

Policy News

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Private electronic devices may be subject to public records requests

The California Public Records Act grants the public the right to access records relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency, regardless of physical form or characteristics. The application of the CPRA to any communication or information which constitutes a public record, but which may not be directly retained by a public agency, has raised some questions and concerns.

On March 2, 2017, the California Supreme Court in *City of San Jose v. Superior Court* offered some clarification on the reach of the CPRA. The Court held that writings and communications about public business are not excluded from a public records request under the CPRA simply because they have been sent or received on a personal account or device. Thus, when a district or county office of education board member or employee uses a personal account or device to conduct district/COE business, the district/COE must use "reasonable efforts" to locate any requested records on the personal account or device. Recognizing the concerns about potential violation of an individual's privacy rights, the Court observed that the CPRA does not require extraordinary or intrusive searches.

The CPRA and other statutes exempt certain records from public disclosure, including, but not limited to, preliminary drafts, notes and interagency or intra-agency memoranda that are not retained in the ordinary course of business, provided that the public interest in withholding these records clearly outweighs the public interest in disclosure. Whether an electronic communication is a public record or entirely personal may depend upon the context, and legal counsel should be consulted as necessary.

CSBA has issued a legal alert, *Tips for Governing Boards in Response to Public Records Act Ruling on Electronic Communications*, which provides strategies and practices for complying with the Court's ruling without infringing on the privacy rights of an individual. For example, board members and employees may restrict themselves to use only a district/COE-provided email address or device to send district/COE communications, use a separate dedicated phone or application, conduct business over the phone or in person and/or avoid the use of text messages and other instant-messaging tools to conduct public business. If board members and employees continue to use their personal accounts or devices for public business, they may copy a district/COE email address on any district/COE-related communication sent to or from their personal email account. Otherwise, they must be prepared to search their personal accounts or devices for public business-related communications and provide a sworn declaration establishing whether communications are subject to disclosure, are exempt from disclosure under the CPRA or are personal communications.

To reflect the new ruling, CSBA has updated BP 1340 - Access to District Records, AR 3580 - District Records and BB 9012 - Board Member Electronic Communications.



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New requirements address sudden cardiac arrest for student athletes

Sudden cardiac arrest is the leading cause of death on school campuses and is 60 percent more likely to occur during exercise or sports activity, reports the California Interscholastic Federation (www.cifstate.org/sports-medicine/sca). Sudden cardiac arrest may be caused by a heart defect, an electrical defect that interrupts the normal rhythm of the heart, or another cause such as substance abuse, and is fatal in 92 percent of cases if not treated immediately and properly.

Thus, it is imperative that student athletes, parents, coaches and other staff are knowledgeable about the symptoms of and appropriate response to sudden cardiac arrest. Often confused with warning signs of physical exhaustion, symptoms of sudden cardiac arrest may include dizziness, lightheadedness, shortness of breath, racing or fluttering heartbeat, fainting, fatigue, weakness, nausea, and/or chest pains.

Effective July 1, 2017, the Eric Paredes Sudden Cardiac Arrest Prevention Act (Assembly Bill 1639 [2016], Maienschein, R-San Diego) expands health and safety standards for student athletes to include protocols for identifying symptoms of sudden cardiac arrest and for taking immediate action to remove the student from the athletic activity. Named for a California high school student athlete who died from sudden cardiac arrest at home, the Act provides that:

- » Coaches must complete, and retake every two years, a training course related to the nature and warning signs of sudden cardiac arrest. Beginning July 1, 2019, a coach who does not complete the required training will be subject to suspension from coaching until the training is completed.
- » Before a student participates in an athletic activity governed by the CIF, the student and parent/guardian must review and submit a signed information sheet provided by the CIF (available at www.cifstate.org/sports-medicine/sca/SCA_parent_review_form.pdf). If the athletic activity is not governed by the CIF, the student and parent/guardian must sign an acknowledgement that they have reviewed information on sudden cardiac arrest posted on the California Department of Education's website.
- » School districts and schools are encouraged to post on their websites the information and material on sudden cardiac arrest required to be posted by the CDE.
- » A student athlete must be removed from participation in an athletic activity if he or she passes out or faints, and must not be permitted to return to the activity until a health care provider evaluates the student and gives written clearance. If a coach or other staff member observes other symptoms such as seizures, unexplained shortness of breath, chest pains, dizziness, racing heart rate, or extreme fatigue, the student may be removed and the parents/guardians must be notified so they can determine whether to seek medical treatment.

CIF bylaws enacted last year already require training and education related to sudden cardiac arrest for coaches and athletes in sports programs governed by the CIF. AB 1639 incorporates those requirements into law and expands them to apply to other athletic activities outside the physical education program (e.g., athletic contests or competitions sponsored by a school, noncompetitive cheerleading, practice sessions and scrimmages), as well as to programs in charter schools and private schools.

The provisions of AB 1639 are similar to requirements added by AB 2127 in 2014 pertaining to concussions or head injuries sustained by student athletes. That law also requires distribution of information to student athletes and parents/guardians, training of coaches, and removal of students from participation in the athletic activity when a concussion or head injury is suspected.



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CSBA has updated BP/AR 6145.2 - Athletic Competition and BP/AR 4127/4227/4327 - Temporary Athletic Team Coaches to reflect the new law.

Districts are reminded that state regulations (5 CCR 5594) require the superintendent or designee to certify to the board, and require the board to certify to the State Board of Education, that each coach meets the qualifications and competencies specified in 5 CCR 5593. Although state regulations do not require certification that coaches have met the training requirements pertaining to sudden cardiac arrest or concussions, it is recommended that boards require the superintendent or designee to provide such information to ensure that coaches are in full compliance.

The CDE has indicated that it plans to update the "Physical Education FAQs" on its website to reflect the certification requirement of 5 CCR 5594. Currently, there is no form for such certification and districts may submit a brief statement to the SBE, such as "Title 5, California Code of Regulations, Section 5594 requires that the governing board of each local school district shall certify to the State Board of Education that the provisions of Section 5593 have been met. I hereby certify that the _____ School District has met the conditions set forth in Title 5, Section 5593."

USDA mandates policy on delinquent meal payments

The U.S. Department of Agriculture has mandated that districts/COEs participating in the National School Lunch or Breakfast program adopt, by July 1, 2017, a written policy which describes how students who pay the full or reduced-price cost of a reimbursable meal are impacted by having insufficient funds on hand or in their account to purchase a meal.

To fulfill this requirement, USDA Memorandum SP 46-2016, "Unpaid Meal Charges: Local Meal Charge Policies," authorizes state agencies to develop a statewide meal charge policy to be implemented by all local agencies. If the state agency does not do so, then districts/COEs must develop and implement a local policy. The CDE has confirmed that districts/COEs will be required to adopt local policies, but is updating its Management Bulletin SNP-03-2017 to provide guidance in policy development.

Local agencies have some discretion in developing the specific details of their policies and may have different requirements for elementary, middle and high schools. Practices that may be implemented include, but are not limited to:

- » Establishing a system for families to prepay for meals to help ensure that students have access to reimbursable meals without accruing unpaid meal charges and to limit the exchange of cash in the school cafeteria. If such a system is established, families must be allowed to add funds on the day of service and, especially with regard to reduced-price meals, any unused funds must be carried over or refunded.
- » Allowing families to check their account balance and make deposits electronically, provided that other payment methods are available to families that do not have a computer or mobile device or that prefer to make payments in person.
- » Calling, emailing or sending letters to remind parents/guardians of delinquent payments, provided that such reminders are only provided by persons authorized to access student eligibility information in order to carry out activities under the federal meal program.
- » Encouraging eligible families to apply for free or reduced-price meals and assisting with the application process.
- » Working with families to establish long-term repayment plans.
- » Providing an alternate meal to students who are late in paying full price for meals, as long as the alternate meal meets federal nutrition standards. Students receiving reduced-



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price meals cannot be given an alternate meal. However, the USDA encourages schools to provide the same reimbursable meal to all students so as not to single out students with unpaid meal charges.

- » When the district/COE is unsuccessful in collecting the delinquent debt by the end of the fiscal year, classifying the debt as “bad debt” and using nonfederal funding sources (e.g., district/COE general fund, parent-teacher organization) to repay the cafeteria fund for the total amount.

The USDA requires that the policy be communicated in writing to all households at the start of each school year and whenever a student transfers into the district/COE during the school year. The USDA’s updated Memorandum SP 23-2017, “Unpaid Meal Charges: Guidance and Q&A,” states that while posting the policy on the district/COE website is useful, it is not sufficient to reach all families. The memorandum suggests that the policy may be communicated by including a letter with student registration materials, including the policy in student handbooks if distributed annually, and/or including the policy in notifications regarding applications for free or reduced-price meals.

The district/COE policy on delinquent meal payments, as well as records of the notification methods used, must be provided to the CDE during the state monitoring process (Administrative Review) that occurs at least once every three years.

CSBA has updated BP/AR 3551 - Food Service Operations/Cafeteria Fund to reflect the mandate for policy on this topic. In developing local policy, districts/COEs are encouraged to review the USDA memoranda and related resources, available at www.fns.usda.gov/school-meals/unpaid-meal-charges.

New transparency law requires oral report of executive compensation

To ensure openness and transparency when fixing the salary and benefits offered to executives of public agencies, Senate Bill 1436 (2016, Bates, R-Laguna Niguel) adds a requirement for boards to orally report, in open session, a summary of the recommendation for final action on the salary and benefits of such employees. The law is applicable to contracts with the superintendent; a deputy, associate, or assistant superintendent; a department head; and any other person whose position within the district/COE is established through an employment contract.

Current law generally prohibits boards from discussing or taking action on proposed compensation in closed session. Exceptions are when an employee’s compensation is reduced as a result of the imposition of discipline or when the board is instructing its designated representative concerning negotiations with prospective employees (“labor exception”). In addition, boards are prohibited from deliberating on the salary or other compensation of an employee at a special meeting.

The new requirement goes a step further by ensuring that final action on compensation is not placed on a consent agenda where it might receive little attention and there is no public participation. According to the author of SB 1436, “There is a public interest in ensuring that decisions made by legislative bodies of local agencies regarding local agency executive compensation are open and transparent. Local agency executives, such as agency CEOs and city managers, are offered fringe benefits including health care coverage and pensions in amounts that can have a significant long-term impact on the budget and that deserve particular scrutiny by the public.”

CSBA has updated BP 2121 - Superintendent’s Contract and BP 4312.1 - Contracts to reflect the new law.

Further guidance on the development of the superintendent’s contract is available in the



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annotated Superintendent Contract template issued by CSBA's Education Legal Alliance. This template is intended to be a starting point for boards developing a contract with a new superintendent and, as necessary, negotiating the details of the contract with the superintendent. For further information or to request a copy, go to www.csba.org/SupContractTemplate.

CSBA partnership offers Executive Search Service

To assist districts/COEs with their executive hiring needs, CSBA partners with McPherson & Jacobson, L.L.C. to offer the Executive Search Service. The team of California-based consultants works with the board and stakeholder groups identified by the district/COE to implement a systematic, comprehensive search process.

The service includes identifying the characteristics desired of the future superintendent, meeting with stakeholder groups, advertising the vacancy and developing promotional materials, actively recruiting applicants, evaluating all completed applicant files, conducting reference checks, assisting the board in selecting final candidates to be interviewed, preparing the board for the interview process, scheduling and coordinating interviews and establishing performance objectives for the superintendent.

For further information about the service, as well as a list of current openings, see www.csba.org/ESS.

CCBE conference scheduled for September

County board members will have the opportunity to focus on specific issues which impact them and to network with other county board members at the California County Boards of Education Annual Conference from Sept. 8-10. Speakers and programs will highlight best practices and new ideas for addressing the unique issues faced by county boards and the students they serve.

Key areas of focus for the conference include the Local Control and Accountability Plan and Local Control Funding Formula, advocacy, charter schools, governance, students' social and emotional well-being, and innovation and student learning.

A discounted registration fee of \$299 is available to board members and superintendents who register by July 19. For further information, see <http://theccbe.org/Events/CCBEAnnualConference.aspx>. To register, go to www.csba.org/TrainingAndEvents.



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