

# CSBA Sample

## Board Policy

### Philosophy, Goals, Objectives, and Comprehensive Plans

BP 0460(a)

### LOCAL CONTROL AND ACCOUNTABILITY PLAN

Note: Education Code 52060-52077 require the Governing Board to adopt and annually update, on or before July 1, a local control and accountability plan (LCAP). Pursuant to Education Code 52060, ~~as amended by AB 2878 (Ch. 826, Statutes of 2018),~~ the LCAP must include goals and actions aligned with eight state priorities related to (1) the degree to which teachers are appropriately assigned and fully credentialed, students have sufficient access to standards-based instructional materials, and facilities are maintained in good repair; (2) implementation of and student access to state academic content and performance standards; (3) parent/guardian involvement and family engagement; (4) student achievement; (5) student engagement; (6) school climate; (7) student access to and enrollment in a broad course of study, including programs and services provided to benefit low-income students, English learners, and/or foster youth (i.e., "unduplicated students" for purposes of supplemental and concentration grants under the local control funding formula (LCFF)); and (8) student outcomes in the specified course of study. Education Code 52060 provides that, in addition to addressing the state priorities in the LCAP, the district may establish and address local priorities and goals. Examples include priorities for student wellness and other conditions of children, professional development, community involvement, and effective governance and leadership. See the accompanying administrative regulation for further information about the required content of the LCAP.

The Governing Board desires to ensure the most effective use of available funding to improve outcomes for all students. A comprehensive, data-driven planning process shall be used to identify annual goals and specific actions which are aligned with the district budget and facilitate continuous improvement of district practices.

*(cf. 0000 - Vision)*

*(cf. 0200 - Goals for the School District)*

*(cf. 0415 - Equity)*

Note: Pursuant to Education Code 52064, the State Board of Education (SBE) has adopted a template that districts must use to complete the LCAP. An electronic version of the template is available on the California Department of Education's (CDE) web site.

~~As amended by AB 1840 (Ch. 426, Statutes of 2018), Education Code 52064 requires the SBE, by January 31, 2020, to expand the template to include more specific information about the goals, actions, expenditures, and services for all students and subgroups of students, as well as information about the district, highlights of the LCAP, and annual performance as indicated by the California School Dashboard.~~

The Board shall adopt a districtwide local control and accountability plan (LCAP), based on the template adopted by the State Board of Education (SBE), that addresses the state priorities in Education Code 52060 and any local priorities adopted by the Board. The LCAP shall be updated on or before July 1 of each year and, like the district budget, shall cover the next fiscal year and two subsequent fiscal years. (Education Code 52060, 52064; 5 CCR 15494-15497)

*(cf. 3100 - Budget)*

## LOCAL CONTROL AND ACCOUNTABILITY PLAN (continued)

Note: Education Code 52060 requires that the LCAP include annual goals to be achieved for all students and for each numerically significant student subgroup as defined in Education Code 52052. In addition, several state priorities address programs and services for "unduplicated students," as defined in Education Code 42238.01-42238.02.

The LCAP shall focus on improving outcomes for all students, particularly those who are "unduplicated students" or are part of any numerically significant student subgroup that is at risk of or is underperforming.

Note: Pursuant to Education Code 42238.01, as amended by AB 1962 (Ch. 748, Statutes of 2018), no later than the 2020-21 fiscal year, the definition of "foster youth" for the purpose of identifying unduplicated students will include a dependent child of the court of an Indian tribe, consortium of tribes, or tribal organization who is the subject of a petition filed in the tribal court in accordance with the tribe's law, provided the child would also meet one of the descriptions in Welfare and Institutions Code 300 describing when a child may be adjudged a dependent child of the juvenile court.

*Unduplicated students* include students who are eligible for free or reduced-price meals, English learners, and foster youth, as defined in Education Code 42238.01 for purposes of the local control funding formula (LCFF). (Education Code 42238.02)

(cf. 3553 - *Free and Reduced Price Meals*)  
(cf. 6173.1 - *Education for Foster Youth*)  
(cf. 6174 - *Education for English Learners*)

*Numerically significant student subgroups* include ethnic subgroups, socioeconomically disadvantaged students, English learners, students with disabilities, foster youth, and homeless students, when there are at least 30 students in the subgroup or at least 15 foster youth or homeless students. (Education Code 52052)

(cf. 6164.4 - *Identification and Evaluation of Individuals for Special Education*)  
(cf. 6173 - *Education for Homeless Children*)

The Superintendent or designee shall review the school plan for student achievement (SPSA) submitted by each district school pursuant to Education Code 64001 to ensure that the specific actions included in the LCAP are consistent with strategies included in the SPSA. (Education Code 52062)

(cf. 0420 - *School Plans/Site Councils*)

The LCAP shall also be aligned with other district and school plans to the extent possible in order to minimize duplication of effort and provide clear direction for program implementation.

(cf. 0400 - *Comprehensive Plans*)  
(cf. 0440 - *District Technology Plan*)  
(cf. 0450 - *Comprehensive Safety Plan*)

## LOCAL CONTROL AND ACCOUNTABILITY PLAN (continued)

(cf. 5030 - Student Wellness)

(cf. 6171 - Title I Programs)

(cf. 7110 - Facilities Master Plan)

Note: Pursuant to Education Code 52064.1, as added by AB 1808 (Ch. 32, Statutes of 2018), districts are required, by July 1, 2019, to develop an LCFF budget overview for parents/guardians with specified information. The budget overview must be developed in conjunction with, and attached as a cover to, the LCAP and annual update to the LCAP. The budget overview is subject to the requirements of Education Code 52062 and 52070 pertaining to the adoption, review, and approval of the LCAP. The Superintendent of Public Instruction (SPI) is required to develop, before December 31, 2018, a template for the budget overview.

As part of the LCAP adoption and annual update to the LCAP, the Board shall separately adopt an LCFF budget overview for parents/guardians, based on the template developed by the SBE, which includes specified information relating to the district's budget. The budget overview shall be adopted, reviewed, and approved in the same manner as the LCAP and the annual update. (Education Code 52064.1)

Any complaint that the district has not complied with legal requirements pertaining to the LCAP may be filed pursuant to AR 1312.3 - Uniform Complaint Procedures. (Education Code 52075)

(cf. 1312.3 - Uniform Complaint Procedures)

### Plan Development

The Superintendent or designee shall gather data and information needed for effective and meaningful plan development and present it to the Board and community. Such data and information shall include, but not be limited to, data regarding the number of students in student subgroups, disaggregated data on student achievement levels, and information about current programs and expenditures.

Note: Education Code 52060 requires consultation on plan development with all of the groups listed below. The Board may delegate responsibility for arranging meetings and other input opportunities to the Superintendent or designee.

5 CCR 15495 defines what it means to consult with students, including unduplicated students and other numerically significant student subgroups, and gives examples of methods that may be used for this consultation. State regulations do not provide examples of consultation with groups other than students, but consultations might include surveys, the establishment of an advisory committee consisting of representatives of all the specified groups, solicitation of feedback from the groups after a draft plan is available, discussion of the LCAP at staff meetings, and communication with parent organizations, student councils, school site councils, or other established committees or organizations. The district may expand the following paragraph to reflect district practice.

The Board shall consult with teachers, principals, administrators, other school personnel,

## **LOCAL CONTROL AND ACCOUNTABILITY PLAN (continued)**

employee bargaining units, parents/guardians, and students in developing the LCAP. Consultation with students shall enable unduplicated students and other numerically significant student subgroups to review and comment on LCAP development and may include surveys of students, student forums, student advisory committees, and/or meetings with student government bodies or other groups representing students. (Education Code 52060; 5 CCR 15495)

*(cf. 1220 - Citizen Advisory Committees)*

*(cf. 4140/4240/4340 - Bargaining Units)*

*(cf. 6020 - Parent Involvement)*

### **Public Review and Input**

Note: Pursuant to Education Code 52063 and 5 CCR 15495, the Board is required to establish a parent advisory committee and, if district enrollment includes at least 15 percent English learners, an English learner parent advisory committee to review and comment on the LCAP. The district may use existing parent advisory committees for these purposes if the committee composition complies with Education Code 52063 and 5 CCR 15495. However, the district should consider whether such opportunities need to be expanded to achieve significant levels of stakeholder involvement in the planning process as intended by law.

The Board shall establish a parent advisory committee to review and comment on the LCAP. The committee shall be composed of a majority of parents/guardians and shall include parents/guardians of unduplicated students as defined above. (Education Code 52063; 5 CCR 15495)

Whenever district enrollment includes at least 15 percent English learners, with at least 50 students who are English learners, the Board shall establish an English learner parent advisory committee composed of a majority of parents/guardians of English learners to review and comment on the LCAP. (Education Code 52063; 5 CCR 15495)

The Superintendent or designee shall present the LCAP to the committee(s) before it is submitted to the Board for adoption, and shall respond in writing to comments received from the committee(s). (Education Code 52062)

Note: Education Code 52062 requires notification to the public of the opportunity to submit written comments on the proposed LCAP, including notification in the primary language of parents/guardians when required by Education Code 48985. Pursuant to Education Code 48985, whenever 15 percent or more of the students in a school speak a single primary language other than English, notifications sent to parents/guardians of such students must be written in the primary language as well as in English; see BP 5145.6 - Parental Notifications.

The Superintendent or designee shall notify members of the public of the opportunity to submit written comments regarding the specific actions and expenditures proposed to be included in the LCAP. The notification shall be provided using the most efficient method of

**LOCAL CONTROL AND ACCOUNTABILITY PLAN** (continued)

notification possible, which may not necessarily include producing printed notices or sending notices by mail. All written notifications related to the LCAP shall be provided in the primary language of parents/guardians when required by Education Code 48985. (Education Code 52062)

*(cf. 5145.6 - Parental Notifications)*

Note: Pursuant to Education Code 305, the LCAP parent/guardian and community engagement process must include solicitation of input on language acquisition programs. See BP/AR 6174 - Education for English Learners for further information regarding the types of language acquisition programs that may be offered.

As part of the parent/guardian and community engagement process, the district shall solicit input on effective and appropriate instructional methods, including, but not limited to, establishing language acquisition programs to enable all students, including English learners and native English speakers, to have access to the core academic content standards and to become proficient in English. (Education Code 305-306)

Note: Education Code 52062, as amended by AB 1808, requires the district to consult with its special education local plan area administrator(s) to ensure that specific actions for individuals with disabilities are included in the LCAP.

The Superintendent or designee shall consult with the administrator(s) of the special education local plan area of which the district is a member to ensure that specific actions for students with disabilities are included in the LCAP and are consistent with strategies included in the annual assurances support plan for the education of students with disabilities. (Education Code 52062)

*(cf. 0430 - Comprehensive Local Plan for Special Education)*

Note: Pursuant to Education Code 42127, the Board must not adopt a district budget until the LCAP is in place for the budget year; see BP 3100 - Budget. The budget must include the expenditures necessary to implement the plan that will be effective during the subsequent fiscal year. If it does not, the County Superintendent of Schools will disapprove the district's budget.

The Board shall hold at least one public hearing to solicit the recommendations and comments of members of the public regarding the specific actions and expenditures proposed to be included in the LCAP. The public hearing shall be held at the same meeting as the budget hearing required pursuant to Education Code 42127 and AR 3100 - Budget. (Education Code 42127, 52062)

*(cf. 9320 - Meetings and Notices)*

## **LOCAL CONTROL AND ACCOUNTABILITY PLAN (continued)**

### **Adoption of the Plan**

The Board shall adopt the LCAP prior to adopting the district budget, but at the same public meeting. This meeting shall be held after the public hearing described above, but not on the same day as the hearing. (Education Code 52062)

The Board may adopt revisions to the LCAP at any time during the period in which the plan is in effect, provided the Board follows the process to adopt the LCAP pursuant to Education Code 52062 and the revisions are adopted in a public meeting. (Education Code 52062)

### **Submission of Plan to County Superintendent of Schools**

Note: Education Code 52070 requires the district to submit the LCAP to the County Superintendent, who may seek written clarification of the contents of the plan and may submit recommendations for amendments as provided below. The County Superintendent is required to approve the LCAP on or before October 8 if it is determined that (1) the LCAP adheres to the template adopted by the SBE and follows any SBE instructions or directions for completing the template; (2) the district budget includes expenditures sufficient to implement the specific actions and strategies in the LCAP; and (3) the LCAP adheres to supplemental and concentration grant expenditure requirements specified in Education Code 42238.07 for unduplicated students. In determining whether the district has fully demonstrated that it will use supplemental and concentration funds to increase or improve services for unduplicated students, 5 CCR 15497 requires the County Superintendent to review any descriptions of districtwide or schoolwide services provided.

Education Code 52064.1, ~~as added by AB 1808~~, requires the district to file the LCFF budget overview for parents/guardians with the County Superintendent to be reviewed for adherence with the template adopted by the SPI. If the budget overview is not approved, the County Superintendent will withhold approval of the LCAP and will provide technical assistance pursuant to Education Code 52071.

Not later than five days after adoption of the LCAP, the district budget, and the budget overview for parents/guardians, the Board shall file the LCAP, the budget, and the budget overview with the County Superintendent of Schools. (Education Code 42127, 52064.1, 52070)

If the County Superintendent sends, by August 15, a written request for clarification of the contents of the LCAP, the Board shall respond in writing within 15 days of the request. If the County Superintendent then submits recommendations for amendments to the LCAP within 15 days of receiving the Board's response, the Board shall consider those recommendations in a public meeting within 15 days of receiving the recommendations. (Education Code 52070)

If the County Superintendent does not approve the district's LCAP, the Board shall accept technical assistance from the County Superintendent focused on revising the plan so that it can be approved. (Education Code 52071)

## LOCAL CONTROL AND ACCOUNTABILITY PLAN (continued)

### Monitoring Progress

Note: The following **optional** paragraph may be revised to reflect the district's timeline for reviewing the progress and effectiveness of strategies included in the LCAP. Reports should be provided to the Board in sufficient time to allow for any necessary changes in the annual update to the LCAP by July 1 of each year, as required by Education Code 52060-52061. The Dashboard provides a tool to assist in evaluation of district and school performance and includes all of the state priorities for the LCAP described in Education Code 52060.

The Superintendent or designee shall report to the Board, at least annually in accordance with the timeline and indicators established by the Superintendent and the Board, regarding the district's progress toward attaining each goal identified in the LCAP. Evaluation shall include, but not be limited to, an assessment of district and school performance reported on the California School Dashboard. Evaluation data shall be used to recommend any necessary revisions to the LCAP.

*(cf. 0500 - Accountability)*

**Note:** Pursuant to Education Code 52071, when a school or a numerically significant student subgroup is not making sufficient progress toward its LCAP goals, the County Superintendent may be required to provide technical assistance or the Board may request technical assistance. In addition, the Superintendent of Public Instruction may intervene in any school which has been identified as in need of intervention based on criteria specified in Education Code 52072. Pursuant to Education Code 52059.5, CDE has established a unified system of support for districts and schools that meets state requirements as well as federal Title I requirements and ensures consistency between technical assistance provided under both sets of requirements. For more information, see BP 0520 - Intervention for Underperforming Schools.

**The Superintendent or designee shall seek and/or accept technical assistance or other intervention that may be required pursuant to Education Code 52071 or 52072 when a school or a numerically significant student subgroup is not making sufficient progress toward the goals in the LCAP.**

*(cf. 0520 - Intervention for Underperforming Schools)*

*(cf. 0520.1 - Comprehensive and Targeted Support and Improvement)*

### **Technical Assistance/Intervention**

~~Note: Pursuant to Education Code 52071, as amended by AB 1808, the Board may, at its discretion, request technical assistance from the County Superintendent as described in items #1-2 below. The County Superintendent may charge a fee not to exceed the cost of the service, if the provision of the service requested would create an unreasonable or untenable cost burden for the County Superintendent.~~

~~At its discretion, the Board may submit a request to the County Superintendent for technical assistance, including, but not limited to: (Education Code 52071)~~

## LOCAL CONTROL AND ACCOUNTABILITY PLAN (continued)

1. Assistance in identifying district strengths and weaknesses in regard to state priorities, which includes the review of performance data on the state and local indicators included in the Dashboard and other relevant local data, and in identifying effective, evidence-based programs or practices that address any areas of weakness.
2. Assistance from an academic, programmatic, or fiscal expert, or team of experts, in identifying and implementing effective programs and practices that are designed to improve performance in any identified areas of weakness. The district may engage other service providers, including, but not limited to, other school districts, county offices of education, or charter schools, to provide such assistance.

Note: Pursuant to Education Code 52071, as amended by AB 1808, the district must be provided technical assistance whenever one or more numerically significant student subgroups meet the criteria for assistance and intervention established pursuant to Education Code 52064.5.

In the event that the County Superintendent requires the district to receive technical assistance based on one or more numerically significant student subgroups meeting the criteria established pursuant Education Code 52064.5, the Board shall work with the County Superintendent, or another service provider at district expense, and shall provide the County Superintendent timely documentation of the district's completion of the activities listed in items #1-2 above or substantially similar activities. (Education Code 52071)

Note: Pursuant to Education Code 52074, as amended by AB 1840, either the County Superintendent or the SPI may refer a district to the California Collaborative for Educational Excellence (CCEE) if it is determined to be necessary to help the district accomplish the goals set forth in the district's LCAP. Additionally, if a district receives an emergency apportionment pursuant to Education Code 41320-41322, the district shall be deemed to have been referred to the CCEE.

If referred to the California Collaborative for Educational Excellence by either the County Superintendent or the Superintendent of Public Instruction (SPI), the district shall implement the recommendations of that agency in order to accomplish the goals set forth in the district's LCAP. (Education Code 52071, 52074)

Note: Education Code 52072 provides that the SPI, with approval of the SBE, may intervene when a district meets both of the following criteria: (1) the district did not improve the outcomes for three or more student subgroups identified pursuant to Education Code 52052, or all of the student subgroups if the district has fewer than three subgroups, in regard to more than one state or local priority in three out of four consecutive school years; and (2) the CCEE has provided advice and assistance to the district and submits a finding that the district failed or is unable to implement the CCEE's recommendations or that the district's inadequate performance is so persistent or acute as to require intervention. For any district identified as needing intervention, the SPI or an academic trustee appointed by the SPI may, with approval of the SBE, take one or more of the actions listed in items #1-3 below.

**LOCAL CONTROL AND ACCOUNTABILITY PLAN (continued)**

If the SPI identifies the district as needing intervention, the district shall cooperate with any action taken by the SPI or any academic advisor appointed by the SPI, which may include one or more of the following: (Education Code 52072)

1. Revision of the district's LCAP
2. Revision of the district's budget in accordance with changes in the LCAP
3. A determination to stay or rescind any district action that would prevent the district from improving outcomes for all student subgroups, provided that action is not required by a collective bargaining agreement

*Legal Reference:***EDUCATION CODE**

305-306 English language education

17002 State School Building Lease-Purchase Law, including definition of good repair

33430-33436 Learning Communities for School Success Program; grants for LCAP implementation

41020 Audits

41320-41322 Emergency apportionments

42127 Public hearing on budget adoption

42238.01-42238.07 Local control funding formula

44258.9 County superintendent review of teacher assignment

**47604.33 Submission of reports by charter schools****47606.5 Charter schools, local control and accountability plan**

48985 Parental notices in languages other than English

51210 Course of study for grades 1-6

51220 Course of study for grades 7-12

52052 Numerically significant student subgroups

52059.5 Statewide system of support

52060-52077 Local control and accountability plan

52302 Regional occupational centers and programs

52372.5 Linked learning program

54692 Partnership academies

60119 Sufficiency of textbooks and instructional materials; hearing and resolution

60605.8 California Assessment of Academic Achievement; Academic Content Standards Commission

64001 School plan for student achievement

99300-99301 Early Assessment Program

**WELFARE AND INSTITUTIONS CODE**

300 Dependent child of the court

**CODE OF REGULATIONS, TITLE 5**

4600-4670 Uniform complaint procedures

15494-15497 Local control and accountability plan and spending requirements

**UNITED STATES CODE, TITLE 20****6311 State plan**

6312 Local educational agency plan

6826 Title III funds, local plans

Management Resources continued: (see next page)

## LOCAL CONTROL AND ACCOUNTABILITY PLAN (continued)

### *Management Resources:*

#### CSBA PUBLICATIONS

*The California School Dashboard and Small Districts*, October 2018

*Promising Practices for Developing and Implementing LCAPs*, Governance Brief, November 2016

*LCFF Rubrics, Issue 1: What Boards Need to Know About the New Rubrics*, Governance Brief, rev. October 2016

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

*California School Accounting Manual*

*California School Dashboard*

*LCFF Frequently Asked Questions*

*Local Control and Accountability Plan and Annual Update (LCAP) Template*

*Family Engagement Framework: A Tool for California School Districts*, 2014

*California Career Technical Education Model Curriculum Standards*, 2013

*California Common Core State Standards: English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects*, rev. 2013

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS (continued)

*California Common Core State Standards: Mathematics*, rev. 2013

*California English Language Development Standards*, 2012

#### WEB SITES

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

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

California School Dashboard: <http://www.caschooldashboard.org>

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# CSBA Sample

## Administrative Regulation

### Philosophy, Goals, Objectives, and Comprehensive Plans

AR 0460(a)

### LOCAL CONTROL AND ACCOUNTABILITY PLAN

Note: Education Code 52060-52077 require the Governing Board to adopt and annually update, on or before July 1, a three-year local control and accountability plan (LCAP). See the accompanying Board policy for information about plan development and monitoring.

### Goals and Actions Addressing State and Local Priorities

Note: Education Code 52060 requires that the LCAP include annual goals, aligned with specified state priorities, to be achieved for all students and for each numerically significant subgroup as defined in Education Code 52052. Pursuant to Education Code 52052, a numerically significant subgroup includes ethnic subgroups, socioeconomically disadvantaged students, English learners, students with disabilities, foster youth, and homeless students, when there are at least 30 students in the subgroup (or at least 15 foster youth or homeless students) in the school or district.

In addition, several state priorities address programs and services for "unduplicated students." For purposes of supplemental and concentration grants allocated through the local control funding formula (LCFF), "unduplicated students" are defined by Education Code 42238.02 as students eligible for free or reduced-price meals, English learners, and foster youth; see the accompanying Board policy.

The district's local control and accountability plan (LCAP) and annual updates shall include, for the district and each district school: (Education Code 52060)

1. A description of the annual goals established for all students and for each numerically significant subgroup as defined in Education Code 52052, including ethnic subgroups, socioeconomically disadvantaged students, English learners, students with disabilities, foster youth, and homeless students. The LCAP shall identify goals for each of the following state priorities:
  - a. The degree to which district teachers are appropriately assigned in accordance with Education Code 44258.9 and fully credentialed in the subject areas and for the students they are teaching; every district student has sufficient access to standards-aligned instructional materials as determined pursuant to Education Code 60119; and school facilities are maintained in good repair as specified in Education Code 17002

(cf. 1312.4 - Williams Uniform Complaint Procedures)

(cf. 3517 - Facilities Inspection)

(cf. 4112.2 - Certification)

(cf. 4113 - Assignment)

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

**LOCAL CONTROL AND ACCOUNTABILITY PLAN** (continued)

- b. Implementation of the academic content and performance standards adopted by the State Board of Education (SBE), including how the programs and services will enable English learners to access the Common Core State Standards and the English language development standards for purposes of gaining academic content knowledge and English language proficiency

(cf. 6011 - Academic Standards)

(cf. 6174 - Education for English Learners)

Note: ~~Education Code 52060, as amended by AB 2878 (Ch. 826, Statutes of 2018), expands the parent involvement state priority to include family engagement.~~ Education Code 52060 provides that family engagement may include, but not be limited to, efforts by the district and schools to apply research-based practices, such as welcoming all families into the school community, engaging in effective two-way communication, supporting student success, and empowering families to advocate for equity and access. It may also include partnering with families to inform, influence, and create practices and programs that support student success and collaboration with families and the broader community, expand student learning opportunities, and promote civic participation.

- c. Parent/guardian involvement and family engagement, including efforts the district makes to seek parent/guardian input in district and school site decision making and how the district will promote parent/guardian participation in programs for unduplicated students, as defined in Education Code 42238.02 and Board policy, and students with disabilities

(cf. 3553 - Free and Reduced Price Meals)

(cf. 6020 - Parent Involvement)

(cf. 6173.1 - Education for Foster Youth)

- d. Student achievement, as measured by all of the following as applicable:

- (1) Statewide assessments of student achievement

Note: As amended by AB 1240 (Ch. 783, Statutes of 2019), Education Code 52060 adds, as a measure of student achievement, the percentage of students who have successfully completed both college entrance courses and career technical education courses.

- (2) The percentage of students who have successfully completed courses that satisfy the requirements for entrance to the University of California and the California State University; ~~or~~ **have successfully completed** career technical education (CTE) sequences or programs of study that align with SBE-approved career technical education standards and frameworks, including, but not limited to, those described in Education Code 52302, 52372.5, or 54692; **and have successfully completed both college entrance courses and CTE sequences or programs**

**LOCAL CONTROL AND ACCOUNTABILITY PLAN** (continued)

- (3) The percentage of English learners who make progress toward English proficiency as measured by the SBE-certified assessment of English proficiency
- (4) The English learner reclassification rate
- (5) The percentage of students who have passed an Advanced Placement examination with a score of 3 or higher
- (6) The percentage of students who demonstrate college preparedness in the Early Assessment Program pursuant to Education Code 99300-99301

*(cf. 0500 - Accountability)*  
*(cf. 6141.5 - Advanced Placement)*  
*(cf. 6162.5 - Student Assessment)*  
*(cf. 6162.51 - State Academic Achievement Tests)*  
*(cf. 6178 - Career Technical Education)*

- e. Student engagement, as measured by school attendance rates, chronic absenteeism rates, middle school dropout rates, high school dropout rates, and high school graduation rates, as applicable

*(cf. 5113.1 - Chronic Absence and Truancy)*  
*(cf. 5147 - Dropout Prevention)*  
*(cf. 6146.1 - High School Graduation Requirements)*

- f. School climate, as measured by student suspension and expulsion rates and other local measures, including surveys of students, parents/guardians, and teachers on the sense of safety and school connectedness, as applicable

*(cf. 5137 - Positive School Climate)*  
*(cf. 5144 - Discipline)*  
*(cf. 5144.1 - Suspension and Expulsion/Due Process)*  
*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*

- g. The extent to which students have access to and are enrolled in a broad course of study that includes all of the subject areas described in Education Code 51210 and 51220, as applicable, including the programs and services developed and provided to unduplicated students and students with disabilities, and the programs and services that are provided to benefit these students as a result of supplemental and concentration grant funding pursuant to Education Code 42238.02 and 42238.03

*(cf. 6143 - Courses of Study)*  
*(cf. 6159 - Individualized Education Program)*

**LOCAL CONTROL AND ACCOUNTABILITY PLAN** (continued)

- h. Student outcomes, if available, in the subject areas described in Education Code 51210 and 51220, as applicable

Note: In addition to goals aligned with the state priorities described in item #1 above, Education Code 52060 provides that the LCAP may include goals for local priorities established by the Board; see the accompanying Board policy. **Optional** item #2 below may be revised to reflect local priorities.

2. Any goals identified for any local priorities established by the Board.

(cf. 0200 - Goals for the School District)

3. A description of the specific actions the district will take during each year of the LCAP to achieve the identified goals, including the enumeration of any specific actions necessary for that year to correct any deficiencies in regard to the state and local priorities specified in items #1-2 above. Such actions shall not supersede provisions of existing collective bargaining agreements within the district.

Note: Pursuant to Education Code 52060, in developing goals and actions for the LCAP, the Board may consider qualitative information, including, but not limited to, the results of school quality reviews conducted pursuant to Education Code 52052. Education Code 52052 authorizes the Superintendent of Public Instruction (SPI), with approval of the State Board of Education and conditional upon an appropriation in the state budget, to develop and implement a program of school quality reviews that features locally convened panels to visit schools, observe teachers, interview students, and examine student work.

For purposes of the descriptions required by items #1-3 above, the Board may consider qualitative information, including, but not limited to, findings that result from any school quality review conducted pursuant to Education Code 52052 or any other reviews. (Education Code 52060)

For any local priorities addressed in the LCAP, the Board and Superintendent or designee shall identify and include in the LCAP the method for measuring the district's progress toward achieving those goals. (Education Code 52060)

Note: AB 1840 (Ch. 426, Statutes of 2018) amended Education Code 52060 to require data to be reported in a manner consistent with the California School Dashboard rather than the school accountability report card.

To the extent practicable, data reported in the LCAP shall be reported in a manner consistent with how information is reported on the California School Dashboard. (Education Code 52060)

## LOCAL CONTROL AND ACCOUNTABILITY PLAN (continued)

### Increase or Improvement in Services for Unduplicated Students

Note: The following section is for use by districts that receive LCFF supplemental and/or concentration grant funds. Such districts are required to increase or improve services for unduplicated students in proportion to the increase in funds apportioned on the basis of the number and concentration of unduplicated students; see BP 3100 - Budget. 5 CCR 15494-15496 specify the method for determining the percentage by which services for unduplicated students must be increased or improved above services provided to all students in the fiscal year.

The LCAP shall demonstrate how the district will increase or improve services for unduplicated students at least in proportion to the increase in funds apportioned on the basis of the number and concentration of unduplicated students. (5 CCR 15494-15496)

When the district expends supplemental and/or concentration grant funds on a districtwide or schoolwide basis during the year for which the LCAP is adopted, the district's LCAP shall: (5 CCR 15496)

1. Identify those services that are being funded and provided on a districtwide or schoolwide basis
2. Describe how such services are principally directed towards, and are effective in, meeting the district's goals for unduplicated students in the state priority areas and any local priority areas
3. If the enrollment of unduplicated students is less than 55 percent of district enrollment or less than 40 percent of school enrollment, describe how these services are the most effective use of the funds to meet the district's goals for its unduplicated students in the state priority areas and any local priority areas. The description shall provide the basis for this determination, including, but not limited to, any alternatives considered and any supporting research, experiences, or educational theory.

### Availability of the Plan

Note: Education Code 52065, as amended by AB 1840, requires the district to prominently post its LCAP, and any annual update or revisions to the LCAP, and LCFF budget overview for parents/guardians on the homepage of its web site. In addition, the County Superintendent of Schools is required to post all district LCAPs, or links to those plans, on the county office of education web site and to transmit all such plans to the SPI, who will then post links to all plans on the California Department of Education web site.

Education Code 52064.1, as added by AB 1808 (Ch. 32, Statutes of 2018), provides that the LCFF budget overview for parents/guardians is also subject to the requirements of Education Code 52065.

**LOCAL CONTROL AND ACCOUNTABILITY PLAN** (continued)

The Superintendent or designee shall prominently post the LCAP, any updates or revisions to the LCAP, and the LCFF budget overview for parents/guardians on the homepage of the district's web site. (Education Code 52064.1, 52065)

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

(10/17 12/18) 10/19

# CSBA Sample

## Board Policy

Philosophy, Goals, Objectives, and Comprehensive Plans

BP 0520(a)

### INTERVENTION FOR UNDERPERFORMING SCHOOLS

**Note:** Pursuant to Education Code 52059.5, the California Department of Education (CDE) has established a single statewide system of support for districts and schools that meets state requirements as well as federal Title I requirements. The following policy reflects the purposes and requirements of the statewide system and may be revised to reflect district practice.

The Governing Board desires that all district schools provide a high-quality educational program that maximizes the achievement of each district student. The district shall provide assistance to schools to support the continuous improvement of student performance within the priorities identified in the district's local control and accountability plan (LCAP) and to enhance the achievement of low-performing student subgroups.

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

*(cf. 0500 - Accountability)*

**Note:** Pursuant to Education Code 52071, the Governing Board may, at its discretion, request technical assistance from the County Superintendent of Schools as described in items #1-2 below. The County Superintendent may charge a fee, not to exceed the cost of the service, when the district has otherwise not been identified for technical assistance or state intervention and the service requested would create an unreasonable or untenable cost burden for the County Superintendent.

At its discretion, the Board may submit a request to the County Superintendent of Schools for technical assistance regarding the following: (Education Code 52071)

1. Identifying the district's strengths and weaknesses in regard to state priorities addressed in the LCAP, including collaboration between the district and County Superintendent to review performance data on the state and local indicators included in the California School Dashboard and other relevant local data and to identify effective, evidence-based programs or practices that address any areas of weakness
2. Securing assistance from an academic, programmatic, or fiscal expert, or team of experts, to identify and implement effective programs and practices that are designed to improve performance in any areas of weakness identified by the district

In the event that the County Superintendent requires the district to receive technical assistance based on a determination that one or more numerically significant student subgroups in a district school meet the performance criteria established pursuant Education Code 52064.5, the Board shall work with the County Superintendent and

## **INTERVENTION FOR UNDERPERFORMING SCHOOLS**

shall provide the County Superintendent timely documentation of the district's completion of the activities listed in items #1-2 above or substantially similar activities. (Education Code 52071)

With the approval of the County Superintendent, the district may, at its own expense, engage another service provider, including, but not limited to, another school district, the county office of education, or a charter school, to act as a partner to the district in filling the district's need for technical assistance. (Education Code 52071)

Note: Pursuant to Education Code 52074, either the County Superintendent or the Superintendent of Public Instruction (SPI) may refer a district to the California Collaborative for Educational Excellence (CCEE) if it is determined to be necessary to help the district accomplish the goals set forth in the district's LCAP. Additionally, if a district receives an emergency apportionment pursuant to Education Code 41320-41322, the district shall be deemed to have been referred to CCEE.

If referred to the California Collaborative for Educational Excellence by either the County Superintendent or the Superintendent of Public Instruction (SPI), the district shall implement the recommendations of that agency in order to accomplish the goals set forth in the district's LCAP. (Education Code 52071, 52074)

Note: Education Code 52072 provides that the SPI, with approval of the State Board of Education (SBE), may intervene when a district meets both of the following criteria: (1) the district did not improve the outcomes for three or more student subgroups identified pursuant to Education Code 52052, or all of the student subgroups if the district has fewer than three subgroups, in regard to more than one state or local priority in three out of four consecutive school years; and (2) the CCEE has provided advice and assistance to the district and submits a finding that the district failed or is unable to implement the CCEE's recommendations or that the district's inadequate performance, based on the California School Dashboard, is so persistent or acute as to require intervention. For any district identified as needing intervention, the SPI or an academic trustee appointed by the SPI may, with approval of the SBE, take one or more of the actions listed in items #1-3 below.

If the SPI identifies the district as needing intervention, the district shall cooperate with any action taken by the SPI or any academic advisor appointed by the SPI, which may include one or more of the following: (Education Code 52072)

1. Revision of the district's LCAP
2. Revision of the district's budget, in conjunction with changes in the LCAP, that would allow the district to improve the outcomes for all student subgroups in regard to state and local priorities
3. A determination to stay or rescind any district action that would prevent the district from improving outcomes for all student subgroups, provided that action is not required by a collective bargaining agreement

## INTERVENTION FOR UNDERPERFORMING SCHOOLS

**Note:** Pursuant to 20 USC 6311, based on data in the Dashboard, schools that are in the lowest performing five percent statewide of schools receiving federal Title I funding, as well as high schools with a graduation rate lower than 67 percent averaged over two years, are identified by CDE for comprehensive support and improvement (CSI). Schools are identified for targeted support and improvement (TSI) if one or more numerically significant student subgroups meet the criteria for the lowest performing five percent of Title I schools, or for additional targeted support and improvement (ATSI) if one student group, on its own, meets these criteria. For program requirements, see BP 0520.1 - Comprehensive and Targeted Support and Improvement.

In addition, any school identified by the California Department of Education for comprehensive support and improvement, targeted support and improvement, or additional targeted support and improvement shall develop and implement a school plan in accordance with 20 USC 6311. Such schools may be required to partner with an external entity, agency, or individual with demonstrated expertise and capacity to identify and implement more rigorous interventions.

(cf. 0420 - School Plans/Site Councils)

(cf. 0520.1 - Comprehensive and Targeted Support and Improvement)

### **Legal Reference:**

#### **EDUCATION CODE**

52052 Numerically significant student subgroups

52059.5 Statewide system of support

52060-52077 Local control and accountability plan

60640-60649 California Assessment of Student Performance and Progress

64001 School plan for student achievement

#### **UNITED STATES CODE, TITLE 20**

6311-6322 Improving basic programs for disadvantaged students, especially:

6311 State plans

### **Management Resources:**

#### **CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS**

California School Dashboard

CSI/TSI/ATSI Frequently Asked Questions

California ESSA Consolidated State Plan, 2017

#### **U.S. DEPARTMENT OF EDUCATION PUBLICATIONS**

Non-Regulatory Guidance: Using Evidence to Strengthen Education Investments, 2016

#### **WEB SITES**

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

California School Dashboard: <http://www.caschooldashboard.org>

U.S. Department of Education: <https://www.ed.gov>

# CSBA Sample

## Board Policy

Philosophy, Goals, Objectives, and Comprehensive Plans

BP 0520.1(a)

### COMPREHENSIVE AND TARGETED SUPPORT AND IMPROVEMENT

**Note:** Pursuant to 20 USC 6311, the California Department of Education (CDE) has established a system of school support and improvement to assist low-performing schools. Based on data in the California School Dashboard (or other performance data if a school is too small to receive a color-coded performance level on the Dashboard), every three years CDE identifies schools that need comprehensive support and improvement (CSI), including (1) schools in the lowest performing five percent of Title I schools and (2) all high schools (including Title I, non-Title I, traditional, and alternative schools) with a graduation rate lower than 67 percent averaged over two years. A district with school(s) that meet the criteria for CSI is eligible to apply to CDE for Title I, Part A funding to assist with the development and implementation of a plan to improve student outcomes. Such a district may also choose to provide all students in a CSI school the option to transfer to another district school, provided that priority is given to the lowest achieving students from low-income families, and may use up to five percent of its Title I allocation to pay for transportation for this purpose.

Schools will be annually identified for targeted support and improvement (TSI) if one or more student subgroups, for two consecutive years, meet the criteria for the lowest performing five percent of Title I schools. Every three years, TSI schools that have not improved will be identified for additional targeted support and improvement (ATSI).

Identification of schools for CSI and ATSI began in the 2018-19 school year. Schools will be identified for TSI for the first time beginning in 2020-21.

The Governing Board is committed to enabling all district students to meet state academic achievement standards. The district shall provide support and assistance to increase student achievement in all district schools, especially any school that has been identified by the California Department of Education (CDE) as in need of comprehensive support and improvement (CSI), targeted support and improvement (TSI), or additional targeted support and improvement (ATSI).

*(cf. 0500 - Accountability)*

*(cf. 0520 - Intervention for Underperforming Schools)*

*(cf. 6011 - Academic Standards)*

*(cf. 6171 - Title I Programs)*

When any school is identified for CSI, TSI, or ATSI, the Superintendent or designee shall notify the school community, including the principal, teachers, and parent/guardians of students of the school, of the identification and, if applicable, shall inform the school of the student subgroup(s) which are consistently underperforming at the school.

## COMPREHENSIVE AND TARGETED SUPPORT AND IMPROVEMENT (continued)

### School Plan

Note: Pursuant to 20 USC 6311, the district is required to develop a school improvement plan for each school identified for CSI, TSI, or ATSI, which must be based on all state indicators in the California School Dashboard. In accordance with the discretion granted to state agencies under 20 USC 6311, CDE has determined that schools eligible for Dashboard Alternative School Status pursuant to Education Code 52052 that have fewer than 100 students are not exempted from this requirement, but they do have flexibility within the school planning process to focus on the Dashboard state indicators that are more applicable to the nature of their program. See the Frequently Asked Questions on CDE's web site.

20 USC 6311 also requires that the plan include evidence-based interventions. Such interventions are described in the U.S. Department of Education's Non-Regulatory Guidance: Using Evidence to Strengthen Education Investments.

Upon receiving notification from CDE that a district school has been identified as eligible for CSI, TSI, or ATSI, the district shall, in partnership with principals, other school leaders, teachers, and parents/guardians, develop and implement a plan to improve student outcomes at the school. The plan shall: (20 USC 6311)

1. Be based on all state indicators in the California School Dashboard, including student performance against state-determined long-term goals, except that any school subject to the state's Dashboard Alternative School Status that has fewer than 100 students may focus on the state indicators that are more applicable to the nature of its program
2. Be based on a school-level needs assessment
3. Include evidence-based interventions
4. If the school is identified for CSI or ATSI, identify resource inequities, which may include a review of district and school-level budgets, to be addressed through implementation of the plan

*(cf. 0400 - Comprehensive Plans)*

The school plan for student achievement developed pursuant to Education Code 64001 may serve as the school improvement plan required for CSI, TSI, or ATSI, provided that the plan meets the requirements of 20 USC 6311. (Education Code 64001)

*(cf. 0420 - School Plans/Site Councils)*

The school improvement plan shall be submitted to the Board for approval. (20 USC 6311)

## COMPREHENSIVE AND TARGETED SUPPORT AND IMPROVEMENT (continued)

**Note:** In addition to requiring district approval of school plans, 20 USC 6311 requires that CSI plans be approved by the state educational agency. However, CDE does not directly review and approve school-level plans. Instead, the template adopted by the State Board of Education for the local control and accountability plan requires a district with school(s) identified for CSI to provide the following information within the plan summary.

If any district school is identified for CSI, the district's local control and accountability plan shall include descriptions of how the district provides support to CSI school(s) in developing the CSI plan and how the district will monitor and evaluate the implementation and effectiveness of the CSI plan to support student and school improvement.

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

### Monitoring and Intervention

The Board and the Superintendent or designee shall regularly review the performance of each school identified for CSI, TSI, or ATSI.

**Note:** For schools identified for TSI, 20 USC 6311 requires the district to monitor the school's implementation of its plan and take action if implementation of the plan is unsuccessful after a period of years established by the district. The following paragraph extends this requirement to CSI and ATSI schools and may be modified to reflect district practice, including the number of years for determining if the plan has been successful.

After two years of implementing the school plan, if any such school has been unsuccessful in improving student outcomes to a level that exceeds initial eligibility criteria, the district shall identify the problem and take additional action as necessary.

**Note:** In accordance with 20 USC 6311 and CDE's California ESSA Consolidated State Plan, schools identified for ATSI and CSI are expected to meet exit criteria after four years. A school is considered to have met exit criteria if it no longer has any combination of performance levels on state indicators that meet the criteria used for identification at the time the school was identified.

For schools identified for CSI, CDE must monitor and periodically review the implementation of the school's plan. The following paragraph reflects interventions established by CDE that may be imposed if a school fails to satisfy the exit criteria for CSI within four years of the initial identification. For further information, see CDE's California ESSA Consolidated State Plan.

If a school identified for CSI fails to improve student outcomes within four years to a level that exceeds the CSI eligibility criteria, it shall be subject to more rigorous interventions that include, but are not limited to, partnering with an external entity, agency, or individual with demonstrated expertise and capacity to:

**COMPREHENSIVE AND TARGETED SUPPORT AND IMPROVEMENT**  
(continued)

- 1. Conduct a new needs assessment that focuses on systemic factors and conduct a root cause analysis that identifies gaps between current conditions and desired conditions in student performance and progress**
- 2. Use the results of the analysis along with stakeholder feedback to develop a new improvement plan that includes:**
  - a. A prioritized set of evidence-based interventions and strategies**
  - b. A program evaluation component with support to conduct ongoing performance and progress monitoring**

**Legal Reference:**

**EDUCATION CODE**

**52052 Numerically significant student subgroups**

**52059.5 Statewide system of support**

**52060-52077 Local control and accountability plan**

**64001 School plan for student achievement**

**UNITED STATES CODE, TITLE 20**

**6311-6322 Improving basic programs for disadvantaged students, especially:**

**6311 State plans**

**6313 Eligibility of schools and school attendance areas; funding allocation**

**Management Resources:**

**CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS**

**California School Dashboard**

**CSI/TSI/ATSI Frequently Asked Questions**

**California ESSA Consolidated State Plan, 2017**

**U.S. DEPARTMENT OF EDUCATION PUBLICATIONS**

**Non-Regulatory Guidance: Using Evidence to Strengthen Education Investments, 2016**

**WEB SITES**

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

**California School Dashboard: <http://www.caschooldashboard.org>**

**U.S. Department of Education: <https://www.ed.gov>**

# CSBA Sample

## Board Policy

Community Relations

BP 1431(a)

### WAIVERS

Note: The following **optional** policy covers waiver requests that the State Board of Education (SBE) generally has legal authority to grant (general waivers). In order to provide districts with flexibility without undermining the basic intent of the law, Education Code 33050-33053 permit **districts** **the Governing Board** to request that **the SBE** waive sections of the Education Code, **and** Title 5 of the California Code of Regulations, ~~or any applicable federal law~~. Education Code 33050 exempts certain sections of the Education Code from ~~the SBE's authority of the SBE~~ to grant waivers. **SB 75 (Ch. 51, Statutes of 2019) amended Education Code 33050 to prohibit the waiver of specified provisions relating to funding for charter schools.**

~~However, this~~ **This** policy does not address waivers expressly authorized by law for specific programs and situations (specific waivers) such as the waiver of Education Code 56101 for students with disabilities, **the waiver of specified school site council provisions pursuant to Education Code 65001, and** ~~waivers that may be granted by the Commission on Teacher Credentialing, or waivers that may be specifically granted by~~ the Superintendent of Public Instruction such as waivers for alternative schools. See BP 6181 - Alternative Schools/Programs of Choice. For any such waiver, the process for obtaining the waiver would be as specified in the provision of law governing the program.

The Governing Board recognizes that ~~strict compliance with the law may sometimes hinder the district's ability to provide its students with an effective, well rounded educational program.~~ **circumstances may arise in the operation of the district that require a waiver from state law or regulation.** When it is in the interest of district students, the Board may request that the State Board of Education (SBE) waive any provision of state ~~or federal~~ law or regulation which ~~it~~ **SBE** has authority to waive pursuant to Education Code 33050.

Note: The California Department of Education (CDE) ~~has instituted~~ **web site contains** an online waiver request system ~~which it encourages districts to use.~~ **In addition, CDE has updated as well as** guidance and Frequently Asked Questions ~~on its web site~~ to help expedite the waiver submission process. Prior to submitting a waiver request, the district should confirm that it has gathered all the data required and **has** complied with all the legal requirements for the request. The district should also review Education Code 33051 which specifies the reasons for which ~~the SBE~~ may deny the request. **For example, a request to waive a provision of law regarding a program that requires the existence of a site council must be approved by that site council; otherwise the request will be denied by the SBE.**

Any waiver request to be submitted to ~~the SBE~~ shall first be approved by the Board. The Superintendent or designee shall ensure that each proposed waiver request includes all information necessary for the Board to analyze the need for the waiver and make an informed decision.

~~Prior to presenting the proposed request for Board approval, the Superintendent or designee shall consult with and obtain the approval of any advisory committee or site council when required by law.~~ **If the proposed waiver request affects a program that requires the existence of a school site council, the Superintendent or designee shall obtain the school site council's approval of the request before presenting it to the Board. As**

**WAIVERS** (continued)

**appropriate, other councils or advisory committees, including bilingual advisory committees, shall be provided adequate opportunity to review a proposed waiver request, and the request shall include a written summary of any objections to the request by the councils or advisory committees. (Education Code 33051)**

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

Note: The following **optional** paragraph is for **use by** districts with an employee organization certified to represent the district's employees in negotiations with the district.

In addition, the Superintendent or designee shall **involve** **consult with** the exclusive representative of district employees in the development of the waiver request, and shall include in the request the exclusive representative's position regarding the waiver. (Education Code 33050, **33051**)

*(cf. 4140/4240/4340 - Bargaining Units)*

Note: The following paragraph is for use by districts that participate in a joint powers entity to operate a **regional occupational center or program**. See BP 6178.2 - **Regional Occupational Center/Program**.

**A request for a waiver related to a regional occupational center or program operated by a joint powers agency shall be submitted as a joint waiver request with other participating school districts upon approval of a unanimous vote of the governing board of the joint powers agency. (Education Code 33050)**

*(cf. 6178.2 - Regional Occupational Center/Program)*

Note: Education Code 33050 does not include specific requirements in regard to the public hearing that must be held before the Board submits a waiver request. CDE's General Waiver Instructions, located on its web site, state that the public hearing must be properly noticed and held during a **board meeting**.

To receive public testimony on each **proposal for a** waiver request **proposal**, the Board shall hold a properly noticed public hearing during a Board meeting. (Education Code 33050)

Note: Education Code 33050 does not specify the length of the advanced notice required for the public hearing described above. However, CSBA believes that the notice must allow sufficient time to enable members of the public adequate opportunity to participate in the waiver request process.

**CDE's General Waiver Instructions provide that distribution of the board meeting agenda is insufficient to constitute proper notice for the public hearing. The notice must specifically invite public testimony, and can be advertised by (1) printing a notice that includes the time, date, location, and subject of the hearing in a newspaper of general circulation, or (2) in small districts, posting a formal notice at each school and three public places in the district.**

**WAIVERS** (continued)

The following **optional** paragraph may be revised to specify the length of the notice in accordance with district practice, **and should be modified appropriately depending on the size of the district.**

The notice, which shall state the time, date, location, and subject of the public hearing **and invite public testimony**, may be printed in a newspaper of general circulation **and/or** posted at each school and three public places in the district.

(cf. 9320 - Meetings and Notices)

Note: ~~The following optional paragraph addresses renewal of general waivers which have been granted by the SBE. According to CDE's State Board of Education - CalEd Facts issued in January 2013, pursuant Pursuant to Education Code 33051, any general waiver which has been granted for two consecutive years, or which is initially granted for two years, may be regarded as "permanent" for as long as the information on the waiver request remains current. However, the SBE may require updated information for a general waiver whenever it determines that information to be necessary. The SBE may also rescind a waiver if additional information supporting a recession is made available to the SBE. Additionally, a district is required to apply annually for the renewal of any waiver regarding teacher credentialing.~~

**If the district determines that a waiver is needed for more than one year, the Board shall reapply to SBE.** When the **district Board** has requested and received the same general waiver from the SBE for two consecutive years, the Board **is not required does not subsequently need** to reapply annually **if provided that** the information contained on the request remains current, **except that the district shall apply annually** for the renewal of any waiver regarding teacher credentialing. (Education Code 33051)

*Legal Reference: (see next page)*

## WAIVERS (continued)

### *Legal Reference:*

#### EDUCATION CODE

~~5000-5033 Governing board elections~~

~~10400-10407 Cooperative improvement programs~~

~~17047.5 Facilities used by special education students~~

~~17291 Portable school buildings~~

~~33050-33053 General waiver authority~~

~~37202 Equity length of time~~

~~41000-41360 School finance~~

~~41381 Minimum school day~~

~~41600-41854 Computation of allowances~~

~~41920-42842 Budget requirements; local taxation by school districts~~

~~44666-44669 School Based Management and Advanced Career Opportunities~~

~~44681-44689 Administrator Training and Evaluation~~

~~45108.7 Maximum number of senior management positions~~

~~48660-48666 Community day schools~~

~~48800 Attendance at community college~~

~~49550-49560 Meals for needy students~~

~~51224.5 Algebra instruction~~

~~51745.6~~ **51747.3 Charter school independent study ratio funding**

~~52160-52178 Bilingual Bicultural Education Act of 1976~~

~~52522 Plans for adult education~~

~~54407 Waiver for compensatory education programs~~

~~56000-56867 Special education programs~~

~~58407 Waiver related to individualized instruction program~~

~~60119 Public hearing on sufficiency of instructional materials~~

**65001 School site councils**

#### CODE OF REGULATIONS, TITLE 5

~~3100 Resource specialist caseload waivers~~

~~3945 Cooperative programs~~

~~11960 Charter school attendance~~

~~11963.4 Charter school percentage funding~~

~~13017 Waivers, compensatory education New Careers in Education Program~~

~~13044 Waivers, compensatory education Professional Development and Program Improvement Programs~~

#### UNITED STATES CODE, TITLE 20

~~1400-1482 Individuals with Disabilities Education Act~~

~~7115 Student Support and Academic Enrichment Grants~~

### *Management Resources:*

#### WEB SITES

California Department of Education, Waiver Office: <http://www.cde.ca.gov/re/lr/wr>

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

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### **Policy Reference UPDATE Service**

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# CSBA Sample

## Board Policy

### Business and Noninstructional Operations

BP 3515(a)

#### CAMPUS SECURITY

Note: The following **optional** policy should be modified to reflect district practice.

The Governing Board is committed to providing a school environment that promotes the safety of students, **employees staff**, and visitors to school grounds. The Board also recognizes the importance of protecting district property, facilities, and equipment from vandalism and theft.

(cf. 4158/4258/4358 - *Employee Security*)

(cf. 5131.5 - *Vandalism and Graffiti*)

(cf. 5142 - *Safety*)

Note: A district's campus security strategy may be developed as part of the school's comprehensive school safety planning process (see BP/AR 0450 - *Comprehensive Safety Plan*).

The Superintendent or designee shall develop campus security procedures, which **are consistent with the goals and objectives of** **may be included in** the district's comprehensive safety plan and/or site-level safety plans. Such procedures shall be regularly reviewed to reflect changed circumstances and to assess their effectiveness in achieving safe school objectives.

(cf. 0450 - *Comprehensive Safety Plan*)

#### Surveillance Systems

Note: The following **optional** section is for use by districts that have authorized the use of surveillance systems. ~~Although courts have not ruled on the use of surveillance systems in a school setting, g~~ Generally, the use of cameras (i.e., a "search" within the meaning of the Fourth Amendment) must be reasonable and the cameras must not be used in areas where there is a "reasonable expectation of privacy" (New Jersey v. T.L.O.). **To protect reasonable expectations of privacy,** ~~Thus,~~ cameras should not **be** located in areas such as bathrooms, locker rooms, or private offices. **In addition,** Education Code 51512 prohibits the use of a recording device in a classroom without the prior consent of the teacher and principal. Examples of locations where cameras may generally be used include hallways, stairwells, parking lots, and cafeterias. For language about the use of cameras on school buses, see **BP/AR 5131.1 - Bus Conduct**.

**Penal Code 632 prohibits the recording of conversations unless the parties to the conversation may reasonably expect that the communication may be overheard or recorded. Thus, if the district's equipment has audio capability, it should be disabled so that sounds are not recorded.**

~~Before adopting the use of such a system, a cost-benefit analysis should be conducted to determine whether surveillance cameras are the most effective method to address the particular security concerns on the campus (e.g., certain locations are difficult to monitor and other means of deterrence have not been successful). Another determination is whether the cameras will be monitored in "real time" by trained personnel or whether the images will be recorded and later used as "evidence." The district should also~~

**CAMPUS SECURITY** (continued)

determine whether the system will record images 24 hours a day, during school hours, or on some other schedule. Because audio surveillance generally requires a warrant, if the district's equipment has audio capability, it should be disabled so that sounds are not recorded.

The Board believes that reasonable use of surveillance cameras will help the district achieve its goals for campus security. In consultation with the **district's** safety planning committee, **and other** relevant **stakeholders, and** staff, the Superintendent or designee shall identify appropriate locations for the placement of surveillance cameras. Cameras shall not be placed in areas where students, staff, or community members have a reasonable expectation of privacy. Any audio capability on the district's surveillance equipment shall be disabled so that sounds are not recorded.

(cf. 5131.1 - Bus Conduct)

(cf. 5145.12 - Search and Seizure)

Note: According to the National Institute of Justice publication **The Appropriate and Effective Use of Security Technologies in U.S. Schools: A Guide for Schools and Law Enforcement Agencies**, signage is an important component of a successful **surveillance** system and can serve as a deterrent against vandals. The Institute **also** recommends that the signs state **whether or not that** the system **may or may not be** **is** being actively monitored, so that potential victims are not under the impression **Such language is intended to deter potential perpetrators while also not building an expectation among potential victims** that a person is watching events live and will be able to provide immediate assistance. **is also recommended that districts provide notice to students and parents/guardians about the district's surveillance program in order to clarify that there is no expectation of privacy in those locations where the cameras will be placed and that images from the cameras may be used in disciplinary proceedings.**

Prior to the operation of the surveillance system, the Superintendent or designee shall ensure that signs are posted at conspicuous **and targeted** locations **at affected around** school buildings and grounds. These signs shall **inform students, staff, and visitors that surveillance may occur and shall state whether the district's system is actively monitored by school personnel state that the facility uses video surveillance equipment for security purposes and that the equipment may or may not be actively monitored at any time.** The Superintendent or designee shall also provide prior written notice to students and parents/guardians about the district's surveillance system, including the locations where surveillance may occur, **explaining and** that the recordings may be used in disciplinary proceedings, **and/or that matters captured by the camera may be** referred to local law enforcement, as appropriate.

(cf. 5144 - Discipline)

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

Note: Pursuant to 20 USC 1232(g) (Family Educational Rights and Privacy Act), **34 CFR 99.3**, and Education Code 49061, any recording or image **of that is directly related to** a student **collected and is maintained** by the district **or a person acting for the district** is considered a "student record" and thus is subject to those laws regarding access, disclosure, and retention. See BP/AR 5125 - Student Records. **Also**

**CAMPUS SECURITY** (continued)

see the U.S. Department of Education's **FAQs on Photos and Videos under FERPA, located on its web site.**

In addition, a recording or image of a staff member that may be used in a personnel action is subject to the laws regarding personnel records, including an employee's right to comment on derogatory information placed in **his/her a personnel** file. See AR 4112.6/4212.6/4312.6 - Personnel Files.

To the extent that any images from the district's surveillance system create a student or personnel record, the Superintendent or designee shall ensure that the images are accessed, retained, and disclosed in accordance with law, Board policy, administrative regulation, and any applicable collective bargaining agreements.

(cf. 4112.6/4212.6/4312.6 - Personnel Files)  
 (cf. 5125 - Student Records)  
 (cf. 5125.1 - Release of Directory Information)

*Legal Reference:*EDUCATION CODE

**17070.10-17079.30 Leroy F. Greene School Facilities Act, especially:**

**17075.50 Classroom security locks, new construction projects**

**17583 Classroom security locks, modernization projects**

32020 Access gates

32211 Threatened disruption or interference with classes

32280-~~32288~~ **32289** School safety plans

35160 Authority of governing boards

35160.1 Broad authority of school districts

38000-38005 Security ~~patrols~~ **departments**

49050-49051 Searches by school employees

49060-49079 Student records

PENAL CODE

469 Unauthorized making, duplicating or possession of key to public building

626-~~626.10~~ **626.11** Disruption of schools

CALIFORNIA CODE OF REGULATIONS, TITLE 24

**1010.1.9 Door operations**

**1010.1.11 Lockable doors from the inside**

CALIFORNIA CONSTITUTION

Article I, Section 28(c) Right to Safe Schools

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

CODE OF FEDERAL REGULATIONS, TITLE 34

**99.3 Definition of education records**

COURT DECISIONS

***Brannum v. Overton County School Board* (2008) 516 F. 3d 489**

*New Jersey v. T.L.O.* (1985) 469 U.S. 325

ATTORNEY GENERAL OPINIONS

83 *Ops.Cal.Atty.Gen.* 257 (2000)

75 *Ops.Cal.Atty.Gen.* 155 (1992)

*Management Resources: (see next page)*

## CAMPUS SECURITY (continued)

### *Management Resources:*

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Safe Schools: A Planning Guide for Action, 2002

NATIONAL INSTITUTE OF JUSTICE PUBLICATIONS

The Appropriate and Effective Use of Security Technologies in U.S. Schools: A Guide for Schools and Law Enforcement Agencies, 1999 rev. 2005

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

FAQs on Photos and Videos under FERPA

WEB SITES

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

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/ls/ss>

National Institute of Justice: <http://www.ojp.usdoj.gov/nij>

National School Safety Center: <http://www.schoolsafety.us>

U.S. Department of Education, Protecting Student Privacy: <https://studentprivacy.ed.gov>

# CSBA Sample

## Administrative Regulation

### Business and Noninstructional Operations

AR 3515(a)

#### CAMPUS SECURITY

Note: The following **optional** administrative regulation may be used as a component of a comprehensive safety plan (see BP/AR 0450 - Comprehensive Safety Plan) and should be modified to reflect district practice.

The Superintendent or designee shall ~~ensure that the district's~~ **develop a** campus security plan **which contributes to a positive school climate, fosters social and emotional learning and student well-being, and** includes strategies to:

1. Secure the campus perimeter and school facilities in order to prevent criminal activity

These strategies include a risk management analysis of each campus' security system, lighting system, and fencing. Procedures to ensure unobstructed views and eliminate blind spots caused by doorways and landscaping shall also be considered. In addition, parking lot design may be studied, including methods to discourage through traffic.

2. Secure buildings **and interior spaces** from outsiders and discourage trespassing

These strategies may include **installing locks,** requiring visitor registration, **providing** staff and student identification tags, and patrolling ~~of~~ places used for congregating and loitering.

(cf. 1250 - Visitors/Outsiders)

(cf. 3515.2 - Disruptions)

(cf. 5112.5 - Open/Closed Campus)

3. Discourage vandalism and graffiti

These strategies may include plans to immediately cover graffiti ~~as well as~~ **and implement** campus beautification projects ~~and shall also include students and the community in these projects.~~

(cf. 3515.4 - Recovery for Property Loss or Damage)

(cf. 5131.5 - Vandalism and Graffiti)

(cf. 5137 - Positive School Climate)

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

4. Control access to keys and other school inventory

(cf. 3440 - Inventories)

## CAMPUS SECURITY (continued)

### 5. Detect and intervene with school crime

These strategies may include ~~the creation of~~ **creating** a school watch program, **increasing adult presence and supervision**, **establishing** an anonymous crime reporting system, ~~analysis of~~ **analyzing** school crime incidents, and ~~collaboration~~ **collaborating** with local law enforcement agencies, including providing for law enforcement presence.

(cf. 3515.3 - District Police/Security Department)

(cf. 3515.7 - Firearms on School Grounds)

(cf. 3516.2 - Bomb Threats)

~~(cf. 5116.1 - Intradistrict Open Enrollment)~~

(cf. 5116.2 - Involuntary Student Transfers)

(cf. 5131.2 - Bullying)

(cf. 5131.7 - Weapons and Dangerous Instruments)

(cf. 5141.52 - Suicide Prevention)

(cf. 5138 - Conflict Resolution/Peer Mediation)

(cf. 5145.9 - Hate-Motivated Behavior)

(cf. 6164.2 - Guidance/Counseling Services)

All staff shall receive training in building and grounds security procedures **and emergency response**.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

### **Locks**

**All state-funded new construction and modernization projects shall include locks that allow doors to classrooms and any room with an occupancy of five or more persons to be locked from the inside. Student restrooms and doors that lock from the outside at all times are not required to have locks that can be locked from the inside. (Education Code 17075.50, 17583; 24 CCR 1010.1.9, 1010.1.11)**

### **Keys**

Note: The following <b>optional</b> section should be modified to reflect district practice.
--

All keys used in a school shall be the responsibility of the principal or designee. Keys shall be issued only to ~~those~~ **authorized** employees who regularly need a key in order to carry out ~~normal activities of their position~~ **their job responsibilities**.

The principal or designee shall create a key control system with a record of each key assigned and room(s) or building(s) which the key opens.

**CAMPUS SECURITY** (continued)

Keys ~~shall be used only by authorized employees and~~ shall never be loaned to students, ~~parents/guardians, or volunteers, nor shall the~~ The master key ~~shall not~~ ever be loaned.

Note: Pursuant to Penal Code 469, a person who knowingly possesses, duplicates, uses, or attempts to use or duplicate, a key without authorization may be guilty of a misdemeanor.
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~~The~~ Any person issued a key shall be responsible for its safekeeping. The duplication of school keys is prohibited. If a key is lost, the person responsible shall immediately report the loss to the principal or designee and shall pay for a replacement key.

(6/96 3/07) 10/19

# CSBA Sample

## Board Policy

Certificated Personnel

BP 4116(a)

### PROBATIONARY/PERMANENT STATUS

**Note: The following Board policy is for use by districts that grant permanent status to certificated employees following successful completion of a probationary period, and should be modified for consistency with the district's collective bargaining agreement if applicable.**

**Pursuant to Education Code 44929.23, districts with an average daily attendance (ADA) of less than 250 may adopt a policy of annually reelecting certificated employees instead of granting them permanent status. Such districts may replace the following policy with a policy statement reflecting the decision to not grant permanent status in accordance with the authority granted pursuant to Education Code 44929.23.**

**Probationary employees should not be confused with temporary employees, as there are significant differences in terms of the layoff procedures and reemployment rights applicable to them; see BP 4117.3 - Personnel Reduction. According to the courts in Bakersfield Elementary Teachers Association v. Bakersfield City School District and California Teachers Association v. Vallejo City Unified School District, employees who have not attained permanent status but who cannot properly be classified as temporary or substitute employees (see BP 4121 - Temporary/Substitute Personnel) must be classified as probationary employees. An employee should not be classified as temporary rather than probationary solely on the basis of not holding a clear credential (e.g., a holder of a preliminary credential, internship certificate, provisional internship permit, short-term staff permit, emergency permit, or credential waiver). In addition, in Stockton Teachers Association CTA/NEA v. Stockton Unified School District, the court held that employees hired for the term of a categorically funded project pursuant to Education Code 44909 may only be considered temporary employees if they are terminated at the expiration of the categorically funded project and, if not terminated, must be considered probationary employees.**

**The Governing Board desires to employ and retain highly qualified certificated personnel to implement the district's educational program. Newly hired certificated personnel shall serve a probationary period during which the Board shall determine their suitability for long-term district employment.**

**Certificated employees who satisfactorily complete the probationary period shall be granted permanent status.**

**Note: The district should select the option below that reflects ~~district practice and~~ the ADA of the district.**

**Pursuant to Education Code 44929.21, a district with ADA of 250 or more must grant permanent status in accordance with Option 1.**

**Pursuant to Education Code 44949.23, if the Governing Board of a district with ADA of less than 250 elects to dismiss probationary employees during the school year in accordance with Education Code 44948.2 and 44948.3, the district must grant permanent status after two years (Option 1). Other districts with less than 250 ADA may choose to grant permanent status after three years (Option 2).**

## **PROBATIONARY/PERMANENT STATUS (continued)**

**OPTION 1: (Districts of 250 ADA or more, and districts with less than 250 ADA whose Board has elected to dismiss probationary employees during the school year pursuant to Education Code 44948.2 and 44948.3)**

A probationary ~~teacher~~ **employee** who has been employed by the district in a position(s) ~~or positions~~ requiring certification for two complete consecutive school years and is then ~~rehired~~ **reelected** for the next succeeding school year shall become a permanent employee at the beginning of the third year. (Education Code 44929.21, 44929.23)

**OPTION 2: (Districts with less than 250 ADA that grant permanent status after three years)**

A probationary ~~teacher~~ **employee** who has been employed by the district in a position(s) ~~or positions~~ requiring certification for three complete consecutive school years and is then ~~rehired~~ **reelected** for the next succeeding school year shall become a permanent employee at the beginning of the fourth year. ~~This grant of permanent status may only be made specifically by and at the discretion of the Board.~~ (Education Code 44929.23)

### **Probationary Status**

<b>Note: The following optional paragraphs apply to all districts.</b>
--

**During the probationary period,** Probationary employees shall receive **training professional development and,** assistance ~~and evaluations consistent with their needs as new teachers.~~ **Such training and assistance** **which** may consist of inservice training and/or meetings with the employee's evaluator to discuss areas of strength and areas requiring improvement. Inservice training may be provided during school hours as part of a comprehensive staff development program.

*(cf. 4131 - Staff Development)*

The performance of each probationary employee shall be evaluated and assessed at least once every school year.

*(cf. 4115 - Evaluation/Supervision)*

~~*(cf. 4131 - Staff Development)*~~

### **Dismissal/Nonreelection of Probationary Employees**

**During the school year, a probationary employee may be suspended or dismissed only for cause and in accordance with district procedures. (Education Code 44948.3)**

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

**PROBATIONARY/PERMANENT STATUS (continued)**

**With proper notice, the Board may, without cause, elect not to reemploy a probationary employee for the subsequent year. (Education Code 44929.21, 44929.23)**

*(cf. 4117.3 - Personnel Reduction)*

*(cf. 4117.6 - Decision Not to Rehire)*

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

**The Superintendent or designee shall annually provide the Board with recommendations regarding the reelection or nonreelection of probationary certificated personnel for the ensuing school year.**

**Note: The following optional paragraph is for use by districts that grant permanent status to certificated employees after completion of two consecutive years of service (Option 1 above). Districts with less than 250 ADA that grant permanent status upon completion of three consecutive years of service (Option 2 above) should revise the following paragraph to indicate that a nonreelection notice may be provided during the employee's first or second year of employment if the probationary employee will not be reelected for the following year.**

**At any time during a probationary employee's first year of employment in the district, the Board may give written notice to the employee of the Board's decision not to reelect the employee for a second school year. If the Board does not give written notice, the employee shall be deemed reelected for the next succeeding school year.**

**Note: For districts that select Option 1 above, Education Code 44929.21 requires the district to give written notice, as provided below, if the probationary employee will not be reelected for the third year. Districts with less than 250 ADA must also provide notice by March 15 pursuant to Education Code 44948.5.**

**During the final year of the probationary period, the Board may decide not to reelect the employee for the following year, and shall so notify the employee in writing on or before March 15. If the Board does not give written notice on or before March 15, the employee shall be deemed reelected for the next succeeding school year. (Education Code 44929.21, 44948.5)**

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

**Note: State law does not specify a method that must be used to provide the above notice to a probationary employee who is not reelected for the subsequent school year. The following paragraph may be revised to reflect district practice.**

**In *Grace v. Beaumont Unified School District*, the court ruled that acceptable methods of notification include email, certified mail if a return receipt shows that the letter was received before March 15, oral notification, and/or adoption and publication of termination decision(s) by employee number at a board meeting when the employee is present.**

## PROBATIONARY/PERMANENT STATUS (continued)

In Hoschler v. Sacramento City Unified School District, the court held that, when providing notice of nonreelection pursuant to Education Code 44929.21, the district must ensure that the employee receives notice on or before March 15 either through personal service or through another method ~~which will ensure actual receipt equivalent to imparting actual notice~~. Because the district provided notice via certified mail but did not have evidence that the employee received the certified letter on or before March 15, the notice was not timely and the employee was deemed to have been reelected for the subsequent school year.

In Sullivan v. Centinela Valley Union High School District, the court held that a probationary teacher who avoided service of the notice may not assert failure of notice since it reasonably can be inferred that the teacher did so with knowledge of the nonreelection decision.

**Such notices shall be delivered through personal service upon the employee, certified mail with return receipt, email, or another method which documents actual receipt of the notice by the employee.**

### **Permanent Status**

~~Note: The following **optional** paragraph is for use by districts with 250 ADA or more and those districts with less than 250 ADA that grant permanent status.~~

~~Granting of permanent status shall be based on completion of the probationary period in accordance with applicable law. Employees granted permanent status acquire specific rights under the Education Code, including those relating to discipline and dismissal. (Education Code 44932-44988)~~

~~(cf. 4118 – Dismissal/Suspension/Disciplinary Action)~~

*Legal Reference: (see next page)*

## PROBATIONARY/PERMANENT STATUS (continued)

### *Legal Reference:*

#### EDUCATION CODE

44466 *Status of university interns*

44850.1 *No tenure in administrative or supervisory position*

44885.5 *Status of district interns*

44908 *Complete year for probationary employees*

44909 *Classification of certificated employees in categorically funded projects*

~~44911~~ 44910-44913 *Service not computed in eligibility for permanent status*

44915 *Classification of probationary employees*

44917-44921 *Status of substitute or temporary employees*

44929.20 *Continuing contracts (not to exceed four years - ADA under 250)*

44929.21 *Districts of 250 ADA or more*

44929.23 *Districts with less than 250 ADA*

44929.28 *Employment by another district*

44930-44988 *Resignations, dismissals and leaves of absence, especially:*

44948.2 *Election to use provisions of Section 44948.3*

44948.3 *Dismissal of probationary employees*

44948.5 *Nonreelection procedures, districts under 250 ADA*

44949 *Cause, notice and right to hearing required for dismissal of probationary employee*

44955 *Reduction in number of permanent employees*

#### COURT DECISIONS

*Grace v. Beaumont Unified School District* (2013) 216 Cal. App. 4th 1325

*Stockton Teachers Association CTA/NEA v. Stockton Unified School District* (2012) 203 Cal. App. 4th 1552

*Sullivan v. Centinela Valley Union High School District* (2011) 194 Cal. App. 4th 69

*California Teachers Assn. v. Vallejo City Unified School District* (2007) 149 Cal. App. 4th 135, 146

*Hoschler v. Sacramento City Unified School District* (2007) 149 Cal. App. 4th 258

*Bakersfield Elementary Teachers Assn. v. Bakersfield City School District* (2006) 145 Cal. App. 4th 1260, 1280

*Fischer v. Los Angeles Unified School District* (1999) 70 Cal. App. 4th 87

*Bellflower Education Assn. v. Bellflower Unified School District* (1991) 228 Cal. App. 3d 805

*Fontana Teachers Assn. v. Fontana Unified School District* (1988) 201 Cal. App. 3d 1517

*Grimsley v. Board of Trustees* (1987) 189 Cal. App. 3d 1440

# CSBA Sample

## Administrative Regulation

Certificated Personnel

AR 4116(a)

### PROBATIONARY/PERMANENT STATUS

**Note:** The following administrative regulation is for use by districts that grant permanent status to certificated employees following successful completion of a probationary period as specified in law. Pursuant to Education Code 44929.23, districts with an average daily attendance (ADA) of less than 250 may choose to not grant permanent status; see the accompanying Board policy.

#### **Permanent Status (Districts of 250 ADA or More)**

A probationary teacher who has been employed by the district in a position or positions requiring certification for two complete consecutive school years and is then rehired for the next succeeding school year shall become a permanent employee at the beginning of the third year. (Education Code 44929.21)

**Note:** Pursuant to Education Code 44929.21 and 44929.23, districts of 250 ADA or more and districts of less than 250 ADA that grant permanent status (Option 1 below), must notify an employee on or before March 15 of the employee's second complete consecutive school year of employment of the decision to whether to reelect the employee for the next school year. If the district does not provide that notice, the employee is deemed to be reelected for the next school year. See AR 4117.6—Decision Not to Rehire.

#### **Permanent Status (Districts with Less than 250 ADA)**

**Note:** Option 1 below is for use by districts with less than 250 ADA that grant permanent status after two consecutive years; this option must be used by districts desiring the right to dismiss probationary certificated employees by nonreelection for a subsequent school year without a hearing pursuant to Education Code 44929.21 and 44929.23. Districts making this election also achieve broader rights to dismiss the probationary teacher during the school year pursuant to Education Code 44948.2 and 44948.3. (See AR 4117.6—Decision Not to Rehire and AR 4118—Dismissal/Suspension/Disciplinary Action.) Once the district elects to have this right and give permanent status after two years as described in Option 1, its decision is irreversible and it can no longer delay or deny the granting of permanent status as described in Option 2 or 3.

Options 2 and 3 may be selected by districts with less than 250 ADA that have not elected to dismiss probationary employees pursuant to Education Code 44948.2 and 44948.3. Such districts still have the choice of granting permanent status to certificated employees after they have completed three consecutive years of service (Option 2), or, if the Board does not choose to grant permanent status, employees may be reelected from year to year without becoming permanent employees (Option 3). Because of the ramifications of this decision, districts should seek legal counsel before choosing one of these options.

**OPTION 1:** A probationary teacher who has been employed by the district in a position or positions requiring certification for two complete consecutive school years and is then rehired for the next succeeding school year shall become a permanent employee at the beginning of the third year. (Education Code 44929.23)

## **PROBATIONARY/PERMANENT STATUS (continued)**

~~OPTION 2: A probationary teacher who has been employed by the district in a position or positions requiring certification for three complete consecutive school years and is then rehired for the next succeeding school year may become a permanent employee at the beginning of the fourth year. This grant of permanent status may only be made specifically by and at the discretion of the Board. (Education Code 44929.23)~~

~~OPTION 3: Permanent status shall not be granted to certificated district employees. (Education Code 44929.23)~~

~~(cf. 4115—Evaluation/Supervision)~~

~~(cf. 4117.6—Decision Not to Rehire)~~

~~(cf. 4118—Dismissal/Suspension/Disciplinary Action)~~

~~(cf. 4121—Temporary/Substitute Personnel)~~

### **Eligibility for Permanent Status**

**A probationary employee who, in any one school year, has served for at least 75 percent of the number of days maintained by regular district schools shall be deemed to have served a complete school year. (Education Code 44908)**

**The following shall not be included for purposes of computing the service required as a prerequisite to classification as a permanent employee:**

- 1. Service as an instructor in classes conducted at regional occupational centers or programs (Education Code 44910)**
- 2. Service under a provisional credential other than a one-year emergency credential (Education Code 44911)**
- 3. Service only as a teacher of basic military drill in high school cadet companies (Education Code 44912)**
- 4. Employment in summer school (Education Code 44913)**

### **Permanency Achieved in Other Districts**

Note: The following <b>paragraph section</b> is <b>optional</b> .
---

A person who has achieved permanent status as a certificated employee in another school district may be employed by the **Governing** Board as a permanent certificated employee. (Education Code 44929.28)

**PROBATIONARY/PERMANENT STATUS** (continued)**Interns**

Note: AB 552 (Ch. 138, Statutes of 1997) amended Education Code 44466 to make the requirements for the attainment of permanent status by university interns authorized pursuant to Education Code 44450 consistent with the requirements for district interns authorized pursuant to Education Code 44325.

A person employed as a district or university intern shall be classified as a probationary employee. Following completion of the internship, if **he/she is** reelected by the district to serve in a position requiring certification qualifications for the next succeeding school year, **he/she the employee** shall continue to be classified as a probationary employee during that year. (Education Code 44466, 44885.5)

(cf. 4112.21 - Interns)

Note: The following paragraph should be used only by districts that grant permanent status to certificated staff.

~~A person~~ **An employee** who has completed an internship and at least one complete school year in a position requiring certification qualifications within the district shall be granted permanent status when **he/she the employee** is reelected for the next succeeding school year to a position requiring certification qualifications. (Education Code 44466, 44885.5)

(10/95 2/98) 10/19

# CSBA Sample

## Board Policy

All Personnel

BP 4119.22(a)

4219.22

**DRESS AND GROOMING**

4319.22

Note: The following **optional** policy may be revised to reflect district practice. Government Code 12949, several court cases, and Public Employment Relations Board (PERB) decisions support districts' non-negotiable management prerogative to adopt a dress code. However, in 22 PERC P29, 136, PERB determined that districts must provide the exclusive bargaining representative with an opportunity to bargain over the "effects" of the dress code which may have an impact on matters within scope of representation. Districts should consult legal counsel when prescribing or prohibiting specific items of clothing.

The Governing Board believes that appropriate dress and grooming by district employees contribute to a productive learning environment and model positive behavior. During school hours and at school activities, employees shall maintain professional standards of dress and grooming that demonstrate their high regard for education, present an image consistent with their job responsibilities and assignment, and do not endanger the health or safety of employees or students. All employees shall be held to the same standards unless their assignment provides for modified dress as approved by their supervisor.

(cf. 0415 - Equity)

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)

(cf. ~~4112.21/4212.21/4312.21~~ **4119.21/4219.21/4319.21** - Professional Standards)

(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

The district shall allow employees to appear and dress in a manner consistent with their gender identity or gender expression. (Government Code 12949)

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

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

**Note: Government Code 12926, as amended by SB 188 (Ch. 58, Statutes of 2019), defines "race," for purposes of prohibiting employment discrimination, as including traits historically associated with race, such as hair texture and protective hairstyles, as defined.**

**The district shall not discriminate against employees based on hair texture and protective hairstyles, including, but not limited to, braids, locks, and twists. (Government Code 12926)**

**In addition, the** The district shall not dismiss an employee, discriminate against an employee in compensation or in terms, conditions, or privileges of employment, or refuse to hire a job applicant on the basis of religious dress or grooming practices. (Government Code 12926, 12940)

## **DRESS AND GROOMING (continued)**

This policy shall be presented to employees upon employment, through the employee handbook or other appropriate means, and may be periodically reviewed with all employees as necessary.

### *Legal Reference:*

#### EDUCATION CODE

35160 Authority of governing boards

35160.1 Broad authority of school districts

#### GOVERNMENT CODE

3543.2 Scope of representation

12926 Definitions

12940 Unfair employment practices

12949 Dress standards, consistency with gender identity

#### COURT DECISIONS

*San Mateo City School District v. PERB* (1983) 33 Cal. 3d 850

*Domico v. Rapides Parish School Board* (5th Cir. 1982) 675 F.2d 100

*East Hartford Education Assn. v. Board of Education* (2d Cir. 1977) 562 F. 2d 856 838

*Finot v. Pasadena Board of Education* (1967) 250 Cal.App.2d 189

#### PUBLIC EMPLOYMENT RELATIONS BOARD DECISIONS

*Santa Ana Unified School District* (1998) 22 PERC P29, 136

*Inglewood Unified School District* (1985) 10 PERC P17, 000

### *Management Resources:*

#### CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PUBLICATIONS

*Transgender Rights in the Workplace*

#### WEB SITES

California Department of Fair Employment and Housing: <https://www.dfeh.ca.gov>

Public Employment Relations Board: <http://www.perb.ca.gov>

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# CSBA Sample

## Board Policy

Classified Personnel

BP 4216(a)

### PROBATIONARY/PERMANENT STATUS

Note: Education Code 45113 mandates the Governing Board in a non-merit system district to develop rules and regulations establishing a period of probationary service of no more than one year for the personnel management of classified employees. For districts establishing the merit system pursuant to Education Code 45240-45320, rules for the efficient running of the classified service are established by the personnel commission pursuant to Education Code 45260. The following policy may be revised to reflect district practice, the collective bargaining agreement, or personnel commission rules.

These rules and regulations are often included in the collective bargaining agreement; if so, a separate policy is not mandated. All parts of the following policy may be revised to reflect district practice; the first two paragraphs should be revised to reflect the duration of probationary period used in the district. This policy applies only to districts not incorporating the merit system (Education Code 45240-45320).

Employees newly hired for regular positions in the classified service shall be considered probationary employees until they have satisfactorily completed one year of probationary service. Upon satisfactorily completing this period, they shall become permanent classified employees of the district.

The Governing Board desires to employ and retain highly qualified classified personnel to support the district's educational program and operations. Newly hired classified employees shall serve a probationary period during which the Board shall determine their suitability for long-term district employment.

Note: The following paragraph should be revised to reflect the specific length of the probationary period prescribed by the district, provided the probationary period does not exceed the time limits specified below.

Education Code 45113, as amended by AB 1353 (Ch. 542, Statutes of 2019), shortened the maximum length of the required probationary period in non-merit system districts from one year to six months or 130 days of paid service, whichever is longer. Therefore, the maximum length of the required probationary period for non-merit districts is now the same as that of districts incorporating the merit system as provided under Education Code 45301. Education Code 45113, as amended, will not override any conflicting provision of a collective bargaining agreement entered into before January 1, 2020, until the collective bargaining agreement expires or is renewed.

A probationary employee who has been employed by the district for six months or 130 days of paid service, whichever is longer, shall be classified as a permanent employee of the district. (Education Code 45113, 45301)

Probationary employees shall receive written performance evaluations by their supervisor during the probationary period. These evaluations shall indicate whether the evaluator is satisfied or not satisfied with the employee's ability, performance, and compatibility with the job.

## PROBATIONARY/PERMANENT STATUS (continued)

*(cf. 4215 - Evaluation/Supervision)*

The ~~Superintendent or designee~~ **district** may, **without cause**, dismiss ~~an~~ **a new** employee during the ~~initial~~ probationary period.

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

Permanent employees promoted to a higher classification shall be considered probationary in their new position until they have satisfactorily completed **the probationary period** ~~one year~~ **of service in that position**.

Note: AB 365 (Ch. 844, Statutes of 2001) amended Education Code 45113 to add the following requirement.

A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional position shall be employed in the classification from which ~~he/she~~ **the employee** was promoted. (Education Code 45113)

This policy shall be made available to classified employees and the public. (Education Code 45113)

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

### *Legal Reference:*

#### EDUCATION CODE

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

45240-45320 Merit system

### *Management Resources:*

#### WEB SITES

California School Employees Association: <http://www.csea.org>

(6/96 7/02) 10/19

# 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. **To the extent that this policy is inconsistent with provisions of the collective bargaining agreement, the collective bargaining agreement would prevail.**

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

*(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.

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 disciplinary action only for cause as specified in the accompanying administrative regulation. (Education Code 45113)

**Procedures for Serious Disciplinary Proceedings**

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

**In Skelly v. State Personnel Board, the California Supreme Court held that permanent public employees have a right to certain due process protections prior to any punitive disciplinary action, such as termination, suspension, or demotion. These procedural rights include notice of the proposed materials upon which the action is based and the right to respond, either orally or in writing, to the individual recommending that discipline be imposed. These procedural rights are designed to protect an employee who may be wrongfully disciplined, without necessitating a full evidentiary hearing before the Governing Board. Therefore, CSBA recommends that the Superintendent or designee appoint a Skelly officer to evaluate whether there are reasonable grounds for believing that the employee engaged in the alleged misconduct and whether the proposed discipline is justified.**

~~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.~~

**The Superintendent or designee shall develop disciplinary procedures for use when dismissal, suspension, demotion, involuntary reassignment, or other serious disciplinary action is contemplated against an employee. The procedures for such discipline shall include an opportunity for an employee for whom any such disciplinary action is recommended to meet with, or respond in writing to, a designated district official ("Skelly officer") who will determine whether the recommended discipline should proceed further or be modified or withdrawn.**

## DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)

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

Pursuant to Education Code 45113, the 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.~~ **Districts that refer all disciplinary matters to a third-party hearing officer rather than holding Board hearings should revise the remainder of this section accordingly.**

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.

~~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.~~

**After meeting with the employee or considering the employee's written response, if the Skelly officer determines that the recommended discipline should proceed, the Superintendent or designee shall send the employee a notice of the recommended disciplinary action, a statement of charges, and the results of the Skelly hearing. The notice shall include a statement advising the employee of the right to request a Board hearing on the matter.**

If the employee fails to request a hearing within the time specified in the notice, the employee is deemed to have waived the right to do so, and the Board may order the recommended disciplinary action into effect immediately.

If a timely request is submitted, a hearing shall be conducted by the Board, ~~except that, if the matter involves an allegation of egregious misconduct as defined in 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)~~

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

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

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 be represented by legal counsel.

The Board may use the services of its legal counsel in ruling upon procedural questions, objections to evidence, and issues of law. The Board may review and consider the records of any prior personnel action proceedings against the employee in which a disciplinary action was ultimately sustained and any records contained in the employee's personnel files and introduced into evidence at the hearing. The Board 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 by the Board.

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

Following the hearing **or, if the employee has not requested a hearing, after reviewing the Superintendent or designee's recommendation for disciplinary action,** the Board shall affirm, modify, or reject the **recommended** 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 disciplinary action approved, if any. The decision of the Board shall be final.

Within 10 working days of the Board's final decision, a copy of the decision shall be delivered to the employee and/or designated representative personally or by registered mail.

**In lieu of holding a Board hearing on the sufficiency of the causes for disciplinary action, the Board may delegate its authority to an impartial third-party hearing officer. When the matter is heard by a third-party hearing officer, the Board retains the authority to review the determination and to adopt or reject the recommended decision. (Education Code 45113)**

**If the matter involves an allegation of egregious misconduct as defined in Education Code 44932 and involves a minor, the matter shall be referred to an administrative law judge to**

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

determine whether sufficient cause exists for disciplinary action against the employee. In such 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  
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 4th 391*

*CSEA v. Foothill Community College District (1975) 52 Cal.App. 3rd 150, 155-156, 124 Cal. Rptr 830*

***Skelly v. State Personnel Board (1975) 15 Cal. 3d 194***

# CSBA Sample

## Administrative Regulation

Classified Personnel

AR 4218(a)

### DISMISSAL/SUSPENSION/DISCIPLINARY ACTION

#### 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.

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 must not continue to employ anyone who has been convicted of a specified sex offense, controlled substance offense, or violent or serious offense as defined, except for employees who have been rehabilitated or had their conviction reversed or the charges dismissed. Also see AR 4112.5/4212.5/4312.5 - Criminal Record Check.

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)

3. Unlawful discrimination, including harassment, 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)*

4. Violation of or refusal to obey state or federal law or regulation, Board policy, or district or school procedure

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

6. Unsatisfactory performance

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

7. Unprofessional conduct
8. Dishonesty
9. Neglect of duty or absence without leave
10. Insubordination
11. Use of alcohol or a controlled substance while on duty or in such close time proximity thereto as to affect the employee's performance

*(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)*

12. Destruction or misuse of district property

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

13. Failure to 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)*

<p>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.</p>
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14. A physical or mental condition which precludes the employee from the proper performance of duties and responsibilities as determined by competent medical authority, except as otherwise provided by a contract or by law

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4032 - Reasonable Accommodation)*

15. Retaliation against any 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

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

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

16. Violation of Education Code 45303 or Government Code 1028 (advocacy of communism)
17. Any other misconduct which is of such nature that it causes discredit or injury to the district or the employee's position

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)*

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)*

### **Initiation and Notification of Charges**

**Note: Pursuant to Skelly v. State Personnel Board, permanent public employees are entitled to due process before any punitive disciplinary action, such as termination, suspension, or demotion, may be taken against such employees. These procedural rights include provision of notice of the materials upon which the proposed action is based and the right to respond, either orally or in writing, to a district official ("Skelly officer") who is designated to decide whether the recommended discipline should be imposed.**

**The Superintendent or designee shall provide notice to the employee of a recommendation for discipline, which includes the charges and materials upon which the recommendation is based. The notification shall identify an impartial district official ("Skelly officer") with whom the employee may meet at a specified time and place or to whom the employee may provide a written response to the recommendation of discipline. After meeting with the employee or considering any response from the employee, the Skelly officer shall recommend to the Superintendent or designee whether to proceed with the recommendation for discipline.**

**Note: Education Code 45113 mandates districts to adopt disciplinary procedures which contain provisions for giving classified employees a written notice of specific charges, 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.**

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

The Superintendent or designee shall file any **final** recommendation 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 notice shall, in ordinary and concise language, 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*)

**Request for **Board** Hearing**

Note: 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. **For further information on the evidentiary hearing conducted by the Board or a hearing officer, see the accompanying Board policy.**

Within the time specified in the notice of the recommendation of disciplinary action, the employee may request a hearing on the charges by signing and filing the card or paper included with the 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 the request for a hearing. The request shall be delivered to the office of the Superintendent or designee during normal work hours of that office. If mailed to the office of the Superintendent or designee, it must be received or postmarked no later than the time limit specified by the district. In cases where an order of suspension without pay has been issued in conjunction with a recommendation of dismissal, any request for a hearing on the dismissal shall also constitute a request to hear the suspension order, and the necessity of the suspension order shall be an issue in the hearing.

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)**Employment Status Pending a Hearing**

A classified employee against whom a recommendation of disciplinary action has been issued shall remain on active duty status pending any hearing on the charges, unless the Superintendent or designee determines that the employee's continuance in active duty would present an unreasonable risk of harm to students, staff, or property. The Superintendent or designee may, in writing, order the employee immediately suspended from duty without pay 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.

**Compulsory Leave of Absence**

Note: 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.

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

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.

(6/94 7/19) 10/19

# CSBA Sample

## Board Policy

Students

BP 5131(a)

### CONDUCT

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

The Governing Board believes that all students have the right to be educated in a **safe and** positive learning environment free from disruptions. Students shall be expected to exhibit appropriate conduct that does not infringe upon the rights of others or interfere with the school program while on school grounds, going to or coming from school, at school activities, or using district transportation.

(cf. 0450 - Comprehensive Safety Plan)

(cf. 5131.1 - Bus Conduct)

(cf. 5137 - Positive School Climate)

(cf. 6145.2 - Athletic Competition)

The Superintendent or designee shall ensure that each school develops standards of conduct and discipline consistent with Board policies and administrative regulations. Students and parents/guardians shall be notified of district and school rules related to conduct.

Note: The district may modify, delete, or add to the **optional** items below to reflect district practice. Also see AR 5144.1 - Suspension and Expulsion/Due Process for conduct that constitutes grounds for suspension or expulsion.

Prohibited student conduct includes, but is not limited to:

1. Conduct that endangers students, staff, or others, including, but not limited to, physical violence, possession of a firearm or other weapon, and terrorist threats

(cf. 5131.7 - Weapons and Dangerous Instruments)

(cf. 5142 - Safety)

~~Note: Education Code 234.1, as amended by AB 9 (Ch. 723, Statutes of 2011), requires the Governing Board to adopt policy prohibiting discrimination, harassment, intimidation, and bullying based on specified characteristics and requires school personnel who witness such acts to take immediate steps to intervene when safe to do so; see BP 5131.2 - Bullying, AR 5145.3 - Nondiscrimination/Harassment, and BP/AR 5145.7 - Sexual Harassment. In addition, AB 1156 (Ch. 732, Statutes of 2011) amended Education Code 32282 to encourage comprehensive safety plans to include policies and procedures aimed at the prevention of bullying; see BP 0450 - Comprehensive Safety Plan.~~

2. Discrimination, harassment, intimidation, or bullying of students or staff, including sexual harassment, hate-motivated behavior, cyberbullying, hazing or initiation activity, extortion, or any other verbal, written, or physical conduct that causes or threatens to cause violence, bodily harm, or substantial disruption **to the school program**

**CONDUCT** (continued)

*(cf. 5131.2 - Bullying)*  
*(cf. 5145.3 - Nondiscrimination/Harassment)*  
*(cf. 5145.7 - Sexual Harassment)*  
*(cf. 5145.9 - Hate-Motivated Behavior)*

3. Conduct that disrupts the orderly classroom or school environment

*(cf. 5131.4 - Student Disturbances)*

4. Willful defiance of staff's authority

5. Damage to or theft of property belonging to students, staff, or the district

*(cf. 3515.4 - Recovery for Property Loss or Damage)*  
*(cf. 5131.5 - Vandalism and Graffiti)*

~~The district shall not be responsible for students' personal belongings which are brought on campus or to a school activity and are lost, stolen, or damaged.~~

6. Obscene acts or use of profane, vulgar, or abusive language

*(cf. 5145.2 - Freedom of Speech/Expression)*

7. Possession, use, or being under the influence of tobacco, alcohol, or other prohibited **drugs substances**

*(cf. 5131.6 - Alcohol and Other Drugs)*  
*(cf. 5131.62 - Tobacco)*  
*(cf. 5131.63 - Steroids)*

Note: Penal Code 417.27 prohibits students from possessing laser pointers on school premises, unless the pointer is used for valid instructional or other school-related purpose, as provided in item #8 below. Penal Code 417.25 states that aiming or pointing a laser scope (i.e., a portable device capable of projecting a laser light on objects at a distance) at another person in a threatening manner, whether or not the laser scope is attached to a firearm, may be a misdemeanor if intended to cause a person fear of bodily harm.

8. Possession or use of a laser pointer, unless for a valid instructional or other school-related purpose **with prior permission of the principal or designee** (Penal Code 417.27)

~~Prior to bringing a laser pointer on school premises for a valid instructional or school-related purpose, a student shall obtain permission from the principal or designee.~~

**CONDUCT** (continued)

Note: Pursuant to Education Code 48901.5, the district may regulate the use of electronic signaling devices that operate through the transmission or receipt of radio waves. ~~Districts that choose to prohibit all possession of such devices on campus should revise item #9 accordingly; however,~~ **However,** student use of such devices may not be prohibited if essential for a student's health.

**Additionally, Education Code 48901.7, as added by AB 272 (Ch. 42, Statutes of 2019), authorizes the Governing Board to limit or prohibit student use of smartphones while at school or while under the supervision and control of an employee of the district, except under specified circumstances. See BP 5131.8 - Mobile Communication Devices.**

9. Use of a ~~cellular/digital telephone,~~ **cell phone, smart watch,** pager, or other mobile communications device during instructional time **or in an unauthorized manner in violation of district policy**

*(cf. 5131.8 - Mobile Communication Devices)*

*(cf. 6163.4 - Student Use of Technology)*

~~Such devices shall be turned off in class, except when being used for a valid instructional or other school related purpose as determined by the teacher or other district employee, and at any other time directed by a district employee. Any device with camera, video, or voice recording function shall not be used in any manner which infringes on the privacy rights of any other person.~~

~~No student shall be prohibited from possessing or using an electronic signaling device that is determined by a licensed physician or surgeon to be essential for the student's health and the use of which is limited to purposes related to the student's health. (Education Code 48901.5)~~

10. Plagiarism or dishonesty on school work or tests

*(cf. 5131.9 - Academic Honesty)*

*(cf. 6162.54 - Test Integrity/Test Preparation)*

*(cf. 6162.6 - Use of Copyrighted Materials)*

11. ~~Inappropriate attire~~ **Wearing of any attire that violates district or school dress codes, including gang-related apparel**

*(cf. 5132 - Dress and Grooming)*

*(cf. 5136 - Gangs)*

12. Tardiness or unexcused absence from school

*(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)*

## CONDUCT (continued)

### 13. Failure to remain on school premises in accordance with school rules

(cf. 5112.5 - Open/Closed Campus)

Employees are expected to ~~provide appropriate supervision to~~ enforce standards of conduct and, ~~if when~~ they observe or receive a report of a violation of these standards, to ~~immediately appropriately~~ intervene or ~~call for~~ seek assistance. ~~If an employee believes a matter has not been resolved, he/she shall refer the matter to his/her supervisor or an administrator for further investigation.~~ **As necessary, the employee shall refer the matter to a supervisor or the principal or designee.**

Note: When school officials want to search a student or ~~his/her~~ **a student's** belongings (e.g., backpack, purse, cell phone, ~~or other mobile communication device, or~~ computer) as part of an investigation of suspected student misconduct, the legality of the search will depend on whether the search is "reasonable" (New Jersey v. T.L.O.); see BP/AR 5145.12 - Search and Seizure. The "reasonableness" of a search depends on (1) whether there is individualized suspicion that the search will turn up evidence of a student's violation of the law or school rules and (2) whether the search is reasonably related to the objectives of the search and not excessively intrusive in light of the student's age, gender, and/or the nature of the infraction. It is recommended that the district consult with legal counsel as appropriate.

When a school ~~official~~ **employee** suspects that a search of a student or ~~his/her~~ **a student's** belongings will turn up evidence of the student's violation of the law or school rules, such a search shall be conducted in accordance with BP/AR 5145.12 - Search and Seizure.

(cf. 5145.12 - Search and Seizure)

When a student uses any prohibited device, or uses a permitted device in ~~an unethical or illegal activity~~ **an unauthorized manner**, a district employee may confiscate the device. The employee shall store the ~~item in a secure manner until an appropriate time~~ **device securely until it is returned to the student or turned over to the principal or designee, as appropriate.**

Students who violate district or school rules and regulations may be subject to discipline including, but not limited to, suspension, expulsion, transfer to alternative programs, referral to a student success team or counseling services, or denial of participation in extracurricular or cocurricular activities or other privileges in accordance with Board policy and administrative regulation. The Superintendent or designee shall notify local law enforcement as appropriate.

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

(cf. 5020 - Parent Rights and Responsibilities)

(cf. 5127 - Graduation Ceremonies and Activities)

(cf. 5138 - Conflict Resolution/Peer Mediation)

(cf. 5144 - Discipline)

**CONDUCT** (continued)

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*  
*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*  
*(cf. 6020 - Parent Involvement)*  
*(cf. 6145 - Extracurricular and Cocurricular Activities)*  
*(cf. 6159.4 - Behavioral Interventions for Special Education Students)*  
*(cf. 6164.2 - Guidance/Counseling Services)*  
*(cf. 6164.5 - Student Success Teams)*  
*(cf. 6184 - Continuation Education)*  
*(cf. 6185 - Community Day School)*

Note: The following **optional** paragraph addresses students' off-campus conduct during nonschool hours; also see BP 5145.2 - Freedom of Speech/Expression. In general, the courts have upheld districts' discipline of students for off-campus conduct that posed a threat to the safety of other students, staff, or school property or presented a risk of substantial disruption of school activities, provided that the district was able to document the impact or disruption that the conduct had, or could be expected to have, on school activities. In addition, courts have analyzed the reasonableness of the district's policy and whether the disciplinary action taken by the district was in proportion to the student's misbehavior. In adopting policy related to off-campus conduct, districts should consult with legal counsel to ensure that the policy does not violate students' First Amendment rights to freedom of speech or expression.

AB 256 (Ch. 700, Statutes of 2013) amended Pursuant to Education Code 48900, to clarify that districts have the authority to suspend or expel students who engage in cyberbullying off campus, provided that the act meets the criteria specified in the definition of "bullying" in Education Code 48900 (i.e., a severe or pervasive physical or verbal act or conduct that has or can be reasonably predicted to have the effect of placing a reasonable student in fear of harm to his/her the student's person or property, causing a substantially detrimental effect on his/her the student's physical or mental health, causing substantial interference with his/her the student's academic performance, or causing substantial interference with his/her the student's ability to participate in or benefit from school services, activities, or privileges); see BP 5131.2 - Bullying.

In adopting policy related to off-campus conduct, districts should consult with legal counsel to ensure that the policy does not violate students' First Amendment rights to freedom of speech or expression. Also see BP 5145.2 - Freedom of Speech/Expression.

Students also may be subject to discipline, in accordance with law, Board policy, or administrative regulation, for any off-campus conduct during nonschool hours which poses a threat or danger to the safety of students, staff, or district property, or substantially disrupts school activities.

*Legal Reference: (see next page)*

## CONDUCT (continued)

### Legal Reference:

#### EDUCATION CODE

200-262.4 Prohibition of discrimination

32280-32289 Comprehensive safety plan

35181 Governing board authority to set policy on responsibilities of students

35291-35291.5 Rules

44807 Duty concerning conduct of students

48900-48925 Suspension and expulsion

51512 Prohibition against electronic listening or recording device in classroom without permission

#### CIVIL CODE

1714.1 Liability of parents and guardians for willful misconduct of minor

#### PENAL CODE

288.2 Harmful matter with intent to seduce

313 Harmful matter

417.25-417.27 Laser scope or laser pointer

647 Use of camera or other instrument to invade person's privacy; misdemeanor

653.2 Electronic communication devices, threats to safety

#### VEHICLE CODE

23123-23124 Prohibitions against use of electronic devices while driving

#### CODE OF REGULATIONS, TITLE 5

300-307 Duties of students

#### UNITED STATES CODE, TITLE 42

~~2000h-2000h-6~~ **20 USC 1681-1688** Title IX, 1972 Education Act Amendments

#### COURT DECISIONS

*J.C. v. Beverly Hills Unified School District* (2010) 711 F.Supp.2d 1094

*LaVine v. Blaine School District* (~~2000~~ **2001**, 9th Cir.) 257 F.3d 981

*Emmett v. Kent School District No. 415* (2000) 92 F.Supp. 1088

*Bethel School District No. 403 v. Fraser* (1986) 478 U.S. 675

*New Jersey v. T.L.O.* (1985) 469 U.S. 325

*Tinker v. Des Moines Independent Community School District* (1969) 393 U.S. 503

### Management Resources:

#### CSBA PUBLICATIONS

*Safe Schools: Strategies for Governing Boards to Ensure Student Success*, 2011

*Providing a Safe, Nondiscriminatory School Environment for All Students*, Policy Brief, April 2010

*Cyberbullying: Policy Considerations for Boards*, Policy Brief, July 2007

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

*Bullying at School*, 2003

#### WEB SITES

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

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/ls/ss>

Center for Safe and Responsible Internet Use: <http://cyberbully.org>

<https://www.ewa.org/organization/center-safe-and-responsible-internet-use>

National School Boards Association: <http://www.nsba.org>

National School Safety Center: <http://www.schoolsafety.us>

U.S. Department of Education: <http://www.ed.gov>

(3/10 3/12) 10/19

### Policy Reference UPDATE Service

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# CSBA Sample

## Board Policy

Students

BP 5131.8(a)

### MOBILE COMMUNICATION DEVICES

**Note:** The following optional policy may be revised to reflect district practice. Education Code 48901.7, as added by AB 272 (Ch. 42, Statutes of 2019), authorizes the Governing Board to limit or prohibit student use of smartphones while at school or while under the supervision and control of a district employee, except for specified purposes. In addition, Education Code 48901.5 authorizes the district to regulate the use of electronic signaling devices that operate through the transmission or receipt of radio waves unless essential for a student's health.

Districts that choose to regulate mobile communication devices differently based on grade level may revise this policy accordingly.

The Governing Board recognizes that the use of smartphones and other mobile communication devices on campus may be beneficial to student learning and well-being, but could be disruptive of the instructional program in some circumstances. The Board permits limited use of mobile communication devices on campus in accordance with law and the following policy.

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 5131.2 - Bullying)*

*(cf. 5131.4 - Student Disturbances)*

*(cf. 5131.9 - Academic Honesty)*

*(cf. 5137 - Positive School Climate)*

*(cf. 5141.52 - Suicide Prevention)*

*(cf. 6163.4 - Student Use of Technology)*

Students may use cell phones, smart watches, pagers, or other mobile communication devices on campus during noninstructional time as long as the device is utilized in accordance with law and any rules that individual school sites may impose.

Mobile communication devices shall be turned off during instructional time. However, a student shall not be prohibited from possessing or using a mobile communication device under any of the following circumstances: (Education Code 48901.5, 48901.7)

1. In the case of an emergency, or in response to a perceived threat of danger
2. When a teacher or administrator grants permission to the student to possess or use a mobile communication device, subject to any reasonable limitation imposed by that teacher or administrator
3. When a licensed physician or surgeon determines that the possession or use is necessary for the student's health and well-being

## MOBILE COMMUNICATION DEVICES (continued)

### **4. When the possession or use is required by the student's individualized education program**

*(cf. 6159 - Individualized Education Program)*

**Smartphones and other mobile communication devices shall not be used in any manner which infringes on the privacy rights of any other person.**

**Note: A search of a student's personally owned mobile communication device may be subject to the Fourth Amendment of the U.S. Constitution which prohibits unreasonable search and seizure. When school officials want to search a student's mobile communication device as part of an investigation of suspected student misconduct, the legality of the search will depend on whether the search is "reasonable" (New Jersey v. T.L.O.). The "reasonableness" of a search depends on (1) whether there is individualized suspicion that the search will turn up evidence of a student's violation of the law or school rules and (2) whether the search is reasonably related to the objectives of the search and not excessively intrusive in light of the student's age, gender, and/or the nature of the infraction. It is recommended that the district consult with legal counsel as appropriate. See BP/AR 5145.12 - Search and Seizure.**

**When a school official reasonably suspects that a search of a student's mobile communication device will turn up evidence of the student's violation of the law or school rules, such a search shall be conducted in accordance with BP/AR 5145.12 - Search and Seizure.**

*(cf. 5145.12 - Search and Seizure)*

*(cf. 5145.2 - Freedom of Speech/Expression)*

**When a student uses a mobile communication device in an unauthorized manner, the student may be disciplined and a district employee may confiscate the device. The employee shall store the device securely until it is returned to the student or turned over to the principal or designee, as appropriate.**

**Note: The following optional paragraph addresses students' off-campus conduct during nonschool hours. In general, the courts have upheld districts' discipline of students for off-campus conduct that posed a threat to the safety of other students, staff, or school property or presented a risk of substantial disruption of school activities, provided that the district was able to document the impact or disruption that the conduct had, or could be expected to have, on school activities.**

**Pursuant to Education Code 48900, districts have the authority to suspend or expel students who engage in cyberbullying off campus, provided that the act meets the criteria specified in the definition of "bullying" in Education Code 48900 (i.e., a severe or pervasive physical or verbal act or conduct that has or can be reasonably predicted to have the effect of placing a reasonable student in fear of harm to the student's person or property, causing a substantially detrimental effect on the student's physical or mental health, causing substantial interference with the student's academic performance, or causing substantial interference with the student's ability to participate in or benefit from school services, activities, or privileges); see BP 5131.2 - Bullying.**

**MOBILE COMMUNICATION DEVICES** (continued)

**In adopting policy related to off-campus conduct, districts should consult with legal counsel to ensure that the policy does not violate students' First Amendment rights to freedom of speech or expression. Also see BP 5145.2 - Freedom of Speech/Expression.**

**A student may also be subject to discipline, in accordance with law, Board policy, or administrative regulation, for off-campus use of a mobile communication device which poses a threat or danger to the safety of students, staff, or district property or substantially disrupts school activities.**

**The Superintendent or designee shall inform students that the district will not be responsible for a student's mobile communication device which is brought on campus or to a school activity and is lost, stolen, or damaged.**

*Legal Reference: (see next page)*

## MOBILE COMMUNICATION DEVICES (continued)

### **Legal Reference:**

#### **EDUCATION CODE**

*200-262.4 Prohibition of discrimination*

*32280-32289 Comprehensive safety plan*

*35181 Governing board authority to set policy on responsibilities of students*

*35291-35291.5 Rules*

*44807 Duty concerning conduct of students*

*48900-48925 Suspension and expulsion, especially:*

*48901.5 Regulation of possession or use of electronic signaling devices*

*48901.7 Limitation or prohibition of student use of cell phones*

*51512 Prohibition against electronic listening or recording device in classroom without permission*

#### **CIVIL CODE**

*1714.1 Liability of parents and guardians for willful misconduct of minor*

#### **PENAL CODE**

*288.2 Harmful matter with intent to seduce*

*313 Harmful matter*

*647 Use of camera or other instrument to invade person's privacy; misdemeanor*

*653.2 Electronic communication devices, threats to safety*

#### **VEHICLE CODE**

*23123-23124 Prohibitions against use of electronic devices while driving*

#### **CODE OF REGULATIONS, TITLE 5**

*300-307 Duties of students*

#### **UNITED STATES CODE, TITLE 20**

*1681-1688 Discrimination based on sex or blindness*

#### **COURT DECISIONS**

*J.C. v. Beverly Hills Unified School District (2010) 711 F.Supp.2d 1094*

*New Jersey v. T.L.O. (1985) 469 U.S. 325*

*Tinker v. Des Moines Independent Community School District (1969) 393 U.S. 503*

### **Management Resources:**

#### **CSBA PUBLICATIONS**

*Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011*

*Cyberbullying: Policy Considerations for Boards, Policy Brief, July 2007*

#### **CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS**

*Bullying at School, 2003*

#### **WEB SITES**

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

*California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/lr/ss>*

*Center for Safe and Responsible Internet Use: <https://www.ewa.org/organization/center-safe-and-responsible-internet-use>*

*National School Safety Center: <http://www.schoolsafety.us>*

*U.S. Department of Education: <http://www.ed.gov>*

# CSBA Sample

## Board Policy

Students

BP 5132(a)

### DRESS AND GROOMING

Note: The following policy may be revised to reflect district practice. Pursuant to Education Code 35183, districts that adopt a school uniform policy are **mandated** to include specified provisions; see section on "Uniforms" below.

The Governing Board believes that appropriate dress and grooming contribute to a productive learning environment. The Board expects students to wear clothing that is suitable for the school activities in which they participate. Students shall not wear clothing that presents a health or safety hazard or **is likely to** causes a substantial disruption to the educational program.

(cf. 4119.22/4219.22/4319.22 - Dress and Grooming)

District and school rules pertaining to student attire shall be included in student handbooks, may be posted in school offices and classrooms, and may be periodically reviewed with all students as necessary.

Students shall not be prohibited from dressing in a manner consistent with their gender identity or gender expression or with their religious or cultural observance.

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

**Note: Education Code 212.1, as amended by SB 188 (Ch. 58, Statutes of 2019), defines "race," for purposes of prohibiting discrimination, as including traits historically associated with race, such as hair texture and protective hairstyles.**

**In addition, the dress code shall not discriminate against students based on hair texture and protective hairstyles, including, but not limited to, braids, locks, and twists. (Education Code 212.1)**

Note: While students do not lose their constitutional rights by virtue of entering school grounds, numerous court decisions have found that the First Amendment rights of public school students are not necessarily the same as the rights of adults in other settings and must be viewed in light of the special circumstances of the school environment. In Hazelwood School District v. Kuhlmeier, the U.S. Supreme Court ruled that a school may limit student expression as long as its decision is reasonably related to "legitimate pedagogical concerns." For instance, districts may prohibit clothing that is vulgar or causes a substantial disruption to the educational program. Districts may also prohibit clothing that promotes drug use. While districts can regulate clothing that causes a "substantial disruption," districts cannot regulate student clothing simply because the district does not approve of the message displayed. The district's ability to prohibit "hate speech," including clothing with derogatory or demeaning messages, is unclear. The 9th Circuit Court in Harper v. Poway Unified School District ruled that a school could prohibit a student from wearing a t-shirt

## **DRESS AND GROOMING (continued)**

with a religious viewpoint against homosexuality, citing a provision in Tinker v. Des Moines which held that schools may prohibit speech that "intrudes upon the rights of other students" and interferes with their learning. However, because the student had graduated, the U.S. Supreme Court vacated the Harper decision on appeal and thus its analysis cannot be relied upon. It is recommended that the district consult legal counsel in the development of this policy and whenever it has questions about the appropriate enforcement of this policy based on student expression.

The principal or designee is authorized to enforce this policy and shall inform any student who does not reasonably conform to the dress code. The dress code shall not be enforced in a manner that discriminates against a particular viewpoint or results in a disproportionate application of the dress code based on students' gender, sexual orientation, race, ethnicity, household income, or body type or size.

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

*(cf. 0415 - Equity)*

*(cf. 5145.2 - Freedom of Speech/Expression)*

School administrators, teachers, and other staff shall be notified of appropriate and equitable enforcement of the dress code.

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

When practical, students shall not be directed to correct a dress code violation during instructional time or in front of other students.

Repeated violations or refusal to comply with the district's dress code may result in disciplinary action.

*(cf. 5144 - Discipline)*

## **Gang-Related Apparel**

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.

District policy should not include a districtwide prohibition against wearing gang-related apparel. Pursuant to Education Code 35183, such a dress code must be initiated at the school-site level and apply only to the school where it is initiated.

## **DRESS AND GROOMING** (continued)

The principal, staff, and parents/guardians at a school may establish a reasonable dress code that prohibits students from wearing gang-related apparel when there is evidence of a gang presence that disrupts or threatens to disrupt the school's activities. Such a proposed dress code shall be presented to the Board, which shall approve the plan upon determining that it is necessary to protect the health and safety of the school environment. The dress code policy may be included in the school's comprehensive safety plan. (Education Code 35183)

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 5136 - Gangs)*

When determining specific items of clothing that may be defined as gang apparel, the school shall ensure that the determination is free from bias based on race, ethnicity, national origin, immigration status, or other protected characteristics.

### **Uniforms**

Note: In Jacobs v. Clark County School District, the 9th Circuit Court of Appeals held that a district policy requiring students to wear school uniforms did not violate students' First Amendment right to freedom of speech or expression, as such policies are viewpoint-neutral and content-neutral and not intended to suppress the expression of particular ideas.

Pursuant to Education Code 35183, the Board may approve a school-initiated plan that requires a school's students to wear uniforms when the Board determines that the policy is necessary for the health and safety of the school environment.

The Board may approve a school-initiated dress code requiring students at the school to wear a school uniform whenever the Board determines that such a dress code will promote student achievement, a positive school climate, and/or student safety.

Note: If the Board adopts a dress code policy requiring uniforms for any school, Education Code 35183 requires that the Board provide a method whereby parents/guardians may choose to have their children exempted from the adopted school uniform policy. Education Code 35183 **mandates** that the Board policy include a statement that such students shall not be penalized academically, otherwise discriminated against, or denied attendance to school.

The Superintendent or designee shall establish procedures whereby parents/guardians may choose to have their children exempted from the school uniform policy. Students shall not be penalized academically, otherwise discriminated against, or denied attendance to school if their parents/guardians so decide. (Education Code 35183)

The Superintendent or designee shall ensure that resources are identified to assist economically disadvantaged students in obtaining uniforms. (Education Code 35183)

*Legal Reference: (see next page)*

## DRESS AND GROOMING (continued)

### Legal Reference:

#### EDUCATION CODE

#### **212.1 Nondiscrimination based on race or ethnicity**

220 Nondiscrimination

32281 School safety plans

35183 School dress codes; uniforms

35183.5 Sun-protective clothing

48907 Student exercise of free expression

49066 Grades; effect of physical education class apparel

#### COURT DECISIONS

Jacobs v. Clark County School District (2008) 26 F. 3d 419

Harper v. Poway Unified School District (2006) 445 App. 3d 166

Marvin H. Jeglin et al v. San Jacinto Unified School District et al (C.D. Cal. 1993)  
827 F.Supp. 1459

Arcadia Unified School District v. California Department of Education (1992) 2 Cal. 4th 251

Hazelwood School District v. Kuhlmeier (1988) 108 S. Ct. 562

Hartzell v. Connell (1984) 35 Cal. 3d 899

Tinker v. Des Moines Independent Community School District (1969) 393 U.S. 503

(10/96 5/19) 10/19

# CSBA Sample Administrative Regulation

Students

AR 5141.26(a)

## TUBERCULOSIS TESTING

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

Any student ~~with~~ **who is reasonably suspected of having** active tuberculosis shall be excluded from attendance at a district school ~~in accordance with AR 5112.2. Exclusions from Attendance until the student provides evidence of a certificate showing that the student is free of communicable tuberculosis. (Health and Safety Code 121485, 121495, 121505)~~

(cf. 5112.2 - Exclusions from Attendance)

Note: Item #1 below is for use by districts that maintain elementary schools. See AR 5141.32 - Health Screening for School Entry for detailed requirements of the comprehensive health screening required by Health and Safety Code 124085. Pursuant to Health and Safety Code 124040, this health screening must include screening for tuberculosis.

Students shall be screened or tested for tuberculosis under the following circumstances:

Note: Item #1 below is for use by districts that maintain elementary schools. See AR 5141.32 - Health Screening for School Entry for detailed requirements of the comprehensive health screening required by Health and Safety Code 124040, 124085, and 124105. The Child Health and Disability Prevention (CHDP) office of the California Department of Health Care Services (DHCS) and the California Department of Public Health (CDPH) clarify that this health screening includes screening for tuberculosis when required by the local health department. See DHCS' CHDP School Handbook: School Entry Health Examination Requirements and CDPH's California Immunization Handbook: Pre-Kindergarten (Child Care) and School Immunization Requirements for further information.

1. **When required by the local health department as** ~~As~~ part of the comprehensive health screening required for school entry, parents/guardians shall, ~~within 90 days after their child's entry into first grade, provide evidence within 90 days after their child's entry into first grade~~ **certification evidencing** that their child has been screened for risk of tuberculosis within the preceding 18 months. **Such certification shall be on a form approved by the California Department of Health Care Services.** (Health and Safety Code 124040, 124085, **124105**)

**In lieu of the certificate, parents/guardians may submit a signed waiver indicating that they do not want or are unable to obtain the health screening and evaluation services for their child and, if applicable, the reasons that they are unable to obtain the services. (Health and Safety Code 124085)**

(cf. 5141.32 - Health Screening for School Entry)

**TUBERCULOSIS TESTING (continued)**

Note: Health and Safety Code 121515 requires the Governing Board to cooperate with the county or city health officer in carrying out any programs ordered by the health officer for the tuberculosis examinations of individuals applying for first admission to any elementary or secondary school in the district, as provided in item #2 below. The Board is authorized to use district funds, property, and personnel for this purpose.

Pursuant to 22 CCR 41301-41303, the following requirements also pertain to children enrolling in a child care center or preschool.

2. Whenever ordered by the local health officer **for the preservation and protection of public health**, students seeking admission for the first time to a district school at any grade level shall submit to tuberculosis testing. ~~Any student~~ **Students who are** subject to the **health officer's** order shall be admitted to school as follows:

- a. The Superintendent or designee shall unconditionally admit ~~the student if he/she,~~ **any student who,** prior to admission, submits a certificate, signed by any public or private medical provider, indicating that ~~he/she~~ **the student** has completed an approved tuberculosis examination and is free from active tuberculosis. (Health and Safety Code 121485, 121490, 121500; 22 CCR 41305, 41311, 41313)

(cf. 5141.3 - Health Examinations)

(cf. 5141.6 - School Health Services)

(cf. 5148 - Child Care and Development)

(cf. 5148.3 - Preschool/Early Childhood Education)

~~A student shall not be required to obtain the~~ **The Superintendent or designee shall exempt a student from the requirement to submit a** certificate if ~~his/her~~ **the student's** parent/guardian, or ~~eustodian~~ **the student if an emancipated minor,** provides ~~the Superintendent or designee with~~ an affidavit stating that the required examination is contrary to ~~his/her~~ **one's personal** beliefs. If there is probable cause to believe that such a student has active tuberculosis, ~~he/she~~ **the student** may be excluded from school until the Superintendent or designee is satisfied that ~~he/she~~ **the student** is not afflicted. (Health and Safety Code 121505)

- b. A student who has not submitted the certificate **or personal beliefs affidavit** may be ~~conditionally~~ admitted ~~provided~~ **on condition** that ~~he/she~~ **the student** receives an approved tuberculin skin test within 10 school days after admission. A student who **has** had a positive skin test and has not subsequently obtained a chest x-ray may be ~~conditionally~~ admitted ~~if he/she~~ **on condition that the student** receives a chest x-ray within 20 school days after admission. Any student who fails to provide the certificate within those time periods shall be prohibited from further attendance until ~~he/she provides~~ the certificate **is provided**. (Health and Safety Code 121495; 22 CCR 41315, 41327)

**TUBERCULOSIS TESTING** (continued)

- c. Whenever the local health officer so orders, a student may be required to complete an additional examination and provide another certificate indicating that **he/she the student** is free of communicable tuberculosis. (Health and Safety Code 121485)
  - d. At the discretion of the local health officer, the district may admit a student without a certificate if **he/she the student** is undergoing or has already undergone preventive treatment for tuberculosis infection or treatment for tuberculosis disease. (22 CCR 41319)
3. Whenever the Superintendent or designee suspects that a student who has not been examined for tuberculosis either has the disease or has been exposed, **he/she the Superintendent or designee** shall immediately report by telephone to the local health officer. When required by the local health officer, the district shall exclude the student from school until **he/she the student** is certified to be free of communicable tuberculosis. (22 CCR 41329)

The Superintendent or designee shall maintain a record of any student's tuberculosis examination as part of the student's mandatory permanent student record. (22 CCR 41323)

*(cf. 5125 - Student Records)*

The Superintendent or designee shall annually file a report with the local health department on the results of tuberculosis examinations for all **individuals new district students** required to complete such examinations in accordance with item #2 above, including, but not necessarily limited to, the number of **individuals students** unconditionally and conditionally admitted and the number of **individuals students** exempted on the basis of their personal beliefs. (22 CCR 41325)

Note: The following paragraph is <b>optional</b> .
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All district staff shall receive information on how tuberculosis is spread and how it can be prevented and treated.

*(cf. 4112.4/4212.4/4312.4 - Health Examinations)*  
*(cf. 4119.43/4219.43/4319.43 - Universal Precautions)*  
*(cf. 4131 - Staff Development)*  
*(cf. 4231 - Staff Development)*  
*(cf. 4331 - Staff Development)*  
*(cf. 5141.22 - Infectious Diseases)*

*Legal Reference: (see next page)*

## **TUBERCULOSIS TESTING (continued)**

### *Legal Reference:*

#### EDUCATION CODE

48213 Prior parent notification of exclusion; exemption

49451 Parent's refusal to consent to health examination

#### HEALTH AND SAFETY CODE

120230 Exclusion of persons from school when residence is in isolation or quarantine

121365 Duties of local health officer re: tuberculosis control

121475-121520 Tuberculosis tests for students

124025-124110 Child Health and Disability Prevention Program

#### CODE OF REGULATIONS, TITLE 5

202 Exclusion of students with contagious disease

432 Student records

3030 Eligibility for special education; tuberculosis that adversely affects educational performance

#### CODE OF REGULATIONS, TITLE 22

41301-41329 Tuberculosis tests for students

### *Management Resources:*

#### **CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES PUBLICATIONS**

**CHDP School Handbook: School Entry Health Examination Requirements, rev. January 2006**

#### **CALIFORNIA DEPARTMENT OF PUBLIC HEALTH PUBLICATIONS**

**California Immunization Handbook: Pre-Kindergarten (Child-Care) and School Immunization Requirements, 10th Edition, July 2019**

#### WEB SITES

American Lung Association: <http://www.lungusa.org>

**California Department of Health Care Services: <https://www.dhcs.ca.gov>**

California Department of Public Health, Tuberculosis Control: <http://www.cdph.ca.gov/programs/tb>

**<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/TBCB.aspx>**

Centers for Disease Control and Prevention, Tuberculosis: <http://www.cdc.gov/tb>

Health Officers Association of California: <http://www.calhealthofficers.org>

# CSBA Sample

## Board Policy

Students

BP 5142(a)

### SAFETY

Note: The following optional policy should be modified to reflect district practice.

The Under the California Tort Claims Act (Government Code 810-996.6), provides that a district may be held liable for personal injuries caused by dangerous conditions on school property and could be liable for its employees' failure to use reasonable care to prevent foreseeable injuries resulting from school activities. The court in Dailey v. Los Angeles Unified School District held that, within the scope of their employment, school staff must exercise the degree of care "which a person of ordinary prudence, charged with (comparable) duties, would exercise under the same circumstances." (Dailey v. Los Angeles Unified School District) In J.H. v. Los Angeles Unified School District, the court held that the district had a duty to use ordinary care in supervising the after-school program.

With regard to sports athletic activities, the court in Kahn v. East Side Union High School District held that schools have no legal duty to eliminate risks inherent in the sport activity itself because students are deemed to assume those risks by participating in the activity. However, but schools do have a duty to use exercise due care not to increase the risks over and above those inherent in the sport. (Kahn v. East Side Union High School District)

The following optional policy should be modified to reflect district practice.

The Governing Board recognizes the importance of providing a safe school environment that is conducive to learning and helps ensure promotes student safety and well-being, and the prevention of student injury. The Superintendent or designee shall implement appropriate practices measures shall be implemented to minimize the risk of harm to students, including, but not limited to, practices relative to protocols for maintaining safe conditions on school grounds, promoting safe use of school facilities and equipment, the outdoor environment, and guiding student participation in educational programs and school-sponsored activities.

(cf. 0450 - Comprehensive Safety Plan)

(cf. 3320 - Claims and Actions Against the District)

(cf. 3514 - Environmental Safety)

(cf. 3514.1 - Hazardous Substances)

(cf. 3514.2 - Integrated Pest Management)

(cf. 3515 - Campus Security)

(cf. 3515.21 - Unmanned Aircraft Systems (Drones))

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

(cf. 3530 - Risk Management/Insurance)

(cf. 3542 - School Bus Drivers)

(cf. 3543 - Transportation Safety and Emergencies)

(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)

(cf. 4119.43/4219.43/4319.43 - Universal Precautions)

(cf. 5131 - Conduct)

(cf. 5131.1 - Bus Conduct)

(cf. 5141 - Health Care and Emergencies)

(cf. 5141.22 - Infectious Diseases)

(cf. 5142.1 - Identification and Reporting of Missing Children)

## SAFETY (continued)

(cf. 5143 - Insurance)

(cf. 5144 - Discipline)

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

(cf. 6145.2 - Athletic Competition)

(cf. 6163.2 - Animals at School)

(cf. 7111 - Evaluating Existing Buildings)

~~Staff~~ **School staff** shall be responsible for the proper supervision of students **at all times when students are subject to district rules, including, but not limited to,** during school hours, **during** school-sponsored activities, **before and after-school programs, morning drop-off and afternoon pick-up,** and while students are using district transportation ~~to and from school.~~

The Superintendent or designee shall ensure that students receive appropriate instruction on topics related to safety **and emergency procedures,** as well as injury and disease prevention.

(cf. 5141.7 - Sun Safety)

(cf. 6142.8 - Comprehensive Health Education)

## Crossing Guards/**Student** Safety Patrol

Note: The following section is **optional**. School crossing guards may be employed by the **Governing** Board pursuant to Education Code 45450-45451 and by cities and counties pursuant to Vehicle Code 42200 and 42201. Education Code 49300 authorizes the Board to establish a ~~school~~ **student** safety patrol at any district school **for the purpose of assisting students in safely crossing streets.** See the accompanying administrative regulation for requirements pertaining to ~~school~~ safety patrols.

To assist students in safely crossing streets adjacent to or near school sites, the Board may employ crossing guards and/or establish a **student** safety patrol at any district school. The Superintendent or designee shall periodically examine traffic patterns within school attendance areas in order to identify locations where crossing assistance may be needed.

(cf. 5142.2 - Safe Routes to School Program)

## **Student Identification Cards and Safety Information**

Note: The following section is for use by districts that serve students in grades 7-12.

Education Code 215.5 requires districts that issue student identification cards to have printed on either side of the card the telephone number of the National Suicide Prevention Lifeline (1-800-273-8255), and allows to have printed on the card the Crisis Text Line (texting HOME to 741741) and/or a local suicide prevention hotline telephone number.

Effective October 1, 2020, Education Code 215.5, as amended by SB 316 (Ch. 270, Statutes of 2019), requires districts to have the telephone number of the National Domestic Violence Hotline (1-800-799-7233) on either side of student identification cards.

**SAFETY** (continued)

If, as of January 1, 2020, the district has a supply of unissued student identification cards that do not comply with the above requirements, the cards may be issued until the supply is depleted.

Student identification cards of students in grades 7-12 shall have printed on them safety information, including the following: (Education Code 215.5, 217)

1. The National Suicide Prevention Lifeline telephone number and, at the district's discretion, the Crisis Text Line and/or a local suicide prevention hotline telephone number

*(cf. 5141.52 - Suicide Prevention)*

2. The National Domestic Violence Hotline

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

*Legal Reference: (see next page)*

## **SAFETY (continued)**

### *Legal Reference:*

#### EDUCATION CODE

8482-8484.65 After School Education and Safety Program  
17280-17317 Building approvals (Field Act)  
17365-17374 Fitness of school facilities for occupancy  
32001 Fire alarms and drills  
32020 School gates; entrances for emergency vehicles  
32030-32034 Eye safety  
32040 First aid equipment  
32225-32226 Two-way communication devices in classrooms  
32240-32245 Lead-free schools  
32250-32254 CDE school safety and security resources unit  
32280-32289 Safety plans  
44807 Duty of teachers concerning conduct of students  
44808 Exemption from liability when students are not on school property  
44808.5 Permission for students to leave school grounds; notice (high school)  
45450-45451 Crossing guards  
48900 Hazing  
49300-49307 School safety patrol  
49330-49335 Injurious objects  
49341 Hazardous materials in school science laboratories  
51202 Instruction in personal and public health and safety

#### GOVERNMENT CODE

810-996.6 California Tort Claims Act

#### HEALTH AND SAFETY CODE

115725-115735 Playground safety  
115775-115800 Wooden playground equipment  
~~115810-115816 Playground safety and recycling grants~~  
**116046 Issuance of best practices guidelines for K-12 pool safety**

#### PENAL CODE

245.6 Hazing

#### PUBLIC RESOURCES CODE

5411 Purchase of equipment usable by ~~physically disabled~~ persons **with disabilities**

#### VEHICLE CODE

21100 Rules and regulations; crossing guards  
**21201 Rules for operation of bicycle on roadway**  
21212 Use of helmets  
42200 Fines and forfeitures, disposition by cities  
42201 Fines and forfeitures, disposition by counties

#### CODE OF REGULATIONS, TITLE 5

202 Exclusion of students with a contagious disease  
570-576 School safety patrols  
5531 Supervision of social activities  
5552 Playground supervision  
5570 When school shall be open and teachers present  
**14030 Standards for development of plans for the design and construction of school facilities**  
14103 Bus driver; authority over pupils

*Legal Reference continued: (see next page)*

## **SAFETY (continued)**

### *Legal Reference: (continued)*

#### COURT DECISIONS

**J.H. v. Los Angeles Unified School District, (2010) 183 Cal.App.4th 123**

**Lane v. City of Sacramento, (2010) 183 Cal. App. 4th. 1337**

Wiener v. Southcoast Childcare Centers, (2004) 32 Cal.4th 1138

Kahn v. East Side Union High School District, (2003) 31 Cal.4th 990

**Knight v. Jewett, (1992) 3 Cal.4th 296, 313**

Hoyem v. Manhattan Beach City School District, (1978) 22 Cal. 3d 508

Dailey v. Los Angeles Unified School District, (1970) 2 Cal 3d 741

### *Management Resources:*

#### AMERICAN SOCIETY FOR TESTING AND MATERIALS

*F 1487-05, Standard Consumer Safety Performance Specification for Playground Equipment for Public Use, ~~2005~~ 2017*

#### **CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS**

**Science Safety Handbook for California Public Schools, 2014**

#### U.S. CONSUMER PRODUCT SAFETY COMMISSION PUBLICATIONS

~~Handbook for~~ Public Playground Safety ~~Pub. No. 325, 1994, rev. 1997~~ **Handbook, 2010**

#### WEB SITES

American Society for Testing and Materials: <http://www.astm.org>

California Department of Education, Safe Schools Office: <http://www.cde.ca.gov/ss/>

California Department of Public Health: <http://www.cdph.ca.gov>

Centers for Disease Control and Prevention: <http://www.cdc.gov>

Environmental Protection Agency: <http://www.epa.gov>

U.S. Consumer Product Safety Commission: <http://www.cpsc.gov>

U.S. Department of Education, Safe Schools: <http://www.ed.gov/about/offices/list/osep/gtss.html>

(11/02 7/06) 10/19

# CSBA Sample Administrative Regulation

Students

AR 5142(a)

## SAFETY

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

Each principal or designee shall establish **school emergency procedures, rules for student conduct, and** rules for the safe and appropriate use of school **facilities,** equipment, and materials, ~~and for student conduct~~ consistent with law, Board policy, and administrative regulation. **The rules shall be communicated to students.** ~~Copies of the rules shall be distributed to parents/guardians, and shall be~~ readily available at the school at all times.

(cf. 0450 - Comprehensive Safety Plan)

(cf. 5131 - Conduct)

(cf. 5144 - Discipline)

## Release of Students

Note: The following **optional** section may be revised to reflect district practice. For release of students during an emergency, see AR 3516 - Emergencies and Disaster Preparedness Plan.

Students shall be released during the school day only to the custody of an adult **if who is one of the following:**

1. ~~The adult is the~~ **The** student's custodial parent/guardian.

(cf. 5021 - Noncustodial Parents)

2. ~~The An~~ adult ~~has been~~ authorized on the student's emergency card as someone to whom the student may be released when the custodial parent/guardian cannot be reached, ~~and provided~~ the principal or designee verifies the adult's identity.

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

3. ~~The adult is an~~ **An** authorized law enforcement officer acting in accordance with law.

(cf. 5141.4 - Child Abuse Prevention and Reporting)

(cf. 5145.11 - Questioning and Apprehension by Law Enforcement)

**(cf. 5145.13 - Response to Immigration Enforcement)**

4. ~~The An~~ adult ~~is~~ taking the student to emergency medical care at the request of the principal or designee.

(cf. 5141 - Health Care and Emergencies)

**SAFETY** (continued)**Supervision of Students**

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

5 CCR 5570 states that, unless otherwise provided by rule of the **Governing** Board, teachers are required to be present at their rooms and admit students not less than 30 minutes before school starts. **Supervision of students also may be addressed in the district's collective bargaining agreement. The district's collective bargaining agreement may include supervision of students.** The following paragraph may be revised to specify a longer or shorter time period. **maintain consistency with the district's collective bargaining agreement and/or district practice.**

Teachers shall be present at their respective rooms and shall open them to admit students not less than 30 minutes before the time ~~when~~ **that** school starts. (5 CCR 5570)

Every teacher shall hold students accountable for their conduct on the way to and from school, on the playgrounds, and during recess. (Education Code 44807)

The principal or designee shall require all individuals supervising students to remain alert **in spotting for unauthorized persons and** dangerous conditions, promptly report any such **conditions observations** to the principal or designee, and file a written report **on such conditions** as appropriate.

*(cf. 1250 - Visitors/Outsiders)*

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

In arranging for appropriate supervision on playgrounds, the principal or designee shall:

~~1. Where playground supervision is not otherwise provided, provide for certificated employees to supervise the conduct and safety, and direct the play, of students who are on school grounds before and after school and during recess and other intermissions (5 CCR 5552)~~

**2.1.** Clearly identify supervision zones on the playground and require all playground supervisors to remain outside at a location from which they can observe their entire zone of supervision

**3.2.** Consider the size of the playground area, the number of areas that are not immediately visible, and the age of the students to determine the ratio of playground supervisors to students

**Where At any school where** playground supervision is not otherwise provided, **the principal or designee shall** provide for certificated employees to supervise the conduct and safety, and direct the play, of students who are on school grounds before and after school and during recess and other intermissions. (5 CCR 5552)

**SAFETY** (continued)

The Superintendent or designee shall ensure that teachers, teacher aides, playground supervisors, yard aides, and volunteers who supervise students receive training in safety practices and in supervisory techniques that will help **them to forestall prevent** problems and resolve conflicts **among students**. Such training shall be documented and kept on file.

*(cf. 1240 - Volunteer Assistance)*

*(cf. 3515.2 - Disruptions)*

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 5131.4 - Student Disturbances)*

*(cf. 5138 - Conflict Resolution/Peer Mediation)*

**Student Safety Patrols**

Note: The following section is <b>optional</b> .
--

A school safety patrol shall be composed of students of the school **who are** selected by the principal and shall serve only with written consent **from their of the students and their** parents/guardians. Patrol members shall be at least 10 years old and at least in the fifth grade. (Education Code 49302; 5 CCR 571)

School safety patrols shall be used only at those locations where the nature of traffic will permit their safe operation. The locations where school safety patrols are used should be determined jointly with the local law enforcement agency. (5 CCR 572)

Patrol members shall be under the supervision and control of the principal or designee and shall receive training in proper procedures, including, but not limited to, the operations specified in 5 CCR 573-574. Whenever on duty, patrol members shall wear the standard uniform required by 5 CCR 576.

**Playground Safety**

<p>Note: <b>Effective January 1, 2008, AB 1144 (Ch. 470, Statutes of 2006) repeals state standards for playground safety contained in Health and Safety Code 115725-115755, which were contingent upon state funding, and replaces those standards with Health and Safety Code 115725-115735 which require playgrounds to conform with standards set forth by the American Society for Testing and Materials and the U.S. Consumer Product Safety Commission. Pursuant to Health and Safety Code 115725, all public agencies operating playgrounds must have a certified playground safety inspector conduct an initial inspection to aid compliance with the safety standards.</b></p>
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<p><b>In addition, AB 1144 amended Health and Safety Code 115725 to redefine "playground" to include fall zones, surface materials, access ramps, and all areas within and including the designated enclosure and barriers.</b></p>
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<p><b>Further information about playground safety and standards is available through CSBA's California Playground Safety Compliance Program.</b></p>
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**SAFETY** (continued)

Any new playground or any replacement of equipment or modification of components inside an existing playground shall conform to standards set forth by the American Society for Testing and Materials and the guidelines set forth by the U.S. Consumer Product Safety Commission. **The Superintendent or designee shall have a playground safety inspector certified by the National Playground Safety Institute conduct an initial inspection to aid compliance with applicable safety standards.** (Health and Safety Code 115725)

~~Any playground installed between January 1, 1994, and December 31, 1999, shall conform to these standards not later than 15 years after the date of installation. (Health and Safety Code 115725)~~

**Activities with Safety Risks**

Note: The following **optional** section lists activities that might be prohibited by the district because of high risk to student safety and should be revised to reflect district practice.

**Pursuant to Government Code 831.7, public entities, including districts, are not liable to participants in a hazardous recreational activity, those who assist participants, or spectators for any damage to person or property arising out of the hazardous recreational activity when the person knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury and was voluntarily in the place of risk or having the ability to leave but failed to do so. Government Code 831.7 defines a "hazardous recreational activity" as a recreational activity conducted on school grounds that creates a substantial risk of injury, as distinguished from a minor, trivial, or insignificant risk of injury. The list below includes, but is not limited to, some of the hazardous recreational activities listed in Government Code 831.7. Prior to authorizing such activities, it is recommended that districts consult with their insurance carrier or joint powers authority or, for those who self-insure, with legal counsel. See BP/AR 3530 - Risk Management/Insurance.**

~~Because of~~ **Due to** concerns about the risk to student safety, the principal or designee shall not permit the following activities on campus or during school-sponsored events unless the activity is properly supervised, students wear protective gear as appropriate, and each participant has insurance coverage:

1. Trampolining
2. Scuba diving
3. Skateboarding or use of scooters
4. In-line or roller skating or use of skate shoes
5. Sailing, boating, or water skiing
6. ~~Snow trips~~ **Cross-country or downhill skiing**

**SAFETY** (continued)

7. Motorcycling
8. Target shooting
9. Horseback riding
10. Rodeo

**11. Archery**

**12. Mountain bicycling**

**13. Rock climbing**

**14. Rocketeering**

**15. Surfing**

**16. Other activities determined by the principal to have a high risk to student safety**

(cf. 5143 - Insurance)

(cf. 6145 - Extracurricular and Cocurricular Activities)

(cf. 6153 - School-Sponsored Trips)

**Note: The following paragraph is optional. Vehicle Code 21201 establishes requirements for bicycles on roadways in regard to brakes, handlebars, size, and illumination when operated during darkness. Districts may want to provide such information to students and parents/guardians.**

Students who operate or ride as a passenger on a bicycle, nonmotorized scooter, or skateboard, or wear in-line or roller skates, upon a street, bikeway, or any other public bicycle path or trail shall wear a properly fitted and fastened bicycle helmet that meets the standards of law. ~~Students also shall be required to wear such helmets while wearing in-line or roller skates.~~ (Vehicle Code 21212)

**Laboratory Safety**

**Note: The following optional section reflects the Legislature's intent as stated in Education Code 49341, and the California Department of Education's Science Safety Handbook for Public Schools.**

The principal of each school offering laboratory work shall develop procedures for laboratory safety and designate a trained certificated employee to implement and regularly review these procedures.

## **SAFETY** (continued)

**Students in a laboratory shall be under the supervision of a certificated employee. Students shall be taught laboratory safety, and safety guidelines and procedures shall be posted in science classrooms. Students shall receive continual reminders about general and specific hazards.**

**Hazardous materials shall be properly used, stored, and disposed of in accordance with law and the district's chemical hygiene plan.**

*(cf. 3514.1 - Hazardous Substances)*

**Bloodborne pathogens shall be handled in accordance with the district's exposure control plan.**

*(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)*  
*(cf. 5141.22 - Infectious Diseases)*

**The district's emergency plan, emergency contact numbers, and first aid supplies shall be readily accessible.**

**Parents/guardians shall be made aware of the kinds of laboratory activities that will be conducted during the school year.**

## **Hearing Protection**

Note: The following <b>optional</b> section may be revised to reflect district practice.
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The Superintendent or designee shall monitor students' exposure to excessive noise in classrooms and provide protection as necessary. The Superintendent or designee **also** may **also** provide hearing conservation education to teach students ways to protect their hearing.

## **Eye Safety Devices**

Note: Education Code 32031 addresses circumstances under which eye protection devices must be used.
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The Superintendent or designee shall provide schools with eye safety devices for use whenever students, teachers, or visitors are engaged in or observing an activity or using hazardous substances likely to cause injury to the eyes. Eye safety devices may be sold to students for an amount not to exceed their actual cost to the district. (Education Code 32030, 32031, 32033)

*(cf. 3260 - Fees and Charges)*

**SAFETY** (continued)

**Protection Against Insect Bites**

Note: The following <b>optional</b> section may be revised to reflect district practice.
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To help protect students against insect bites or stings that may spread disease or cause allergic reactions, students shall be allowed to apply insect repellent provided by their parents/guardians, under the supervision of school personnel, and in accordance with the manufacturer's directions, when engaging in outdoor activities.

(7/06 7/07) 10/19

# CSBA Sample

## Board Policy

Facilities

BP 7140(a)

### ARCHITECTURAL AND ENGINEERING SERVICES

Note: ~~Education Code 17302 requires districts to employ a licensed and certified architect or structural engineer to prepare building plans, estimates and specifications and supervise the construction of building projects.~~ Pursuant to Education Code 17266, when professional design services are used for construction or modernization of school facilities, districts are responsible for the selection of a licensed architect and/or structural engineer for necessary structural engineering and supervision of construction. Article 22 of the California Constitution allows districts to contract with qualified private entities for architectural and engineering services for all public works projects. Sample contracts are available from the American Institute of Architects, California Council.

Pursuant to Education Code 17262, the district may purchase sets of plans and specifications provided by the State Allocation Board (SAB) for use in constructing a school building of the type desired by the district.

~~In order to ensure safe construction and protect the investment of public funds, the Governing Board requires that~~ **The Governing Board desires to provide school facilities that support the educational program and meet all applicable safety and design standards. When required by law, the Board shall employ or contract with** a licensed and certified architect **and/or** structural engineer ~~be employed~~ to design and supervise the construction of district schools and other facilities.

*(cf. 7110 - Facilities Master Plan)*

**The architect and/or structural engineer shall be responsible for preparing all construction plans, specifications, and estimates and for the observation of the work of construction. (Education Code 17302)**

Note: Education Code 17070.50 requires the California Department of Education (CDE) to review and approve plans and specifications for new construction and modernization of school facility projects funded by SAB. During this review, CDE's School Facilities Planning Division verifies project consistency with the design standards specified in Title 5 of the Code of Regulations. Pursuant to CDE forms SFPD 4.07, Plan Submission Requirements for New Construction, and SFPD 4.08, Plan Submission Requirements for Modernization Projects, facilities projects subject to this review include those funded through the Leroy F. Greene School Facilities Act (Education Code 17070.10-17079.30) and projects that receive state funding for overcrowding relief, critically overcrowded schools, career technical education facilities, joint use facilities, or modernization funding. Board-approved educational specifications must be submitted when the project involves construction of a new school or demolition and rebuilding of 50 percent or more of the existing school's square footage.

Construction plans for school facility projects that are not funded by SAB are not required to be submitted to CDE for review and approval. However, locally funded projects must still comply with Title 5 design standards. Pursuant to Education Code 17251, a district may request that CDE, at district expense, review plans and specifications for locally funded school facility projects.

## ARCHITECTURAL AND ENGINEERING SERVICES (continued)

Pursuant to Education Code 17267, all plans and specifications for school construction projects must also be filed with the Department of General Services, Division of the State Architect (DSA) to ensure compliance with Title 24 of the Code of Regulations. See DSA's web site for information regarding this process.

To ensure compliance with state design and safety standards, preliminary and final plans for any state-funded school facility project, including Board-approved educational specifications for school design when necessary, shall be submitted to the California Department of Education and the Department of General Services, Division of the State Architect. (Education Code 17267; 5 CCR 14030-14032)

Note: ~~As added by SB 50 (Ch. 407, Statutes of 1998),~~ Education Code 17070.50 prohibits ~~the State Allocation Board SAB~~ from apportioning state facilities funds ~~under the new program~~ unless the district has certified that the services of an architect, a structural engineer, or other design professional has been selected using a "competitive process" consistent with Government Code ~~4526~~ **4525-4529.5**. ~~The process required by Government Code 4526~~ **requires that the competitive process** must be based on "demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required." See **AR 7140 the accompanying administrative regulation.**

The Superintendent or designee shall devise a competitive process for the selection of architects, ~~and~~ structural engineers, **and other design professionals** that is based on demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. For each project, ~~he/she~~ **the Superintendent or designee** shall recommend **specific** architectural and engineering firms to the Board **for approval**. The Board shall pay fair and reasonable amounts warranted by the provider's qualifications and competence. The Board need not select the lowest responsible bidder.

(cf. 3311 - Bids)

(cf. 3311.3 - Design-Build Contracts)

Note: ~~Although contracts for architectural and other professional services are exempted from the bidding requirements detailed in Public Contract Code 20111, State Allocation Board policy still requires a three percent disabled veteran business participation goal when contracts exceeding \$10,000 for lease purchase building projects and certain contracts in the State Relocatable Classroom Program are awarded by school districts and funded by the State Allocation Board. Architects and other professionals who are not disabled veteran business enterprises can comply with this policy by using subcontractors for goal attainment or by meeting specified "good faith" efforts.~~

Legal Reference: (see next page)

## ARCHITECTURAL AND ENGINEERING SERVICES (continued)

### *Legal Reference:*

#### EDUCATION CODE

**17070.10-17079.30 Leroy F. Greene School Facilities Act, especially:**

**17070.50 Conditions for apportionment**

**17250.10-17250.55 Design-build contracts**

**17251 School construction; duties of the California Department of Education**

**17262-17268 School construction plans**

**17280-17316 Approvals, especially:**

**17302 Persons qualified to prepare plans, specifications and estimates and supervise construction**

**17316 Contract provision regarding school district property**

**17371 Limitation on liability of governing board**

#### BUSINESS AND PROFESSIONS CODE

**5500-5502 Architecture**

**5550-5558 Architects, licensure**

**6700-6706.3 Engineers**

**6750-6766 Engineers, licensure**

#### GOVERNMENT CODE

**4525-4529.5 Contracts with private architects, engineering, land surveying, and construction project management firms**

**14837 Definition of small business**

**87100 Public officials; financial interest**

#### PUBLIC CONTRACT CODE

**20111 School district contracts**

#### CODE OF REGULATIONS, TITLE 5

**14001 Minimum standards for school facilities**

**14030-14036 Standards, planning, and approval of school facilities**

#### CODE OF REGULATIONS, TITLE 24

**101 et seq. California Building Standards Code**

#### CALIFORNIA CONSTITUTION

**Article 22 Architectural and engineering services**

### *Management Resources:*

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

**Plan Submission Requirements for Modernization Projects, Form SFPD 4.08**

**Plan Submission Requirements for New Construction, Form SFPD 4.07**

#### OFFICE OF PUBLIC SCHOOL CONSTRUCTION PUBLICATIONS

**School Facility Program Handbook, January 2019**

#### WEB SITES

**American Institute of Architects California Council: <https://aiacalifornia.org>**

**California Department of Education, Facilities: <http://www.cde.ca.gov/lr/fa>**

**Department of General Services, Division of the State Architect: <https://www.dgs.ca.gov/DSA>**

**Department of General Services, Office of Public School Construction: <https://www.dgs.ca.gov/OPSC>**

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# CSBA Sample Administrative Regulation

Facilities

AR 7140(a)

## ARCHITECTURAL AND ENGINEERING SERVICES

~~The Governing Board shall engage the services of a licensed architect(s) holding a valid certificate or engineer(s) holding a valid certificate for the preparation of plans, specifications or estimates for any construction project, through a signed contract. (Education Code 17302)~~

~~(cf. 3312 - Contracts)~~

Note: ~~As a condition to the receipt of state funding, Education Code 17070.50, as added by SB 50 (Ch. 407, Statutes of 1998), requires districts to select architectural and engineering services pursuant to the competitive process outlined below.~~ **When applying for state facilities funding, the district will be required to certify that any professional design services used for the project were selected using a qualification-based selection process. The Office of Public School Construction, in its School Facility Handbook, advises districts to consult with legal counsel to ensure that its process for selecting architects or structural engineers is a qualification-based selection process and complies with all other legal requirements, including the Public Contract Code and requirements for disabled veterans business enterprises.**

Contractors for any architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be selected, at fair and reasonable prices, on the basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required. (Government Code 4526)

Note: Government Code 4526 requires that the district's selection process include at least items #1-3 below; however, the law does not prescribe the exact procedures that must be followed. Generally, elements of a "competitive process" include advertising and notice of the need for services, objective evaluation and selection criteria, and an appeals process for use by those not selected. Districts may wish to develop procedures consistent with these and other requirements in consultation with legal counsel.

The Superintendent or designee shall ensure that the selection process for projects receiving state funding: (Government Code 4526)

1. ~~Ensures that projects entail~~ **Assures** maximum participation by small business firms as defined pursuant to Government Code 14837
2. Prohibits practices which might result in unlawful activity such as rebates, kickbacks, or other unlawful consideration
3. Prohibits district employees from participating in the selection process when they have a relationship with a person or business entity seeking a contract which would subject the employee to the prohibition of Government Code 87100

*(cf. 9270 - Conflict of Interest)*

## ARCHITECTURAL AND ENGINEERING SERVICES (continued)

Note: Pursuant to Government Code 4527, the following items are optional and may be revised to reflect district practice.

The selection process may also include: (Government Code 4527)

1. ~~Detailed evaluations~~ **Evaluation** of current statements of ~~prospective contractors'~~ qualifications and performance data **on file with the district and evaluation of statements that may be submitted by other firms regarding the proposed project**
2. Discussion **with at least three firms** **regarding anticipated concepts and the relative utility** of alternative approaches for furnishing the **required** services ~~with at least three firms~~
3. Selection, **in order of preference**, of at least three firms deemed to be the most highly qualified to provide the required services in accordance with established **district** criteria ~~and recommended in order of preference~~

Note: The following paragraph is optional and may be revised to reflect district practice. Government Code 4528 authorizes, but does not require, the district to implement the following procedures.

**The district shall negotiate a contract with the best qualified firm at compensation determined by the district to be fair and reasonable. If the district is unable to negotiate a contract with the most qualified firm, the district shall negotiate a contract with the second most qualified firm and, if unsuccessful, with the third most qualified firm. If the district is unable to negotiate a satisfactory contract with any of the selected firms, the district shall select additional firms in order of their competence and qualification and continue negotiations until an agreement is reached. (Government Code 4528)**

**The above procedures shall not apply if the Superintendent or designee determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest. (Government Code 4529)**

**(cf. 3311 - Bids)**

Contracts shall specify that all plans, **including, but not limited to, record drawings, specifications, and estimates prepared by the** ~~contractor~~ **architect or structural engineer shall become the property of the district. The contract shall also specify terms and conditions for reuse within the district of any plans prepared by the architect or structural engineer.** (Education Code 17316)

**ARCHITECTURAL AND ENGINEERING SERVICES** (continued)

**A contract may be awarded to a single entity for both design and construction of any school facility in excess of \$1,000,000 in accordance with AR 3311.3 - Design-Build Contracts. (Education Code 17250.20)**

*(cf. 3311.3 - Design-Build Contracts)*

# CSBA Sample

## Board Bylaw

### Board Bylaws

BB 9323(a)

### MEETING CONDUCT

Note: Education Code 35010 **mandates** the Governing Board to "prescribe and enforce" rules for its own governance. These rules must not be inconsistent with law or with regulations prescribed by the State Board of Education. The following bylaw provides suggested rules and procedures for meeting conduct and reflects provisions of law as applicable.

#### Meeting Procedures

All Governing Board meetings shall begin on time and shall be guided by an agenda prepared in accordance with Board bylaws and posted and distributed in accordance with the Ralph M. Brown Act (open meeting requirements) and other applicable laws.

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

Note: The law does not specify that a particular set of procedures must govern Board meetings. Although Robert's Rules of Order can serve as a useful guide, the Board may adopt any procedure that allows for the efficient and consistent conduct of meetings.

The Board president shall conduct Board meetings in accordance with Board bylaws and procedures that enable the Board to efficiently consider issues and carry out the will of the majority.

*(cf. 9121 - President)*

Note: The following **optional** paragraph limits the length of Board meetings and should be revised to reflect district practice.

The Board believes that late night meetings deter public participation, can affect the Board's decision-making ability, and can be a burden to staff. Regular Board meetings shall be adjourned at 10:30 p.m. unless extended to a specific time determined by a majority of the Board. The meeting shall be extended no more than once and subsequently may be adjourned to a later date.

*(cf. 9320 - Meetings and Notices)*

Note: In Rubin v. City of Burbank, an appellate court held that inclusion of "sectarian prayer" at city council meetings, which communicated a preference for a particular religious faith and advanced one faith over another, was unconstitutional by directing the prayer "in the name of Jesus." The court held that it would be constitutional to require the city to advise those people conducting the prayer of this limitation. This opinion is consistent with an unpublished 9th Circuit federal court opinion which stated that an invocation "in the name of Jesus" was unconstitutional in that it displayed allegiance to a particular faith.

## MEETING CONDUCT (continued)

Some general guidelines for invocations can be found in an Attorney General's opinion (76 Ops.Cal.Atty.Gen. 281 (1993)) which stated that a county board of supervisors could open its sessions with an invocation when the invocation is (1) not required by law as a condition to the official proceedings, (2) not part of the deliberative agenda, (3) not offered, supervised, or approved as to content by a public officer, (4) not officially limited to a particular religion, (5) not disparaging of others, and (6) not directed towards proselytizing. However, because this is an unsettled area of law that is subject to frequent litigation, it is strongly recommended that districts consult legal counsel if they wish to open meetings with an invocation. Note that a different legal analysis applies to student-led or student-initiated prayer; see BP 5127 - Graduation Ceremonies and Activities.

## Quorum and Abstentions

The Board shall act by majority vote of all of the membership constituting the Board. (Education Code 35164)

(cf. 9323.2 - *Actions by the Board*)

Note: According to an Attorney General opinion (61 Ops.Cal.Atty.Gen. 243 (1978)), members of a public body have a duty to vote on issues before them so that the public is represented and receives the services which the public body was created to provide. Issues arise when a motion is tied and one Board member has abstained. The general parliamentary rule is that an abstention is counted as agreeing with the action taken by the majority of those who vote, whether affirmatively or negatively (66 Ops.Cal.Atty.Gen. 336 (1983). However, a stronger argument could be made that the parliamentary rule is in conflict with Education Code 35164 which requires a majority vote of all of the membership of the Board in order for the Board to act (i.e., a majority of all of the membership of the Board must vote affirmatively in order to approve any action). In 55 Ops.Cal.Atty.Gen. 26 (1972), the Attorney General opined that, when a statutory requirement exists that requires an affirmative action of at least a majority of the members of the Board, the general rule that members not voting were deemed to have agreed with the action taken by the majority of those that voted is not applicable.

The following **optional** paragraph is consistent with CSBA's opinion that a majority of the Board must vote affirmatively for a motion to carry, but the law is not settled and contrary legal opinions may exist. It is strongly recommended that the district consult with legal counsel and modify the following paragraph to ensure consistency with district practice.

The Board believes that when no conflict of interest requires abstention, its members have a duty to vote on issues before them. When a member abstains, **his/her** the abstention shall not be counted for purposes of determining whether a majority of the membership of the Board has taken action.

(cf. 9270 - *Conflict of Interest*)

Note: The following paragraph applies only to districts with seven member boards and **should be deleted by districts with a three or five member board.**

Provided the Board typically has seven members and there are no more than two vacancies on the Board, the vacant position(s) shall not be counted for purposes of determining how

## MEETING CONDUCT (continued)

many members of the Board constitute a majority. In addition, whenever any provisions of the Education Code require unanimous action of all or a specific number of the members, the vacant position(s) shall not be counted for purposes of determining the total membership constituting the Board. (Education Code 35165)

### Public Participation

Note: Pursuant to Government Code 54953.3, **a** members of the public cannot be required to register **his/her** **their** names, complete a questionnaire, or provide other information as a condition of attending a Board meeting. If an attendance list or similar document is posted near the entrance or circulated during the meeting, it must clearly state that signing or completing the document is voluntary.

Members of the public are encouraged to attend Board meetings and to address the Board concerning any item on the agenda or within the Board's jurisdiction. So as not to inhibit public participation, persons attending Board meetings shall not be requested to sign in, complete a questionnaire, or otherwise provide their name or other information as a condition of attending the meeting.

In order to conduct district business in an orderly and efficient manner, the Board requires that public presentations to the Board comply with the following procedures:

Note: Education Code 35145.5 **mandates** the Board to adopt regulations which ensure that the public can address the Board regarding agenda items, as specified below.

District employees have the same right as members of the public to address the Board during a public Board meeting. In 90 Ops.Cal.Atty.Gen. 47 (2007), the Attorney General opined that, under the Ralph M. Brown Act, an administrative district employee cannot be prohibited from attending a Board meeting or from speaking during the public comment period, including comments on an employment-related issue.

1. The Board shall give members of the public an opportunity to address the Board on any item of interest to the public that is within the subject matter jurisdiction of the Board, either before or during the Board's consideration of the item. (Education Code 35145.5; Government Code 54954.3)
2. At a time so designated on the agenda at a regular meeting, members of the public may bring before the Board matters that are not listed on the agenda. The Board shall take no action or discussion on any item not appearing on the posted agenda, except as authorized by law. (Education Code 35145.5; Government Code 54954.2)
3. Without taking action, Board members or district staff members may briefly respond to statements made or questions posed by the public about items not appearing on the agenda. Additionally, on their own initiative or in response to questions posed by the

**MEETING CONDUCT** (continued)

public, **a** Board **members** or staff members **s** may ask a question for clarification, make a brief announcement, or make a brief report on **his/her** **their** own activities. (Government Code 54954.2)

Furthermore, the Board or a Board member may provide a reference to staff or other resources for factual information, ask staff to report back to the Board at a subsequent meeting concerning any matter, or take action directing staff to place a matter of business on a future agenda. (Government Code 54954.2)

4. The Board need not allow the public to speak on any item that has already been considered by a committee composed exclusively of Board members at a public meeting where the public had the opportunity to address the committee on that item. However, if the Board determines that the item has been substantially changed since the committee heard the item, the Board shall provide an opportunity for the public to speak. (Government Code 54954.3)

(cf. 9130 - Board Committees)

5. A person wishing to be heard by the Board shall first be recognized by the president and shall then proceed to comment as briefly as the subject permits.

Note: Government Code 54954.3 authorizes **reasonable** regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. **Such reasonable regulations must ensure that the intent of allowing the public an adequate opportunity to speak to the Board is carried out.** The following paragraph should be revised to reflect district practice.

~~If the Board limits the time for public comment, Government Code 54954.3, as amended by AB 1787 (Ch. 507, Statutes of 2016), requires the Board to provide at least twice the allotted time to a member of the public who utilizes a translator, as provided below.~~

**In general, Individual speakers ~~shall~~ will be allowed three minutes to address the Board on each agenda or nonagenda item, and ~~the~~ Board ~~shall~~ will limit the total time for public input on each item to 20 minutes. However, in exceptional circumstances when necessary to ensure full opportunity for public input, With Board consent, the Board president may, with Board consent, increase or decrease adjust the amount of time allowed for public presentation input, depending on the topic and the number of persons wishing to be heard and/or the time allotted for each speaker. Any such adjustment shall be done equitably so as to allow a diversity of viewpoints. The president may take a poll of speakers for or against a particular issue and may ask that additional persons speak only if they have something new to add. The president may also ask members of the public with the same viewpoint to select a few individuals to address the Board on behalf of that viewpoint.**

**MEETING CONDUCT** (continued)

In order to ensure that non-English speakers receive the same opportunity to directly address the Board, any member of the public who utilizes a translator shall be provided at least twice the allotted time to address the Board, unless simultaneous translation equipment is used to allow the Board to hear the translated public testimony simultaneously. (Government Code 54954.3)

6. The Board president may rule on the appropriateness of a topic, subject to the following conditions:
  - a. If a topic would be suitably addressed at a later time, the Board president may indicate the time and place when it should be presented.
  - b. The Board shall not prohibit public criticism of its policies, procedures, programs, services, acts, or omissions. (Government Code 54954.3)

Note: The following **optional** item addresses the issue of specific charges or complaints against district employees in open Board meetings. Although the Board may inform the speaker of appropriate district complaint procedures, it cannot prohibit criticisms of the district and its employees, no matter how harsh. Board members and staff may briefly respond to the concerns raised by the complainant at the meeting.

In Baca v. Moreno Valley Unified School District, a federal district court issued a preliminary injunction against the district prohibiting it from enforcing its policy barring criticism of employees at public Board meetings. The court found that the district's policy violated the plaintiff's First Amendment rights by restricting the content of her speech. The court further noted that the district could not legally prevent a person from speaking in open session, even if the speech was clearly defamatory. It is recommended that the Board consult legal counsel if a question arises regarding public criticism of a district employee.

- c. The Board shall not prohibit public criticism of district employees. However, whenever a member of the public initiates specific complaints or charges against an individual employee, the Board president shall inform the complainant of the appropriate complaint procedure.

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 9321 - Closed Session Purposes and Agendas)

Note: As provided in item #7 below, Government Code 54957.9 authorizes the Board to remove persons who willfully disrupt or disturb a meeting. Examples of disruptive conduct might include conduct that is extremely loud, disturbing, or creates a health or safety risk. In McMahon v. Albany Unified School District, the court held that a speaker's constitutional rights were not violated when he was removed from a Board meeting after dumping a substantial amount of garbage on the floor of the meeting room. Because the speaker was not removed based on the content of his speech, the court upheld his conviction for a willful disruption of a public meeting. In City of San Jose v. Garbett, the court held that a legislative body may exclude from a meeting a person who has expressed a credible threat of violence that would place a reasonable persons in fear for his/her their safety or the safety of his/her their immediate family and that serves no legitimate purpose.

## MEETING CONDUCT (continued)

However, the courts have found that a person's conduct must actually disrupt the meeting in order to warrant ejection. In Norse v. City of Santa Cruz, the court held that the city council improperly ejected a member of the public who gave the council a silent Nazi salute, on the grounds that the action did not interfere with the proceedings of the meeting.

7. The Board president shall not permit any disturbance or willful interruption of Board meetings. Persistent disruption by an individual or group or any conduct or statements that threaten the safety of any person(s) at the meeting shall be grounds for the president to terminate the privilege of addressing the Board.

The Board may remove disruptive individuals and order the room cleared if necessary. In this case, members of the media not participating in the disturbance shall be allowed to remain, and individuals not participating in such disturbances may be allowed to remain at the discretion of the Board. When the room is ordered cleared due to a disturbance, further Board proceedings shall concern only matters appearing on the agenda. (Government Code 54957.9)

When such disruptive conduct occurs, the Superintendent or designee shall contact local law enforcement as necessary.

## Recording by the Public

Note: Government Code 54953.5 provides that any person attending an open meeting may record it with an audio or video recorder or a still or motion picture camera unless the Board makes a reasonable finding that the recording cannot continue without noise, illumination, or obstruction of view which would persistently disrupt the meeting. Government Code 54953.6 requires a similar finding before the Board can prohibit or restrict a broadcast of its meetings.

The following paragraph extends the right to record an open meeting to include recordings made by other devices such as a cell phone.

Members of the public may record an open Board meeting using an audio or video recorder, still or motion picture camera, cell phone, or other device, provided that the noise, illumination, or obstruction of view does not persistently disrupt the meeting. The Superintendent or designee may designate locations from which members of the public may make such recordings without causing a distraction.

*(cf. 9324 - Board Minutes and Recordings)*

If the Board finds that noise, illumination, or obstruction of view related to these activities would persistently disrupt the proceedings, these activities shall be discontinued or restricted as determined by the Board. (Government Code 54953.5, 54953.6)

*Legal Reference: (see next page)*

## MEETING CONDUCT (continued)

### *Legal Reference:*

#### EDUCATION CODE

5095 Powers of remaining board members and new appointees

32210 Willful disturbance of public school or meeting a misdemeanor

35010 Prescription and enforcement of rules

35145.5 Agenda; public participation; regulations

35163 Official actions, minutes and journal

35164 Vote requirements

35165 Effect of vacancies upon majority and unanimous votes by seven member board

#### CODE OF CIVIL PROCEDURE

527.8 Workplace Violence Safety Act

#### GOVERNMENT CODE

54953.3 Prohibition against conditions for attending a board meeting

54953.5 Audio or video recording of proceedings

54953.6 Broadcasting of proceedings

54954.2 Agenda; posting; action on other matters

54954.3 Opportunity for public to address legislative body; regulations

54957 Closed sessions

54957.9 Disorderly conduct of general public during meeting; clearing of room

#### PENAL CODE

403 Disruption of assembly or meeting

#### COURT DECISIONS

*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526

*Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966

*McMahon v. Albany Unified School District* (2002) 104 Cal.App.4th 1275

*Rubin v. City of Burbank* (2002) 101 Cal.App.4th 1194

*Baca v. Moreno Valley Unified School District* (1996) 936 F.Supp. 719

#### ATTORNEY GENERAL OPINIONS

90 *Ops. Cal. Atty. Gen.* 47 (2007)

76 *Ops. Cal. Atty. Gen.* 281 (1993)

66 *Ops. Cal. Atty. Gen.* 336 (1983)

63 *Ops. Cal. Atty. Gen.* 215 (1980)

61 *Ops. Cal. Atty. Gen.* 243, 253 (1978)

59 *Ops. Cal. Atty. Gen.* 532 (1976)

55 *Ops. Cal. Atty. Gen.* 26 (1972)

### *Management Resources:*

#### CSBA PUBLICATIONS

*Call to Order: A Blueprint for Great Board Meetings*, 2015

*The Brown Act: School Boards and Open Meeting Laws*, rev. 2014

#### ATTORNEY GENERAL PUBLICATIONS

*The Brown Act: Open Meetings for Local Legislative Bodies*, 2003

#### WEB SITES

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

California Attorney General's Office: <https://oag.ca.gov>

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### **Policy Reference UPDATE Service**

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