

# CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3511.1(a)

## INTEGRATED WASTE MANAGEMENT

Note: The following policy may be revised to reflect district practice. Pursuant to Public Resources Code 42630, **districts and** schools are encouraged to assist cities and counties in meeting the solid waste diversion goals set by Public Resources Code 41780. ~~In addition, pursuant to Public Resources Code 42649.2, as added by AB 341 (Ch. 476, Statutes of 2011), businesses, including schools, that generate more than four cubic yards of solid waste per week are required to arrange for recycling services in accordance with law.~~ Pursuant to Public Resources Code 42649.2 and 42649.81, **businesses, including schools, are required to arrange for recycling services if the amount of solid or organic waste they produce meets the thresholds specified in law and the accompanying administrative regulation. The California Department of Resources Recycling and Recovery (CalRecycle) offers Useful resources such as specific identifying waste management strategies, available funding sources, and other publications, including resources for developing and implementing integrated education and school waste reduction programs that provide curriculum to link instruction on integrated waste management and environmental concepts with student action projects at school sites, may be obtained from the California Department of Resources Recycling and Recovery (CalRecycle).**

The Governing Board believes that the conservation of **water, energy, and other** natural resources, ~~and~~ the protection of the environment, **and the implementation of an effective waste diversion program** are connected to the district's educational mission and are essential to the health and well-being of the community. The Superintendent or designee shall develop ~~and/or~~ implement a cost-effective, integrated waste management program that incorporates the principles of green school operations.

(cf. 0100 - Philosophy)  
(cf. 3510 - Green School Operations)  
(cf. 3511 - Energy and Water Management)  
(cf. 3514 - Environmental Safety)  
(cf. 3514.2 - Integrated Pest Management)

The district's **integrated waste management** program shall include strategies designed to **promote waste management practices of source reduction, recycling, and composting to help the district reduce and recycle solid and hazardous organic waste generation, properly dispose of potentially hazardous materials,** improve efficiency in ~~its-the~~ use of natural resources, and minimize the impact of such use on the environment. The program shall address all areas of the district's operations, including, but not limited to, procurement, resource utilization, and facilities management practices.

(cf. 3300 - Expenditures and Purchases)  
(cf. 3517 - Facilities Inspection)

The Superintendent or designee may collaborate with city, county, and state agencies and other public or private agencies in developing and implementing the district's integrated waste management program.

## INTEGRATED WASTE MANAGEMENT (continued)

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

*(cf. 7131 - Relations with Local Agencies)*

Note: CalRecycle provides grants and related information to eligible schools for developing and implementing integrated waste management programs. For more information, see CalRecycle's web site.

The Superintendent or designee shall make every effort to identify funding opportunities for the district's integrated waste management program, including applying for available grants or other cost-reduction incentives.

~~To the extent that funding permits, t~~The Superintendent or designee ~~shall~~ **may** provide appropriate educational and training opportunities to students and staff regarding the benefits and methods of conserving natural resources and ~~protecting the environment~~ **the manner in which integrated waste management strategies impact such efforts.**

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

*(cf. 6142.5 - Environmental Education)*

*(cf. 6142.93 - Science Instruction)*

The Superintendent or designee shall regularly monitor all aspects of the district's integrated waste management program and shall provide an update to the Board on its effectiveness as necessary.

*Legal Reference: (continued)*

## INTEGRATED WASTE MANAGEMENT (continued)

### Legal Reference:

#### EDUCATION CODE

8700-8707 Environmental education

17070.96 Leroy F. Greene School Facilities Act of 1996, consideration of high performance standards

17072.35 New construction grants; use for designs and materials for high performance schools

32370-32376 Recycling paper

33541 Environmental education

#### PUBLIC RESOURCES CODE

25410-25421 25422 Energy conservation assistance

40050-40063 Waste management; integrated waste management

41780-41786 Waste diversion

42620-42622 Source reduction and recycling programs

42630-42647 School site source reduction and recycling

42649-42649.7 Recycling of commercial solid waste

42649.8-42649.87 Recycling of organic waste

#### CODE OF REGULATIONS, TITLE 14

17225.12 Commercial solid waste

### Management Resources:

#### CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

##### PUBLICATIONS

Frequently Asked Questions

Recycling and Organics Recycling Guide for Schools Poster

Where to Put It: Recycling, Composting, and Trash Bin Signage

##### WEB SITES

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

California Department of Resources Recycling and Recovery:

<http://www.calrecycle.ca.gov/ReduceWaste/Schools> <https://www.calrecycle.ca.gov/Recycle/Schools>

California Division of State Architect: <http://www.dgs.ca.gov/dsa>

California Energy Commission: <http://www.energy.ca.gov>

California Environmental Protection Agency: <http://www.calepa.ca.gov>

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

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# CSBA Sample

## Administrative Regulation

### Business and Noninstructional Operations

AR 3511.1(a)

### INTEGRATED WASTE MANAGEMENT

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

For all applicable areas of district operations, the Superintendent or designee shall design an integrated waste management program that minimizes the generation of waste, encourages the recovery and diversion of reusable materials from the waste stream, improves efficiency in the utilization of natural and material resources, and protects the environment. The program shall implement measures and/or practices to:

1. Reduce the consumption of disposable materials, increase the composting of organic materials, and fully utilize all materials prior to disposal

(cf. 3510 - Green School Operations)

2. Recycle materials such as paper, glass, plastic, and aluminum

Note: Pursuant to Public Resources Code 42649.2, as added by AB 341 (Ch. 476, Statutes of 2011), any business, including a school, which generates more than four cubic yards of commercial solid waste per week (approximately the size of a 72 inch length, 51 inch width, and 56 inch rear height dumpster) is required to arrange for recycling services, to the extent that such services are available from a local provider, as stated in items a and b below. Commercial solid waste, as defined in 14 CCR 17225.12, means any type of solid waste generated by stores, offices, or other commercial sources.

Any school site or district facility which generates more than four cubic yards of commercial solid waste per week shall take at least one of the following actions: (Public Resources Code 42649.2; 14 CCR 17225.12)

- a. Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that may include collection, self hauling, or other arrangements for the pickup of the recyclable materials
- b. Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation

Note: Pursuant to Public Resources Code 42642, the California Department of Resources Recycling and Recovery maintains on its web site a list of recycled and environmentally preferable products that may be used in the construction and modernization of school facilities.

3. Prefer recycled, **biodegradable**, and other environmentally preferable products when procuring materials for use in district schools and buildings or contracting for the construction or modernization of any district building



## INTEGRATED WASTE MANAGEMENT (continued)

*(cf. 3300 - Expenditures and Purchases)*

*(cf. 3311 - Bids)*

*(cf. 3312 - Contracts)*

*(cf. 7110 - Facilities Master Plan)*

4. Work with city, county, or other government agencies to locate markets for the district's reusable and recyclable materials

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

*(cf. 7131 - Relations with Local Agencies)*

5. Minimize the use of nonbiodegradable materials and work with vendors and contractors to use packaging and delivery materials that generate less waste

### Recycling

Note: Pursuant to Public Resources Code 42649.2, as added by AB 341 (Ch. 476, Statutes of 2011), any business or public entity, including a school or other district facility, which generates more than four or more cubic yards of commercial solid waste per week (approximately the size of a 72-inch length, 51-inch width, and 56-inch rear height dumpster) is required to arrange for recycling services in accordance with law, to the extent that such services are available from a local provider, as stated in items a and b below. Commercial solid waste, as defined in 44 CCR 17225.12 Public Resources Code 42649.1, means any type of solid waste generated by stores, offices, or other commercial or public entity source.

Any school site or district facility which generates more than four or more cubic yards of commercial solid waste per week shall take at least one of the following actions: (Public Resources Code 42649.1, 42649.2; 14 CCR 17225.12)

1. Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that may include collection, self-hauling, or other arrangements for the pickup of the recyclable materials
2. Subscribe to a recycling service that which may include mixed waste processing that yields diversion results comparable to source separation

Note: In September 2020, the California Department of Resources Recycling and Recovery (CalRecycle) determined, pursuant to Public Resources Code 42649.81, that the statewide disposal of organic waste has not been reduced to 50 percent of the 2014 level of disposal. Thus, any school facility that generates two or more cubic yards per week of solid waste is required to meet requirements pertaining to the recycling of organic waste as described below. CalRecycle's Frequently Asked Questions clarify that, for this purpose, the threshold applies to solid waste, recyclables, and organics.

CalRecycle also extended the exemption in Public Resources Code 42649.81 and 42649.83 for rural jurisdictions that adopt a resolution as specified. Districts in rural jurisdiction that have adopted such a resolution may delete the following paragraph.

**INTEGRATED WASTE MANAGEMENT (continued)**

Any school site or district facility which generates two or more cubic yards per week of solid waste, recyclables, and organics shall arrange for recycling services specifically for organic waste, including food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste. Such facilities shall take at least one of the following actions: (Public Resources Code 42649.8, 42649.81-42649.82, 42649.84)

1. Source separate organic waste from other waste and subscribe to a basic level of organic waste recycling service that includes collection and recycling of organic waste
2. Recycle organic waste onsite or self-haul organic waste for recycling
3. Subscribe to an organic waste recycling service that may include mixed waste processing that specifically recycles organic waste
4. Make other arrangements to sell or donate recyclable organic waste materials

Note: Public Resources Code 42649.2 and 42649.81 require a school or other district facility that generates at least four cubic yards of solid waste or two cubic yards of organic waste per week to provide recycling bins or containers to collect material purchased on the premises. According to CalRecycle's school poster, Recycling and Organics Recycling Guide for Schools, bins or containers must be placed where material is purchased on the premises for immediate consumption, such as areas where food is consumed.

Any school site or district facility that meets the above thresholds for solid or organic waste shall place a recycling bin or container for solid or organic waste, as applicable, in areas where food or other materials are purchased at the facility for immediate consumption. The recycling bin or container shall be: (Public Resources Code 42649.2, 42649.81)

1. Adjacent to each bin or container for nonrecyclable trash, except in restrooms
2. Visible and easily accessible

Note: Public Resources Code 42649.2 and 42649.81 require that each recycling bin or container be clearly marked with educational signage indicating what is appropriate to place in the bin or container. CalRecycle provides customizable signage for this purpose on its web site, or districts may contact their local government or waste hauler for signage.

3. Clearly marked with educational signage indicating appropriate items to be placed in the recycling bin or container in accordance with state law and the local jurisdiction's waste ordinances and practices

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# CSBA Sample

## Board Policy

Business and Noninstructional Operations

BP 3515.31(a)

### SCHOOL RESOURCE OFFICERS

**Note:** The following optional policy is for use by districts that choose to employ school resource officers (SROs) or enter into an agreement with local law enforcement for the purpose of providing SROs on school campuses and/or at school activities. 34 USC 10389 defines an SRO as a law enforcement officer with sworn authority who is assigned by the agency to work in collaboration with schools to (1) address crime and disorder problems, gangs, and drug activities affecting or occurring in or around a school; (2) develop or expand crime prevention efforts for students; (3) educate likely school-age victims in crime prevention and safety; (4) develop or expand community justice initiatives for students; (5) train students in conflict resolution, restorative justice, and crime awareness; (6) assist in the identification of physical changes in the environment that may reduce crime in and around the school; and (7) assist in developing school policy that addresses crime and recommend procedural changes.

Requirements for districts that choose to establish their own police or security department are addressed in BP/AR 3515.3 - District Police/Security Department.

Education Code 38000, as amended by SB 98 (Ch. 24, Statutes of 2020), expresses legislative intent to encourage districts to redirect resources currently allocated to contracts with local law enforcement or the maintenance of district police departments into student support services (e.g., mental health services) and professional development on cultural competency and restorative justice, if found to be a more appropriate use of resources based on student and school needs.

The Governing Board is committed to protecting the safety of students and staff and the security of district property. The district shall develop a multi-tiered approach focused on the prevention of school violence and crime and the development of a positive school culture, which may include providing mental health services and other student support services, implementing restorative justice practices, implementing professional development addressing cultural competency, and employing and/or contracting with a law enforcement agency to provide school resource officers (SROs) on school campuses and/or school activities.

In order to reduce unnecessary law enforcement interactions with students, the Superintendent or designee shall provide training to school staff regarding the role of SROs and the appropriate circumstances for contacting such officers.

(cf. 0450 - Comprehensive Safety Plan)

(cf. 1250 - Visitors/Outsiders)

(cf. 3515 - Campus Security)

(cf. 3515.2 - Disruptions)

(cf. 3515.3 - District Police/Security Department)

(cf. 3515.5 - Sex Offender Notification)

(cf. 3515.7 - Firearms on School Grounds)

(cf. 3516.2 - Bomb Threats)

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

(cf. 5131.4 - Student Disturbances)



## SCHOOL RESOURCE OFFICERS (continued)

(cf. 5131.5 - Vandalism and Graffiti)

(cf. 5131.6 - Alcohol and Other Drugs)

(cf. 5131.7 - Weapons and Dangerous Instruments)

(cf. 5136 - Gangs)

(cf. 5141.5 - Mental Health)

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

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

(cf. 5145.12 - Search and Seizure)

Note: The following paragraphs are for use by districts that contract with local law enforcement for the provision of SROs and may be revised to reflect district practice. If the district decides to contract for SROs, the district should enter into a memorandum of understanding (MOU) that clearly defines roles, responsibilities, and expectations for the district, school site, law enforcement agency, and individual officers. For further information, see the Memorandum of Understanding Fact Sheet issued by the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS). In addition, sample MOUs are available on the National Association of School Resource Officers (NASRO) web site.

Agencies that receive grant funding from COPS to deploy SROs to school districts are subject to specified requirements, including, but not limited to, requirements to establish an MOU, ensure that SROs complete a basic training course no later than nine months after being notified of the grant award, and assign SROs to work in and around schools for at least 75 percent of the calendar year or 100 percent of the time during the school year, depending on the agreement between the agency and school district. See the COPS web site for information about this grant program.

The Board shall approve a memorandum of understanding (MOU) with the local law enforcement agency which includes, at a minimum:

1. The purpose of the agreement
2. A clear definition of the roles and responsibilities of the district, school site, law enforcement agency, and SROs, including responsibility for supervision of the SRO
3. The extent to which information will be shared between the district and law enforcement agency consistent with state and federal laws
4. Requirements for qualifications and training of SROs
5. Assigned hours of SRO duty in and around schools
6. Performance monitoring

The Board may expand on the above requirements to include more specific terms, such as acknowledgement of nondiscrimination requirements, training focused on eliminating



## SCHOOL RESOURCE OFFICERS (continued)

disproportionalities in SRO contacts with students, and staffing of an SRO position when the assigned SRO is on leave.

### Duties

SROs are duly sworn peace officers who are authorized to carry out their duties pursuant to state law.

Note: The following paragraph reflects a recommendation of the U.S. Department of Education's Guiding Principles: A Resource Guide for Improving School Climate and Discipline that educators, rather than police or security officers, should handle student discipline issues. Law enforcement agencies that receive grant funding through COPS are required to include a statement in their MOU that SROs will not be responsible for requests to resolve routine student discipline problems; see COPS' Memorandum of Understanding Fact Sheet.

Job duties of the SRO shall not include the handling of student code of conduct violations or routine student disciplinary matters that should be addressed by school administrators, or conduct that would be better addressed by mental health professionals.

(cf. 5144 - Discipline)

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

Note: Pursuant to Government Code 7286, law enforcement agencies are required to establish policy that provides a minimum standard on the use of force, with specified components. In addition, pursuant to Penal Code 13651, as added by AB 846 (Ch. 322, Statutes of 2020), an agency that employs peace officers is required to review the job description that is used in recruitment and hiring and make changes that emphasize community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving while de-emphasizing the paramilitary aspects of the job. Although these requirements are the responsibility of the law enforcement agency, not a district that contracts with a law enforcement agency for SROs, it is important that the district is aware of the expectations regarding use of force.

SROs shall be expected to collaborate with district staff in problem solving and, when circumstances warrant intervention with students, to use positive and restorative approaches in accordance with Penal Code 13651. SROs shall use tactics such as de-escalation techniques to mitigate the use of force in an educational setting and shall strictly adhere to the policy on minimum use of force pursuant to Government Code 7286.

When approved by the Superintendent or designee, an SRO may provide classroom presentations and/or parent/guardian education pertaining to safety issues and may link students, parents/guardians, and staff with resources and services.



## SCHOOL RESOURCE OFFICERS (continued)

### Qualifications of Officers

Note: NASRO recommends that the selection, training, and supervision of SROs comport with NASRO's Standards and Best Practices for School Resource Officers and that SROs receive at least 40 hours of specialized training in school policing before beginning their assignment. NASRO offers training on adolescent development, trauma-informed investigations, crisis intervention and de-escalation, threat assessment, and active shooter situations.

In addition, Government Code 7286 requires that the law enforcement agency's use of force policy address training regarding the policy, including (1) training standards and requirements related to demonstrated knowledge and understanding of the agency's use of force policy; (2) training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities; and (3) minimum training and course titles required to meet the objectives in the use of force policy.

Prior to beginning their assignment when possible, SROs shall complete specialized training in school policing, the unique experiences of the diverse populations within the school community, and the law enforcement agency's use of force policy.

### Nondiscrimination

SROs shall not discriminate against or treat any person differently on the basis race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information; a perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

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

*(cf. 0415 - Equity)*

The Superintendent or designee shall periodically report to the Board disaggregated data on student interactions with SROs to evaluate the appropriateness of such interactions and ensure compliance with the prohibition against nondiscrimination. Such reports may include the number of arrests and referrals for prosecution, the number of reports provided to the school or district regarding student misconduct, or other actions taken by SROs with respect to individual students or others on campus.

As necessary, the Superintendent or designee shall develop and implement practices to prevent disproportionality of student interactions with SROs based on student characteristics and to minimize the potential for referrals of students into the juvenile justice system.



**SCHOOL RESOURCE OFFICERS** (continued)

**Access to Records**

SROs shall not have access to student records, nor release student information to another person, agency, or organization, without written permission from the parent/guardian or adult student, unless specifically allowed or required by state or federal law. (Education Code 49076; 34 CFR 99.1)

SROs shall not solicit or collect information or documents regarding the citizenship or immigration status of students or their family members or provide assistance with immigration enforcement at district schools, except as may be required by state and/or federal law. (Education Code 234.7)

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

*Legal Reference: (see next page)*

## SCHOOL RESOURCE OFFICERS (continued)

### Legal Reference:

#### EDUCATION CODE

234.7 *Student protections relating to immigration and citizenship status*

#### GOVERNMENT CODE

3300-3312 *Public safety officers, rights and protections*

7286-7286.5 *Law enforcement use of force policies*

8597-8598 *Peace officers*

12525.2 *Reports of incidents involving peace officers*

#### PENAL CODE

290.45 *Sex offenders; authority of peace officers*

626.9 *Gun Free School Zone Act*

646.91 *Emergency protective order for stalking*

830-832.9 *Peace officers*

13510-13519.10 *Standards for recruitment and training*

13651 *Peace officers, job descriptions*

#### UNITED STATES CODE, TITLE 34

10389 *Public safety and community policing; definitions*

### Management Resources:

#### COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING PUBLICATIONS

*POST Use of Force Standards and Guidelines, November 2020*

#### NATIONAL ASSOCIATION OF SCHOOL RESOURCE OFFICERS PUBLICATIONS

*Standards and Best Practices for School Resource Officers*

*To Protect and Educate: The School Resource Officer and the Prevention of Violence in Schools, 2012*

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

*Guiding Principles: A Resource Guide for Improving School Climate and Discipline, 2014*

#### U.S. DEPARTMENT OF JUSTICE PUBLICATIONS

*School Resource Officers and School-Based Policing, Fact Sheet, 2019*

*Memorandum of Understanding Fact Sheet, 2017*

*Violence Prevention in Schools: Enhancement Through Law Enforcement Partnerships, 2017*

*Assigning Police Officers to Schools, 2013*

#### WEB SITES

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

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

California School Resource Officers' Association: <https://csroa.org>

Commission on Peace Officer Standards and Training: <http://www.post.ca.gov>

National Association of School Resource Officers: <http://www.nasro.org>

U.S. Department of Justice, Office of Community Oriented Policing Services:  
<https://cops.usdoj.gov/supportingsafeschools>



# CSBA Sample

## Board Policy

### Business and Noninstructional Operations

BP 3516.5(a)

#### EMERGENCY SCHEDULES

In order to provide for the safety of students and staff, the Governing Board authorizes the Superintendent or designee to close a school site, change the regular school day schedule, or take any necessary action when hazardous environmental or weather conditions or other emergencies warrant.

(cf. 0450 - Comprehensive Safety Plan)

(cf. 4157/4257/4357 - Employee Safety)

(cf. 5142 - Safety)

(cf. 6112 - School Day)

Note: Education Code 41420 requires every district to have at least 175 days of instruction to receive full average daily attendance (ADA) reimbursement. However, pursuant Pursuant to Education Code 41422 and 46392, a district may apply to the Superintendent of Public Instruction to obtain apportionment credit for days and minutes lost due to emergency closure and material decreases in attendance due to emergency events when one or more schools are prevented from meeting this minimum requirement because of such as a fire, flood, impassable roads, epidemic, earthquake, imminence of a major safety hazard, strike involving transportation services to students provided by a nonschool entity, or other "extraordinary condition" so that it may receive full average daily attendance ADA apportionment reimbursement.

When an emergency condition causes a school closure, reduction in attendance, or change in schedule pursuant to Education Code 41422 or 46392, thereby preventing the district from complying with the minimum number of instructional days or minutes required by law, the Superintendent or designee shall complete and submit to the Superintendent of Public Instruction (SPI) the necessary forms and/or affidavits for obtaining approval of apportionment credit for the days of the closure, reduction in attendance, or change in schedule. The Superintendent or designee shall submit other relevant district records as may be required.

(cf. 3580 - District Records)

(cf. 6111 - School Calendar)

Note: Education Code 46393, as added by AB 130 (Ch. 44, Statutes of 2021), requires districts submitting affidavits regarding emergency events occurring after September 1, 2021 to certify that the district has a plan for offering independent study to impacted students.

For school closures due to emergency events occurring after September 1, 2021, the Superintendent or designee shall develop a plan for offering independent study within 10 days of school closure to any student impacted by the emergency condition. The plan shall also address the establishment, within a reasonable time, of independent study master agreements as specified in BP 6158 - Independent Study. The plan shall

**EMERGENCY SCHEDULES** (continued)

require reopening in person as soon as possible once allowable under the direction from the city or county health officer. The Superintendent or designee shall certify that the district has a plan for independent study in the affidavit submitted to the SPI pursuant to Education Code 46392. (Education Code 46393)

*(cf. 6158 - Independent Study)*

Note: Vehicle Code 34501.6 mandates the Governing Board of any district that provides student transportation to adopt procedures that limit the home-to-school operation of school buses when atmospheric conditions reduce visibility to 200 feet or less; see AR 3543 - Transportation Safety and Emergencies for language implementing this mandate. The following **optional** paragraph may be revised to reflect district practice.

The Superintendent or designee shall establish a system for informing students and parents/guardians when school buses are not operating as scheduled, the school day schedule is changed, or the school is closed. The district's notification system shall include, but is not limited to, notifying local television and radio stations, posting on district web site(s), sending email and text messages, and/or making telephone calls.

*(cf. 1112 - Media Relations)*

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

*(cf. 3542 - School Bus Drivers)*

*(cf. 3543 - Transportation Safety and Emergencies)*

Whenever the school day schedule changes after students have arrived at school, the Superintendent or designee shall ensure that students are supervised in accordance with the procedures specified in the district's emergency and disaster preparedness plan.

*(cf. 3516 - Emergencies and Disaster Preparedness Plan)*

The Superintendent or designee may provide a means to make up lost instructional time later during the year. Students and parents/guardians shall receive timely **advanced** notice **in advance** of any resulting changes in the school calendar or school day schedule.

*Legal Reference: (see next page)*



## EMERGENCY SCHEDULES (continued)

### *Legal Reference:*

#### EDUCATION CODE

41420 Required length of school term

41422 Schools not maintained for 175 days

46010 Total days of attendance

46100-~~46192~~ 46208 Attendance; maximum credit; minimum day

46390 Calculation of ADA in emergency

46391 Lost or destroyed ADA records

46392 Decreased attendance in emergency situation

46393 Certification of plan for independent study

#### VEHICLE CODE

34501.6 School buses; reduced visibility

### *Management Resources:*

#### CALIFORNIA DEPARTMENT OF EDUCATION CORRESPONDENCE

90-01 Average Daily Attendance Credit During Periods of Emergency, February 10, 2005

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Frequently Asked Questions - Form J-13A

#### WEB SITES

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

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# CSBA Sample Board Policy

All Personnel

BP 4112.42(a)

4212.42

**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS**

4312.42

Note: State and federal law (Vehicle Code 34520; 49 CFR 382.101-382.605) require that any district employing school bus drivers establish a drug and alcohol testing program, with specified components, applicable to bus drivers and any other drivers of a commercial motor vehicle weighing over 26,000 pounds or designed to transport 16 or more passengers including the driver. All testing must be conducted in accordance with 49 CFR 40.1-40.413. For further information, see the web sites of the U.S. Department of Transportation (DOT) and the California Highway Patrol (CHP).

In addition, Vehicle Code 34520.3 requires **individuals employed as** drivers of **other** school transportation vehicles (i.e., vehicles that are not school buses, student activity buses, or youth buses and are used by the district for the primary purpose of transporting children), such as a van, to participate in the testing program to the same extent as required by law for school bus drivers. ~~The Legislative Counsel has issued an opinion that Vehicle Code 34520.3 applies only to employees whose primary job is transportation.~~ The district should consult legal counsel as necessary to determine applicability of this law to district employees.

The district's drug and alcohol testing program is subject to compliance inspections conducted by the CHP. It is recommended that the district review the CHP's Controlled Substances and Alcohol Testing Compliance Checklist to assess whether its program fulfills legal requirements.

The Governing Board desires to ensure that district-provided transportation is safe for students, staff, and the public. To that end, the Superintendent or designee shall establish a drug and alcohol testing program designed to prevent the operation of buses or the performance of other safety-sensitive functions by a driver who is under the influence of drugs or alcohol, including a driver of a school bus, student activity bus, or other school transportation vehicle or any other employee who holds a commercial driver's license which is necessary to perform duties related to district employment.

*(cf. 3540 - Transportation)*

*(cf. 3542 - School Bus Drivers)*

*(cf. 3543 - Transportation Safety and Emergencies)*

*(cf. 4020 - Drug and Alcohol-Free Workplace)*

*(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)*

A driver shall not report for duty or remain on duty when **he/she the driver** has used any drug listed in 21 CFR 1308.11. A driver is also prohibited from reporting for duty or remaining on duty when **he/she the driver** has used any drug listed in 21 CFR 1308.12-1308.15, unless **he/she the driver** is using the drug under the direction of a physician who has advised **him/her the driver** that the substance will not adversely affect the driver's ability to safely operate a bus. **(49 CFR 382.213)**

In addition, a driver shall not consume alcohol while on duty **and/or performing safety-sensitive functions**, or for four hours prior to on-duty time. **(49 CFR 382.201-382.209, 382.213-382.205, 382.207)**



BP 4112.42(b)

4212.42

4312.42

## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

Note: 49 USC 31306 and 49 CFR 382.301-382.311 require that certain types of tests be part of the district's drug and alcohol testing program. See the accompanying administrative regulation for requirements applicable to each test.

Pursuant to 49 CFR 382.301, the district may, but is not required to, conduct pre-employment alcohol testing. The following paragraph should be revised by districts that choose to conduct such testing.

**Drivers shall submit to drug and alcohol testing as required under federal law and specified in the accompanying administrative regulation.** The district's testing program for drivers shall include pre-employment drug testing and reasonable suspicion, random, post-accident, return-to-duty, and follow-up drug and alcohol testing of drivers. (49 USC 31306; 49 CFR 382.301-382.311)

Note: Pursuant to 49 CFR 40.11, districts are responsible for implementing the drug and alcohol testing program. They may do this using their own employees, contracting for services, or joining together in a consortium with other employers. The following **optional** paragraph provides that the district will contract for such services and may be revised by districts that use alternative methods.

The Board shall contract for testing services upon verifying that the personnel are appropriately qualified and/or certified and that testing procedures conform to federal regulations.

Except as otherwise provided by law, the Superintendent or designee shall not release individual test results or medical information about a driver to a third party without the driver's specific written consent. (49 CFR 40.321)

### **Consequences Based on Test Results**

No driver shall be temporarily removed from the performance of safety-sensitive functions based only on a laboratory report of a confirmed positive test **for a drug or drug metabolite** before the certified medical review officer has completed verification of the test results, unless the district has obtained a waiver **from the Federal Motor Carrier Safety Administration**. (49 CFR 40.3, 40.21, 382.107, 382.119)

Any driver **for whom the district receives a verified positive drug test result who refuses to take a required drug or alcohol test, tests positive for drugs, or who is found to have a blood alcohol concentration level that exceeds the levels specified in law of 0.04 or higher** shall be **immediately** removed from performing safety-sensitive functions in accordance with 49 CFR 40.23 and 382.211. **An alcohol concentration between 0.02 and 0.04 requires temporary removal of the bus driver for a 24-hour period following the test. Any driver who refuses to take a required drug or alcohol test shall not be permitted to perform or continue to perform safety-sensitive functions.** (49 CFR 40.23, 382.211)

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## DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

Note: Pursuant to 49 CFR 40.21 and 382.119, before temporarily removing a driver from safety sensitive functions, the district must receive verification of the test results from a licensed physician certified as a medical review officer, unless a waiver of this requirement has been obtained from the Federal Motor Carrier Safety Administration.

No driver shall be temporarily removed from the performance of safety sensitive functions based only on a laboratory report of a confirmed positive test before the certified medical review officer has completed verification of the test results, unless the district has obtained a waiver. (49 CFR 40.21, 382.107, 382.119)

Not later than five days after receiving notification of the test result or refusal to comply, the Superintendent or designee shall report any refusal, failure to comply, or positive test result to the California Department of Motor Vehicles (DMV) using a form approved by the DMV. (Vehicle Code 13376)

A driver who has violated federal drug and alcohol regulations may be subject to disciplinary action up to and including dismissal in accordance with law, administrative regulations, and the district's collective bargaining agreement.

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

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

Note: Pursuant to Vehicle Code 13376, upon receiving a report of a driver's refusal, failure to comply, or positive test result, the California Department of Motor Vehicles will revoke the driver certificate or refuse to approve an initial application for a certificate. An exception exists for a driver who complies with a rehabilitation or return-to-duty program that meets the requirements of federal regulations. For purposes of retaining a his/her certificate, the driver may participate in such a program only once within a three-year period.

The following paragraph is **optional**. Pursuant to 49 CFR 40.289, the district is not required to provide education and treatment services to any driver. However, if the district offers the driver an opportunity to return to work following a violation, then it must ensure that the driver receives an evaluation by a qualified substance abuse professional and successfully complies with the evaluation recommendations. Responsibility for payment for evaluation and services is to be determined by the district and driver and may be governed by a collective bargaining agreement and health care benefits.

Any driver who refuses, fails to comply, or has a positive test result may be referred to an education and treatment program that meets the requirements of 49 CFR 40.281-40.313. Any driver provided with an opportunity to return to a safety-sensitive duty following a violation shall be evaluated by a qualified substance abuse professional and complete the evaluation recommendations before returning to such duty. (49 CFR 40.289)



## DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

If the substance abuse professional recommends that **further and** ongoing services are needed to assist the driver to maintain sobriety or abstinence from drug use, the Superintendent or designee shall require the driver to participate in the recommended services as part of a return-to-duty agreement and shall monitor **his/her the driver's** compliance. Any drop from a rehabilitation or return-to-duty program or a subsequent positive test result shall be reported to the DMV. (Vehicle Code 13376; 49 CFR 40.285, 40.287, 40.303, 382.605)

(cf. 4159/4259/4359 - Employee Assistance Programs)  
(cf. 4161/4261/4361 - Leaves)  
(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)  
(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)  
(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)  
(cf. 4261.1 - Personal Illness/Injury Leave)

~~A driver who has violated federal drug and alcohol regulations may be subject to disciplinary action up to and including dismissal in accordance with law, administrative regulations, and the district's collective bargaining agreement.~~

~~(cf. 4118 - Dismissal/Suspension/Disciplinary Action)~~  
~~(cf. 4218 - Dismissal/Suspension/Disciplinary Action)~~

### Voluntary Self-Identification

Note: The following section is for use by districts that choose to establish a voluntary self-identification policy or program, pursuant to 49 CFR 382.121, which relieves drivers who admit alcohol or drug misuse from the federal requirements for referral, evaluation, and treatment contained in 49 CFR 40.281-40.313. If the district chooses to establish such a program, it is **mandated** to adopt a written policy containing the provisions specified in items #1-3 below. Pursuant to 49 CFR 382.121, the district's program may also include employee monitoring and non-DOT follow-up testing. If the district chooses to incorporate these elements, it should add them to this list.

Whenever a driver admits to alcohol or drug misuse under the district's voluntary self-identification program, the Superintendent or designee shall ensure all of the following: (49 CFR 382.121)

1. No adverse action shall be taken against the driver by the district.
2. The driver shall be allowed sufficient opportunity to seek evaluation, education, or treatment to establish control over **his/her the** drug or alcohol problem.
3. The driver shall be permitted to participate in safety-sensitive functions only after:

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**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

- a. Successfully completing an education or treatment program, as determined by a drug and alcohol abuse evaluation expert, such as an employee assistance professional, substance abuse professional, or qualified drug and alcohol counselor
- b. Undergoing a return-to-duty test with a result indicating an alcohol concentration of less than 0.02 and/or a verified negative result for drug use

A driver who admits to alcohol or drug misuse shall not be subject to federal requirements related to referral, evaluation, and treatment, provided that ~~he/she~~ **the driver** does not self-identify in order to avoid drug or alcohol testing, makes the admission prior to performing a safety-sensitive function, and does not perform a safety-sensitive function until ~~he/she~~ **the driver** has been evaluated and has successfully completed education or treatment requirements in accordance with program guidelines. (49 CFR 382.121)

*Legal Reference: (see next page)*



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4212.42  
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## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)**

### *Legal Reference:*

#### EDUCATION CODE

35160 Authority of governing boards

#### GOVERNMENT CODE

8355 Drug-free workplace; employee notification

#### VEHICLE CODE

13376 Driver certificates; revocation or suspension

34500-34520.5 Safety regulations

#### CODE OF REGULATIONS, TITLE 13

1200-1293-1294 Motor carrier safety, especially:

1213.1 Placing drivers out-of-service

#### UNITED STATES CODE, TITLE 41

8101-8106 Drug-Free Workplace Act

#### UNITED STATES CODE, TITLE 49

31306 Alcohol and drug testing

#### CODE OF FEDERAL REGULATIONS, TITLE 21

1308.11-1308.15 Controlled substances

#### CODE OF FEDERAL REGULATIONS, TITLE 49

40.1-40.413 Procedures for transportation workplace drug and alcohol testing programs

382.101-382.605727 Drug and alcohol use and testing; especially:

382.205 On-duty use

382.207 Pre-duty use

382.209 Use following an accident

### *Management Resources:*

#### CALIFORNIA HIGHWAY PATROL PUBLICATIONS

Controlled Substances and Alcohol Testing Compliance Checklist, 20072017

What is CSAT? Controlled Substances and Alcohol Testing, 20052016

#### WEB SITES

California Department of Motor Vehicles: <https://www.dmv.ca.gov>

California Highway Patrol: <http://www.chp.ca.gov>

Commercial Driver's License Drug and Alcohol Clearinghouse: <https://clearinghouse.fmcsa.dot.gov>

Federal Motor Carrier Safety Administration: <http://www.fmcsa.dot.gov>

U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance:

<http://www.dot.gov/ost/dapc>

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### **Policy Reference UPDATE Service**

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# CSBA Sample

## Administrative Regulation

All Personnel

AR 4112.42(a)

4212.42

**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS**

4312.42

Note: The following administrative regulation reflects state and federal requirements (Vehicle Code 34520; 49 CFR 40.1-40.413, 382.101-382.605) for drug and alcohol testing of school bus drivers, including pre-employment, post-accident, random, reasonable suspicion, return-to-duty, and follow-up testing. Pursuant to 49 CFR 40.27, the district must not require a driver to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process.

### Definitions

Note: Regardless of state medical or recreational marijuana laws, marijuana remains an illegal drug under the Controlled Substances Act and use of it by a driver remains a violation of federal drug testing regulations.

For purposes of drug testing required by the U.S. Department of Transportation (DOT), ~~drugs included in the tests are~~ marijuana, cocaine, amphetamines, phencyclidine (PCP), and ~~opioids opiates~~. (49 CFR 40.3, 40.85, 382.107)

~~Alcohol concentration or level~~ (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath ~~as indicated by an evidential breath test~~. For purposes of the DOT alcohol testing program, an alcohol level between 0.02 and 0.04 requires removal of the bus driver for a 24 hour period following the test. An alcohol level of 0.04 or higher requires immediate removal of the driver from performing safety sensitive functions until the driver has successfully completed the return to duty process. (49 CFR 40.3, 382.107, ~~382.201, 382.505~~)

*Safety-sensitive function* means all time from the time ~~he/she~~ the driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. Safety-sensitive functions include, but are not limited to, all time driving or otherwise in the bus ~~or other school transportation vehicle~~; waiting at a district facility to be dispatched; inspecting, servicing, or conditioning the ~~bus vehicle~~ or ~~bus vehicle~~ equipment; loading or unloading the ~~bus vehicle~~; supervising or assisting in the loading or unloading of the ~~bus vehicle~~; and repairing, obtaining assistance, or remaining in attendance upon a disabled ~~bus vehicle~~. (49 CFR 382.107)

(cf. 3540 - Transportation)

(cf. 3542 - School Bus Drivers)

(cf. 3543 - Transportation Safety and Emergencies)

(cf. 4020 - Drug and Alcohol-Free Workplace)



## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)**

### **Designated Employer Representative**

Note: 49 CFR 40.35 and 40.215 require the district to identify a "designated employer representative" to perform the duties specified in 49 CFR 40.3. The following paragraph may be revised to reflect the title of the employee so designated.

The Superintendent or designee shall identify a designated employer representative **who is authorized to take immediate action to remove drivers from safety-sensitive functions and to make required decisions in the testing and evaluation processes. The designated employer representative shall also be responsible for receiving test results and other communications. The name and telephone number of the designated employer representative shall be provided** ~~and shall provide his/her name and telephone number~~ to the testing contractor to contact about any problems or issues that may arise during the testing process. (49 CFR 40.35, 40.215)

### **Pre-employment Testing**

Note: Pursuant to 49 CFR 382.701, districts are required to conduct a pre-employment query using the Commercial Driver's License Drug and Alcohol Clearinghouse's online database, available on its web site, to obtain information about an applicant. Pursuant to 49 CFR 40.25 and 382.413, districts must also, until January 6, 2023, continue to request a driver's drug and alcohol testing record from any employer who has employed the driver during the previous three years.

When hiring a new driver, the Superintendent or designee shall, with the driver's written consent, **conduct a pre-employment query using the Commercial Driver's License Drug and Alcohol Clearinghouse to obtain information about whether the driver has committed a violation of federal drug or alcohol regulations. (49 CFR 382.701)**

**The Superintendent or designee shall also, with the driver's consent, request the driver's past drug and alcohol testing record, as specified in 49 CFR 40.25 and 382.413, from any employer who has employed the driver at any time during the previous two three years. To the extent practicable, the Superintendent or designee shall obtain and review such information before the driver first performs safety-sensitive functions.** In addition, the Superintendent or designee shall ask the driver if ~~he/she tested~~ **there was a positive test**, or ~~refused a refusal~~ to test, on any pre-employment drug or alcohol test that was administered during the past two years in the course of applying for another safety-sensitive transportation position ~~that he/she did not obtain~~ **was not obtained. (49 CFR 40.25, 382.413)**

The driver shall not be permitted to perform safety-sensitive functions if ~~he/she~~ **the driver** refuses to provide consent to obtain the information from previous employers **or from the Clearinghouse;** the information from previous employers is not received within 30 days of

## DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

the date on which the driver first performed safety-sensitive functions for the district; or the driver, **the Clearinghouse**, or a previous employer reports a violation of a drug or alcohol regulation without subsequent completion of the return-to-duty process. (49 CFR 40.25, 382.413, **382.701, 382.703**)

~~Upon making a contingent offer of employment to a driver and prior to the first time the driver performs safety sensitive functions for the district, the Superintendent or designee shall require the A driver whom the district intends to hire or use shall to undergo testing for drugs and to receive a verified negative test result prior to the first time the driver performs safety-sensitive functions for the district.~~ This testing requirement may be waived if all of the following conditions exist: (49 CFR 382.301)

1. The driver has participated in a qualified drug testing program within the previous 30 days.
2. While participating in the program, the driver either was tested within the past six months **from the date of application** or participated in a random drug testing program for the previous 12 months **from the date of application**.
3. ~~The Superintendent or designee has contacted the testing program(s) in which the driver has participated and has obtained information about the program and the driver's participation as specified in 49 CFR 382.301.~~
34. No prior employer of the driver of whom the district has knowledge has records of the driver's violation of federal drug testing regulations within the previous six months.

The Superintendent or designee **shall contact** ~~has contacted~~ the testing program(s) in which the driver has participated and **obtain** ~~has obtained~~ information about the program and the driver's participation as specified in 49 CFR 382.301.

Note: The following **optional** paragraph is for use by districts that choose to conduct pre-employment alcohol testing; see the accompanying Board policy. Pursuant to 49 CFR 382.301, pre-employment alcohol testing is not required but, if the district chooses to conduct such testing, it must comply with the following requirements.

In addition, the Superintendent or designee shall require the driver to undergo pre-employment alcohol testing in accordance with the procedures in 49 CFR 40.1-40.605 and to receive a test result indicating an alcohol concentration **level** of less than 0.04. (49 CFR 382.301)



**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)**Post-Accident Testing**

As soon as practicable following an accident involving a school bus or student activity bus, the Superintendent or designee shall ensure that the driver involved is tested for alcohol and/or drugs under either of the following conditions: (49 CFR 382.303)

1. The accident involved loss of human life.
2. The driver receives a citation for a moving traffic violation **within eight hours of the accident** and the accident involved bodily injury to a person who required immediate medical treatment away from the scene of the accident and/or disabling damage to one or more vehicles requiring towing.

The Superintendent or designee shall attempt to administer a required alcohol test up to eight hours following the accident and/or a drug test up to 32 hours following the accident. The results of an alcohol or drug test conducted by federal, state, or local officials having independent authority for the test shall be considered to meet this requirement. If the alcohol test is not administered within two hours following the accident, or the test for drugs is not administered within 32 hours following the accident, the Superintendent or designee shall make a record stating the reasons the test was not promptly administered. (49 CFR 382.303)

**No driver required to take a post-accident alcohol test pursuant to 49 CFR 382.303 shall use alcohol for eight hours following the accident or until the driver undergoes a post-accident alcohol test, whichever occurs first. (49 CFR 382.209)**

**Random Testing**

Note: The district may revise the following paragraph to specify the method by which it will select drivers for random drug and alcohol testing. Pursuant to 49 CFR 382.305, the district must randomly select drivers for testing using a scientifically valid method such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Pursuant to 49 CFR 40.347, the district may contract with a third-party administrator or join a consortium of employers to operate the random selection process.

The Superintendent or designee shall ensure that random, unannounced drug and alcohol tests of bus drivers are conducted on testing dates reasonably spread throughout the year.

Such tests shall be **unannounced and** conducted during, immediately before, or immediately after the performance of safety-sensitive functions. (49 CFR 382.305)

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## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)**

Note: Pursuant to 49 CFR 382.305, the district must annually test at least 10 percent of district drivers for alcohol and at least **25 50** percent for drugs. However, the minimum required percentage is subject to change as determined necessary by the Federal Motor Carrier Safety Administration (FMCSA). Any such change will be published in the Federal Register and on the FMCSA's web site and will be effective starting January 1 following such publication. **For 2018, the minimum percentage rates remain at 10 percent for alcohol and 25 percent for controlled substances.**

The Superintendent or designee shall ensure that the percentage of district drivers randomly tested for drugs and alcohol meets or exceeds the minimum annual percentage rates specified in 49 CFR 382.305 or subsequently published in the Federal Register.

Each driver selected for random testing shall have an equal chance of being tested each time selections are made. (49 CFR 382.305)

Each driver who is selected for testing shall proceed to the test site immediately or, if performing a safety-sensitive function other than driving a bus, then as soon as possible after ceasing that function. (49 CFR 382.305)

### **Reasonable Suspicion Testing**

Note: The following section may be revised to reflect the position (e.g., driver's supervisor or other district employee) authorized and trained to make observations for reasonable suspicion drug or alcohol testing.

A driver shall be required to submit to a drug or alcohol test whenever the Superintendent or designee has reasonable suspicion that the driver has violated the prohibitions against the use of drugs or alcohol. Such reasonable suspicion shall be based on specific, contemporaneous, articulable observations, conducted during, immediately before, or immediately after the performance of safety-sensitive functions, concerning the driver's appearance, behavior, speech, and/or body odors. Reasonable suspicion of drug use may also include indications of the chronic and withdrawal effects of drugs. (49 CFR 382.307)

The person who makes the required observations for reasonable suspicion testing for drugs or alcohol shall be trained in accordance with 49 CFR 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not be the same person who conducts the alcohol test. (49 CFR 382.307)

Within 24 hours of the observed behavior or before the results of the drug or alcohol test are released, whichever is earlier, **the Superintendent or designee shall prepare and sign a written record of the observations leading to a reasonable suspicion test shall be made and signed by the person who made the observations.** (49 CFR 382.307)



**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

An alcohol test required as a result of reasonable suspicion shall be administered within eight hours following the determination of reasonable suspicion. If the test is not administered within two hours, the Superintendent or designee shall prepare and maintain on file a record stating the reasons the test was not promptly administered. (49 CFR 382.307)

In the absence of a reasonable suspicion alcohol test, the district shall take no action against a driver based solely on the driver's behavior and appearance, except that the driver shall not be allowed to report for or remain on safety-sensitive functions until an alcohol test is administered and the results show a concentration less than 0.02 or 24 hours have elapsed following the determination of reasonable suspicion. (49 CFR 382.307)

**Return-to-Duty Testing**

Note: Pursuant to 49 CFR 40.305, the district may return a driver to safety-sensitive functions after ~~he/she-~~  
~~the driver~~ completes required education and treatment services as described in the accompanying Board policy and a return-to-duty drug or alcohol test. Such personnel decisions may be subject to collective bargaining or other legal requirements.

The Superintendent or designee may permit a driver who has violated federal drug or alcohol regulations to return to safety-sensitive functions after the driver has successfully complied with the education and treatment services prescribed by a substance abuse professional and has ~~a~~ taken a return-to-duty drug or alcohol test. The driver shall not resume performance of safety-sensitive functions unless the drug test shows a negative result and/or the alcohol test shows a concentration of less than 0.02. (49 CFR 40.305, 382.309)

**Follow-Up Testing**

Note: Pursuant to 49 CFR 40.307, after a driver successfully complies with education and treatment services, the substance abuse professional will prescribe a follow-up testing plan and will present that plan to the designated employer representative. The plan must direct that the driver be subject to at least six unannounced follow-up tests in the first 12 months following the driver's return to safety-sensitive functions.

Upon receiving a written follow-up testing plan from a substance abuse professional, the Superintendent or designee shall determine the actual dates for follow-up testing consistent with those recommendations and shall ensure that such tests are unannounced and follow no discernable pattern as to their timing. No additional tests beyond those included in the plan shall be imposed by the district. (49 CFR 40.307-40.309, 382.111)

**Mandatory Reporting and Annual Queries to the Drug and Alcohol Clearinghouse**

**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)**

The Superintendent or designee shall report to the Clearinghouse any violation of federal drug and alcohol regulations, any refusal to test, and other required information by the close of the third business day following the date on which the information was obtained. (49 CFR 382.705)

The Superintendent or designee shall conduct a query using the Clearinghouse at least once a year for all drivers to determine whether information exists in the Clearinghouse about the drivers. (49 CFR 382.701)

In lieu of a full query, the Superintendent or designee may obtain the individual driver's consent to conduct a limited query that is effective for more than one year and informs the district about whether there is information about the driver in the Clearinghouse without releasing that information to the district. If the limited query shows that information exists in the Clearinghouse about the individual driver, the Superintendent or designee shall conduct a full query within 24 hours of conducting the limited query. If a full query is not conducted within 24 hours, the driver may not perform any safety-sensitive function until the results from a full query confirm that the driver may perform such functions. (49 CFR 382.701)

A driver may not perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has committed a violation of federal drug or alcohol regulations. (49 CFR 382.701)

**Notifications**

Note: Pursuant to 49 CFR 382.601, the district is **mandated** to adopt policy and procedures pertaining to misuse of drugs and alcohol and to provide these materials to each driver. When conducting compliance inspections, the **CHP-California Highway Patrol** reviews whether district policy or regulations contain all of items #1-~~11~~**12** below.

The Superintendent or designee shall provide each driver with materials explaining the federal regulations and the district's policy and procedure related to drug and alcohol testing and shall notify representatives of employee organizations of the availability of this information. This information shall include a detailed discussion of at least the following: (49 CFR 382.113, 382.303, 382.601)

1. The identity of the person designated by the district to answer driver questions about the materials
2. The categories of drivers who are subject to drug and alcohol testing



**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

3. Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the workday the driver is required to be in compliance
4. Specific information concerning prohibited driver conduct
5. The circumstances under which a driver will be tested for drugs and/or alcohol, including post-accident testing
6. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver
7. The requirement that a driver submit to drug and alcohol tests
8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences
9. The consequences for drivers found to have violated the prohibitions against drug or alcohol use, including the circumstances under which drivers will be removed immediately from safety-sensitive functions and the requirements for education, treatment, and return-to-duty testing
10. The consequences for drivers found to have a blood alcohol concentration between 0.02 and 0.04
11. Information concerning the effects of drug and alcohol use on an individual's health, work, and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a co-worker's); and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to any employee assistance program, and/or referral to management
- 12. The requirement that personal information collected and maintained pursuant to 49 CFR 382 shall be reported to the Clearinghouse**

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

Each driver shall sign a statement certifying ~~that he/she has received~~ receipt of a copy of the above materials. The Superintendent or designee shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver. (49 CFR 382.601)

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## **DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

In addition, prior to administering each alcohol or drug test, the driver shall be notified that the test is required pursuant to Title 49, Part 382, of the Code of Federal Regulations. (49 CFR 382.113)

The driver shall be notified of the results of drug and alcohol tests in accordance with 49 CFR 382.411.

### **Records**

Note: 49 CFR 40.333 and 382.401 specify the records that must be retained by the district and how long each record must be retained (i.e., one year, two years, three years, five years, or indefinitely). Upon receiving a request from the FMCSA to inspect any such record, the district must make the record(s) available for inspection at the district office within two business days.

The Superintendent or designee shall maintain records of the district's drug and alcohol testing program in accordance with 49 CFR 40.333 and 382.401. Such records shall be maintained in a secure location with controlled access and shall be disclosed only in accordance with 49 CFR 382.405.

*(cf. 3580 - District Records)*

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# CSBA Sample

## Board Policy

Certificated Personnel

BP 4131(a)

### STAFF DEVELOPMENT

Note: Staff development is not one of the enumerated items within the scope of collective bargaining pursuant to Government Code 3543.2. However, the Public Employment Relations Board (PERB) has found that some aspects of staff development may be negotiable if they are related to an enumerated subject of bargaining, such as working hours, wages, or other enumerated terms or conditions of employment; see United Faculty of Contra Costa Community College District v. Contra Costa Community College District. Because the terms "staff development" and "training" are not always clear, their negotiability, in the absence of an agreement, may be determined by PERB on a case-by-case basis.

The following paragraph has been expanded to emphasize the importance of student well-being and related professional development in the area of social-emotional development and learning. Social-emotional learning is a strategy utilized to improve school climate, which benefits all students including students at higher risk of harassment. See Items #4 and 7 below regarding diverse student populations and school climate, respectively.

The Governing Board believes that, in order to maximize student learning, ~~and~~ achievement, **and well-being**, certificated staff members must be continuously learning and improving **relevant** ~~their~~ skills. The Superintendent or designee shall develop a program of ongoing professional development which includes opportunities for teachers to enhance their instructional and classroom management skills, ~~and~~ become informed about changes in pedagogy and subject matter, **and strengthen practices related to social-emotional development and learning**.

(cf. 6111 - School Calendar)

Note: Education Code 52060-52077 require districts to develop a local control and accountability plan (LCAP) which includes goals aligned with state and local priorities, specific actions aligned to meet those goals, and a budget aligned to fund those specific actions; see BP/AR 0460 - Local Control and Accountability Plan. The district's staff development program should be aligned with its priorities and goals as outlined in the LCAP and other applicable district and school plans.

The Superintendent or designee shall involve teachers, site and district administrators, and others, as appropriate, **when creating, reviewing, and amending** ~~in the development of~~ the district's staff development program. ~~He/she~~ **The Superintendent or designee** shall ensure that the district's staff development program is aligned with district priorities for student **learning**, achievement **and well-being**, school improvement objectives, the local control and accountability plan, and other district and school plans.

(cf. 0000 - Vision)

(cf. 0200 - Goals for the School District)

(cf. 0420 - School Plans/Site Councils)

(cf. 0460 - Local Control and Accountability Plan)

Note: Items #1-11 below are **optional** and may be revised to reflect district practice.

**STAFF DEVELOPMENT** (continued)

The district's staff development program shall assist certificated staff in developing knowledge and skills, including, but not limited to:

1. Mastery of subject-matter knowledge, including current state and district academic standards

*(cf. 6011 - Academic Standards)*

*(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)*

*(cf. 6142.2 - World/~~Foreign~~ Language Instruction)*

*(cf. 6142.3 - Civic Education)*

*(cf. 6142.5 - Environmental Education)*

*(cf. 6142.6 - Visual and Performing Arts Education)*

*(cf. 6142.7 - Physical Education and Activity)*

*(cf. 6142.8 - Comprehensive Health Education)*

*(cf. 6142.91 - Reading/Language Arts Instruction)*

*(cf. 6142.92 - Mathematics Instruction)*

*(cf. 6142.93 - Science Instruction)*

*(cf. 6142.94 - History-Social Science Instruction)*

2. Use of effective, subject-specific teaching methods, strategies, and skills

**Note:** The State Board of Education's California Digital Learning Integration and Standards Guidance, adopted pursuant to SB 98 (Ch. 24, Statutes of 2020), provides recommendations for staff development regarding technology-based learning. It encompasses curriculum and instructional guidance for mathematics, English language arts, and English language development, including a framework for addressing critical standards, formative and diagnostic assessment, recommended aggregate time for instruction and independent work by grade, and guidance on embedding social-emotional supports for students into technology-based learning curriculum. Although this guidance was written in response to COVID-19, it is intended to be used as a resource for the re-envisioning of education and digital teaching and learning.

Education Code 51745-51749.6, as amended by AB 130 (Ch. 44, Statutes of 2021), contain specified requirements for districts offering technology-based instruction pursuant to an independent study program. See BP/AR 6158 - Independent Study.

3. Use of technologies to enhance instruction **and learning, including face-to-face, remote, or hybrid instruction**

*(cf. 0440 - District Technology Plan)*

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

*(cf. 4113.5/4213.5/4313.5 - Working Remotely)*

*(cf. 6158 - Independent Study)*

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

**Note:** Pursuant to Education Code 218, the California Department of Education (CDE) has developed and/or updated resources, available on its web site, for use in schools serving students in grades 7-12 for in-service training for the support of lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) students, and strategies to increase support for LGBTQ students which



## STAFF DEVELOPMENT (continued)

improve overall school climate. Pursuant to Education Code 218, districts that serve students in grades 7-12 are encouraged to use such resources to provide training at least once every two years to teachers and other certificated staff.

4. Sensitivity to and ability to meet the needs of diverse student populations, including, but not limited to, students **with characteristics specified in Education Code 200 and/or 220, Government Code 11135, and/or Penal Code 422.55** of various racial and ethnic groups, students with disabilities, English learners, economically disadvantaged students, foster youth, gifted and talented students, and at risk students

*(cf. 0410 - Nondiscrimination/Harassment)*

*(cf. 0415 - Equity)*

*(cf. 4112.22 - Staff Teaching English Learners)*

*(cf. 4112.23 - Special Education Staff)*

*(cf. 5146 - Married/Pregnant/Parenting Students)*

*(cf. 5147 - Dropout Prevention)*

*(cf. 6141.5 - Advanced Placement)*

*(cf. 6171 - Title I Programs)*

*(cf. 6172 - Gifted and Talented Student Program)*

*(cf. 6173 - Education for Homeless Children)*

*(cf. 6173.1 - Education for Foster Youth)*

*(cf. 6174 - Education for English Learners)*

*(cf. 6175 - Migrant Education Program)*

5. Understanding of how academic and career technical instruction can be integrated and implemented to increase student learning

*(cf. 6178 - Career Technical Education)*

6. Knowledge of strategies that encourage parents/guardians to participate fully and effectively in their children's education

*(cf. 1240 - Volunteer Assistance)*

*(cf. 5020 - Parent Rights and Responsibilities)*

*(cf. 6020 - Parent Involvement)*

7. Effective classroom management skills and strategies for establishing a climate that promotes respect, fairness, **acceptance, tolerance, and civility** and discipline, including conflict resolution, **and** hatred prevention, **and positive behavioral interventions and supports**

*(cf. 1313 - Civility)*

*(cf. 5131 - Conduct)*

*(cf. 5131.2 - Bullying)*

*(cf. 5137 - Positive School Climate)*

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

*(cf. 5144 - Discipline)*

## STAFF DEVELOPMENT (continued)

(cf. 5145.9 - Hate-Motivated Behavior)

8. Ability to relate to students, understand their various stages of growth and development, and motivate them to learn
9. Ability to interpret and use data and assessment results to guide instruction

(cf. 5121 - Grades/Evaluation of Student Achievement)

(cf. 6162.5 - Student Assessment)

**Note: The following paragraph has been expanded to include social-emotional learning and trauma-informed practices.**

The Collaborative for Academic, Social, and Emotional Learning describes social-emotional learning as, "the process through which all young people and adults acquire and apply the knowledge, skills, and attitudes to develop healthy identities, manage emotions and achieve personal and collective goals, feel and show empathy for others, establish and maintain supportive relationships, and make responsible and caring decisions."

Trauma-informed practices include recognizing and responding appropriately to students who have experienced trauma in order to minimize disruption to learning, academic achievement, and physical and emotional well-being.

10. Knowledge of topics related to student mental and physical health, safety, and welfare, which may include social-emotional learning and trauma-informed practices

(cf. 0450 - Comprehensive Safety Plan)

(cf. 5030 - Student Wellness)

(cf. 5131.6 - Alcohol and Other Drugs)

(cf. 5131.63 - Steroids)

(cf. 5141.21 - Administering Medication and Monitoring Health Conditions)

(cf. 5141.22 - Infectious Diseases)

(cf. 5141.4 - Child Abuse Prevention and Reporting)

(cf. 5141.5 - Mental Health)

(cf. 5141.52 - Suicide Prevention)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)

11. Knowledge of topics related to employee health, safety, and security

(cf. 3514.1 - Hazardous Substances)

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

(cf. 4119.12 - Title IX Sexual Harassment Complaint Procedures)

(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)



## STAFF DEVELOPMENT (continued)

(cf. 4119.42/4219.42/4319.42- *Exposure Control Plan for Bloodborne Pathogens*)  
(cf. 4119.43/4219.43/4319.43 - *Universal Precautions*)  
(cf. 4157/4257/4357 - *Employee Safety*)  
(cf. 4158/4258/4358 - *Employee Security*)

Note: The following **optional** paragraph may be revised to reflect district practice. Education Code 44277, encourages districts to establish individualized professional growth programs for teachers and other educators based on a needs assessment and to evaluate such programs based on specified criteria. Districts may assist teachers with preliminary credentials to meet the qualifications required for a professional clear credential, and are required to provide support and guidance to teachers participating in internship programs (Education Code 44325-44328, 44450-44468, and 44830.3) and teachers who possess a short-term staff permit (5 CCR 80021), **a** provisional internship permit (5 CCR 80021.1), or **an** emergency permit (Education Code 44300; 5 CCR 80023-80026.6); see AR 4112.2 - Certification and AR 4112.21 - Interns.

The Superintendent or designee shall, in conjunction with teachers, interns, and administrators, as appropriate, develop an individualized program of professional growth to increase competence, performance, and effectiveness in teaching and classroom management and, as necessary, to assist them in meeting state or federal requirements to be fully qualified for their positions.

(cf. 4112.2 - *Certification*)  
(cf. 4112.21 - *Interns*)  
(cf. 4131.1 - *Teacher Support and Guidance*)

~~Note: Pursuant to Education Code 44277, as amended by SB 1060 (Ch. 199, Statutes of 2014), acceptable professional learning activities must meet specified criteria.~~

Professional learning opportunities offered by the district shall be evaluated based on the criteria specified in Education Code 44277. Such opportunities may be part of a coherent plan that combines school activities within a school, including lesson study or co-teaching, and external learning opportunities that are related to academic subjects taught, provide time to meet and work with other teachers, and support instruction and student learning. Learning activities may include, but are not limited to, mentoring projects for new teachers, extra support for teachers to improve practice, and collaboration time for teachers to develop new instructional lessons, select or develop common formative assessments, or analyze student data. (Education Code 44277)

The district's staff evaluation process may be used to recommend additional individualized staff development for individual employees.

(cf. 4115 - *Evaluation/Supervision*)

The Board may budget funds for actual and reasonable expenses incurred by staff who participate in staff development activities.

(cf. 3100 - *Budget*)

**STAFF DEVELOPMENT (continued)***(cf. 3350 - Travel Expenses)*

The Superintendent or designee shall provide a means for continual evaluation of the benefit of staff development activities to both staff and students and shall regularly report to the Board regarding the effectiveness of the staff development program. Based on the Superintendent's report, the Board may revise the program as necessary to ensure that the staff development program supports the district's priorities for student achievement **and well-being.**

*(cf. 0500 - Accountability)**Legal Reference:*EDUCATION CODE**200 Educational equity****218 Lesbian, gay, bisexual, transgender, queer, and questioning student resources****220 Prohibition of discrimination**

44032 Travel expense payment

44259.5 Standards for teacher preparation

44277 Professional growth programs for individual teachers

44300 Emergency permits

44325-44328 District interns

44450-44468 University internship program

**44570-44578 Inservice training, secondary education**

44830.3 District interns

45028 Salary schedule and exceptions

48980 Notification of parents/guardians; schedule of minimum days

**51745-51749.6 Independent study**

52060-52077 Local control and accountability plan

56240-56245 Staff development; service to persons with disabilities

99200-**99204 99206** Subject matter projectsGOVERNMENT CODE

3543.2 Scope of representation of employee organization

**11135 Discrimination**PENAL CODE**422.55 Hate crime**CODE OF REGULATIONS, TITLE 5

13025-13044 Professional development and program improvement

80021 Short-term staff permit

80021.1 Provisional internship permit

80023-80026.6 Emergency permits

UNITED STATES CODE, TITLE 20**1681-1688 Discrimination based on sex or blindness, Title IX****6601-6692 6702 Preparing, Training, and Recruiting High Quality Teachers and Principals***Legal Reference continued: (see next page)*



## STAFF DEVELOPMENT (continued)

### *Legal Reference: (continued)*

UNITED STATES CODE TITLE 29

794 Rehabilitation Act of 1973, Section 504

UNITED STATES CODE TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964

12101-12213 Americans with Disabilities Act

PUBLIC EMPLOYMENT RELATIONS BOARD DECISIONS

United Faculty of Contra Costa Community College District v. Contra Costa Community College District, (1990) PERB Order Dec. No. 804, 14 PERC P21-085

### *Management Resources:*

CSBA PUBLICATIONS

Governing to the Core: Professional Development for Common Core, Governance Brief, May 2013

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

California Digital Learning Integration and Standards Guidance, June 2021

Social and Emotional Learning in California, A Guide to Resources, October 2018

COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

California Standards for the Teaching Profession (CSTP), 2009

WEB SITES

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

California Department of Education, Professional Learning: <http://www.cde.ca.gov/pd>

California Department of Education, Supporting LGBTQ+ Students:

<https://www.cde.ca.gov/pd/ee/supportlgbtq.asp>

California Subject Matter Projects: <http://csmf.ucop.edu>

Collaborative for Academic, Social, and Emotional Learning: <https://casel.org>

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

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

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# CSBA Sample Board Policy

Certificated and Classified Personnel

BP 4141(a)  
4241

## COLLECTIVE BARGAINING AGREEMENT

Note: The following **optional** policy addresses the implementation of the collective bargaining agreement adopted by the Governing Board following a process of negotiations with the exclusive representatives of employees. See BP 4143/4243 - Negotiations/Consultation for information about the bargaining process.

The Governing Board recognizes that collective bargaining agreements are legally binding, bilateral agreements with the exclusive representatives of employees pertaining to terms and conditions of employment. The Board is committed to carrying out the provisions of each agreement and expects the agreements to be consistently and uniformly administered.

(cf. 4140/4240/4340 - Bargaining Units)  
(cf. 4143/4243 - Negotiations/Consultation)

Note: Districts should consider deleting policies and administrative regulations on topics covered in collective bargaining agreements or retaining them only after determining that the provisions in the policy or regulation are consistent with the adopted agreements. Some policies or regulations may also need to be retained and/or modified when they pertain to unrepresented employees. Should a contract and a policy conflict, the district may be required to grant the benefits in both documents, even if the district believed that the contract was intended to supersede the policy. See BB 9310 - Board Policies.

If the district has adopted a merit system pursuant to Education Code 45220-45320, then its classified employees are subject to the rules prescribed by the district's personnel commission, except when the subject matter is within the scope of representation and is included in a negotiated agreement. Such districts may revise the following paragraph to clarify that the negotiated agreement supersedes any conflicting rules of the personnel commission.

**In *United Teachers of Los Angeles v. Los Angeles Unified School District*, the California Supreme Court held that a provision in a collective bargaining agreement that directly conflicts with the Education Code cannot be enforced.**

~~Education Code 35036 prohibits the Board from entering into a collective bargaining agreement that, after April 15 prior to the school year that a teacher's transfer would become effective, assigns priority to a teacher who requests to be transferred to another school over other qualified teachers who have applied for positions requiring certification qualifications at that school. See BP 4114 - Transfers.~~

Following adoption of the collective bargaining agreement, the Superintendent or designee shall review related Board policies and recommend to the Board any action needed to maintain consistency with the agreement. Whenever a Board policy conflicts with a provision in the collective bargaining agreement, the agreement shall be binding for those employees covered by the terms of the agreement. **Whenever a law conflicts with a provision in the collective bargaining agreement, the law will prevail as to those employees for whom the law applies.**

(cf. 9310 - Board Policies)



## COLLECTIVE BARGAINING AGREEMENT (continued)

Upon request by the Public Employment Relations Board, the Superintendent or designee shall provide, within 15 days of the request, a copy of the written agreement and any amendments. (8 CCR 32120)

### *Legal Reference:*

#### EDUCATION CODE

35035 *Additional powers and duties of superintendent, transfer authority*

35036 *Voluntary transfers*

35160 *Authority of governing boards*

35160.1 *Broad authority of school districts*

45220-45320 *Merit system, classified employees*

#### GOVERNMENT CODE

3540-3549.3 *Educational Employment Relations Act*

#### CODE OF REGULATIONS, TITLE 8

31001-32997 *Regulations of employee relations boards*

#### COURT DECISIONS

*Janus v. American Federation of State, County and Municipal Employees, Council 31* (2018) 138 S.Ct. 2448

*United Teachers of Los Angeles v. Los Angeles Unified School District* (2012) 54 Cal. 4th 504

*Round Valley Teachers Association* (1996) 13 Cal. 4th 269

### *Management Resources:*

#### WEB SITES

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

California Public Employee Relations: <http://cper.berkeley.edu>

Center for Collaborative Solutions: <http://www.ccscenter.org>

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

State Mediation and Conciliation Service (SMCS): <http://www.dir.ca.gov/csmcs/smcs.html>

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# CSBA Sample Board Policy

Students

BP 5145.9(a)

## HATE-MOTIVATED BEHAVIOR

Note: The following **optional** policy addresses prevention strategies for hate-motivated incidents and should be modified to reflect district practice. Elements of this policy may be integrated into existing district and school site plans, such as the local control and accountability plan, comprehensive school safety plan, and staff development plans.

The Governing Board is committed to providing a **respectful, inclusive, and** safe learning environment that protects students from discrimination, harassment, intimidation, bullying, **or any other type of behavior that is motivated by hate.** ~~and other behavior motivated by a person's hostility towards another person's real or perceived ethnicity, national origin, immigrant status, sex, gender, sexual orientation, religious belief, age, disability, or any other physical or cultural characteristic. The Superintendent or designee shall design strategies to promote harmonious relationships among students, prevent incidents of hate motivated behavior to the extent possible, and address such incidents if they occur.~~

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

*(cf. 0415 - Equity)*

*(cf. 0450 - Comprehensive Safety Plan)*

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

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

*(cf. 5131- Conduct)*

*(cf. 5131.2 - Bullying)*

*(cf. 5131.5 - Vandalism and Graffiti)*

*(cf. 5136 - Gangs)*

*(cf. 5137 - Positive School Climate)*

*(cf. 5141.52 - Suicide Prevention)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*

*(cf. 5145.7 - Sexual Harassment)*

Note: The following paragraph reflects the definition of "hate-motivated behavior" specified in the California Department of Education's (CDE) publication Bullying at School, expanded to include the categories of protected characteristics identified in state and federal law. Also see BP 0410 - Nondiscrimination in District Programs and Activities and AR 1312.3 - Uniform Complaint Procedures.

**Hate-motivated behavior** is any behavior intended to cause emotional suffering, physical injury, or property damage through intimidation, harassment, bigoted slurs or epithets, force or threat of force, or vandalism motivated in part or in whole by bias or hostility toward the victim's real or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code 200 or 220, Government Code 11135, or Penal Code 422.55.



**HATE-MOTIVATED BEHAVIOR** (continued)

The Superintendent or designee shall design strategies to promote harmonious relationships among students, prevent incidents of hate-motivated behavior to the extent possible, and address such incidents **in a timely manner** ~~if when~~ they occur.

Note: Hate-motivated behavior, such as an assault, physical threat, bomb threat, destruction of property, graffiti, and ~~certain types of~~ vandalism, may constitute a crime under state or federal law. Local law enforcement agencies, ~~and human rights commissions,~~ **and community organizations** throughout the state have established countywide hate crimes networks aimed at responding to and preventing hate crimes.

Districts can identify local hate crime resources through the California Association of Human Relations Organizations, which conducts activities designed to protect human and civil rights **by creating a climate of respect and inclusion** through networks of collaborations that reduce community tension and build intergroup relationships.

~~The following optional paragraph should be revised to reflect district practice.~~

The Superintendent or designee shall collaborate with regional programs and community organizations to promote **safe an environments for youth where diversity is celebrated and hate-motivated behavior is not tolerated.** Such collaborative efforts shall focus on ~~ensuring an efficient use of district and community resources, developing the development of~~ effective prevention strategies and response plans, ~~providing~~ **provision of** assistance to students affected by hate-motivated behavior, and/or ~~educating~~ **education of** students who have perpetrated hate-motivated acts.

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

*(cf. 1700 - Relations Between Private Industry and the Schools)*

*(cf. 5148.2 - Before/After School Programs)*

The district shall provide students with age-appropriate instruction that:

1. **Includes the development of social-emotional learning;**
2. **pPromotes their an understanding, awareness, appreciation, of and respect for human rights, human relations, diversity, and acceptance in a multicultural society;**
3. **Explains the harm and dangers of explicit and implicit biases**
4. **Discourages discriminatory attitudes and practices and**
5. **pProvides strategies to manage conflicts constructively;**

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

*(cf. 6142.3 - Civic Education)*

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

*(cf. 6142.94 - History-Social Science Instruction)*

## HATE-MOTIVATED BEHAVIOR (continued)

As necessary, the district shall provide counseling, guidance, and support to students who are victims of hate-motivated behavior and to students who exhibit such behavior.

*(cf. 6164.2 - Guidance/Counseling Services)*

**When appropriate, students who engage in hate-motivated behavior shall be disciplined.**

*(cf. 5144 - Discipline)*

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

*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*

~~The Superintendent or designee shall ensure that the rules prohibiting hate motivated behavior and procedures for reporting a hate motivated incident are provided to students and parents/guardians.~~

**Note: Education Code 218 requires CDE, by July 1, 2021, to develop and/or update resources for use in schools serving students in grades 7-12 for in-service training for the support of lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) students, and strategies to increase support for LGBTQ students which improve overall school climate. Pursuant to Education Code 218, districts that serve students in grades 7-12 are encouraged to use such resources to provide training at least once every two years to teachers and other certificated staff.**

The Superintendent or designee shall provide staff with training **that on:**

- 1. Promotes an understanding of diversity, equity, and inclusion**
- 2. Discourages the development of discriminatory attitudes and practices**
- 3. Includes social-emotional learning and nondiscriminatory instructional and counseling methods**
- 4. Supports the prevention, recognition, recognizing and response preventing to hate-motivated behavior**
- 5. Raises the awareness and sensitivity of staff to potentially prejudicial and discriminatory behavior and on**
- 6. Includes effectively enforcement enforcing of** rules for appropriate student conduct.

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*



## HATE-MOTIVATED BEHAVIOR (continued)

Employees who engage in hate-motivated behavior shall be subject to disciplinary action, up to and including dismissal.

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

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

The Superintendent or designee shall ensure that the Rules prohibiting hate-motivated behavior and procedures for reporting a hate-motivated incident are shall be provided to students, staff, and parents/guardians.

This policy shall be posted in a prominent location on the district's web site in a manner that is readily and easily accessible to parents/guardians and students. (Education Code 234.6)

(cf. 1113 - District and School Web Sites)

### Complaints Process

Note: Pursuant to Education Code 234.1, districts are required to adopt a process for receiving and investigating complaints involving unlawful discrimination (such as discriminatory harassment, intimidation, and bullying) based on race or ethnicity, nationality, disability, gender, gender identity, gender expression, sex, sexual orientation, religion, immigration status, or any characteristic contained in the definition of hate crimes in Penal Code 422.55, or association with a person or group with one or more of these actual or perceived characteristics. In addition, federal regulations require districts to adopt procedures providing for the prompt and equitable resolution of complaints of discrimination on the basis of sex (34 CFR 106.8), disability (34 CFR 104.7 and 28 CFR 35.107), and age (34 CFR 110.25). Pursuant to 5 CCR 4600-4670, uniform complaint procedures (UCP) must be used for this purpose. See BP/AR 1312.3 - Uniform Complaint Procedures. Complaints of sexual harassment that meet the federal definition of sexual harassment in 34 CFR 106.30 must be addressed through the procedures specified in 34 CFR 106.44-106.45; see AR 5145.71 - Title IX Sexual Harassment Complaint Procedures.

Although some incidents of harassment, intimidation, or bullying may not fall within the provisions of Education Code 234.1 or federal civil rights regulations, CSBA strongly recommends that districts use the UCP to investigate all incidents (whether discriminatory or nondiscriminatory) to ensure consistent implementation by district staff. It is not always easy or possible for staff to know prior to an investigation whether a student was victimized because of his/her an actual or perceived membership in a legally protected class. Those incidents found to involve discrimination based on the results of the investigation would then be resolved using the UCP. When an incident is determined to be nondiscriminatory, it should be resolved through the appropriate disciplinary process.

A student or parent/guardian who believes the student is a victim of hate motivated behavior is strongly encouraged to report the incident to a teacher, the principal, or other staff member.

Any staff member who is notified that hate-motivated behavior has occurred, observes such behavior, or otherwise becomes aware of an incident shall immediately contact the principal

**HATE-MOTIVATED BEHAVIOR** (continued)

~~or the~~ compliance officer responsible for coordinating the district's response to complaints and complying with state and federal civil rights laws. As appropriate, ~~he/she~~ **the staff member** shall also contact law enforcement.

*(cf. 3515.3 - District Police/Security Department)*

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

A student or parent/guardian who believes the student is a victim of hate-motivated behavior is ~~strongly~~ encouraged to report the incident to a teacher, the principal, **the district's compliance officer**, or other staff member.

Any complaint of hate-motivated behavior shall be investigated and, if determined to be discriminatory, shall be resolved in accordance with law and the district's uniform complaint procedures specified in AR 1312.3 - Uniform Complaint Procedures **or other applicable procedure**. If, during the investigation, it is determined that a complaint is about nondiscriminatory behavior, the principal or designee shall inform the complainant and shall take all necessary actions to resolve the complaint.

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 1312.3 - Uniform Complaint Procedures)*

*(cf. ~~5144 - Discipline~~)*

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

*(cf. ~~5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities)~~)*

*(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)*

*Legal Reference: (see next page)*



## HATE-MOTIVATED BEHAVIOR (continued)

### Legal Reference:

#### EDUCATION CODE

200-262.4 Prohibition of discrimination

32282 School safety plans

48900.3 Suspension for hate violence

48900.4 Suspension or expulsion for ~~threats or~~ harassment, threats, or intimidation

#### GOVERNMENT CODE

11135 Prohibition of discrimination in programs or activities

#### PENAL CODE

422.55 Definition of hate crime

422.6 Crimes, harassment

#### CODE OF REGULATIONS, TITLE 5

4600-4670 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

#### CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

#### CODE OF FEDERAL REGULATIONS, TITLE 34

100.3 Prohibition of discrimination on basis of race, color or national origin

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

106.30 Discrimination on the basis of sex in education programs and activities; definitions

106.44 Recipient's response to sexual harassment

106.45 Grievance process for formal complaints of sexual harassment

110.25 Prohibition of discrimination based on age

### Management Resources:

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

*Bullying at School*, 2003

#### CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS

*Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues*, April 2018

#### HUMAN RIGHTS CAMPAIGN FOUNDATION PUBLICATIONS

*California LGBTQ Youth Report*, 2019

#### U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Dear Colleague Letter: Harassment and Bullying, October 2010

Dear Colleague Letter: Prohibited Disability Harassment, July 2000

#### WEB SITES

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

California Association of Human Relations Organizations: <http://www.cahro.org>

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

California Office of the Attorney General: <http://oag.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr>

U.S. Department of Health and Human Services: <http://www.stopbullying.gov>

U.S. Department of Justice: <https://www.justice.gov>

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# CSBA Sample Board Policy

Students

BP 5145.12(a)

## SEARCH AND SEIZURE

Note: The following **optional policy and accompanying administrative regulation** should be modified to reflect district practice. **The legality of a search by school officials is complex and depends on the particular circumstances surrounding the search. Districts with specific questions about the legality of a search should consult legal counsel.** It is also recommended that the district work with legal counsel to provide staff development for employees conducting searches on behalf of the district.

**The following policy and accompanying administrative regulation address circumstances under which searches of individual students may be authorized based on individualized suspicion, and circumstances under which the district may conduct searches without individualized suspicion (e.g., searches of lockers, use metal detectors, or use contraband detection dogs). In *In re Sean A.*, the Court of Appeal upheld a limited search for weapons or drugs without individualized suspicion where a school policy called for students who left campus and returned in the middle of the day to be searched. Districts that wish to develop policy authorizing limited searches for weapons or drugs without individualized suspicion should consult legal counsel.**

The Governing Board is fully committed to promoting a safe learning environment and, to the extent possible, eliminating the possession and use of weapons, illegal drugs, and other controlled substances by students on school premises and at school activities. As necessary to protect the health and welfare of students and staff, **and only as authorized by law, Board policy, and administrative regulation**, school officials may search students, their property, and/or district property under their control and may seize illegal, unsafe, or otherwise prohibited items. **The Board urges that employees School officials shall exercise discretion and use good judgment when conducting searches.**

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

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 3515 - Campus Security)*

*(cf. 3515.3 - District Police/Security Department)*

*(cf. 5131 - Conduct)*

*(cf. 5131.7 - Weapons and Dangerous Instruments)*

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

*(cf. 5145.3 - Nondiscrimination/Harassment)*

**The Board urges that employees exercise discretion and good judgment. When conducting a search or seizure, employees shall act in accordance with law, Board policy, and administrative regulation.**

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

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 5145.3 - Nondiscrimination/Harassment)*



**SEARCH AND SEIZURE (continued)**

~~Note: As discussed below, the law surrounding student searches is complex. Therefore, it is recommended that the district work with legal counsel to provide training for employees conducting searches on behalf of the district.~~

The Superintendent or designee shall ensure that staff who conduct student searches receive training regarding the requirements of the district's policy and administrative regulation and other legal issues, as appropriate.

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331- Staff Development)*

**Individual Searches Based on Individualized Suspicion**

Note: The Fourth Amendment of the U.S. Constitution, which prohibits unreasonable search and seizure, also applies to students in the school setting. In *New Jersey v. T.L.O.*, the U.S. Supreme Court held that the legality of a search of a student and/or ~~his/her~~ **the student's** belongings depends on whether the search is "reasonable." The "reasonableness" of a search depends on two factors: (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.

In *Redding v. Safford Unified School District*, the U.S. Supreme Court held that a strip search of a student ~~(permissible in Arizona schools)~~ was beyond the scope and overly intrusive in light of the seriousness of the student's alleged violation (i.e., possession of ibuprofen), the lack of immediate danger, and the lack of justification for the search given that the basis of the search was an uncorroborated tip from a fellow student. Although the specific type of search discussed in the court decision is not permissible in California schools pursuant to Education Code 49050, the factors considered by the court are applicable to an analysis as to whether a search is reasonable in scope, as specified below.

The law regarding searches of students' cellular phones, personally owned computers, or other personal communications devices is still developing. It is especially difficult to determine whether the school can impose discipline in circumstances where the behavior, such as sending a threatening message, occurs off-campus; see BP 5131—Conduct. When the student brings an electronic device onto school grounds, it may be searched by school officials, but the search is subject to the same legal standards as a search of other student property, such as a backpack or purse. Therefore, when searching a student's personally owned electronic device, the district must have individualized suspicion that the search will lead to evidence that the student is violating a specific law or school rule and the scope of the search must be reasonably related to that violation. For example, searching a student's phone for evidence against another student or searching text messages extending well beyond the period of time of the alleged violation would likely be considered excessive in scope and thus unlawful. These standards for personally owned items are not applicable to a district's right to monitor a student's use of district owned computer equipment or networks, subject to the district's acceptable use agreement; see BP/E 6163.4—Student Use of Technology.

School officials may search any individual student, ~~his/her~~ **the student's** property, or district property under ~~his/her~~ **the student's** control when there is a reasonable suspicion that the search will uncover evidence that ~~he/she~~ **the student** is violating the law, Board policy,



## SEARCH AND SEIZURE (continued)

administrative regulation, or other rules of the district or the school. Reasonable suspicion shall be based on specific and objective facts that the search will produce evidence related to the alleged violation.

The types of student property that may be searched by school officials include, but are not limited to, lockers, desks, purses, backpacks, student vehicles parked on district property, cellular phones, or other electronic communication devices.

Note: In *Redding v. Safford Unified School District*, the U.S. Supreme Court held that a strip search of a student (permissible in Arizona schools) was beyond the scope and overly intrusive in light of the seriousness of the student's alleged violation (i.e., possession of ibuprofen), the lack of immediate danger, and the lack of justification for the search given that the basis of the search was an uncorroborated tip from a fellow student. Although the specific type of search discussed in the court decision is not permissible in California schools pursuant to Education Code 49050, the factors considered by the court are applicable to an analysis as to whether a search is reasonable in scope, as specified below.

Any search of a student, **his/her the student's** property, or district property under **his/her the student's** control shall be limited in scope and designed to produce evidence related to the alleged violation. Factors to be considered by school officials when determining the scope of the search shall include the danger to the health or safety of students or staff, such as the possession of weapons, drugs, or other dangerous instruments, and whether the item(s) to be searched by school officials are reasonably related to the contraband to be found. In addition, school officials shall consider the intrusiveness of the search in light of the student's age, gender, and the nature of the alleged violation.

The types of student property that may be searched by school officials include, but are not limited to, lockers, desks, purses, backpacks, **and** student vehicles parked on district property, cellular phones, or other electronic communication devices.

Note: In California, searches of personal electronic devices such as cellular phones are subject to the restrictions imposed by Penal Code 1546.1 in addition to the prohibitions against unreasonable searches and seizures under the Fourth Amendment. Districts with questions about searches of electronic devices such as cellular phones should consult legal counsel.

**A student's personal electronic device may be searched only if a school official, in good faith, believes that an emergency involving danger of death or serious physical injury to the student or others requires access to the electronic device information.**

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

Employees shall not conduct strip searches or body cavity searches of any student. (Education Code 49050)

Searches of individual students shall be conducted in the presence of at least two district employees.



## SEARCH AND SEIZURE (continued)

The principal or designee shall notify the parent/guardian of a student subjected to an individualized search as soon as possible after the search.

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

### Searches of **Multiple Student Lockers/ and Desks**

Note: The ability of school officials to search a locker without individualized suspicion depends on whether, under the circumstances, the student has a reasonable expectation of privacy in the locker. In *In re Cody S.*, the Court of Appeal observed that, while students in California generally have a reasonable expectation of privacy in lockers, that expectation can be limited where school policy makes it clear that lockers are the property of the district and subject to search. Nonetheless, board policy alone will not determine whether a student has a reasonable expectation of privacy in a locker as other circumstances such as staff communication and school practice can also inform the reasonableness of a student's expectation of privacy. Districts with specific questions about whether school officials can search lockers without individualized suspicion should consult legal counsel.

~~Like other student belongings, individual lockers and desks may be searched when there is reasonable, individualized suspicion, subject to the limits discussed in the above section entitled "Individual Searches." An argument could be made that, because lockers and desks are the property of the district, a student does not have an expectation of privacy and thus school officials could search them at any time, without individualized suspicion. However, because California courts have not ruled on this issue, the state of the law is unclear and districts that wish to develop policy authorizing searches of lockers and desks at any time, without individualized suspicion, should consult legal counsel.~~

The following **optional** section is for districts that conduct regular, announced inspections of multiple student lockers and/or desks **and should be revised to reflect district practice.** ~~Because such searches are random and announced in advance, individualized suspicion is not required.~~

All student lockers and desks are the property of the district. The principal or designee may conduct a general inspection of school properties that are within the control of students, such as lockers and desks, on a regular, announced basis, with students standing by their assigned lockers or desks. Any items contained in a locker or desk shall be considered to be the property of the student to whom the locker or desk was assigned.

### Use of Metal Detectors

Note: In *In re Latasha W.*, the Court of Appeal upheld a policy of random weapons screening with a handheld metal detector. In addition, an Attorney General opinion (75 Ops.Cal.Atty.Gen. 155 (1992)) states that the reasonable use of metal detectors to deter the presence of weapons in schools is appropriate without individualized suspicion. The Attorney General recommends that the Governing Board make a specific finding identifying the rationale for the use of metal detectors. This finding need not be based on a specific weapons incident, but rather may be based on the need for metal detectors in response to the general harm caused by weapons and the need to provide a safe learning environment.

The following **optional** paragraph should be modified to reflect the district's rationale for the use of metal detectors.

**SEARCH AND SEIZURE (continued)**

The Board **believes finds** that the presence of weapons in the schools threatens the district's ability to provide the safe and orderly learning environment to which district students and staff are entitled. The Board also **believes finds** that metal detector searches offer a reasonable means to keep weapons out of the schools and mitigate the fears of students and staff.

Note: The Board should consider where and when metal detectors will be used, such as on a permanent basis at certain sites, rotated among sites, during regular school hours, and/or during special events such as athletic events or dances. To ensure that a metal detector search is reasonable, the Attorney General recommends that an administrative plan be established which contains uniform, established procedures and adequate safeguards against arbitrary and capricious enforcement by school officials. For example, the plan may specify that metal detectors be used at randomly selected schools or that students will be searched on a random basis (e.g., every fifth student entering). The key is to ensure that neutral criteria are applied so that the persons conducting the search do not exercise discretion in determining whether specific persons are targeted or selected for the search. The Attorney General's opinion also recommends that the district's use of metal detectors be incorporated into the district and/or school site safety plan; see BP/AR 0450 - Comprehensive Safety Plan. See the accompanying administrative regulation for other safeguards identified by the Attorney General.

The Superintendent or designee shall use metal detectors **at district schools** as necessary to **keep weapons out of schools and** help provide a safe learning environment. **He/she The Superintendent or designee** shall establish a plan to ensure that metal detector searches are conducted in a uniform and consistent manner.

**Use of Contraband Detection Dogs**

Note: The following **optional** section is for districts that use trained dogs for random and unannounced inspections for contraband. Prior to instituting such a program, districts wishing to conduct these types of "sniff searches" should make specific findings as to the need for the program and consult legal counsel.

Legally, problems arise when individual persons are sniffed and when students are separated from their belongings so that the belongings can be sniffed. In B.C. v. Plumas, the 9th Circuit Court of Appeals concluded that the random and suspicionless dog sniff of a student as he walked by the dog while exiting the room was unreasonable. The court found compelling the fact that there were not specific findings of a serious drug problem at the school that would necessitate the need for the use of the dogs. This court did not rule on whether sniffs of inanimate objects (such as automobiles or lockers) in a school setting are legal. However, courts outside of California (Zamora v. Pomeroy and Horton v. Goose Creek Independent School District) have indicated that dog sniffing around lockers and cars would probably not be deemed a "search" and thus would be permissible on a random basis without individualized suspicion. If the dog then alerts on a particular car or locker, this alert could then constitute the reasonable suspicion needed in order to conduct a search.

The law is unclear as to whether the district can conduct random and unannounced use of dogs whereby students are asked or required to leave their belongings so that the dog can sniff those belongings. An Attorney General opinion (83 Ops.Cal.Atty.Gen. 257 (2001-2000)) states that, unless exigent circumstances exist (e.g., supporting data of a known drug problem), requiring students to leave their belongings behind in the classroom (e.g., backpacks, purses, jackets) in order to conduct random, unannounced and neutral sniff



## SEARCH AND SEIZURE (continued)

tests on students' personal belongings would be unreasonable and therefore unconstitutional. Whether the district can "ask" students to leave their belongings behind is also questionable since such a request might be considered an unconstitutional "seizure." Districts that wish to institute either type of policy should consult legal counsel and have specific data demonstrating the need for such a policy. Although Attorney General opinions are not law, they are generally afforded deference by the courts. See the accompanying administrative regulation.

In an effort to keep the schools free of dangerous contraband, the district may use specially trained, nonaggressive dogs to sniff out and alert staff to the presence of substances prohibited by law or Board policy. The dogs may sniff the air around lockers, desks, or vehicles on district property or at district-sponsored events. Dogs shall not sniff within the close proximity of students or other persons and may not sniff any personal items on those persons **without individualized suspicion. without their consent.**

*Legal Reference: (see next page)*

## SEARCH AND SEIZURE (continued)

### Legal Reference:

#### EDUCATION CODE

32280-32289 School safety plans

35160 Authority of governing boards

35160.1 Broad authority of school districts

48900-48927 Suspension and expulsion

49050-49051 Searches by school employees

49330-49334 Injurious objects

#### PENAL CODE

626.9 Firearms

626.10 Dirks, daggers, knives or razor

**1546-1546.1 Production of or access to electronic communication information**

#### CALIFORNIA CONSTITUTION

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

#### COURT DECISIONS

**In G.C. v. Owensboro Public Schools (6th Cir. 2013) 711 F.3d 623**

**In re Sean A. (2010) 191 Cal. App. 4th 182**

**Redding v. Safford Unified School District, (2009) 557 U.S. 364 (2009)**

**B.C. v. Plumas, (9th Cir. 1999) 192 F.3d 1260**

**Jennings v. Joshua Independent School District, (5th Cir. 1992) 948 F.2d 194 557 U.S. 364 (2009)**

**In re Cody S., 121 Cal. App. 4th 86, 92 (2004)**

**Klump v. Nazareth Area School District (E.D. Pa. 2006) 425 F. Supp. 2d 622, 640**

**In Re William V. (2003) 111 Cal.App.4th 1464**

**B.C. v. Plumas, (9th Cir. 1999) 192 F.3d 1260**

**In re Latasha W. (1998), 60 Cal. App. 4th 1524**

**O'Connor v. Ortega, (1987) 480 U.S. 709**

**In re William G (1985) 40 Cal. 3d 550**

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

**Horton v. Goose Creek Independent School District, (5th Cir. 1982) 690 F.2d 470**

**Zamora v. Pomeroy, (10th Cir. 1981) 639 F.2d 662**

#### ATTORNEY GENERAL OPINIONS

83 Ops.Cal.Atty.Gen. 257 **(2001-2000)**

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

### Management Resources:

#### 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

#### WEB SITES

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

California Attorney General's Office: <http://caag.state.ca.us>

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

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

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