

Nicasio School District  
Since 1862

Agenda Item # 9d

Board of Trustees  
Michelle Rutledge, *Board President* ~ Elaine Doss, *Trustee* ~ Mark Burton, *Trustee*

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To: Nicasio School District Board of Trustees  
From: Jan La Torre-Derby, Ed.D. Interim Superintendent  
Date: June 5, 2019  
Re: Action: Resolution 2019-20 #7 Authorization to Sign on Behalf of the Governing Board

**Objective:**

To authorize staff to sign on behalf of the Board for Payroll and Retirement, Cash Receipt/Disbursement Authorization, Attendance Reporting, and State and Federal Reporting

**Background:**

School districts require formal "Authorization to Sign" on behalf of the Board of Trustees. Those authorized to sign include the following:

- Margie Bonardi, Chief Financial Officer
- Jan La Torre-Derby, Interim Superintendent
- Barbara Snekkevik, Principal
- Mikki McIntyre, Office Manager/District Secretary

**Funding Source/Cost:**

NA

**Recommendation:**

Staff recommends approval of Resolution 2018-19 #7 Authorization to Sign on Behalf of the Governing Board for the individuals named above.

RESOLUTION 2018-19 #7  
of the Governing Board of the

\_\_\_\_\_  
NICASIO School/College District  
County of Marin, State of California

**AUTHORIZATION TO SIGN ON BEHALF OF THE GOVERNING BOARD**

\_\_\_\_\_  
NICASIO, California  
**City**

\_\_\_\_\_  
JUNE 5, 2019  
**Date**

Pursuant to the provisions of Education Code Section 42630 to 42633 (School Districts) and 85230 to 85233 (Community College Districts) and other legal provisions, the members of the governing board of the above-named school/college district hereby authorize the officer or employee whose name and signature appear below to sign orders and other documents on behalf of the governing board of said school/college district during the period July 1, 2019 - June 30, 2020 (not to exceed one fiscal year), subject to further board action limiting or extending this authority and notification to the County Superintendent and the County Auditor of such action.

\_\_\_\_\_  
Margie Bonardi  
Name (Typed)  
Chief Business Officer  
\_\_\_\_\_  
Title

IS AUTHORIZED TO SIGN THE FOLLOWING ON BEHALF OF THE BOARD:

\_\_\_\_\_  
Signature

Please Indicate  
"Yes" or "No"

**Payroll & Retirement**

Overpayment / Adjustment .....	Yes
Retirement Election Forms .....	Yes
Sick Leave Transfers .....	Yes
Sick Leave Service Credit Calculations .....	Yes

**Cash Receipt / Disbursement Authorization**

Endorsement Checks.....	Yes
Journal Vouchers Requests .....	Yes
Loan Request –Tax Anticipation Note (TAN) .....	Yes
Payroll Order Certification .....	Yes
Vendor Payment Certification .....	Yes
Deposit Transmittal .....	Yes

**Attendance Reporting**

Attendance Certifications .....	Yes
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**State and Federal Reporting**

Audit Findings-Certification of Corrective Action .....	Yes
Certification of Federal Funds .....	Yes
Independent Auditor Selection Form .....	Yes
Salary and Benefit Schedule (J90).....	Yes

**Other** (Please Specify).....

Signed by a majority of trustees (Original signatures required on all copies):

_____	_____	_____
_____	_____	_____
_____	_____	_____

RESOLUTION 2018-19 #7  
of the Governing Board of the

NICASIO School/College District  
County of Marin, State of California

**AUTHORIZATION TO SIGN ON BEHALF OF THE GOVERNING BOARD**

NICASIO, California  
**City**

JUNE 5, 2019  
**Date**

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Jan Derby, Ed.D.

IS AUTHORIZED TO SIGN THE FOLLOWING ON BEHALF OF THE BOARD:

Name (Typed)

Interim Superintendent

Title

Signature

Please Indicate  
"Yes" or "No"

**Payroll & Retirement**

Overpayment / Adjustment .....	Yes
Retirement Election Forms .....	Yes
Sick Leave Transfers .....	Yes
Sick Leave Service Credit Calculations .....	Yes

**Cash Receipt / Disbursement Authorization**

Endorsement Checks.....	Yes
Journal Vouchers Requests.....	Yes
Loan Request –Tax Anticipation Note (TAN) .....	Yes
Payroll Order Certification .....	Yes
Vendor Payment Certification .....	Yes
Deposit Transmittal .....	Yes

**Attendance Reporting**

Attendance Certifications .....	Yes
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**State and Federal Reporting**

Audit Findings-Certification of Corrective Action .....	Yes
Certification of Federal Funds .....	Yes
Independent Auditor Selection Form .....	Yes
Salary and Benefit Schedule (J90).....	Yes

**Other** (Please Specify).....

Signed by a majority of trustees (Original signatures required on all copies):

_____	_____	_____
_____	_____	_____
_____	_____	_____

RESOLUTION 2018-19 #7  
of the Governing Board of the

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NICASIO School/College District  
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NICASIO, California  
**City**

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JUNE 5, 2019  
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\_\_\_\_\_  
Barbara Snekkevik  
Name (Typed)  
Principal  
\_\_\_\_\_  
Title

IS AUTHORIZED TO SIGN THE FOLLOWING ON BEHALF OF THE BOARD:

\_\_\_\_\_  
Signature

Please Indicate  
"Yes" or "No"

**Payroll & Retirement**

Overpayment / Adjustment .....	Yes
Retirement Election Forms .....	Yes
Sick Leave Transfers .....	Yes
Sick Leave Service Credit Calculations .....	Yes

**Cash Receipt / Disbursement Authorization**

Endorsement Checks.....	Yes
Journal Vouchers Requests.....	Yes
Loan Request –Tax Anticipation Note (TAN) .....	Yes
Payroll Order Certification .....	Yes
Vendor Payment Certification .....	Yes
Deposit Transmittal .....	Yes

**Attendance Reporting**

Attendance Certifications .....	Yes
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**State and Federal Reporting**

Audit Findings-Certification of Corrective Action .....	Yes
Certification of Federal Funds .....	Yes
Independent Auditor Selection Form .....	Yes
Salary and Benefit Schedule (J90).....	Yes

**Other** (Please Specify).....

Signed by a majority of trustees (Original signatures required on all copies):

_____	_____	_____
_____	_____	_____
_____	_____	_____



RESOLUTION 2018-19 #7  
of the Governing Board of the

NICASIO School/College District  
County of Marin, State of California

**AUTHORIZATION TO SIGN ON BEHALF OF THE GOVERNING BOARD**

NICASIO, California  
City

JUNE 5, 2019  
Date

Pursuant to the provisions of Education Code Section 42630 to 42633 (School Districts) and 85230 to 85233 (Community College Districts) and other legal provisions, the members of the governing board of the above-named school/college district hereby authorize the officer or employee whose name and signature appear below to sign orders and other documents on behalf of the governing board of said school/college district during the period July 1, 2019 - June 30, 2020 (not to exceed one fiscal year), subject to further board action limiting or extending this authority and notification to the County Superintendent and the County Auditor of such action.

Mikki McIntyre

IS AUTHORIZED TO SIGN THE FOLLOWING ON BEHALF OF THE BOARD:

Name (Typed)

Office Manager/District Secretary

Title

Signature

Please Indicate  
"Yes" or "No"

**Payroll & Retirement**

Overpayment / Adjustment .....	No
Retirement Election Forms .....	No
Sick Leave Transfers .....	No
Sick Leave Service Credit Calculations .....	No

**Cash Receipt / Disbursement Authorization**

Endorsement Checks .....	Yes
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Audit Findings-Certification of Corrective Action .....	No
Certification of Federal Funds .....	No
Independent Auditor Selection Form .....	No
Salary and Benefit Schedule (J90) .....	No

**Other** (Please Specify).....

Signed by a majority of trustees (Original signatures required on all copies):

_____	_____	_____
_____	_____	_____
_____	_____	_____

## Nicasio School Board Schedule 2019-20

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Regular meetings are held on the 1<sup>st</sup> Thursday of each month unless otherwise noted with an asterisk (\*). Regular meetings commence at 5pm. Open session is held in the school library.

*No Regular Meeting in August*

September 5, 2019

October 3, 2019

November 7, 2019

December 5, 2019

*No Regular Meeting in January*

February 6, 2020

March 5, 2020

April 2, 2020

May 7, 2020

June 4, 2020

June 18, 2020

Nicasio School District  
Since 1862

Agenda Item # 9f

Board of Trustees

Michelle Rutledge, *Board President* ~ Elaine Doss, *Trustee* ~ Mark Burton, *Trustee*

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To: Nicasio School District Board of Trustees  
From: Jan La Torre-Derby, Ed.D. Interim Superintendent  
Date: June 5, 2019  
Re: Action: Approval of BP 4000s Personnel

**Objective:**

To review and approve policies 4000s Personnel which align with district practice and state and Federal mandates

**Background:**

Michelle Rutledge, Nicasio School District Board President, and the Nicasio staff continue to review board policies to update and align mandates and district practice. The 4000s are state and federal requirements regarding Personnel Practices as outlined in law. The first round of policies brought forward range from BP/AR 4119.23-BP/AR 4356.3  
(See next page for policies to be reviewed and approved)

**Funding Source/Cost:**

NA

**Recommendation:**

Staff recommends revision/additions/approval of mandated Board Policies listed above as a first/final reading.

Board Policy/Administrative Regulation	Topic Area
BP 4119.23 BP 4219.23 BP 4319.23	Unauthorized Release of Confidential / Privileged Information
BP/AR 4119.25 BP/AR 4219.25 BP/AR 4319.25	Political Activities of Employees
BP 4119.41 BP 4219.41 BP 4319.41	Employees with Infectious Disease
BP 4119.42 BP 4219.42 BP 4319.41	Exposure Control Plan for Blood-borne Pathogens
BP 4119.43 BP 4219.43 BP 4319.43	Universal Precautions
BP/AR 4121	Temporary/Substitute Personnel
BP 4131	Staff Development
BP 4136 BP 4236 BP 4336	Non-school Employment
BP 4140 BP 4240 BP 4340	Bargaining Units
BP 4143 BP 4243	Public Notice Personnel Negotiations
BP 4143.1 BP 4243.1	Public Notice-Personnel Negotiations
BP 4151 BP 4251 BP 4351	Employee Compensation
BP 4156.3 BP 4256.3 BP 4356.3	Employee Property Reimbursement

\*\*\*\*Cannot change Ed Code Language. Districts can only refer to what is applicable for the district in the Ed Code, but cannot change Ed. Code or Gov Code or Labor Code.

# **Board Policy**

## **Unauthorized Release Of Confidential/Privileged Information**

BP 4119.23 4219.23, 4319.23

### **Personnel**

The Governing Board recognizes the importance of keeping confidential information confidential. Staff shall maintain the confidentiality of information acquired in the course of their employment. Confidential/privileged information shall be released only to the extent authorized by law.

#### **Disclosure of Closed Session Information**

\*\*\*Note: As added by AB 1945 (Ch. 1119, Statutes of 2002), Government Code 54963 specifies that a person may not disclose confidential information acquired during his/her presence in a closed session. For prohibition of the disclosure of closed session information by a Board member, see BB 9011- Disclosure of Confidential/Privileged Information.\*\*\*

An employee shall not disclose confidential information acquired by being present during a closed session to a person not entitled to receive such information, unless the Board authorizes disclosure of that information. (Government Code 54963)

Confidential information means a communication made in a closed session that is specifically related to the basis for the Board to meet lawfully in closed session. (Government Code 54963)

(cf. 9011 - Disclosure of Confidential/Privileged Information)

(cf. 9321 - Closed Session Purposes and Agendas)

\*\*\*Note: Government Code 54963, as added by AB 1945 (Ch. 1119, Statutes of 2002), provides that an employee who willfully discloses confidential information may be subject to disciplinary action. However, in order for the Board to impose discipline, Government Code 54963 requires that the employee have received training about this law or otherwise been given notice of its requirements. As is the case with any other person who violates this section, the employee may also be subject to injunctive relief in a court of law (e.g., injunction or restraining order) or referral to a grand jury.\*\*\*

An employee who willfully discloses confidential information acquired during a closed session may be subject to disciplinary action if he/she has received training or notice as to the requirements of this policy. (Government Code 54963)

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

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

\*\*\*Note: The following optional paragraph specifies one method to help ensure that employees who attend closed sessions receive notice of the law's requirements. This paragraph should be modified to reflect district practice. \*\*\*

The Superintendent or designee shall provide all employees who attend closed sessions a copy of this policy. New employees who may attend closed sessions shall also receive a copy of this policy.

\*\*\*Note: Government Code 54963, as added by AB 1945 (Ch. 1119, Statutes of 2002), states that the district may not take disciplinary action against an employee for releasing information if the disclosure was part of an investigation by a grand jury or the district attorney's office, part of a whistleblower action, or merely an opinion as to the legality of a Board action, as specified below.\*\*\*

The district shall not take disciplinary action against any employee for disclosing confidential information acquired in a closed session, nor shall the disclosure be considered a violation of the law or Board policy, when the employee is: (Government Code 54963)

1. Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts necessary to establish the illegality or potential illegality of a Board action that has been the subject of deliberation during a closed session

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

2. Expressing an opinion concerning the propriety or legality of Board action in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action

3. Disclosing information that is not confidential

#### Other Disclosures

An employee who willfully releases confidential/privileged information about the district, students or staff shall be subject to disciplinary action.

\*\*\*Note: Government Code 1098 prohibits the disclosure of confidential information for pecuniary or financial gain. Pursuant to Education Code 35160, the Board may prohibit the disclosure of confidential information even if the release is not for pecuniary gain. The following paragraph may be modified to reflect district practice. \*\*\*

No employee shall disclose confidential information acquired in the course of his/her official duties. Confidential information includes information that is not a public record subject to disclosure under the Public Records Act, information that by law may not be disclosed, or information that may have a material financial effect on the employee.

(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

(cf. 4143/4243 - Negotiations/Consultation)

(cf. 5125 - Student Records)

(cf. 5125.1 - Release of Directory Information)  
(cf. 5141.4 - Child Abuse Prevention and Reporting)  
(cf. 6164.2 - Guidance/Counseling Services)

Any action by an employee which inadvertently or carelessly results in release of confidential/privileged information shall be recorded, and the record shall be placed in the employee's personnel file. Depending on the circumstances, the Superintendent or designee may deny the employee further access to any privileged information and shall take any steps necessary to prevent any further unauthorized release of such information.

Legal Reference:

EDUCATION CODE

35010 Control of district; prescription and enforcement of rules  
35146 Closed sessions  
35160 Authority of governing boards  
44031 Personnel file contents and inspection  
44932 Grounds for dismissal of permanent employees  
44933 Other grounds for dismissal  
45113 Rules and regulations for classified service  
49060-49079 Pupil records

GOVERNMENT CODE

1098 Public officials and employees: confidential information  
6250-6270 Inspection of public records  
54950-54963 Brown Act

UNITED STATES CODE, TITLE 20

1232g Family Education Rights and Privacy Act

Management Resources:

WEB SITES

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

(5/87 3/88) 7/03

# **Board Policy**

## **Political Activities Of Employees**

BP 4119.25 4219.25, 4319.25

### **Personnel**

\*\*\*Note: The following policy pertains to political activities of individual employees acting on their own behalf as well as employee organizations. Employees engaging in political activities on behalf of the district are subject to legal limitations discussed in BP 1160 - Political Processes.\*\*\*

The Governing Board respects the right of school employees to engage in political discussions and activities on their own time and at their own expense. On such occasions, employees shall make it clear that they are acting as individuals and not as representatives of the district.

(cf. 1160 - Political Processes)

Like other community members, employees may use school facilities for meetings under the Civic Center Act.

(cf. 1330 - Use of School Facilities)

Employees shall refrain from prohibited activities identified in law and administrative regulations. Employees who engage in these activities shall be subject to disciplinary action and/or criminal penalties.

(cf. 1325 - Advertising and Promotion)

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

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

### **Legal Reference:**

#### **EDUCATION CODE**

7050-7057 Political activities of school officers and employees

38130-38139 Civic Center Act

51520 Prohibited solicitations on school premises

#### **GOVERNMENT CODE**

3543.1 Rights of employee organizations

#### **COURT DECISIONS**

Downs v. Los Angeles Unified School District, (9th Cir. 2000) 228 F.3d 1003

California Teachers Association v. Governing Board of San Diego Unified School District, (1996)

45 Cal.App. 4th 1383

L.A. Teachers Union v. L.A. City Board of Education, (1969) 71 Cal.2d 551

#### **ATTORNEY GENERAL OPINIONS**

84 Ops.Cal.Atty.Gen. 106 (2001)

84 Ops.Cal.Atty.Gen. 52 (2001)



77 Ops.Cal.Atty.Gen. 56 (1994)

PERB RULINGS

California Federation of Teachers, Local 1931 v. San Diego Community College District (2001)

PERB Order #1467 (26 PERC 33014)

Management Resources:

CSBA PUBLICATIONS

Political Activities of School Districts: Legal Issues, 1998, revised 2001

WEB SITES

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

Office of the Attorney General, Dept. of Justice: <http://caag.state.ca.us/>

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

(6/96 6/98) 7/02

# **Administrative Regulation**

## **Political Activities Of Employees**

AR 4119.25 4219.25, 4319.25

### **Personnel**

\*\*\*Note: Education Code 7055 authorizes the Board to establish regulations related to (1) officers and employees engaging in political activity during working hours, and (2) political activities on district premises.\*\*\*

District employees shall not:

1. Use district funds, services, supplies or equipment to urge the passage or defeat of any ballot measure or candidate, including any candidate for election to the Governing Board (Education Code 7054)

(cf. 1160 - Political Processes)

2. During working hours and on district property, solicit or receive any political funds or contributions to promote the passage or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service or other working conditions (Education Code 7056)

\*\*\*Note: Items #3-9 below present examples of other types of activities that would be prohibited as they constitute a use of public funds, services, supplies or equipment.\*\*\*

3. During working hours and on district property, solicit or receive any political funds or contributions to promote the passage or defeat of other types of ballot measures

4. Use district time to urge the passage or defeat of any ballot measure or candidate

5. Use district equipment for the preparation or reproduction of political campaign materials, even if the district is reimbursed

(cf. 3512 - Equipment)

6. Post or distribute political campaign materials on district property

7. Disseminate political campaign materials through the district's mail service, e-mail or staff mailboxes

(cf. 4040 - Employee Use of Technology)

8. Use students to write, address or distribute political campaign materials

9. Present viewpoints on particular candidates or ballot measures in the classroom without

giving equal time to the presentation of opposing views

(cf. 6144 - Controversial Issues)

\*\*\*Note: In California Teachers Association v. Governing Board of San Diego, the Court of Appeal concluded that a district may prevent its employees from wearing political buttons in its classrooms and when they are otherwise engaged in providing instruction to the district's students. This authority does not extend to noninstructional time. The ruling in this case applied to both elementary and secondary teachers. This decision supports and expands upon an earlier Attorney General opinion of 1994, which made a similar conclusion regarding elementary teachers only. If the district does decide to allow teachers to wear political buttons during instructional time, it may not support this activity with public funds nor selectively permit some speech while prohibiting other speech. Optional item #10 below would prohibit political buttons during instructional time.\*\*\*

\*\*\*Note: However, in 2001 the Attorney General opined that teachers cannot be prevented from wearing political buttons at Back-to-School Night because it is a noninstructional setting, parents/guardians are less likely than students to be unduly influenced by these political expressions, and teachers' political buttons are not likely to be perceived as reflecting the district's views. Attorney General opinions are not binding but are given deference by the courts.\*\*\*

10. Wear buttons or articles of clothing that express political opinions on ballot measures or candidates during instructional time

However, teachers shall not be prohibited from wearing political buttons during noninstructional time, such as Back-to-School Night.

Nothing in Board policy or administrative regulation shall be construed to prevent employees from soliciting or receiving funds or contributions for political purposes during nonworking time, including before and after school, the lunch period or other scheduled work intermittency during the school day. (Education Code 7056)

### Employee Organizations

Employee organizations may use district mailboxes and other means to communicate with employees, subject to reasonable regulation. Employee organizations may have access at reasonable times to areas in which employees work; may use institutional bulletin boards, mailboxes, and other means of communication and may use district facilities at reasonable times for the purpose of meetings. (Government Code 3543.1)

\*\*\*Note: In California Federation of Teachers, Local 1931 v. San Diego Community College District, PERB found that a district regulation prohibiting a union from using the district's mail system and other equipment for the distribution of political flyers was not an unfair practice charge. According to PERB, Education Code 7054 clearly prohibits such use, even when the union reimburses the district for costs, and the mandate of Education Code 7054 removes the issue from the scope of representation. \*\*\*

However, employee organizations shall not use district funds, services, supplies or equipment, such as the district mail system, to urge the passage or defeat of any ballot measure or candidate, including any candidate for election to the Board (Education Code 7054)

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

Access to district communication channels shall be limited in cases where such access would be disruptive to district operations.

In the event of a concerted action or work stoppage, political activities by employee organizations and individual employees shall be restricted to peaceful informational picketing and other activities allowed by law.

(cf. 4141.6/4241.6 - Concerted Action/Work Stoppage)

(6/96 6/98) 7/02

# Board Policy

## Employees With Infectious Disease

BP 4119.41 4219.41, 4319.41

### Personnel

\*\*\*Note: The following optional policy may be revised to reflect district practice. Because infectious diseases may be either highly communicable (e.g., influenza, chicken pox) or not casually transmitted (e.g., HIV/AIDs, hepatitis B, hepatitis C), the district's response to an employee with infectious disease should be dependent on any legal protections established for employees and take into consideration the potential risk to students, staff, and others.\*\*\*

The Governing Board desires to promote the health of district students and staff in order to reduce absenteeism and enhance employee and student performance. The Superintendent or designee shall develop strategies to prevent the outbreak or spread of infectious diseases at district schools.

(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)

(cf. 4261.1 - Personal Illness/Injury Leave)

(cf. 5113 - Absences and Excuses)

(cf. 5113.1 - Chronic Absence and Truancy)

\*\*\*Note: The following definitions reflect information from the Centers for Disease Control and Prevention (CDC) web site.\*\*\*

An infectious disease is one that is caused by a microorganism and is potentially transmittable to another individual, whether through airborne transmission, bloodborne transmission, skin-to-skin contact, foodborne transmission, or other casual or noncasual means. A communicable infectious disease, such as influenza or chicken pox, is contagious and can be readily transmitted by infectious bacteria or viral organisms.

\*\*\*Note: Education Code 49406, as amended by AB 1667 (Ch. 329, Statutes of 2014), requires employees, upon being initially employed by the district and at specified periods thereafter, to submit to a tuberculosis risk assessment and, if risk factors are identified, then submit to an approved tuberculin skin test followed by an x-ray when required. In addition, when the district is filling a certificated position with an applicant who has not previously been employed in a certificated position in California or a retirant who has not previously been employed as a retirant, Education Code 44839 and 44839.5 require the applicant or retirant to provide a medical certification that he/she is free from any disabling disease that renders him/her unfit to instruct children or associate with them. The sample medical certificate provided in 5 CCR 5504 includes an assessment of whether there is evidence of infectious disease in a communicable stage. For further information, see AR 4112.4/4212.4/4312.4 - Health Examinations.\*\*\*

In accordance with law, job applicants shall be required to provide evidence that they are free of tuberculosis or any other communicable infectious disease prior to beginning employment.

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

To prevent the outbreak or spread of infectious diseases, the Superintendent or designee may provide infection prevention supplies and information to employees, including information about recommended vaccinations. Employees also shall observe universal precautions to avoid contact with potentially infectious blood or other bodily fluids.

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

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

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

\*\*\*Note: CDC recommends that districts develop contingency plans for dealing with an infectious disease outbreak. These contingency plans may be developed with the involvement of local health agencies and/or health care providers and should be incorporated into the district's emergency and disaster preparedness plan. See BP 5141.22 - Infectious Diseases and AR 3516 - Emergencies and Disaster Preparedness Plan as well as CSBA's fact sheets on Pandemic Influenza and H1N1 Influenza (Swine Flu).\*\*\*

Plans for addressing a communicable infectious disease outbreak, including, but not limited to, plans for addressing employee shortages during such an outbreak, shall be included in the district's emergency preparedness plan.

(cf. 3516 - Emergencies and Disaster Preparedness Plan)

(cf. 5112.2 - Exclusions from Attendance)

(cf. 5141.22 - Infectious Diseases)

(cf. 5141.31 - Immunizations)

\*\*\*Note: For the protection of the public health, 17 CCR 2500 and 2508 require specified persons to report communicable diseases to the local health officer, as provided below. The list of reportable diseases is available on the California Department of Public Health's (CDPH) web site. Local health departments may establish additional reporting requirements.\*\*\*

The Superintendent or designee shall immediately report to the local health officer the presence or suspected presence of any communicable infectious disease. In addition, a school nurse or other health care provider who knows of or is in attendance on a case or suspected case of any of the diseases or conditions listed in 17 CCR 2500 shall make a report to the local health officer. If no health care provider is in attendance, any individual having knowledge of a person who is suspected to be suffering from one of the specified diseases or conditions may make a report to the local health officer. (17 CCR 2500, 2508)

(cf. 5141.6 - School Health Services)

Nondiscrimination/Reasonable Accommodation

\*\*\*Note: The Americans with Disabilities Act (ADA) (42 USC 12101-12213) and California Fair Employment and Housing Act (FEHA) (Government Code 12900-12996) prohibit discrimination in employment on the basis of disability. Under the ADA and FEHA, an individual is considered to be disabled if he/she has a physical or mental impairment that limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. According to the CDPH publication California HIV/AIDS Laws, 2009, individuals with clinical HIV disease or AIDS meet the definition of disabled. Court opinions have conflicted as to whether persons with asymptomatic HIV infection meet this definition and districts should consult legal counsel as necessary.\*\*\*

\*\*\*Note: In addition, Section 504 of the Federal Rehabilitation Act of 1973 provides that no otherwise qualified person may, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. In School Board of Nassau County, Florida v. Arline, the U.S. Supreme Court extended this law's protection to employees significantly impaired by infectious diseases.\*\*\*

The district shall not discriminate against any employee or job applicant who has an infectious disease that meets the federal or state definition of a disability under the Americans with Disabilities Act, California Fair Employment and Housing Act, or Section 504 of the Federal Rehabilitation Act. (Government Code 12900-12996; 29 USC 794; 42 USC 12101-12213)

(cf. 4030 - Nondiscrimination in Employment)

\*\*\*Note: Both the ADA (42 USC 12101-12213) and FEHA (Government Code 12900-12996) require employers to reasonably accommodate employees and job applicants with known disabilities; see AR 4032 - Reasonable Accommodation.\*\*\*

Upon request, any qualified person with a disability shall be provided reasonable accommodation to perform the essential duties of his/her position in accordance with the criteria and processes described in AR 4032 - Reasonable Accommodation.

(cf. 4032 - Reasonable Accommodation)

#### Legal Reference:

##### EDUCATION CODE

44839 Medical certificate; periodic medical examination

44839.5 Requirements for employment of retirant

49406 Examination for tuberculosis (employees)

##### CIVIL CODE

56-56.37 Confidentiality of medical information

##### GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

##### HEALTH AND SAFETY CODE

120975-121020 Mandated blood testing and confidentiality to protect public health  
CODE OF REGULATIONS, TITLE 2

7293.5-7294.2 Discrimination based on disability

CODE OF REGULATIONS, TITLE 5

5502-5504 Medical certification

CODE OF REGULATIONS, TITLE 17

2500 Reportable diseases and conditions

2508 Reporting of communicable diseases; duty of schools

UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

COURT DECISIONS

Chevron USA v. Echazabal, (2002) 536 U.S. 73, 122 S.Ct. 2045

School Board of Nassau County, Florida v. Arline, (1987) 408 U.S. 273

Management Resources:

CSBA PUBLICATIONS

H1N1 Influenza (Swine Flu), Fact Sheet, April 2009

Pandemic Influenza, Fact Sheet, September 2007

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH PUBLICATIONS

California HIV/AIDS Laws, 2009, January 2010

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

WEB SITES

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

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

California School Nurses Organization: <http://www.csno.org>

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

Equal Employment Opportunity Commission: <http://www.eeoc.gov>

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

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# Board Policy

## Exposure Control Plan For Bloodborne Pathogens

BP 4119.42 4219.42, 4319.42

### Personnel

\*\*\*Note: Pursuant 29 CFR 1910.1030 and 8 CCR 5193(c), districts must identify employees who have occupational exposure to bloodborne pathogens and must establish a written exposure control plan to eliminate or minimize employee exposure to these pathogens. The exposure control plan must be consistent with the district's Injury and Illness Prevention Program and may be incorporated into that program; see BP/AR 4157/4257/4357 - Employee Safety. The district may want to consult legal counsel regarding whether components of its exposure control plan are subject to collective bargaining.\*\*\*

As part of its commitment to provide a safe and healthful work environment, the Governing Board recognizes the importance of developing an exposure control plan. The Superintendent or designee shall establish a written exposure control plan in accordance with state and federal standards for dealing with potentially infectious materials in the workplace to protect employees from possible infection due to contact with bloodborne pathogens, including but not limited to hepatitis B virus, hepatitis C virus and human immunodeficiency virus (HIV).

(cf. 4119.43/4219.43/4319.43 - Universal Precautions)  
(cf. 4157/4257/4357 - Employee Safety)

The Superintendent or designee shall determine which employees have occupational exposure to bloodborne pathogens and other potentially infectious materials. In accordance with the district's exposure control plan, employees having occupational exposure shall be offered the hepatitis B vaccination.

\*\*\*Note: The following optional paragraph may be implemented only if the district complies with specific conditions; see AR 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens.\*\*\*

The Superintendent or designee may exempt designated first aid providers from pre-exposure hepatitis B vaccination under the conditions specified by state regulations. (8 CCR 5193(f))

\*\*\*Note: The following optional paragraph allows for employees to be included in the training and vaccination program without being classified as having occupational exposure.\*\*\*

Any employee not identified by the Superintendent or designee as having occupational exposure may submit a request to the Superintendent or designee to be included in the training and hepatitis B vaccination program. The Superintendent or designee may deny a request when there is no reasonable anticipation of contact with any infectious material.

Legal Reference:

LABOR CODE

142.3 Authority of Cal/OSHA to adopt standards

144.7 Requirement to amend standards

CODE OF REGULATIONS, TITLE 8

3204 Access to employee exposure and medical records

5193 California bloodborne pathogens standards

CODE OF FEDERAL REGULATIONS, TITLE 29

1910.1030 OSHA bloodborne pathogens standards

Management Resources:

CDE PROGRAM ADVISORIES

1016.89 Guidelines for Informing School Employees about Preventing the Spread of Infectious Diseases, including Hepatitis B and AIDS/HIV Infections and Policies for Dealing with HIV-Infected Persons in School Settings

WEB SITES

OSHA: <http://www.osha.gov>

Cal/OSHA: [http://www.dir.ca.gov/occupational\\_safety.html](http://www.dir.ca.gov/occupational_safety.html)

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

(3/93) 7/99

# **Administrative Regulation**

## **Exposure Control Plan For Bloodborne Pathogens**

AR 4119.42 4219.42, 4319.42

### **Personnel**

\*\*\*Note: The following sample regulation summarizes Cal/OSHA's key requirements for preventing and handling exposure to bloodborne pathogens (8 CCR 5193), as amended by emergency regulations adopted January 1999 and subsequent permanent regulations effective July 30, 1999, pursuant to Register 99, No. 31. The Cal/OSHA standards are detailed and lengthy, and districts are encouraged to examine the full content of 8 CCR 5193 to determine any additional requirements applicable to their circumstances.\*\*\*

\*\*\*Note: Districts may wish to consider including the following optional regulation in their employee handbooks.\*\*\*

### **Definitions**

Occupational exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties. (8 CCR 5193(b))

Exposure incident means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious materials that result from the performance of an employee's duties. (8 CCR 5193 (b))

Parenteral contact means piercing mucous membranes or the skin barrier through such events as needlesticks, human bites, cuts, and abrasions. (8 CCR 5193(b))

A sharp is any object that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident. (8 CCR 5193(b))

A sharps injury is any injury caused by a sharp, including but not limited to cuts, abrasions or needlesticks. (8 CCR 5193(b))

Work practice controls are controls that reduce the likelihood of exposure by defining the manner in which a task is performed. (8 CCR 5193(b))

Engineering controls are controls, such as sharps disposal containers, needleless systems, and sharps with engineered sharps injury protection, that isolate or remove the bloodborne pathogens hazard from the workplace. (8 CCR 5193(b))

Engineered sharps injury protection is a physical attribute built into a needle device or into a non-needle sharp which effectively reduces the risk of an exposure incident. (8 CCR 5193(b))

## Exposure Control Plan

The district's exposure control plan shall contain at least the following components: (8 CCR 5193(c))

1. A determination of which employees have occupational exposure to blood or other potentially infectious materials

The district's exposure determination shall be made without regard to the use of personal protective equipment and shall include a list of:

- a. All job classifications in which all employees have occupational exposure
- b. Job classifications in which some employees have occupational exposure
- c. All tasks and procedures, or groups of closely related tasks and procedures, in which occupational exposure occurs and which are performed by employees listed in item #b above

2. The schedule and method of implementing:

- a. Methods of compliance required by 8 CCR 5193(d), such as universal precautions, general and specific engineering and work practice controls, and personal protective equipment

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

- b. Hepatitis B vaccination
  - c. Bloodborne pathogen post-exposure evaluation and follow-up
  - d. Communication of hazards to employees, including labels, signs, information and training
  - e. Recordkeeping
3. The district's procedure for evaluating circumstances surrounding exposure incidents
  4. An effective procedure for gathering information about each exposure incident involving a sharp, as required for the log of sharps injuries
  5. An effective procedure for periodically determining the frequency of use of the types and brands of sharps involved in exposure incidents documented in the sharps injury log
  6. An effective procedure for identifying currently available engineering controls and selecting such controls as appropriate for the procedures performed by employees in their work areas or departments
  7. An effective procedure for documenting instances when a licensed healthcare professional

directly involved in a patient's care determines, in the reasonable exercise of clinical judgment, that the use of an engineering control would jeopardize an individual's safety or the success of a medical, dental or nursing procedure involving the individual

8. An effective procedure for obtaining the active involvement of employees in reviewing and updating the exposure control plan with respect to the procedures performed by employees in their respective work areas or departments

The exposure control plan shall be reviewed and updated at least annually and whenever necessary to: (8 CCR 5193(c))

1. Reflect new or modified tasks and procedures affecting occupational exposure
2. To the extent that sharps are used in the district, reflect progress in implementing the use of needleless systems and sharps with engineered sharps injury protection
3. Include new or revised employee positions with occupational exposure
4. Review and evaluate the exposure incidents which occurred since the previous update
5. Review and respond to information indicating that the exposure control plan is deficient in any area

The district's exposure control plan shall be accessible to employees upon request. (8 CCR 3204(e))

#### Preventive Measures

\*\*\*Note: The implementation of universal precautions is another preventive measure that should be utilized by the district. See BP/AR 4119.43/4219.43/4319.43 - Universal Precautions.\*\*\*

The Superintendent or designee shall use engineering and work practice controls to eliminate or minimize employee exposure, and shall regularly examine and update controls to ensure their effectiveness. (8 CCR 5193(d))

#### Hepatitis B Vaccination

The hepatitis B vaccination and vaccination series shall be made available at no cost to all employees who have occupational exposure. The hepatitis B vaccination shall be made available after an employee with occupational exposure has received the required training and within 10 working days of initial assignment, unless the employee has previously received the complete hepatitis B vaccination series, or antibody testing has revealed that the employee is immune, or vaccination is contraindicated by medical reasons. (8 CCR 5193(f))

\*\*\*Note: If the employee declines to accept hepatitis B vaccination offered by the district, the district must ensure that he/she signs the statement reproduced as E 4119.42/4219.42/4319.42.\*\*\*

Employees who decline to accept the vaccination shall sign the hepatitis B declination statement. (8 CCR 5193(f))

The Superintendent or designee may exempt designated first aid providers from the pre-exposure hepatitis B vaccine in accordance with 8 CCR 5193 (f).

#### Information and Training

The Superintendent or designee shall ensure that all employees with occupational exposure participate in a training program containing the elements required by state regulations, during working hours and at no cost to the employee. This program shall be offered at the time of initial assignment to tasks where occupational exposure may take place, at least annually thereafter, and whenever a change of tasks or procedures affects the employee's exposure. (8 CCR 5193(g))

Designated first aid providers shall receive training that includes the specifics of reporting first-aid incidents which involve blood or body fluids which are potentially infectious. (8 CCR 5193(g))

#### Reporting Incidents

All exposure incidents shall be reported as soon as possible to the Superintendent or designee.

Unvaccinated designated first aid providers must report any first aid incident involving the presence of blood or other potentially infectious material, regardless of whether an exposure incident occurred, by the end of the work shift. The full hepatitis B vaccination series shall be made available to such employees no later than 24 hours after the first aid incident. (8 CCR 5193(f))

\*\*\*Note: Requirements of 8 CCR 5193 related to designated first aid providers do not apply to employees who assist in nonemployment-related first aid situations as "good Samaritans." Although employees are not covered by the bloodborne pathogen standards if their exposure is unrelated to their job duties, Cal/OSHA encourages employers to offer post-exposure evaluation and follow-up to all employees.\*\*\*

#### Sharps Injury Log

The Superintendent or designee shall establish and maintain a log recording each exposure incident involving a sharp. The exposure incident shall be recorded within 14 working days of the date the incident is reported to the district. (8 CCR 5193(c))

The information recorded shall include the following, if known or reasonably available: (8 CCR 5193(c))

1. Date and time of the exposure incident
2. Type and brand of sharp involved in the exposure incident



3. A description of the exposure incident, including:
  - a. Job classification of the exposed employee
  - b. Department or work area where the exposure incident occurred
  - c. The procedure that the exposed employee was performing at the time of the incident
  - d. How the incident occurred
  - e. The body part involved in the incident
  - f. If the sharp had engineered sharps injury protection, whether the protective mechanism was activated and whether the injury occurred before, during or after the protective mechanism was activated
  - g. If the sharp had no engineered sharps injury protection, the injured employee's opinion as to whether and how such a mechanism could have prevented the injury
  - h. The employee's opinion about whether any other engineering, administrative or work practice could have prevented the injury

#### Post-Exposure Evaluation and Follow-up

Following a report of an exposure incident, the Superintendent or designee shall immediately make available to the exposed employee, at no cost, a confidential medical evaluation, post-exposure evaluation and follow-up. The Superintendent or designee shall, at a minimum: (8 CCR 5193(f))

1. Document the route(s) of exposure and the circumstances under which the exposure incident occurred
2. Identify and document the source individual, unless that identification is infeasible or prohibited by law
3. Provide for the collection and testing of the employee's blood for hepatitis B, hepatitis C and HIV serological status
4. Provide for post-exposure prophylaxis, when medically indicated, as recommended by the U.S. Public Health Service
5. Provide for counseling and evaluation of reported illnesses

The Superintendent or designee shall provide the health care professional with a copy of 8 CCR 5193; a description of the employee's duties as they relate to the exposure incident; documentation

of the route(s) of exposure and circumstances under which exposure occurred; results of the source individual's blood testing, if available; and all medical records maintained by the district relevant to the appropriate treatment of the employee, including vaccination status. (8 CCR 5193(f))

The district shall maintain the confidentiality of the affected employee and the exposure source during all phases of the post-exposure evaluation. (8 CCR 5193(f))

\*\*\*Note: Districts should obtain permission from the source individual before disclosing confidential information about that source individual, in accordance with law. Legal counsel should be consulted regarding current rules for the contents and format of consent forms.\*\*\*

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)  
(cf. 9011 - Disclosure of Confidential/Privileged Information)

## Records

Upon an employee's initial employment and at least annually thereafter, the Superintendent or designee shall inform employees with occupational exposure of the existence, location and availability of related records; the person responsible for maintaining and providing access to records; and the employee's right of access to these records. (8 CCR 3204)

(cf. 1340 - Access to District Records)  
(cf. 3580 - District Records)

Medical records for each employee with occupational exposure shall be kept confidential and not disclosed or reported without the employee's written consent to any person within or outside the workplace except as required by law. (8 CCR 5193(h))

Upon request by an employee, or a designated representative with the employee's written consent, the Superintendent or designee shall provide access to a record in a reasonable time, place and manner, no later than 15 days after the request is made. (8 CCR 3204(e))

Records shall be maintained as follows: (8 CCR 3204(d), 5193(h))

1. Medical records shall be maintained for the duration of employment plus 30 years.
2. Training records shall be maintained for three years from the date of training.
3. The sharps injury log shall be maintained five years from the date the exposure incident occurred.
4. Exposure records shall be maintained for at least 30 years.
5. Each analysis using medical or exposure records shall be maintained for at least 30 years.



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# Exhibit

## Exposure Control Plan for Bloodborne Pathogens

E 4119.42 4219.42, 4319.42

### Personnel

#### Hepatitis B Vaccine Declination

\*\*\*Note: 8 CCR 5193 requires the district to ensure that the following statement is signed by any employee who declines to accept the hepatitis B vaccination offered by the district.\*\*\*

I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with hepatitis B vaccine, at no charge to myself. However, I decline hepatitis B vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with hepatitis B vaccine, I can receive the vaccination series at no charge to myself.

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Signature

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Employee Name (Please print)

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Date

3/93

## **Board Policy**

### **Universal Precautions**

BP 4119.43, 4219.43, 4319.43

#### **Personnel**

\*\*\*Note: Pursuant to 8 CCR 5193(d), all districts with one or more employees having occupational exposure to bloodborne pathogens must enforce universal precautions to prevent contact with blood or other potentially infectious materials.\*\*\*

In order to protect employees from contact with potentially infectious blood or other body fluids, the Governing Board requires that universal precautions be observed throughout the district.

Universal precautions are appropriate for preventing the spread of all infectious diseases and shall be used regardless of whether bloodborne pathogens are known to be present.

(cf. 4157/4257/4357 - Employee Safety)  
(cf. 5141 - Health Care and Emergencies)  
(cf. 5141.22 - Infectious Diseases)  
(cf. 5141.24 - Specialized Health Care Services)  
(cf. 5141.6 - School Health Services)  
(cf. 6145.2 - Athletic Competition)

Employees shall immediately report any exposure incident or first aid incident in accordance with the district's exposure control plan or other safety procedures.

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

#### **Legal Reference:**

##### **HEALTH AND SAFETY CODE**

117600-118360 Handling and disposal of regulated waste

120875 Providing information to school districts on AIDS, AIDS-related conditions and Hepatitis B

120880 Information to employees of school district

##### **CODE OF REGULATIONS, TITLE 8**

5193 California bloodborne pathogens standard

##### **CODE OF FEDERAL REGULATIONS, TITLE 29**

1910.1030 OSHA bloodborne pathogens standards

#### **Management Resources:**

##### **CDE PROGRAM ADVISORIES**

1016.89 Guidelines for Informing School Employees about Preventing the Spread of Infectious Diseases, including Hepatitis B and AIDS/HIV Infections and Policies for Dealing with

HIV-Infected Persons in School Settings

WEB SITES

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

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# Administrative Regulation

## Universal Precautions

AR 4119.43 4219.43, 4319.43

### Personnel

#### Definitions

\*\*\*Note: Districts may wish to include the following optional administrative regulation in their employee handbook.\*\*\*

Universal precautions are an approach to infection control. All human blood and certain human body fluids, including but not limited to semen, vaginal secretions and any body fluid that is visibly contaminated with blood, are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), hepatitis C virus (HCV) and other bloodborne pathogens. (8 CCR 5193(b))

Personal protective equipment includes specialized clothing or equipment worn or used for protection against a hazard. General work clothes such as uniforms, pants, shirts or blouses not intended to function as protection against a hazard are not considered to be personal protective equipment. (8 CCR 5193(b))

A sharp is any object that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident. (8 CCR 5193(b))

Engineered sharps injury protection is a physical attribute built into a needle device or into a non-needle sharp which effectively reduces the risk of an exposure incident. (8 CCR 5193(b))

#### Employee Information

\*\*\*Note: Health and Safety Code 120875 requires districts to provide information regarding AIDS and hepatitis B, as specified below. However, since, pursuant to 8 CCR 5193(b), hepatitis C is included in the definition of "bloodborne pathogens," districts may also wish to provide information to employees about the hepatitis C virus. The following paragraph should be modified to reflect any additional information provided to employees. \*\*\*

The Superintendent or designee shall distribute to employees information provided by the California Department of Education regarding acquired immune deficiency syndrome (AIDS), AIDS-related conditions, and hepatitis B. This information shall include, but not be limited to, any appropriate methods employees may use to prevent exposure to AIDS and hepatitis B, including information concerning the availability of a vaccine to prevent contraction of hepatitis B, and that the cost of this vaccination may be covered by the health plan benefits of the employees. Information shall be distributed at least annually, or more frequently if there is new information supplied by the California Department of Education. (Health and Safety Code 120875, 120880)

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

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

### Infection Control Practices

The Superintendent or designee shall ensure that the worksite is effectively maintained in a clean and sanitary condition, and shall implement an appropriate written schedule for cleaning and decontamination of the worksite. (8 CCR 5193(d))

Where occupational exposure remains after the institution of engineering and work practice controls, the Superintendent or designee shall provide appropriate personal protective equipment at no cost to the employee. Such equipment may include gloves, gowns, masks, eye protection, and other devices that do not permit blood or other potentially infectious materials to pass through or reach the employee's clothes, skin, eyes, mouth or other mucous membranes under normal conditions of use. The Superintendent or designee shall maintain, repair, make accessible and require employees to use and properly handle protective equipment. (8 CCR 5193(d))

The Superintendent or designee shall provide handwashing facilities which are readily accessible to employees. When provision of handwashing facilities is not feasible, the Superintendent or designee shall provide an appropriate antiseptic hand cleanser in conjunction with clean cloth or paper towels, or antiseptic towelettes. (8 CCR 5193(d))

For the prevention of infectious disease, employees shall routinely: (8 CCR 5193(d))

1. Perform all procedures involving blood or other potentially infectious materials in such a manner as to minimize splashing, spraying, spattering, and generating droplets of these substances.
2. Use personal protective equipment as appropriate.
  - a. Appropriate clothing, including but not limited to, gowns, aprons, lab coats, clinic jackets or similar outer garments, shall be worn in occupational exposure situations.

If a garment becomes penetrated by blood or other potentially infectious materials, the employee shall remove the garment immediately or as soon as feasible. All personal protective equipment shall be removed prior to leaving the work area. When removed, it shall be placed in an appropriately designated area or container for storage, washing, decontamination or disposal.

- b. Gloves shall be worn when it can be reasonably anticipated that the employee may have hand contact with blood, other potentially infectious materials, mucous membranes and nonintact skin, and when handling or touching contaminated items or surfaces.

Disposable gloves shall be replaced as soon as practical when contaminated, or as soon as feasible if they are torn, punctured, or when their ability to function as a barrier is compromised. They shall not be washed or decontaminated for reuse. Utility gloves may be decontaminated for reuse if the

integrity of the gloves is not compromised, but must be discarded if they are cracked, peeling, torn, punctured, or exhibit other signs of deterioration or when their ability to function as a barrier is compromised.

c. Masks in combination with eye protection devices or face shields shall be worn whenever splashes, spray, spatter, or droplets of blood or other potentially infectious materials may be generated and eye, nose or mouth contamination can be reasonably anticipated.

3. Wash hands and other skin surfaces thoroughly with soap and running water:

a. Immediately or as soon as feasible following contact of hands or any other skin or mucous membranes with blood or other potentially infectious materials

b. Immediately after removing gloves or other personal protective equipment

When handwashing facilities are not available, the employee shall use antiseptic hand cleanser in conjunction with clean cloth or paper towels, or antiseptic towelettes. In such instances, hands shall be washed with soap and running water as soon as feasible.

4. Refrain from eating, drinking, smoking, applying cosmetics or lip balm, or handling contact lenses in work areas with a reasonable likelihood of occupational exposure.

5. Clean and decontaminate all equipment and environmental and work surfaces after contact with blood or other potentially infectious material, no later than the end of the shift or more frequently as required by state regulations.

6. Rather than using the hands directly, use mechanical means such as a brush and dust pan, tongs or forceps to clean up broken glassware which may be contaminated.

7. Use effective patient-handling techniques and other methods designed to minimize the risk of a sharps injury in all procedures involving the use of sharps in patient care.

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

(cf. 5141.24 - Specialized Health Care Services)

a. Needleless systems shall be used to administer medication or fluids, withdraw body fluids after initial venous or arterial access is established, and conduct any other procedure involving the potential for an exposure incident for which a needleless system is available as an alternative to the use of needle devices. If needleless systems are not used, needles or non-needle sharps with engineered sharps injury protection shall be used.

b. Contaminated needles or other sharps shall not be broken, bent, recapped, removed from devices, or stored or processed in a manner that requires employees to reach by hand into the containers where these sharps have been placed.

c. Disposable sharps shall not be reused.

8. Handle, store, treat and dispose of regulated waste in accordance with Health and Safety Code 117600-118360 and other applicable state and federal regulations.

a. Immediately or as soon as possible after use, contaminated sharps shall be placed in containers meeting the requirements of 8 CCR 5193(d)(3)(D). Containers shall be easily accessible, maintained upright throughout use where feasible, and replaced as necessary to avoid overfilling.

b. Specimens of blood or other potentially infectious material shall be placed in a container which prevents leakage during collection, handling, processing, storage, transport or shipping.

(cf. 4157/4257/4357 - Employee Safety)  
(cf. 5141 - Health Care and Emergencies)  
(cf. 5141.22 - Infectious Diseases)  
(cf. 5141.6 - School Health Services)  
(cf. 6145.2 - Athletic Competition)

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# Board Policy

## Temporary/Substitute Personnel

BP 4121

### Personnel

The Governing Board recognizes that substitute and temporary personnel perform an essential role in promoting student achievement and desires to employ highly qualified, appropriately credentialed employees to fill such positions.

(cf. 4112.2 - Certification)

#### Hiring

The Superintendent or designee shall recommend candidates for substitute or temporary positions for Board approval, and shall ensure that all substitute and temporary employees are assigned in accordance with law and the authorizations specified in their credential.

(cf. 4113 - Assignment)

Substitute personnel may be employed on an on-call, day-to-day basis.

In addition, after September 1 of any school year, the Board may employ substitute personnel for the remainder of the school year for positions for which no regular employee is available. The district shall first demonstrate to the Commission on Teacher Credentialing the inability to acquire the services of a qualified regular employee. (Education Code 44917)

(cf. 4117.14/4317.14 - Postretirement Employment)

\*\*\*Note: Education Code 44956 and 44957 require that districts give employees who are laid off pursuant to Education Code 44955 priority for substitute service during the period of preferred right to reemployment. The period of preferred right to reemployment is 39 months for laid-off permanent employees and 24 months for probationary employees; see BP 4117.3 - Personnel Reduction. \*\*\*

\*\*\*Note: Pursuant to Education Code 44956, if a laid-off permanent employee serves as a substitute in any position requiring certification for any 21 days or more within a period of 60 school days, he/she is entitled to compensation not less than the amount the employee would receive if he/she were being reappointed and retroactive to the first day of the substitute service. Education Code 44957 does not contain similar provisions for probationary employees; such employees are paid according to the salary schedule for substitute employees adopted by the Governing Board, regardless of the number of days worked as a substitute. \*\*\*

Permanent or probationary certificated employees who were laid off pursuant to Education Code 44955 and who have a preferred right of reappointment shall be given priority for substitute

service in the order of their original employment. (Education Code 44956, 44957)

(cf. 4117.3 - Personnel Reduction)

#### Classification

\*\*\*Note: A certificated employee's classification as a substitute, temporary, probationary, or permanent employee governs the statutory job protections to which he/she is entitled and the procedures that apply if he/she is not reelected; see section below entitled "Release from Employment/Dismissal." Districts are encouraged to consult legal counsel when questions arise regarding such classification. \*\*\*

At the time of initial employment and each July thereafter, the Board shall classify substitute and temporary employees as such. (Education Code 44915, 44916)

The Board may classify as substitute personnel a teacher hired to fill the position of a regularly employed person who is absent from service. (Education Code 44917)

\*\*\*Note: The following two paragraphs describe circumstances under which the Education Code expressly defines a position as temporary. In both *Bakersfield Elementary Teachers Association v. Bakersfield City School District* and *California Teachers Association v. Vallejo City Unified School District*, the courts determined that it was inappropriate to classify certificated employees as temporary on the basis of the provisional status of their credential (i.e., those serving under an intern credential, provisional internship permit, short-term staff permit, emergency teaching permit, or credential waiver). According to the courts, districts may classify as temporary employees only those persons who are specified to be temporary employees in the Education Code. All other certificated employees who cannot be properly classified as substitute or permanent employees must be classified as probationary employees. \*\*\*

\*\*\*Note: One circumstance under which a teacher may be classified as a temporary employee is when the district needs an additional teacher for a period of one semester to one year because of teacher absence due to leaves or long-term illness, as authorized in Education Code 44920. As provided below, Education Code 44920 requires the Board to determine the number of temporary employees that may be hired under these circumstances. In *McIntyre v. Sonoma Valley Unified School District*, the court clarified that a district's ability to classify an employee as temporary pursuant to Education Code 44920 is not dependent upon a one-to-one match of temporary employees to employees on leave. Rather, all that is required is that the number of temporary teachers not exceed the total number of employees on leave at any one time. \*\*\*

To address the need for additional certificated employees when regular district employees are absent due to leaves or long-term illness, the Board may classify a teacher who is employed for at least one semester and up to one complete school year as a temporary employee. Any person whose service begins in the second semester and before March 15 may be classified as a temporary employee even if employed for less than a semester. The Board shall determine the number of persons who shall be so employed, which shall not exceed the identified need based on the absence of regular employees. (Education Code 44920)

The Board also shall classify as temporary employees those certificated persons, other than substitute employees, who are employed to:

1. Serve from day to day during the first three months of any school term to teach temporary classes which shall not exist after that time, or perform any other duties which do not last longer than the first three months of any school term (Education Code 44919)

2. Teach in special day and evening classes for adults or in schools of migratory population for not more than four months of any school term (Education Code 44919)

(cf. 6175 - Migrant Education Program)  
(cf. 6200 - Adult Education)

3. Serve in a limited assignment supervising student athletic activities provided such assignments have first been made available to teachers presently employed in the district (Education Code 44919)

(cf. 4127/4227/4327 - Temporary Athletic Team Coaches)

4. Serve in a position for a period not to exceed 20 working days in order to prevent the stoppage of district business during an emergency when persons are not immediately available for probationary classification (Education Code 44919)

\*\*\*Note: Item #5 below applies only to high school and unified districts. \*\*\*

5. Serve only for the first semester because the district expects a reduction in student enrollment during the second semester due to mid-year graduations (Education Code 44921)

For purposes of classifying employees pursuant to item #1 or #2 above, the school year shall not be divided into more than two school terms. (Education Code 44919)

\*\*\*Note: Education Code 44909 authorizes districts to employ certificated employees in programs and projects conducted under contract with public or private agencies or through categorically funded projects which are not required by federal or state statutes, and provides that such persons may be employed for periods less than a full school year. Pursuant to Education Code 44909, such persons may be terminated at the expiration of the contract or specially funded project without regard to termination procedures required for probationary or permanent employees. In *Stockton Teachers Association v. Stockton Unified School District*, the court of appeals clarified that "the expiration of the contract" refers to the contract between the district and the agency providing categorical funds, not a contract between the district and employee. Thus, the district may not hire a person for more or less than the term of the contract or project and treat such a person as a temporary employee. Districts should consult legal counsel as necessary regarding the classification or termination of employees hired pursuant to Education Code 44909. Also, it is recommended that districts use a separate employment agreement tailored to these employees. \*\*\*

Any employee hired to provide services in a categorically funded program or project may be employed for a period less than a full school year. He/she may be classified as a temporary employee if the period of employment will end at the expiration of that program or project. (Education Code 44909)

#### Salary and Benefits

The Board shall adopt and make public a salary schedule setting the daily or pay period rate(s) for substitute employees for all categories or classes of certificated employees of the district. (Education Code 44977, 45030)

\*\*\*Note: Pursuant to Government Code 3540.1, exclusive representatives of employees for purposes of negotiations may include representation of all public school employees other than management and confidential employees, as defined. Thus, substitute and temporary personnel may have the right to be represented. In cases where substitute and temporary employees are not represented, the Board may determine whether to include such employees in the district's health and welfare plan and other benefits. Although Options 1 and 2 below address temporary employees only, a district may modify either option as necessary to reflect its treatment of substitute employees. The district should consult legal counsel if it has any questions about the provision of benefits to substitute and temporary employees. \*\*\*

OPTION 1: Temporary employees shall participate in the health and welfare plans or other fringe benefits of the district.

(cf. 4140/4240/4340 - Bargaining Units)  
(cf. 4154/4254/4354 - Health and Welfare Benefits)

OPTION 2: Temporary employees shall not participate in the health and welfare plans or other fringe benefits of the district.

#### Paid Sick Leave

\*\*\*Note: Labor Code 245-249 (the Healthy Workplaces, Healthy Families Act), as added by AB 1522 (Ch. 317, Statutes of 2014), require districts to grant a minimum of one hour of paid sick leave for every 30 hours worked to their employees who work for 30 days within a year of their employment, including temporary and substitute employees. In implementing this requirement, Labor Code 246, as amended by AB 304 (Ch. 67, Statutes of 2015), permits the district to use any of the options specified below. Option 1 provides for paid leave accrual based on one hour for every 30 hours worked. Option 2 allows an accrual method that provides for a regular accrual basis and ensures that the employee receives 24 hours of paid sick leave by the 120th day of his/her employment. Option 3 is for any district that credits employees with 24 hours of paid sick leave at the beginning of each year and does not allow unused sick leave to carry over to the next year. In addition, pursuant to Labor Code 245.5, as amended by AB 304, retired annuitants who have not reinstated to the applicable public retirement system are excluded from participation in these leave benefit provisions. The district should select the option below which corresponds to its approach under Labor Code 246. \*\*\*

\*\*\*Note: Additional requirements of Labor Code 245-249 include, but are not limited to, display of a poster containing specified information at every workplace, provision of each employee's sick leave balance on his/her wage statements, and maintenance of leave usage documentation for three years. \*\*\*

\*\*\*Note: The provisions of Labor Code 245-249 are very broad and only district employees covered by a valid collective bargaining agreement may be exempted from them, if the collective bargaining agreement expressly provides paid sick leave in an amount equal to or exceeding the amount of leave required pursuant to Labor Code 246, includes final and binding arbitration of disputes regarding the application of the paid sick days provisions, and provides premium wage rates for all overtime hours worked and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate. Since many districts may not satisfy all the conditions for this exemption, the following optional section reflects the requirements of Labor Code 245-249. Any district whose collective bargaining agreement meets all the conditions for exemption may modify this section accordingly. For sick leave for full-time and part-time certificated employees and additional requirements of Labor Code 245-249, see AR 4161.1/4361.1 - Personal Illness/Injury Leave. For sick leave for classified employees, see AR 4261.1 - Personal Illness/Injury Leave. \*\*\*

OPTION 1: Except for a retired annuitant who is not reinstated to the retirement system, any temporary or substitute employee who works for 30 or more days within a year of his/her employment shall be entitled to one hour of paid sick leave for every 30 hours worked. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 48 hours. (Labor Code 246)

OPTION 2: Except for a retired annuitant who is not reinstated to the retirement system, any temporary or substitute employee who works for 30 or more days within a year of his/her employment shall accrue, on a regular basis, paid sick leave of up to 24 hours by the 120th calendar day of his/her employment or each calendar year or 12-month period. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 48 hours. (Labor Code 246)

OPTION 3: Except for a retired annuitant who is not reinstated to the retirement system, any temporary or substitute employee who works for 30 or more days within a year of his/her employment shall be credited with 24 hours of paid sick leave for that year. Unused sick leave shall not carry over to the following year of employment. (Labor Code 246)

\*\*\*Note: The following paragraph applies to all the above options. \*\*\*

Any temporary or substitute employee may begin to use accrued paid sick days on the 90th day of his/her employment, after which he/she may use the sick days as they are accrued. (Labor Code 246)

\*\*\*Note: The following paragraph applies to all of the above options and reflects the intent of the Healthy Workplaces, Healthy Families Act to enable California workers to address their own and



their family's health needs and to provide them with economic security when they need to take time off work for reasons of domestic violence, sexual assault, or stalking. The following paragraph may be revised to include additional reasons for which temporary or substitute employees may use sick leave, pursuant to district policy or practice. Pursuant to Labor Code 247.5, as amended by AB 304 (Ch. 67, Statutes of 2015), a district is not required to inquire into the purposes for which an employee uses paid leave. \*\*\*

A temporary or substitute employee may use accrued sick leave for absences due to: (Labor Code 246.5)

1. His/her own need or the need of a family member, as defined in Labor Code 245.5, for the diagnosis, care, or treatment of an existing health condition or for preventive care
2. Need of the employee to obtain or seek any relief or medical attention specified in Labor Code 230(c) and 230.1(a) for the health, safety, or welfare of the employee, or his/her child, when the employee has been a victim of domestic violence, sexual assault, or stalking

(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)

(cf. 4261.1 - Personal Illness/Injury Leave)

No employee shall be denied the right to use accrued sick days and the district shall not in any manner discriminate or retaliate against an employee for using or attempting to use sick leave, filing a complaint with the Labor Commissioner, or alleging district violation of Labor Code 245-249. The Superintendent or designee shall display a poster containing required information, provide notice to eligible employees of their sick leave rights, keep records of employees' use of sick leave for three years, and comply with other requirements specified in Labor Code 245-249 and in AR 4161.1/4361.1 - Personal Illness/Injury Leave.

#### Release from Employment/Dismissal

The Board may dismiss a substitute employee at any time at its discretion. (Education Code 44953)

\*\*\*Note: Pursuant to Education Code 44954, if a district decides not to reelect for the following year a temporary employee who has served at least 75 percent of the days in the school year, the district must so notify that employee by the end of the school year. In *Neily v. Manhattan Beach Unified School District*, the court held that Education Code 37200, which defines a school year as ending June 30, is applicable for determining the deadline for this notification, not the last day that students and teachers are in their classrooms. \*\*\*

The Board may release a temporary employee at its discretion if the employee has served less than 75 percent of the number of days the regular schools of the district are maintained during one school year. After serving 75 percent of the number of days that district schools are maintained during one school year, a temporary employee may be released as long as he/she is notified, before the last day of June, of the district's decision not to reelect him/her for the following school year. (Education Code 37200, 44954)

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

#### Reemployment as a Probationary Employee

\*\*\*Note: Education Code 44917, 44918, and 44920 provide that a substitute or temporary employee who performs the duties of a certificated employee for a complete school year, or for at least 75 percent of the days in the school year, shall be given credit for a complete year as a probationary employee if he/she is then employed as a probationary employee the following school year, as provided below. However, in *McIntyre v. Sonoma Valley Unified School District*, the court clarified that a district is not required to grant probationary status to an employee based solely on the fact that he/she served as a temporary employee for more than one year if the employee is released and reemployed as a temporary employee for the following year to fill the position of a regularly employed person absent from service. \*\*\*

\*\*\*Note: Reemployment provisions contained in Education Code 44918 do not apply to districts with average daily attendance of over 400,000; such districts should modify the following section accordingly. \*\*\*

Unless released from employment pursuant to Education Code 44954, any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a vacant position requiring certification qualifications, be classified as a probationary employee. With the exception of on-call, day-to-day substitutes, if a temporary or substitute employee performs the duties normally required of certificated employees for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and is then employed as a probationary employee for the following school year, his/her previous employment as a temporary or substitute employee shall be credited as one year's employment as a probationary employee for purposes of acquiring permanent status. (Education Code 44917, 44918, 44920)

(cf. 4116 - Probationary/Permanent Status)

Vacant position means a position in which the employee is qualified to serve and which is not filled by a permanent or probationary employee. It shall not include a position which would be filled by a permanent or probationary employee except for the fact that such employee is on leave. (Education Code 44920, 44921)

A temporary employee hired pursuant to item #1 or #2 in the section "Classification" above shall be classified as a probationary employee if the duties continue beyond the time limits of the assignment. (Education Code 44919)

\*\*\*Note: Districts that do not maintain high schools should delete the following paragraph. \*\*\*

A person employed pursuant to item #5 in the section "Classification" above who is then continued in employment beyond the first semester shall be classified as a probationary employee for the entire school year and shall be reemployed to fill any vacant position in the district for which



he/she is certified. Preference for available positions shall be determined by the Board as prescribed by Education Code 44845 and 44846. (Education Code 44921)

With the exception of on-call, day-to-day substitutes, any temporary or substitute employee who was released pursuant to Education Code 44954 but who has nevertheless served in a certificated position in the district for at least 75 percent of each of two consecutive school years shall receive first priority if the district fills a vacant position for the subsequent school year at the grade level at which the employee served during either year. In the case of a departmentalized program, the employee shall have taught the subject matter in which the vacant position occurs. (Education Code 44918)

Legal Reference:

EDUCATION CODE

22455.5 Provision of retirement plan information to potential members  
22515 Irrevocable election to join retirement plan  
37200 School calendar  
44252.5 State basic skills assessment required for certificated personnel  
44300 Emergency teaching or specialist permits  
44830 Employment of certificated persons; requirements of proficiency in basic skills  
44839.5 Employment of retirant  
44845 Date of employment  
44846 Criteria for reemployment preferences  
44909 Employees providing services through categorically funded programs  
44914 Substitute and probationary employment computation for classification as permanent employee  
44915 Classification of probationary employees  
44916 Time of classification; statement of employment status  
44917 Classification of substitute employees  
44918 Substitute or temporary employee deemed probationary employee; reemployment rights  
44919 Classification of temporary employees  
44920 Employment of certain temporary employees; classifications  
44921 Employment of temporary employees; reemployment rights (unified and high school districts)  
44953 Dismissal of substitute employees  
44954 Release of temporary employees  
44955 Layoff of permanent and probationary employees  
44956 Rights of laid-off permanent employees to substitute positions  
44957 Rights of laid-off probationary employees to substitute positions  
44977 Salary schedule for substitute employees  
45030 Substitutes  
45041 Computation of salary  
45042 Alternative method of computation for less than one school year  
45043 Compensation for employment beginning in the second semester  
56060-56063 Substitute teachers in special education

## GOVERNMENT CODE

3540.1 Educational Employment Relations Act, definitions

## LABOR CODE

220 Sections inapplicable to public employees

230 Jury duty; legal actions by domestic violence, sexual assault and stalking victims, right to time off

230.1 Employers with 25 or more employees; domestic violence, sexual assault and stalking victims, right to time off

233 Illness of child, parent, spouse or domestic partner

234 Absence control policy

245-249 Healthy Workplaces, Healthy Families Act of 2014

## CODE OF REGULATIONS, TITLE 5

5502 Filing of notice of physical examination for employment of retired person

5503 Physical examination for employment of retired persons

5590 Temporary athletic team coach

80025-80025.5 Emergency substitute teaching permits

## COURT DECISIONS

McIntyre v. Sonoma Valley Unified School District (2012) 206 Cal.App.4th 170

Stockton Teachers Association CTA/NEA v. Stockton Unified School District (2012) 204 Cal.App.4th 446

Neily v. Manhattan Beach Unified School District, (2011) 192 Cal.App.4th 187

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

Bakersfield Elementary Teachers Assn. v. Bakersfield City School District, (2006) 145 Cal.App.4th 1260, 1277

Kavanaugh v. West Sonoma Union High School District, (2003) 29 Cal.4th 911

## Management Resources:

### WEB SITES

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

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

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# Administrative Regulation

## Temporary/Substitute Personnel

AR 4121  
Personnel

### Qualifications

Any candidate recommended by the Superintendent or designee for a substitute or temporary position requiring certification qualifications shall possess the appropriate credential or permit authorizing his/her employment in such position and shall meet all other requirements of law for certificated positions. (Education Code 44830)

(cf. 4111.2/4211.2/4311.2 - Legal Status Requirement)  
(cf. 4112.2 - Certification)  
(cf. 4112.3/4212.3/4312.3 - Oath or Affirmation)  
(cf. 4112.4/4212.4/4312.4 - Health Examinations)  
(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)

The district shall not initially hire a certificated person on a substitute or temporary basis in a capacity designated in his/her credential unless he/she has demonstrated basic skills proficiency in reading, writing, and mathematics pursuant to Education Code 44252.5, unless exempted by law. (Education Code 44830)

A noncredentialed person shall not substitute for any special education certificated position. The Superintendent or designee shall recruit and maintain lists of appropriately credentialed substitute teachers for special education positions. He/she shall contact institutes of higher education with approved special education programs for possible recommendations of appropriately credentialed special education personnel. (Education Code 56060, 56063)

### Notifications

\*\*\*Note: Education Code 44915 and 44916 require the Governing Board to classify substitute and temporary employees at the time of initial employment and each July thereafter; see the accompanying Board policy. In addition, Education Code 44916 requires the district to provide temporary employees written notice of their status at the time of initial employment. In *Kavanaugh v. West Sonoma County Union High School District*, the California Supreme Court determined that a temporary employee who received such notice three weeks after she started work was probationary rather than temporary. Although the notice was sent immediately after the board approved the employee's appointment at the first available meeting, the court found that an employee must receive notice of temporary classification before starting work.\*\*\*

\*\*\*Note: Temporary athletic team coaches may be an exception to the notice requirement. In *Neily v. Manhattan Beach Unified School District*, a dismissed employee argued that, because the district did not provide a written statement of classification in accordance with Education Code

44916, it had a mandatory duty to classify him as a probationary employee. However, the court did not accept that the only path to defining a position as temporary is through district notification of that classification, and held that a second path to defining a position as temporary is through a specific section of the Education Code that expressly defines the position as temporary. The court determined that a temporary athletic team coach who holds no other position in the district is deemed a temporary employee pursuant to Education Code 44919.\*\*\*

At the time of initial employment during each school year, each new temporary employee shall receive a written statement indicating his/her employment status and salary. This statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. (Education Code 44916)

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

Time of initial employment means before the employee starts work. (Kavanaugh v. West Sonoma County Union High School District)

The Superintendent or designee shall notify all substitute and part-time certificated employees, within 30 days of their hire, of their right to elect membership in a defined benefit program under a qualified retirement plan. The employee shall sign a form provided by the system to acknowledge receipt of this notice and to indicate whether he/she elects or declines membership. Election of membership shall be irrevocable for all future employment to perform creditable service. (Education Code 22455.5, 22515)

#### Assignments

\*\*\*Note: 5 CCR 80025-80025.5 specify restrictions pertaining to the number of days that an emergency substitute permit holder may substitute for any one teacher during the school year; see AR 4112.2 - Certification.\*\*\*

A person who holds an emergency 30-day substitute permit, emergency career substitute permit, emergency substitute permit for prospective teachers, or emergency substitute permit for career technical education shall be restricted in the number of days he/she may substitute for any one teacher in accordance with 5 CCR 80025-80025.5.

In placing substitute teachers in special education classrooms, the district shall give first priority to substitute teachers with the appropriate special education credential(s), second priority to substitute teachers with any other special education credential, and third priority to substitute teachers with a regular teaching credential. An inappropriately credentialed substitute teacher shall not serve as a substitute for a special education teacher for a period of more than 20 cumulative school days for each special education teacher absent during each school year. The district may apply to the Superintendent of Public Instruction for an extension of 20 school days, or for a longer period in extraordinary circumstances. (Education Code 56060-56062)

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## **Board Policy**

### **Staff Development**

BP 4131

#### **Personnel**

\*\*\*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 (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 Governing Board believes that, in order to maximize student learning and achievement, certificated staff members must be continuously learning and improving 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.

(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, in the development of the district's staff development program. He/she shall ensure that the district's staff development program is aligned with district priorities for student achievement, 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.\*\*\*

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

3. Use of technologies to enhance instruction

(cf. 0440 - District Technology Plan)  
(cf. 4040 - Employee Use of Technology)  
(cf. 6163.4 - Student Use of Technology)

4. Sensitivity to and ability to meet the needs of diverse student populations, including, but not limited to, students 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. 4112.22 - Staff Teaching English Learners)  
(cf. 4112.23 - Special Education Staff)  
(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, tolerance, and discipline, including conflict resolution and hatred prevention

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5137 - Positive School Climate)

(cf. 5138 - Conflict Resolution/Peer Mediation)

(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)

10. Knowledge of topics related to student health, safety, and welfare

(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. 5141.4 - Child Abuse Prevention and Reporting)

(cf. 5141.52 - Suicide Prevention)

(cf. 5145.3 - Nondiscrimination/Harassment)

(cf. 5145.7 - Sexual Harassment)

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. 4119.42/4219.42/4319.42- 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), provisional internship permit (5 CCR 80021.1), or 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)

(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.

(cf. 0500 - Accountability)

Legal Reference:

EDUCATION CODE

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  
52060-52077 Local control and accountability plan  
56240-56245 Staff development; service to persons with disabilities  
99200-99206 Subject matter projects

GOVERNMENT CODE

3543.2 Scope of representation of employee organization

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

6601-6702 Preparing, Training and Recruiting High Quality Teachers and Principals

PUBLIC EMPLOYMENT RELATIONS BOARD DECISIONS

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

Management Resources:

CSBA PUBLICATIONS

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

COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

California Standards for the Teaching Profession, 2009

WEB SITES

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

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

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

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

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# **Board Policy**

## **Nonschool Employment**

BP 4136 4236,4336  
**Personnel**

\*\*\*Note: In order to help prevent financial conflicts of interest, Government Code 1126 prohibits a district employee or Governing Board member from engaging in any activity which is inconsistent, incompatible, in conflict with, or inimical to his/her duties. Government Code 1126 mandates the district to adopt procedures regarding this prohibition. See BB 9270 - Conflict of Interest for language regarding incompatible activities of Board members and other designated employees. Also see BP 4135/4235/4335 - Soliciting and Selling. \*\*\*

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

In order to help maintain public trust in the integrity of district operations, the Governing Board expects all employees to give the responsibility of their positions precedence over any other outside employment. A district employee may receive compensation for outside activities as long as these activities are not inconsistent, incompatible, in conflict with, or inimical to his/her district duties.

(cf. 4119.21/4219.21/4319.21 - Professional Standards)  
(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)  
(cf. 9270 - Conflict of Interest)

\*\*\*Note: Pursuant to Government Code 1126, the district may determine which particular outside activities would be incompatible with an employee's duties. The following list may be modified to reflect any specific positions or activities which the district has determined to be incompatible. \*\*\*

An outside activity shall be considered inconsistent, incompatible, or inimical to district employment when such activity: (Government Code 1126)

1. Requires time periods that interfere with the proper, efficient discharge of the employee's duties
2. Entails compensation from an outside source for activities which are part of the employee's regular duties
3. Involves using the district's name, prestige, time, facilities, equipment, or supplies for private gain
4. Involves service which will be wholly or in part subject to the approval or control of another district employee or Board member

(cf. 1321 - Solicitation of Funds from and by Students)  
(cf. 3300 - Expenditures and Purchases)  
(cf. 4040 - Employee Use of Technology)  
(cf. 4132/4232/4332 - Publication or Creation of Materials)  
(cf. 4135/4235/4335 - Soliciting and Selling)  
(cf. 6161.1 - Selection and Evaluation of Instructional Materials)

\*\*\*Note: Government Code 1126 mandates that the district's procedure include a provision for giving notice to employees of the determination of whether an activity is prohibited and of disciplinary action to be taken, as well as a process for employees to appeal either the determination or the imposition of disciplinary action. The following two paragraphs should be modified to reflect district practice. \*\*\*

An employee wishing to accept outside employment that may be inconsistent, incompatible, in conflict with, or inimical to the employee's duties shall file a written request with his/her immediate supervisor describing the nature of the employment and the time required. The supervisor shall evaluate each request based on the employee's specific duties within the district and determine whether to grant authorization for such employment.

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

The supervisor shall inform the employee whether the outside employment is prohibited. The employee may appeal a supervisor's denial of authorization to the Superintendent or designee. An employee who continues to pursue a prohibited activity may be subject to disciplinary action.

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)  
(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)  
(cf. 4144/4244/4344 - Complaints)  
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

## Tutoring

\*\*\*Note: 5 CCR 80334 prohibits a certificated employee from accepting any compensation or benefit, other than his/her regular compensation, for the performance of any service which he/she must perform within the scope of his/her district employment. However, 5 CCR 80334 does not apply to overtime or the performance of supplemental services at the district's request, nor does it restrict the acceptance of gifts or tokens of minimal value offered and accepted openly from students, parents/guardians, or other persons in recognition or appreciation of service.\*\*\*

\*\*\*Note: The following section may be modified to reflect district practice. \*\*\*

A certificated employee shall not accept any compensation or other benefit for tutoring a student enrolled in his/her class(es). An employee who wishes to tutor another district student shall first request authorization from his/her supervisor in accordance with this Board policy. If authorization is granted, the employee shall not use district facilities, equipment, or supplies when providing the tutoring service.

Legal Reference:

EDUCATION CODE

35160 Authority of governing boards

35160.1 Broad authority of school districts

51520 Prohibited solicitation on school premises

GOVERNMENT CODE

1126 Incompatible activities of employees

1127 Incompatible activities; off duty work

1128 Incompatible activities, attorney

CODE OF REGULATIONS, TITLE 5

80334 Unauthorized private gain or advantage

ATTORNEY GENERAL OPINIONS

70 Ops.Cal.Atty.Gen. 157 (1987)

Management Resources:

WEB SITES

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

Fair Political Practices Commission: <http://www.fppc.ca.gov>

(9/91) 7/08

## **Board Policy**

### **Bargaining Units**

BP 4140 4240,4340

#### **Personnel**

\*\*\*Note: Pursuant to Government Code 3544, an employee organization may become the employees' exclusive representative for negotiations by filing a request with the district providing proof that a majority of the employees in an appropriate unit wish to be represented by that organization. Notice of such request must be immediately posted conspicuously on all employee bulletin boards in each district facility in which members of the unit are employed. Government Code 3544.1 requires the district to grant the request for recognition unless (1) the district doubts the appropriateness of the unit, (2) another employee organization files a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 work days of the posting of notice of the written request, or (3) the district currently has a lawful written agreement with another employee organization representing the same employees.\*\*\*

\*\*\*Note: Pursuant to Government Code 3540.1, the definition of "exclusive representative" includes representation of "all public school employees" other than management and confidential employees, as defined.\*\*\*

\*\*\*Note: Government Code 3543 provides that public school employees have the right to represent themselves individually in their employment relations with the district except that, once an exclusive representative has been recognized, an employee in that unit is prohibited from meeting and negotiating with the district.\*\*\*

The Governing Board recognizes the right of district employees to form a bargaining unit, select an employee organization as their exclusive representative, and be represented by that organization in their employment relationship with the district. The Board is committed to negotiating in good faith with recognized employee organizations and respecting the rights of employees and employee organizations.

(cf. 4141/4241 - Collective Bargaining Agreement)  
(cf. 4143/4243 - Negotiations/Consultation)  
(cf. 9000 - Role of the Board)

The district shall not dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. (Government Code 3543.5)

#### **Formation of Bargaining Units**

Certificated and classified employees shall not be included in the same bargaining unit.  
(Government Code 3545)

The district may recognize a bargaining unit of supervisory employees if: (Government Code

3545)

1. The bargaining unit includes all supervisory employees.
2. The supervisors are not represented by the same organization that represents employees whom the supervisory employees supervise.

(cf. 4300 - Administrative and Supervisory Personnel)  
(cf. 4301 - Administrative Staff Organization)  
(cf. 4312.1 - Contracts)

For this purpose, supervisory employee means any employee, regardless of job description, having the authority, in the interest of the district, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, assign work, direct, adjust grievance of other employees, or effectively recommend that action. The exercise of this authority shall not be merely routine or clerical in nature, but shall require the use of independent judgment. (Government Code 3540.1)

\*\*\*Note: Pursuant to Government Code 3543.4, management and confidential employees, as defined in Government Code 3540.1, are excluded from the right to be represented in negotiations by an employee organization. The Public Employment Relations Board ultimately determines, based upon the duties of the position, which positions qualify as "management" or "confidential" and thus are excluded from bargaining.\*\*\*

Employees serving in management, senior management, or confidential positions shall not be represented by an exclusive representative. Such employees may represent themselves individually or may be represented by an employee organization whose membership is composed entirely of employees designated as holding those positions. When represented by an employee organization, that organization shall not meet and negotiate with the district. For this purpose: (Government Code 3540.1, 3543.4)

1. Management employee means any employee who has significant responsibilities for formulating district policies or administering district programs, and whose position is designated as a management position by the Board.
2. Confidential employee means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

#### Membership

\*\*\*Note: Government Code 3550, as amended by SB 866 (Ch. 53, Statutes of 2018), prohibits a district from deterring or discouraging employees or job applicants from authorizing representation by or making dues deductions to an employee organization.\*\*\*

The district shall not deter or discourage employees or job applicants from becoming or remaining

members of an employee organization, authorizing representation by an employee organization, or authorizing dues or fee deductions to an employee organization. In addition, the district shall not impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of their membership or nonmembership in an employee organization. (Government Code 3543.5, 3550)

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

\*\*\*Note: The following paragraph is optional. Government Code 3553, as added by SB 866 (Ch. 53, Statutes of 2018), establishes requirements for districts that choose to disseminate a mass communication regarding employees' rights to join, support, or refrain from joining or supporting an employee organization. A "mass communication" means any written document, including a script for an oral or recorded presentation or message, intended for multiple employees.\*\*\*

\*\*\*Note: Districts should exercise caution and consult with legal counsel before communicating with employees about their rights to join or not join an employee organization to avoid violating the law against unfair labor practices. When an employee approaches the district with questions specifically about the benefits of the membership in an employee organization, the employee should be referred to the employee organization.\*\*\*

The Superintendent or designee may communicate with district employees regarding their rights under the law. Such communications shall be factual and accurate, and may not promise a benefit, threaten a reprisal, or in any way deter or discourage employees from joining an employee organization or paying dues.

However, before disseminating to multiple employees any mass communication concerning employees' right to join or support an employee organization or to refrain from joining or supporting an employee organization, such as a written document or script for oral or recorded presentation or message, the Superintendent or designee shall meet and confer with the employees' exclusive representative regarding the content of the communication. If the district and exclusive representative do not come to agreement on the content of the mass communication, the Superintendent or designee may disseminate the district's mass communication provided that, at the same time, copies of the exclusive representative's communication, which shall be of reasonable length, are also distributed. (Government Code 3553)

#### Access to Employee Orientations and Contact Information

The district shall permit employee organizations access to new employee orientations where newly hired employees are advised, whether in person, online, or through other means or mediums, of their employment status, rights, benefits, duties, responsibilities, or any other employment-related matters. The district shall provide employee organizations at least 10 days' notice in advance of an orientation. However, in any specific instance where an unforeseeable, urgent need critical to the district's operation prevents the required 10 days' notice, a shorter notice may be provided. (Government Code 3555.5, 3556)

The structure, time, and manner of the access to new employee orientations shall be determined by



mutual agreement of the district and the exclusive representative, following a request to negotiate by either party. If the district and exclusive representative fail to reach an agreement, matters related to the access to new employee orientation shall be subject to compulsory interest arbitration. The district and employee organization may mutually agree to submit any dispute to compulsory interest arbitration at any time. In addition, if any dispute arises during negotiations and is not resolved within 45 days after the first meeting or within 60 days after the initial request to negotiate, whichever is earlier, either party may make a demand for compulsory interest arbitration. When any such dispute arises during the summer when the district's administrative office is closed, the timeline shall commence on the first day the administrative office reopens. The decision of the arbitrator shall be final and binding on the parties. (Government Code 3556, 3557)

\*\*\*Note: SB 866 (Ch. 53, Statutes of 2018) amended Government Code 3556 to add the following requirement.\*\*\*

The date, time, and place of the orientation shall not be disclosed to anyone other than employees, the exclusive representative, or a vendor that is contracted to provide a service for purposes of the orientation. (Government Code 3556)

\*\*\*Note: Pursuant to Government Code 3558, districts are required to provide recognized employee organizations with specified contact information for new employees in the bargaining unit, as provided below. The information required by Government Code 3558 must be provided in a manner consistent with Government Code 6254.3, which authorizes disclosure of an employee's home address, home telephone number(s), and personal cell phone number to an employee organization unless the district receives a written request by the employee to not disclose the information. Pursuant to Government Code 6254.3, the personal email address of an employee is not disclosable unless used by the employee to conduct public business. The following paragraph should be revised if districts have an agreement with their employee organization(s) requiring more frequent or more detailed contact lists.\*\*\*

\*\*\*Note: In *County of Los Angeles v. Service Employees International Union, Local 721*, the California Supreme Court held that (1) an employer has a duty to provide information relevant to collective bargaining to the applicable bargaining unit and failure to do so is a violation of the employer's obligation to bargain in good faith; (2) the disclosure of an employee's home address and phone number(s) by an employer to the union does not violate the employee's constitutional right of privacy; and (3) other avenues for implementing privacy safeguards are available, such as bargaining for a notice and opt-out procedure or drafting employment contracts that will notify employees that their home contact information is subject to disclosure to the union and that they may request nondisclosure.\*\*\*

The Superintendent or designee shall provide an exclusive representative with the name, job title, department, work location, telephone numbers (work, home, and personal cell phone), personal email address(es) on file with the district, and home address of any newly hired employee in the bargaining unit, within 30 days of hire or by the first pay period of the month following hire. In addition, the Superintendent or designee shall provide the same information in regard to all employees in the bargaining unit to an exclusive representative at least every 120 days, unless

more frequent or detailed lists are required by agreement with the exclusive representative. (Government Code 3558, 6254.3)

However, the Superintendent or designee shall not disclose the home address and any phone numbers on file for employees performing law enforcement-related functions, nor shall he/she disclose the home address, home or personal cell phone number(s), or personal email address(es) of any employee who is a participant in the Safe at Home address confidentiality program pursuant to Government Code 6207 or any employee who provides written request that the information not be disclosed for this purpose. Following receipt of a written request, the district shall remove the employee's home address, home and personal cell phone numbers, and personal email address from any mailing list maintained by the district unless the list is only used by the district to contact the employee. (Government Code 3558, 6207, 6254.3)

(cf. 1340 - Access to District Records)

#### Membership Dues or Other Payments to an Employee Organization

\*\*\*Note: Bargaining unit employees who choose to join the employee organization pay membership dues, which are deducted from the employee's salary or wage payment as provided below. Pursuant to the U.S. Supreme Court's decision in Janus v. American Federation of State, County, and Municipal Employees, bargaining unit employees who choose not to join an employee organization may no longer be required to pay any fees to the employee organization. However, pursuant to Education Code 45060 and 45168, as amended by SB 866 (Ch. 53, Statutes of 2018), an employee who chooses not to join an employee organization may be charged fees for applicable services, programs, or committees provided to him/her by the employee organization if that nonmember employee first affirmatively and voluntarily consents to pay those fees to the employee organization, as required by Janus v. AFSCME.\*\*\*

\*\*\*Note: As provided in the following section, Education Code 45060 and 45068, as amended by SB 866 (Ch. 53, Statutes of 2018), set forth the process for handling authorizations, changes, and cancellations for dues or other payments, and provide safeguards for districts that rely on information provided by an employee organization concerning such payroll deductions (i.e., the employee organization's indemnification of the district against any employee's claim based on such reliance).\*\*\*

\*\*\*Note: Specifically, Education Code 45060 and 45168, as amended, provide that the employee organization will handle and process employee written authorizations if it certifies that it has and will maintain individual employee authorizations. When such certification is provided to the district, the employee organization is not required to submit a copy of the written authorization in order for the payroll deductions to be effective, unless there is a dispute about the existence or terms of the written authorization. The employee organization is required to indemnify the district for any employee claims regarding payroll deductions made by the district in reliance on notification from the employee organization.\*\*\*

\*\*\*Note: When an employee organization declines to provide such certification pursuant to Education Code 45060 and 45168, then the district should request a copy of the employee written

authorization before making the payroll deductions. Education Code 45060 and 45168 require that the district honor the terms of the employee's written authorization for payroll deductions, which thus requires the district to first see a copy of such authorization in order to honor its terms.\*\*\*

\*\*\*Note: Pursuant to Education Code 45060 and 45168, as amended, employee requests to cancel or change authorization for payroll deductions must be directed to the employee organization rather than the district.\*\*\*

When drawing an order for the salary or wage payment of a bargaining unit employee of an employee organization, the district shall deduct any amount which has been requested by the employee in a revocable written authorization for the purpose of paying dues or other payments for any service, program, or committee provided or sponsored by the employee organization. (Education Code 45060, 45168)

An employee organization that certifies that it has and will maintain individual employee authorizations shall handle and process employee written authorizations for payroll deductions. When an employee organization provides such a certification to the district, the district shall rely on information from the employee organization regarding the amounts of such payroll deductions and from which employees. The employee organization shall not be required to submit to the district a copy of the written authorization in order for the payroll deductions to be effective. However, when there is a dispute about the existence or terms of the written authorization, a copy of the employee's written authorization shall be submitted to the district. The employee organization shall indemnify the district for any employee claims regarding payroll deductions made by the district in reliance on notification from the employee organization. (Education Code 45060, 45168)

When an employee organization which has declined to certify that it will handle and process employee written authorizations makes a request for payroll deductions, the district shall request a copy of the employee's written authorization before making the payroll deductions. (Education Code 45060, 45168)

A written authorization shall remain in effect until expressly revoked in writing by the employee and pursuant to the terms of the written authorization. Employee requests to cancel or change authorizations for payroll deductions for employee organizations shall be directed to the employee organization rather than the district. The employee organization shall be responsible for processing these requests. The district shall rely on the information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed. The employee organization shall be required to indemnify the district for any claims made by an employee for deductions made by the district in reliance on information from the employee organization. (Education Code 45060, 45168)

#### Legal Reference:

#### EDUCATION CODE

45060-45061.5 Deduction of fees from salary or wage payment, certificated employees

45100.5 Senior management positions  
45104.5 Abolishment of senior classified management positions  
45108.5 Definition of senior classified management employees  
45108.7 Waiver of provisions of 45108.5  
45168 Deduction of fees from salary or wage payment, classified employees  
45220-45320 Merit system, classified employees  
GOVERNMENT CODE  
3540-3549.3 Educational Employment Relations Act, especially:  
3540.1 Definitions  
3543.4 Management position; representation  
3545 Appropriateness of unit; basis  
3550-3552 Prohibition on public employers deterring or discouraging union membership  
3555-3559 Public employee communication, information and orientation  
6205-6210 Confidentiality of addresses for victims of domestic violence, sexual assault or stalking  
6254.3 Disclosure of employee contact information to employee organization  
6503.5 Joint powers agencies  
53260-53264 Employment contracts  
CODE OF REGULATIONS, TITLE 8  
33015-33490 Recognition of exclusive representative; proceedings  
33700-33710 Severance of established unit  
34020 Petition to rescind organizational security arrangement  
34055 Reinstatement of organizational security arrangement  
COURT DECISIONS  
Janus v. American Federation of State, County and Municipal Employees, Council 31, (2018) 138 S.Ct. 2448  
Friedrichs v. California Teachers Association, et al., (2016) 136 S.Ct. 1083  
County of Los Angeles v. Service Employees International Union, Local 721, (2013) 56 Cal. 4th 905

#### Management Resources:

##### WEB SITES

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

Association of California School Administrators: <http://www.acsa.org>

California Federation of Teachers: <http://www.cft.org>

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

California Teachers Association: <http://www.cta.org>

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

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## **Board Policy**

### **Negotiations/Consultation**

BP 4143 4243

#### **Personnel**

\*\*\*Note: Districts that have recognized a bargaining unit of supervisory employees as authorized by Government Code 3545 (see BP 4140/4240/4340 - Bargaining Units) may choose to triple code this Board policy as BP 4143/4243/4343 - Negotiations/Consultation. \*\*\*

The Governing Board recognizes its responsibility to represent the public's interests in the collective bargaining process. In ratifying agreements on employee contracts, the Board shall balance the needs of staff and the priorities of the district in order to provide students with a high-quality instructional program based on a sound, realistic budget.

(cf. 0200 - Goals for the School District)  
(cf. 3100 - Budget)  
(cf. 4140/4240/4340 - Bargaining Units)  
(cf. 4141/4241 - Collective Bargaining Agreement)

The Board and the Superintendent shall establish a bargaining team to assist in analyzing contract provisions and conducting contract negotiations. The Board shall provide its negotiator(s) with expected outcomes and clear parameters for acceptable contract provisions which promote the realization of district goals and priorities.

The Board and its bargaining team shall negotiate in good faith with exclusive employee representatives on wages, hours of employment, and other terms and conditions of employment identified in law as being within the scope of representation. (Government Code 3543.2)

\*\*\*Note: As amended by AB 1611 (Ch. 801, Statutes of 2014), Government Code 3543.2 requires advance "reasonable written notice" to the exclusive employee representative whenever the district intends to make any change to matters within the scope of representation of the exclusive representative. This amendment to law is consistent with previous decisions by the Public Employment Relations Board (PERB). \*\*\*

When the district intends to make any change to matters within the scope of representation, it shall give reasonable written notice of its intent to the exclusive representative for the purpose of providing the exclusive representative a reasonable amount of time to negotiate with the district regarding the proposed changes. (Government Code 3543.2)

\*\*\*Note: Pursuant to Government Code 3543.1, a reasonable number of employees must be granted paid released time during the work day to participate in negotiations. In such cases, the employee is compensated by the district. This released time is distinct from the time off allowed pursuant to Education Code 44987 and 45210 for employees to serve as elected officers of their local, statewide, or national employee organization, which is reimbursed by the employee



organization, except as negotiated otherwise for classified bargaining units; see AR 4161.2/4261.2/4361.2 - Personal Leaves. \*\*\*

A reasonable number of representatives of the employee organization shall have the right to receive reasonable periods of released time without loss of district compensation when meeting and negotiating and/or for the processing of grievances. (Government Code 3543.1)

\*\*\*Note: Pursuant to Government Code 54957.6, the Governing Board may meet in closed session to review its position and/or instruct its designated representative regarding salaries, salary schedules, or benefits or to discuss any other matter within the statutorily provided scope of representation for both represented and unrepresented groups. Government Code 3549.1 specifies that closed sessions may be held for (1) any meeting and negotiating discussion between the district and employee organization; (2) any meeting of a mediator with either party or both parties; (3) any hearing, meeting, or investigation conducted by a factfinder or arbitrator; and (4) an executive session of the district or between the district and its designated representative to discuss its position regarding any matter within the scope of representation and instructing its designated representatives. See BB 9321 - Closed Session Purposes and Agendas. Closed sessions properly conducted pursuant to Government Code 3549.1 are exempt from the Brown Act. \*\*\*

The Board and its bargaining team shall establish standards of conduct pertaining to the negotiations process for members of the bargaining team. Certain meetings related to negotiations shall not be open to the public in accordance with Government Code 3549.1 and 54957.6, except as otherwise required by law. Matters discussed in these meetings shall be kept in strict confidence in accordance with law.

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)  
(cf. 9010 - Public Statements)  
(cf. 9011 - Disclosure of Confidential/Privileged Information)  
(cf. 9321 - Closed Session Purposes and Agendas)

The Board and its negotiator(s) shall not knowingly provide the employee organization with inaccurate information regarding the financial resources of the district. (Government Code 3543.5)

The Board shall monitor the progress of negotiations and carefully consider how proposed contract provisions would affect the district's short- and long-term fiscal, programmatic, instructional, and personnel goals.

\*\*\*Note: Government Code 3547 and 3547.5 require the Board and exclusive representative, at public meetings, to present their initial contract proposals before commencing negotiations and to make public the major provisions of the proposed agreement before entering into such agreement; see BP 4143.1/4243.1 - Public Notice - Personnel Negotiations. \*\*\*

The Board and/or Superintendent or designee shall keep the public informed about the progress of negotiations and the ways in which negotiations may affect district goals unless otherwise agreed upon by the district and exclusive representative.

(cf. 4143.1/4243.1- Public Notice - Personnel Negotiations)

\*\*\*Note: Pursuant to Government Code 3540.2, if the district has a qualified or negative certification on an interim fiscal report, indicating that it may not or will not be able to meet its financial obligations for the current or subsequent fiscal years (see AR 3460 - Financial Reports and Accountability), it must allow the county office of education 10 working days to review and comment on any proposed collective bargaining agreement. During that time, the County Superintendent of Schools will notify the Superintendent, Board, and each parent-teacher organization of the district if, in his/her opinion, the proposed agreement would endanger the fiscal well-being of the district. \*\*\*

Whenever the district has a qualified or negative certification on an interim fiscal report, it shall allow the county office of education at least 10 working days to review and comment on any proposed agreement with exclusive representatives of employees. The district shall provide the County Superintendent of Schools with all information relevant to gain an understanding of the financial impact of any final collective bargaining agreement. (Government Code 3540.2)

(cf. 3460 - Financial Reports and Accountability)

Once the final terms of the agreement have been ratified by the membership of the employee organization, the contract shall be presented to the Board at a public meeting for acceptance.

Any agreement adopted by the Board may be for a term not to exceed three years. (Government Code 3540.1)

\*\*\*Note: Pursuant to Government Code 3548, if the district and employee organization are unable to reach agreement, either party may declare an impasse and request assistance from PERB in instituting mediation procedures in accordance with Government Code 3548-3548.8. \*\*\*

In the event of an impasse in negotiations, the district shall participate in good faith in mediation and fact-finding procedures pursuant to Government Code 3548-3548.8. (Government Code 3543.5)

(cf. 4141.6/4241.6 - Concerted Action/Work Stoppage)

Following adoption of the collective bargaining agreement, any subsequent amendments shall be executed in writing and ratified by the Board and the employees' exclusive representative.

#### Consultation

\*\*\*Note: Pursuant to Government Code 3543.2, the exclusive representative of certificated personnel has the right to consult with the Board on matters specified below; all other matters are reserved to the Board. PERB has determined that consultation procedures are a mandatory subject of bargaining. Although required to consult on these matters, the Board should address the matters in policies and regulations rather than incorporating them into the negotiated agreement. \*\*\*

The exclusive representative of certificated staff may consult with the Board on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks.

(cf. 6011 - Academic Standards)

(cf. 6141 - Curriculum Development and Evaluation)

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

(cf. 9310 - Board Policies)

Legal Reference:

EDUCATION CODE

44987 Service as officer of employee organization (certificated)

45210 Service as officer of employee organization (classified)

GOVERNMENT CODE

3540-3549.3 Educational Employment Relations Act

PUBLIC EMPLOYMENT RELATIONS BOARD DECISIONS

Berkeley Council of Classified Employees v. Berkeley Unified School District, (2008) PERB Decision No. 1954

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/labormgmt>

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

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

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# Board Policy

## Public Notice - Personnel Negotiations

BP 4143.1 4243.1

### Personnel

Because the Governing Board has a responsibility to represent the public's interest in negotiations with employee organizations, the Board is committed to keeping the public informed about issues being negotiated, providing members of the public an opportunity to express their views, and disclosing the position of each Board member in accordance with law.

- (cf. 1112 - Media Relations)
- (cf. 4141/4241 - Collective Bargaining Agreement)
- (cf. 4143/4243 - Negotiations/Consultation)
- (cf. 9000 - Role of the Board)
- (cf. 9010 - Public Statements)
- (cf. 9011 - Disclosure of Confidential/Privileged Information)

### Public Notice/Sunshining of Initial Proposals

\*\*\*Note: The process of notifying the public about initial proposals prior to starting negotiations is often referred to as "sunshining."\*\*\*

All initial contract proposals of the Board and an employee organization which relate to matters within the scope of representation shall be presented at a public Board meeting and shall thereafter be public records. (Government Code 3547)

- (cf. 1340 - Access to District Records)
- (cf. 9321 - Closed Session Purposes and Agendas)
- (cf. 9321.1 - Closed Session Actions and Reports)

Meeting and negotiating between district and employee organization representatives shall not take place on these initial proposals until a reasonable time has elapsed after the submission of these proposals to enable the public to become informed and to express itself regarding the proposals at a public Board meeting. (Government Code 3547)

After the public has had an opportunity to provide input, the Board shall adopt its initial proposal at a public meeting. (Government Code 3547)

New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on any such subject by the Board, each Board member's vote also shall be made public within 24 hours. (Government Code 3547)

### Public Disclosure of Proposed Agreement

Before entering into a written agreement covering matters within the scope of representation, the Board shall disclose, at a public meeting, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the district under the agreement for the current and subsequent fiscal years. (Government Code 3547.5)

\*\*\*Note: Government Code 3547.5 requires the Superintendent and chief business official to certify that the costs under the agreement can be met by the district during the term of the agreement and to itemize any budget revision necessary to meet the costs of the agreement in each year of its term. If the Board does not approve the necessary budget revisions, the County Superintendent of Schools is required to issue a qualified or negative certification for the district on the next interim report. Because Government Code 3547.5 requires that the certification be prepared in a format similar to that of the fiscal reports required by Education Code 42130 and 42131, the certification by the Superintendent and chief business official may be "positive," "negative," or "qualified." See AR 3460 - Financial Reports and Accountability.\*\*\*

\*\*\*Note: The Superintendent and chief business official's certification shall be submitted to the Board prior to the Board's approval of the agreement. It is recommended that labor negotiators be instructed to make any agreements contingent on the certification and that district legal counsel be consulted as appropriate. \*\*\*

The Superintendent and chief business official shall certify, in writing, that any costs incurred by the district under the agreement can be met by the district during the term of the agreement and shall submit the certification to the Board prior to the Board's approval of the agreement. The certification shall itemize any budget revision necessary to meet the costs of the agreement in each year of its term. (Government Code 3547.5)

(cf. 3460 - Financial Reports and Accountability)

\*\*\*Note: In Management Advisory 92-01, the California Department of Education (CDE) recommends that a copy of the proposed agreement be made available to the public prior to the day of the meeting. However, the district may determine the number of days that the agreement should be made available prior to the meeting, and should modify the following optional paragraph accordingly. \*\*\*

A copy of the proposed agreement shall be made available to the public prior to the day of the Board meeting.

\*\*\*Note: In Management Advisory 92-01, the CDE recommends that the Superintendent provide a summary of the major provisions and changes in the proposed agreement, as provided in the following optional paragraph. Also see the accompanying administrative regulation.\*\*\*

The Superintendent or designee shall prepare a summary of the major provisions and changes in the proposed agreement.

Legal Reference:

EDUCATION CODE

42130-42134 Financial reports and certifications

GOVERNMENT CODE

3540.2 Meeting and negotiating in public educational employment

3547 Proposals relating to representation; informing public

3547.5 Major provisions of agreement with exclusive representative

CODE OF REGULATIONS, TITLE 8

32075 PERB regional office defined

Management Resources:

WEB SITES

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

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

Fiscal Crisis and Management Assistance Team: <http://www.fcmat.org>

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

School Services of California: <http://www.sscal.com>

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# Administrative Regulation

## Public Notice - Personnel Negotiations

AR 4143.1 4243.1  
Personnel

### Public Disclosure of Proposed Agreement

\*\*\*Note: Government Code 3547.5 requires that the Board, prior to entering into a written agreement, disclose the major provisions of the proposal; see the accompanying Board policy. The California Department of Education (CDE), in Management Advisory 92-01, recommends that the disclosure include, at a minimum, the following information and encourages districts to expand this information to address issues unique to their situation. \*\*\*

The Superintendent or designee shall prepare a summary of the proposed agreement which shall include, but may not necessarily be limited to:

1. Major provisions of the agreement that affect compensation, such as:
  - a. Direct increases in salaries and percentage change in on-schedule salaries
  - b. Changes in health and welfare benefits
  - c. Changes in health and welfare benefit dollar contributions by the district
  - d. Changes in step and column or longevity provisions
  - e. Changes in overtime, differential, callback, and standby pay provisions
  - f. Changes in staffing ratios
  - g. One-time bonuses or off-the-schedule increases
2. Other provisions that will result in increased costs to the district even if they do not involve an increase in employee compensation, such as class-size reduction or increased number of staff development days
3. Costs of the proposed agreement, for the current and subsequent fiscal years, categorized for salaries, benefits, other compensation, and other noncompensation costs, including percentage increase of total compensation (salaries, benefits, and other compensation provisions) for the average represented employee as a result of the agreement and the approximate cost to the district of providing a one percent increase in total compensation
4. Proposed source(s) of funding for the current and subsequent fiscal years including the assumptions used to determine available resources to meet the obligations of the proposed

agreement

5. Other major provisions that do not directly affect the district's costs, such as binding arbitration or grievance procedures

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# **Board Policy**

## **Employee Compensation**

BP 4151 4251, 4351

### **Personnel**

\*\*\*Note: Districts that include provisions related to employee compensation in their collective bargaining agreements should modify or delete the following optional policy accordingly.\*\*\*

In order to recruit and retain employees committed to the district's goals for student learning, the Governing Board recognizes the importance of offering a competitive compensation package which includes salaries and health and welfare benefits.

(cf. 3100 - Budget)

(cf. 3400 - Management of Districts Assets/Accounts)

(cf. 4000 - Concepts and Roles)

(cf. 4154/4254/4354 - Health and Welfare Benefits)

\*\*\*Note: Education Code 45023 and 45162 require the Governing Board to adopt salary schedules for certificated and classified employees, respectively. For districts operating under a merit system, Education Code 45268 specifies that the personnel commission will recommend a salary schedule for classified employees to the Board for approval and that the Board may not amend the schedule without first giving the commission an opportunity to respond to the amendments.\*\*\*

The Board shall adopt separate salary schedules for certificated, classified, and supervisory and administrative personnel. These schedules shall comply with law and collective bargaining agreements and shall be printed and made available for review at the district office. (Education Code 45022, 45023, 45160, 45162)

(cf. 4121 - Temporary/Substitute Personnel)

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4143/4243 - Negotiations/Consultation)

Each certificated employee, except an employee in an administrative or supervisory position, shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience, unless the Board and employee organization negotiate and mutually agree to a salary schedule based on different criteria. Certificated employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the grade levels at which they teach. (Education Code 45028)

(cf. 4030 - Nondiscrimination in Employment)

Salary schedules for staff who are not a part of a bargaining unit shall be determined by the Board at the recommendation of the Superintendent or designee.

(cf. 4140/4240/4340 - Bargaining Units)  
(cf. 4312.1 - Contracts)

\*\*\*Note: Pursuant to Education Code 45038, certificated employees may be paid once every two weeks, twice a month, or once every four weeks. The Board may also choose to pay certificated employees, or one or more individual employees, in 10, 11, or 12 equal payments instead of by the school month. Education Code 45039 provides that, if the Board arranges to pay certificated employees in 12 equal payments for the year, it may pay each monthly installment at the end of each calendar month, whether or not the employees are engaged in teaching during the month. Education Code 45165 addresses salary payments for classified employees who are employed 9-11 months per year.\*\*\*

\*\*\*Note: Pursuant to 26 CFR 1.409A-1, the practice of paying employees who work 10 months per year is a form of "deferred compensation." If the district allows employees to "elect" whether to receive their paychecks in such a manner, then according to the IRS, such employees must submit written election forms to the district in order to avoid any additional tax on the deferred compensation. If the district requires employees to receive their paychecks in such a manner without offering them an option, then the employees do not need to complete election forms, but the district must develop a written document describing how the employees will be paid, including the dates, schedule, and amounts of payment.\*\*\*

\*\*\*Note: Education Code 45048 and 45165 provide specific timelines for issuing salary payments depending on the frequency of payments. If payments are not made in a timely manner, the district is required to pay the employee interest on the unpaid amount.\*\*\*

\*\*\*Note: The following paragraph may be revised to reflect the payroll schedule determined by the Board.\*\*\*

The Board shall determine the frequency and schedule of salary payments, including whether payments for employees who work less than 12 months per year will be made over the course of the school year or in equal installments over the calendar year. (Education Code 45038, 45039, 45048, 45165)

\*\*\*Note: Pursuant to 29 CFR 516.4, districts are required to post a notice of the minimum wage provisions of the Fair Labor Standards Act (29 USC 201-219) in a conspicuous place at all work sites. The poster that must be used by state and local governments is available on the web site of the U.S. Department of Labor's Wage and Hour Division.\*\*\*

The Superintendent or designee shall post a notice explaining the Fair Labor Standards Act's wage and hour provisions in a conspicuous place at each work site. (29 CFR 516.4)

#### Overtime Compensation

\*\*\*Note: Pursuant to the federal Fair Labor Standards Act (FLSA) (29 CFR 553.20), employees who are not specifically exempted by law must receive overtime pay at a rate not less than one and



one-half times their regular rate of pay for hours worked in excess of 40 hours per work week. Furthermore, state law (Labor Code 510) entitles employees to an overtime pay rate after working eight hours in one day, unless an alternative schedule allowed by law is approved.\*\*\*

\*\*\*Note: Pursuant to 29 CFR 541.0-541.710, employees are exempt from the FLSA overtime rules if they are executive, administrative, or professional staff, as defined, and their salary is at or above the salary level established in 29 CFR 541.600, as amended by 81 Fed. Reg. 32391. This salary level will automatically be updated every three years beginning January 1, 2020 according to the method specified in 29 CFR 541.607. Because the federal salary limit qualifying for exemption is higher than the California salary test, the federal limit prevails.\*\*\*

\*\*\*Note: When calculating the overtime rate of pay, 29 USC 207 requires that all remuneration for employment paid to or on behalf of the employee, with specified exclusions, be considered as part of the employee's regular rate of pay. In *Flores v. City of San Gabriel*, the appeals court ruled that cash payments made in lieu of benefits must be included in the calculation.\*\*\*

\*\*\*Note: Overtime pay requirements are not applicable to school administrators or teachers in elementary or secondary schools under specific exemptions in 29 USC 213 and 29 CFR 541.303. Pursuant to 29 CFR 541.303 and 541.600, teachers do not need to meet the salary level requirement to be exempt from overtime rules. 29 CFR 541.204 provides that administrators must either meet the salary level requirement or be compensated on a salary basis that is at least equal to the entrance salary for teachers in the administrator's school to be exempt from overtime rules.\*\*\*

A district employee shall be paid an overtime rate of not less than one and one-half times his/her regular rate of pay for any hours worked in excess of eight hours in one day or 40 hours in one work week. However, employees shall be exempt from overtime rules if they are employed as teachers or school administrators or if they qualify as being employed in an executive, administrative, or professional capacity and are paid a fixed salary at or above the salary level established by federal regulations. (Labor Code 510; 29 USC 213; 29 CFR 541.0-541.710, 553.27, 553.32)

\*\*\*Note: The following optional paragraph is for use by districts that allow employees to take compensatory time off in lieu of overtime compensation as authorized by 29 USC 207 and 29 CFR 553.20-553.25. Time off in lieu of overtime compensation is allowed only if provided for in a collective bargaining agreement or other agreement and must be provided at the rate of at least one and one-half hours for each hour of overtime work.\*\*\*

\*\*\*Note: Pursuant to 29 CFR 553.21, an employee must be allowed to use earned compensatory time within a "reasonable period" after making the request. 29 CFR 553.25 provides that a "reasonable period" is determined on a case-by-case basis by considering customary work practices such as the normal work schedule, anticipated peak workloads based on past experience, emergency requirements for staff and services, and the availability of qualified substitute staff.\*\*\*

When authorized in a collective bargaining agreement or other agreement between the district and employees, an employee may take compensatory time off in lieu of overtime compensation, provided he/she has not accrued compensatory time in excess of the limits specified in 29 USC

207. An employee who has requested the use of compensatory time shall be allowed to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt district operations. (29 USC 207; 29 CFR 553.20-553.25)

For each nonexempt employee, the Superintendent or designee shall maintain records on the employee's wages, hours, and other information specified in 29 CFR 516.5-516.6.

(cf. 3580 - District Records)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

#### Legal Reference:

##### EDUCATION CODE

45022-45061.5 Salaries, especially:

45023 Availability of salary schedule

45028 Salary schedule for certificated employees

45160-45169 Salaries for classified employees

45268 Salary schedule for classified service in merit system districts

##### GOVERNMENT CODE

3540-3549 Meeting and negotiating, especially:

3543.2 Scope of representation

3543.7 Duty to meet and negotiate in good faith

##### LABOR CODE

226 Employee access to payroll records

232 Disclosure of wages

510 Overtime compensation; length of work day and week; alternative schedules

##### UNITED STATES CODE, TITLE 26

409A Deferred compensation plans

##### UNITED STATES CODE, TITLE 29

201-219 Fair Labor Standards Act, especially:

203 Definitions

207 Overtime

213 Exemptions from minimum wage and overtime requirements

##### CODE OF FEDERAL REGULATIONS, TITLE 26

1.409A-1 Definitions and covered plans

##### CODE OF FEDERAL REGULATIONS, TITLE 29

516.4 Notice of minimum wage and overtime provisions

516.5-516.6 Records

541.0-541.710 Exemptions for executive, administrative, and professional employees

553.1-553.51 Fair Labor Standards Act; applicability to public agencies

##### COURT DECISIONS

Flores v. City of San Gabriel, 9th Cir., June 2, 2016, No. 14-56421

#### Management Resources:

##### WEB SITES

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

Internal Revenue Service: <http://www.irs.gov>

School Services of California, Inc.: <http://www.sscal.com>

U.S. Department of Labor, Wage and Hour Division: <https://www.dol.gov/whd>

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## Board Policy

### Employee Property Reimbursement

BP 4156.3 4256.3, 4356.3

#### Personnel

\*\*\*Note: The following optional policy may be subject to collective bargaining agreements.\*\*\*

OPTION 1: The Governing Board does not authorize payment for the reimbursement of employee personal property which may be stolen or intentionally destroyed or damaged while being used for work-related purposes.

\*\*\*Note: The remainder of this policy is for use by districts that select Option 2.\*\*\*

OPTION 2: The Governing Board authorizes the Superintendent or designee to pay the cost of replacing or repairing employee personal property, except cash, which has been stolen or intentionally destroyed or damaged while being used for work-related purposes.

No reimbursement shall be made for accidental damage or for any loss due to lack of personal supervision or failure to keep property in a secured area.

The maximum payment shall be the amount specified by the district's insurance carrier for such loss or the amount specified in the applicable collective bargaining agreement, whichever is less.

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

(cf. 5131.5 - Vandalism and Graffiti)

Reimbursement for personal items used for work-related purposes shall be made only if:  
(Education Code 35213)

1. Use of the personal property was approved by the principal, site supervisor or designee before the property was brought to school or district premises
2. At that time, the employee and district representative agreed on the value of the property

#### Legal Reference:

##### EDUCATION CODE

35213 Reimbursement for loss, destruction or damage of personal property

48904 Liability of parent/guardian for willful misconduct; withholding of grades, diplomas and transcripts

##### CIVIL CODE

1714.1 Liability of parent or guardian for act of willful misconduct by a minor