



# Policy News

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### Customer Satisfaction Is Our Goal

If you have any comments, suggestions or questions about CSBA's sample policies and regulations or our various policy services, please contact Martin Gonzalez, deputy executive director, Financial Programs and Policy Services, at (800) 266-3382 or [mgonzalez@csba.org](mailto:mgonzalez@csba.org).

## Implementation of low-achieving schools legislation

A number of bills were passed in the Fifth Extraordinary Session (SBX5 1, SBX5 2 and SBX5 4) in an effort to make California more competitive for the federal Race to the Top grant program, including provisions related to transfers out of low-achieving schools, interventions in persistently lowest achieving schools, and parent empowerment to petition the governing board for an intervention. Although California was not one of the finalists in Phase 1 of that program, the bills are now law and will remain in effect whether or not California's application for Phase 2 RTTT funding is successful.

## Open enrollment

The Open Enrollment Act (SBX5 4), which became effective April 14, 2010, allows students enrolled in one of 1,000 schools identified by the California Department of Education as "low achieving" the option to enroll in a different school within their district of residence or within any other school district in the state.

At its July 15 meeting, the State Board of Education adopted emergency Title 5 regulations which only address the formula for creating the list of open enrollment schools. At the same meeting, the SBE introduced "regular" regulations for transfers for the 2011-12 school year and beyond. The "regular" rulemaking procedure requires that a notice be sent allowing for an initial 45-day comment period, a hearing be held (scheduled for September 14), and then a final version of the regulations be submitted to the Office of Administrative Law for approval. Given that process, the regular regulations will likely not be effective until around November. Once the regular regulations take effect, the emergency regulations will expire.

When the SBE's regular regulations become final, CSBA will provide a sample board policy and administrative regulation for transfers for the 2011-12 school year and beyond. During the SBE meeting, CSBA and others testified that proposed sections of the regulations were contrary to law and a working group of interested stakeholders was created to provide comment on the regular regulations. Given the controversy, there may be significant amendments during the public hearing and comment period and questions raised during the OAL approval process.

"It's been frustrating that the development and adoption of the Title 5 regulations by the CDE and SBE have been so delayed," said Judy Cias, associate general counsel and director of Policy Update at CSBA. CSBA staff has testified as to the hardship the state's delay is causing for districts. According to Cias, any policy developed now would be incomplete and would need to be revised again in a few months after the regulation process is completed.

CSBA has issued *Frequently Asked Questions: Open Enrollment Act for Low-Achieving Schools as Added by SBX5 4/Romero* to help explain the legislation and SBE regulations and to suggest actions that districts should take.



## Interventions in persistently lowest achieving schools

The CDE has identified and posted a list of 188 “persistently lowest achieving schools” in the state based on the criteria specified in SBX5 1. If a district or county office of education has one or more schools on this list, the board must hold at least two public hearings and select a reform model to be implemented in each school. To fund these interventions, the district may apply for funds through the School Improvement Grant authorized by 20 USC 6303. The models include:

- **Turnaround model.** The district/COE must replace the principal and up to 50 percent of the staff and grant the new principal sufficient operational flexibility to implement a comprehensive approach to improve student achievement and graduation rates.
- **Restart model.** The district/COE converts a school or closes and reopens a school under a charter school operator, charter management organization or education management organization.
- **School closure.** The school is closed and its students enrolled in other, higher achieving schools within the district/COE.
- **Transformation model.** The district/COE implements a range of strategies including replacement of the principal, staff evaluation systems that include use of student achievement data, rewards for staff who have increased student achievement and removal of staff who have not, high-quality professional development and other strategies designed to recruit, place and retain skilled staff.

CSBA plans to issue a new sample policy and administrative regulation addressing the provisions of this intervention program and related federal regulations, approved in 2009 and 2010, applicable to the School Improvement Grant program. No state regulations have been proposed for this program.

For further information about the identification of persistently lowest achieving schools, see [www.cde.ca.gov/ta/ac/pl](http://www.cde.ca.gov/ta/ac/pl). Information about the School Improvement Grant is available at [www.cde.ca.gov/ar/ts](http://www.cde.ca.gov/ar/ts) or [www2.ed.gov/programs/sif](http://www2.ed.gov/programs/sif).

## Parent empowerment

When a school is not identified as “persistently lowest achieving” but meets other specified criteria (i.e., is subject to corrective action under the No Child Left Behind Act, continues to be unable to make adequate yearly progress and has an Academic Performance Index of less than 800), parents may petition the board to implement one of the intervention models listed above or other alternative governance arrangements authorized by the No Child Left Behind Act. The Parent Empowerment Act is limited to no more than 75 schools statewide. The schools that will be subject to the petition are the first 75 schools whose district/COE notifies the Superintendent of Public Instruction that the board has approved the petition.

Emergency regulations to implement the program were approved by the SBE at its July meeting and submitted to the Office of Administrative Law, but were withdrawn by the SBE on August 5. These regulations would have defined “parent” for the purpose of determining who is eligible to sign a petition, specified the minimum content to be included in a petition and described each of the intervention models. The SBE is expected to revisit the regulations in August.

When regulations or further guidance is available from the state, CSBA will review the implications and determine whether new or revised policy is necessary.

## Court rules on insulin administration in schools

Following an appellate court ruling on June 8, students with diabetes will not be able to receive insulin injections at school from school personnel who are trained but do not have a medical license. The Third District Court of Appeal upheld a 2008 trial court decision that only licensed nurses can administer insulin injections.

The rulings, in a lawsuit brought by nurses associations against the state Superintendent of Public Instruction and the CDE, struck down a 2007 CDE advisory that, ironically, resulted from the settlement of a 2005 federal class action lawsuit. That case was brought by the American Diabetes Association accusing the state of “failing to ensure the provision of health care services to students with diabetes, including insulin administration, that was necessary to enable those students to obtain free appropriate public education.”

The wording of the new ruling suggests that the judges believe existing law sides with the nurses and they “have no power to rewrite the statute to make it conform to a presumed intention that is unexpressed.”

“The ruling speaks to the practical matter of there being too few resources available for students with diabetes,” CSBA associate general counsel and director of Policy Update Judy Cias said. “The appellate court concurred with the trial court that a legislative fix is necessary. Both the trial court and appellate court seemed to say that unlicensed personnel could administer insulin safely but that California law does not allow it, so it’s up to the Legislature. Students need access to someone to help administer the medication and volunteers can be trained to safely do it.”

CSBA’s Governmental Relations Department has been advocating a legislative remedy to give students with diabetes needed assistance with insulin injections without relying solely on licensed nurses. CSBA supported AB 1802 (2010), which would have authorized duly trained school personnel under specified circumstances to administer the insulin to students when needed, and SB 1051 (2010), which would have provided authorization for trained personnel to administer a specific medication to a student experiencing a seizure. Both bills died in committee.

The American Diabetes Association has filed a petition for review to the California Supreme Court in order to overturn the decision and is also considering legislative options. Even if the court agrees to review the decision, it could take years to resolve.

CSBA has revised BP/AR 5141.21 – Administering Medication and Monitoring Health Conditions to add information about the latest court ruling. The appellate decision may be found at [www.courtinfo.ca.gov/opinions/documents/CO61150.PDF](http://www.courtinfo.ca.gov/opinions/documents/CO61150.PDF).

## FMLA definition of “son or daughter” clarified

On June 22, the U.S. Department of Labor issued an Opinion Letter clarifying the definition of “son or daughter” under the Family and Medical Leave Act to ensure that an employee who has day-to-day responsibilities to care for or financially support a child qualifies for family leave, even if the employee has no biological or legal relationship with the child.

FMLA entitles an eligible employee to take up to 12 work weeks of leave within a 12-month period because of the birth, adoption or placement in his/her foster care of a child or to care for a child with a serious health condition (see AR 4161.8/4261.8/4361.8 – Family Care and Medical Leave). For this purpose, a child is defined as a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis as long as the child is under age 18 years of age or is an adult dependent child. FMLA





regulations (29 CFR 825.122) define “in loco parentis” to include persons with day-to-day responsibilities to care for and financially support a child and specify that a biological or legal relationship is not necessary.

According to the Opinion Letter, the FMLA regulations do not require an employee to present evidence of *both* day-to-day care and financial support of a child to establish in loco parentis status. It cites as an example a situation where an employee provides day-to-day care for his/her unmarried partner’s child but does not financially support the child. In this case the employee could be considered to stand in loco parentis to the child and therefore be entitled to FMLA leave to care for the child if the child had a serious health condition. The fact that a child has a biological parent in the home does not prevent a finding that a child is a “son or daughter” of an employee who lacks a biological or legal relationship.

If a district/COE has questions regarding whether an employee’s relationship to a child is covered under FMLA, it may require the employee to provide reasonable documentation or a statement of the family relationship. The Opinion Letter suggests that a simple statement asserting that the requisite family relationship exists is all that is needed in situations where there is no legal or biological relationship.

To read the full Opinion letter, see [www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010\\_3.htm](http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm).

Note that the Opinion Letter does not apply to FMLA leave for purposes of military family leave for qualified exigencies or military caregiver leave, which are determined by separate definitions.

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## New law amends activity supervisor requirements

On July 9, Governor Schwarzenegger signed legislation (AB 346) which revises requirements pertaining to background checks for noncertificated employees and volunteers who work with students in a district-sponsored student activity program. Supporters had argued that the legislation was needed to undo some unintended impacts of a law the governor signed last fall (AB 1025). Under AB 1025, noncertificated employees and volunteers who supervise, direct or coach student activity programs would have been required, beginning July 1, to obtain an Activity Supervisor Clearance Certificate through the Commission on Teacher Credentialing.

A number of questions had arisen regarding who needed to be fingerprinted. Pursuant to AB 346, effective immediately, any noncertificated employee or volunteer who works with students in a student activity program (not just those who supervise, direct or coach the programs) must be fingerprinted. Under the new law, districts can choose whether to require individuals to obtain the Activity Supervisor Clearance Certificate or obtain clearance through a Department of Justice and Federal Bureau of Investigation background check, or to accept either as acceptable evidence of a criminal background check. Districts are cautioned that a DOJ check alone is insufficient. Currently there is no mechanism for submitting fingerprints for an FBI background check alone, so individuals who have only the DOJ clearance would need to submit and pay for both a DOJ/FBI background check under that option.

In addition, determining which positions “work with students in a student activity program” is a local decision. AB 346 does retain exemptions for volunteer supervisors for breakfast, lunch or other nutritional periods and volunteer nonteaching aides under the immediate supervision and direction of certificated personnel, and clarifies that these exemptions include parents/guardians volunteering in a classroom or on a field trip or community members providing noninstructional services.

“There is no enforcement mechanism in the bill and no penalties. So it is the school district that should make common-sense decisions regarding who to require to be fingerprinted. Any

volunteer or noncertificated employee who is alone with kids in a school-sponsored activity should be fingerprinted,” suggests Laura Preston, legislative advocate at the Association of California School Administrators. “If the district does not have fingerprints on an eligible individual and he or she commits an offense, the district could be held liable.”

CSBA has reissued BP/AR 1240 – Volunteer Assistance and BP/AR 4127/4227/4327 – Temporary Athletic Team Coaches to reflect the new law. Also see the CTC’s revised coded correspondence at [www.ctc.ca.gov/notices/coded/2010/1011.pdf](http://www.ctc.ca.gov/notices/coded/2010/1011.pdf).

## GASB 54 changes fund balance reporting

Beginning in the fiscal year that started July 1, 2010, Governmental Accounting Standards Board (GASB) Statement 54 (*Fund Balance Reporting and Governmental Fund Type Definitions*) requires districts/COEs to make changes in the way their external financial reports classify fund balances in the general fund. Fund balances will be classified into the following categories based on the constraints placed on the use of the resources:

- nonspendable amounts that are not expected to be converted to cash,
- restricted amounts constrained to specific purposes by their providers (e.g., grantors, state agencies, federal agencies) or by law,
- committed amounts constrained to specific purposes by the board,
- assigned amounts which the board or its designee intends to use for a specific purpose, and
- unassigned amounts that are available for any purpose.

There will be some lag time before the state’s standardized accounting software incorporates these changes, so districts/COEs must be prepared to determine the information manually for presentation in the financial statements. They will be assisted, though, by information from the state showing the cross-over of funds from the old to the new classification system.

Not only will board members need to be aware of the classification of funds as they review financial statements, but they have a role up front in adopting appropriate policy pertaining to these fund balances.

“Many board members may think that they don’t need to pay attention to GASB statements, that responding to these issues is the responsibility of accounting personnel and auditors. However, GASB 54 impacts the presentation of explicit action by boards and falls under their responsibility,” says Michele Huntoon, associate vice president, School Services of California. “This presents a great opportunity for school boards to clearly communicate to administration, staff and community members.”

The Government Finance Officers Association recommends that boards adopt a “minimum fund balance” policy which sets an appropriate level of unrestricted fund balances that will be maintained in the general fund, the circumstances under which the unrestricted fund balance can be spent down and the procedure for replenishing deficiencies. Such a policy is intended to provide a cushion to protect the district/COE from unforeseen events (e.g., revenue shortfalls or unanticipated expenditures) and is only relevant to the unrestricted fund balance since other fund balances are not available to be used for this purpose. According to the CDE, the preferred level of unrestricted fund balance may be expressed as either a minimum amount or a range between a minimum and maximum amount. The CDE advises that expressing the level as a range may alleviate concerns by some in the school community regarding uncapped unrestricted balances.

BP 3100 – Budget and AR 3460 – Financial Reports and Accountability have been updated to include new sections reflecting GASB 54.





## New resources

### Policy brief on cyberbullying

CSBA has updated its policy brief *Cyberbullying: Policy Considerations for Boards* to reflect recent court decisions addressing the circumstances under which districts/COEs can discipline students for their off-campus conduct. As the brief explains, in determining whether discipline can be imposed, there is a need to balance a student's First Amendment right to freedom of speech with the extent to which the conduct impacts school activities or is brought to the attention of school authorities, and causes, or is foreseeably likely to cause, a substantial disruption of school activities. The July 2010 brief also includes updated statistics regarding the prevalence of cyberbullying, including differences based on age, gender and race/ethnicity.

The brief is available at [www.csba.org/pab.aspx](http://www.csba.org/pab.aspx). The issue of cyberbullying is also addressed in BP 5131 – Conduct, AR 5144.1 – Suspension and Expulsion/Due Process and BP/AR 6163.4 – Student Use of Technology.

### Conflict of interest fact sheet

Along with issuing BB/E 9270 – Conflict of Interest in July, CSBA has developed a fact sheet to provide further explanation of the complex conflict of interest laws that impact locally elected officials (see [www.csba.org/pab.aspx](http://www.csba.org/pab.aspx)). *Conflict of Interest: Overview of Key Issues for Governing Board Members* describes the requirement that all public agencies adopt and biannually review a conflict of interest code, outlines the analysis that must be done pursuant to different sets of statutes to determine whether a conflict of interest exists, and explains the implications of that determination upon a board member's vote and/or the ability of the district/COE to enter into a contract.

The fact sheet also clarifies that the conflict of interest code which must be sent to the code reviewing body includes the following components: (1) a statement incorporating relevant Fair Political Practices Commission regulations by reference, (2) the designated positions in the district/COE that make or participate in making governmental decisions, and (3) the disclosure categories listing the types of investments, income and interests in property that must be disclosed by each person holding a designated position. CSBA's new Exhibit 9270 separates those components that constitute the conflict of interest code out of the board bylaw and into a sample resolution and Appendix that should be revised and adopted by the board as necessary.

### Resources on summer meal programs

Recognizing that many socioeconomically disadvantaged children do not have access to nutritious meals during the summer vacation, CSBA has developed a policy brief to provide information to districts/COEs about how they can sponsor, or partner with other community agencies to provide, a federally funded summer meal program. Supported by a grant from California Project LEAN (Leaders Encouraging Activity and Nutrition), *Providing Access to Nutritious Meals During Summer* presents an overview of the Summer Food Service Program, a case study of a successful program, information about the board's role and key questions for boards to consider.

To further assist districts that are interested in providing these services, a new sample policy and administrative regulation (BP/AR 3552 – Summer Meal Program) address the purposes and legal requirements of the Summer Food Service Program as well as the Seamless Summer Feeding Option.

These materials are available at [www.csba.org/wellness.aspx](http://www.csba.org/wellness.aspx).

## Link to Learning newsletter

The summer issue of CSBA's *Link to Learning* newsletter (available at [www.csba.org/LTL.aspx](http://www.csba.org/LTL.aspx)) highlights resources to help districts/COEs create or sustain healthy school environments. The issue includes articles on First Lady Michelle Obama's Let's Move! campaign, resources from CSBA and California Project LEAN to support comprehensive physical activity programs, the new oral health guidebook from CSBA and the Dental Health Foundation, and a guidebook from the Center for Collaborative Solutions on healthy eating and physical activity in after-school programs.

In addition, the newsletter highlights a new website, [www.attendancecounts.org](http://www.attendancecounts.org), that promotes awareness of the important role that school attendance plays in a student's academic success. The website provides tools for monitoring, understanding and addressing chronic student absenteeism, starting in the early grades, and encourages the sharing of ideas about what works.

## Community schools policy brief

"Community schools" are centers of their communities. Not to be confused with county community schools or district-operated community day schools that provide services for expelled students, these schools are open for public use; offer a range of services for children, families and community members; and have an integrated focus on academics, health and social services, youth and community development, and community engagement. Because they link school and community resources, they provide a coordinated approach to addressing the challenges that students and families face.

There are a number of models, initiatives and resources to help districts/COEs that are interested in exploring the philosophy, operations and effectiveness of community schools. CSBA is preparing a policy brief to provide background information and key issues for boards to consider. The brief is expected to be available in August and will be posted at [www.csba.org/pab.aspx](http://www.csba.org/pab.aspx).

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## CSBA education opportunities

To register online or learn more about any of the following education opportunities, go to CSBA's Web site at [www.csba.org](http://www.csba.org) or contact CSBA at (800) 266-3382.

### Back-to-School Webcast

With every new school year come changes in state and federal laws and other critical education issues. To ensure that district and COE governance teams and staff know how to deal with the changes, CSBA will provide a comprehensive overview of critical issues affecting schools and students in its complimentary Back-to-School Webcast. The Webcast is scheduled for September 23, 10:00 a.m. - 12:00 p.m. Participants will be able to ask questions during the live Webcast format. Space is limited and participants must register to receive the log-in information. For further information, go to [www.csba.org/TrainingAndEvents.aspx](http://www.csba.org/TrainingAndEvents.aspx).

### Annual Education Conference

The 2010 Annual Education Conference and Trade Show is CSBA's premier continuing education program, delivering practical solutions to help governance teams from districts and COEs improve student learning and achievement. More than 200 sessions are planned for board members, superintendents and board support professionals.

CSBA's Policy Services staff will help present a number of workshops on policy and board agenda development, such as Save Resources, Save Time: Go with Agenda Online (Dec. 2,





8:45 - 9:45 a.m.) and My Policy Manual is Online—Now What? (Dec. 2, 11:15 a.m. - 12:15 p.m.). These policy workshops will be located on the trade show floor. Attendees interested in effective policy-making also will want to attend The Board Policy Manual: A Tool for Effective Governance (Dec. 3, 10:00 - 11:00 a.m.).

The conference will be held December 2-4 at San Francisco's Moscone Center. To register or obtain further information, visit <http://aec.csba.org>.

## Trainings for executive assistants

Two upcoming sessions are designed to give executive assistants the skills and tools to effectively meet the needs of the superintendent, board, students and community.

### Regional Training, October 29, Marin County Office of Education

This all-day (9:00 a.m. - 3:00 p.m.) session addresses the role of the superintendent, board president, board members and staff; how different work styles impact communication with members of the team; the Brown Act as it pertains to executive assistants; management of board meetings; and other ways that executive assistants support the team. For further information, go to [www.csba.org/TrainingAndEvents.aspx](http://www.csba.org/TrainingAndEvents.aspx).

### Annual Education Conference, December 3, San Francisco

District and COE executive assistants are invited to a one-day program within CSBA's Annual Education Conference and Trade Show. The one-day registration fee of \$250 includes a breakfast voucher, Executive Assistant Networking Luncheon, materials and choice of breakout sessions.

Among the breakout sessions scheduled for that day are Brown Act: The Game Show; Facebook: Friend or Foe?; How to Use Online Discussion Forums; The Board Policy Manual: A Tool for Effective Governance; 75 Websites in 75 Minutes—The Essential Websites for Today's Business Professionals; Quality Customer Service: Why It's Even More Important Today; and Who's Meeting Is It Anyway: Tips on Running an Effective Board Meeting.

To learn more, visit <http://aec.csba.org/Programs/Program/ExecutiveAssistants.aspx>.

## Roadmap to Policy Updates

If you missed CSBA's complimentary Roadmap to Policy Updates Webinar on August 5, you can access the archived Webinar and related resources at [www.csba.org/TrainingAndEvents.aspx](http://www.csba.org/TrainingAndEvents.aspx). The two-hour Webinar discusses best practices and procedures for keeping the district's policy manual current through CSBA's GAMUT Online and Manual Maintenance services, including a discussion of how to access district policies online.

This training is designed for executive assistants, administrators, board members, board policy committee members and others charged with the task of creating or maintaining the district's policy manual.

As regional in-person Roadmap to Policy Updates workshops are scheduled, these will be posted online on the CSBA Events calendar.



Contact us at (800) 266-3382.

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