

governance & POLICY SERVICES

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Legislative session ends, policy revisions begin

As the 2008 legislative session came to a close, Governor Schwarzenegger had signed 772 bills, about 90 of which impact K-12 education and have implications for district policies and regulations. Some of the major issues are addressed in CSBA's November policy updates. These include, but are not limited to, issues pertaining to communications among board members, suspension/expulsion, student assessment, school health services and special education teacher assignments. Additional legislative changes will be addressed in upcoming editions of CSBA's policy updates.

Board member communications

Brown Act: Serial meetings. The Brown Act has long prohibited serial meetings, previously defined as a series of communications by a majority of the board to develop a "collective concurrence as to action to be taken." SB 1732 (Ch. 63) amended Government Code 54952.2 to delete the requirement that a "collective concurrence" must be reached in order for a prohibited serial meeting to occur. As amended, Government Code 54952.2 now defines a prohibited serial meeting as a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item within the subject matter jurisdiction of the board.

A previous version of this bill was vetoed by the governor last year. Responding to concerns raised by CSBA, this version of the legislation contains an important new exception. SB 1732 specifies that briefings between staff and board members are permissible in order to answer questions or provide information, as long as the comments or position of any board member is not communicated to other board members.

CSBA has revised BB 9320 - Meetings and Notices to reflect this new law.

Electronic communications among board members. The types of communications that can lead to a violation of the Brown Act are also an issue when board members are communicating via e-mail, participating in chat rooms, or posting comments on blogs or Web sites. CSBA is issuing a new bylaw, BB 9012 - Board Member Electronic Communications, to provide boards with some guidelines to help navigate this minefield.

For purposes of the Brown Act, electronic communications are subject to the same conditions as any other form of communication, such as individual conversations and telephone calls. However, the ease with which electronic communications can be shared and forwarded requires extra caution.

The revised definition of "serial meetings" resulting from SB 1732, as discussed above, will require extra diligence on the part of board members. Under the new definition, a prohibited serial meeting is a series of communications involving a majority of the board to discuss or deliberate on district business, outside of a noticed and agenda meeting. Thus, a series of e-mails between a majority of the board or postings of comments by a majority of the board on a community member's blog could lead to a Brown Act violation. Violations of the Brown Act may result in civil remedies or invalidation of any board action that violates the act.

BB 9012 provides sample language about the importance of board member communications and examples of permissible exchanges, such as individual responses to community questions, discussions about meeting times and dates, and discussions about non-district business.



Suspensions/expulsions for bullying

AB 86 (Ch. 646) amended Education Code 48900 to add bullying, including bullying committed personally or by an electronic communication (e.g., message, text, sound or image sent via telephone, computer or other wireless communications device) to the grounds for which a student may be suspended or expelled. Bullying includes harassment, sexual harassment and acts of hate violence as defined in Education Code 48900.2, 48900.3 and 48900.4. Because these sections apply only to grades 4-12, it appears that bullying as grounds for suspension/expulsion also applies only to students in grades 4-12.

CSBA has revised AR 5144.1 – Suspension and Expulsion/Due Process and BP 5131 - Conduct to reflect AB 86.

Because cyberbullying often occurs off campus, districts must be cautious in imposing discipline. Education Code 48950 specifies that if a student's off-campus speech or communication is protected free speech, no discipline may be imposed by the district unless, pursuant to Education Code 48907, the expression is "obscene, libelous or slanderous" or contains "material which so incites students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations or the substantial disruption of the orderly operation of the school."

In July 2007, CSBA issued a policy brief entitled *Cyberbullying: Policy Considerations for Boards*. This policy brief, available on CSBA's Web site, provides background information on the extent of the problem and its impact on students, discusses the legal issues, suggests issues that boards might wish to address in policy on this topic and provides additional resources that may help districts gain a greater understanding of cyberbullying. Districts are encouraged to review the policy brief when considering the revised version of BP 5131 – Conduct.

Student assessment

As a result of AB 519 (Ch. 757), the nationally norm-referenced California Achievement Tests, Sixth Edition Survey, will no longer be a part of the Standardized Testing and Reporting Program in grades 3 and 7. This change will be effective with the spring 2009 test administration and is reflected in the revision of BP/AR 6162.51 – Standardized Testing and Reporting Program. Since students in grades 3 and 7 were already required to take other STAR tests, the elimination of the CAT6/Survey will reduce testing time in those grade levels.

Thus, as of the 2009 test administration, the STAR Program will include the California Standards Tests for grades 2-11, the Standards-Based Tests in Spanish for grades 2-11 (replacing the Aprenda 3 previously used in grades 8-11), and either the California Alternate Performance Assessment or California Modified Assessment for students with disabilities when indicated in their individualized education programs.

The California Department of Education points out that the amount of funding apportioned to districts for the 2009 STAR test administration and subsequent administrations will not be affected by the elimination of the CAT6/Survey; apportionments will continue to be based on a per-student amount for any student who is administered any of the STAR tests (*STAR Assessment Notes*, October 2008).

The CAT6/Survey has been one of the tests used in the calculation of the Academic Performance Index, but the CDE expects its elimination to have little impact on the accountability measure. Each of the tests used in calculating the API has a different emphasis or weight value, and the CAT6/Survey had a relatively small test weight, accounting for only 5-6 percent of the API. The 2008 Base API (to be released in May 2009) will exclude the CAT6/Survey component to ensure comparability with the 2009 Growth API (to be released in August 2009). The CAT6/Survey is not used in calculating adequate yearly progress under the No Child Left Behind Act.

Further information is available on the CDE's Web site at www.cde.ca.gov/ta/tg/sr.

School health services

SB 564 (Ch. 381) establishes a grant program to provide technical assistance and funding for the expansion, renovation and retrofitting of existing school health centers and the development of new school health centers. Funding for the program was not allocated in the state budget, but Governor Schwarzenegger indicated that he was signing the bill "to establish the statutory framework to guide expansion once resources are available."

The new program will require districts to meet, or have a plan to meet, specified requirements, such as providing comprehensive services (i.e., medical, oral health, mental health, health education, and related services in response to community needs), providing primary and other health services, working in partnership with a school nurse if one is employed by the district or school, coordinating services with health care providers, serving all students regardless of ability to pay, operating during school hours, referring students to outside services when the center is closed and facilitating transportation. Until such time as funding is available, districts can begin their planning process and/or review their existing programs for alignment with the requirements of the grant program.

School health services are also being impacted by decisions at the federal level regarding Medicaid reimbursements to local educational agencies. On December 28, 2007, the Centers for Medicare and Medicaid Services finalized a rule (CMS-2287) that would eliminate federal Medicaid reimbursements for transportation services for students with disabilities, as well as reimbursements for administrative activities performed by school employees or contractors. However, H.R. 2642 (Public Law 110-252, the War Supplemental Funding Bill, Title VII) established a moratorium on any new Medicaid-related regulations from taking effect until April 1, 2009. CSBA has aggressively advocated against proposed cuts in Medicaid reimbursements, estimating that over 500 school districts, county offices of education and community colleges in the state would lose more than \$100 million.

CSBA has updated and retitled BP/AR 5141.6 – School Health Services to reflect these issues and “best practices” in school health service delivery. Also see CSBA’s new policy brief on this topic (see “What’s New at CSBA” below).

Teachers of autistic students

A recent report by the California Legislative Blue Ribbon Commission on Autism found that autism spectrum disorders affect one in every 150 children and that the demand for services to autistic children has increased by over 80 percent in the past five years (*An Opportunity to Achieve Real Change for Californians with Autism Spectrum Disorders*, September 2007, <http://senweb03.senate.ca.gov/autism>). A shortage of special education teachers in California has made it difficult to serve the growing number of autistic students, exacerbated by the fact that the authorization to teach students with autism has been limited to those whose education specialist credentials authorize instruction to students with moderate/severe disabilities in grades K-12.

To help meet the demand and provide autistic students with access to appropriate educational services, the Commission on Teacher Credentialing is in the process of developing new credential program standards to prepare all candidates for the education specialist credential to teach students with autism. However, it is expected to take two to three years before candidates will meet the new requirements.

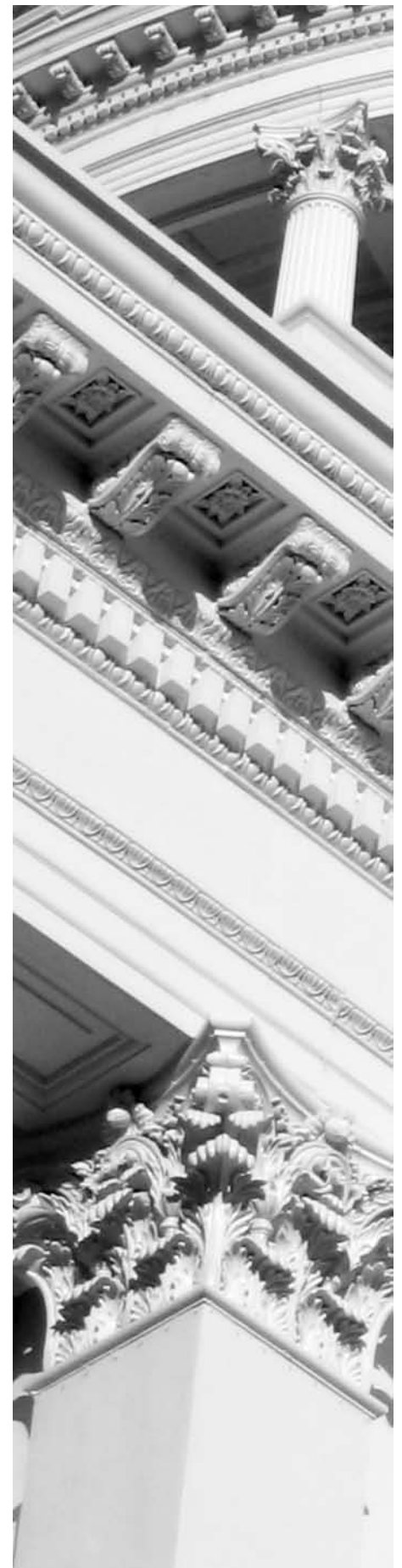
In the meantime, the governor signed AB 2302 (Ch. 41) to allow autistic students to be taught by teachers whose Level I (preliminary) credential authorizes them to provide instruction to students with *mild/moderate disabilities*. CSBA has revised AR 4112.23 – Special Education Staff to reflect the conditions under which these assignments can be made, including provisions pertaining to teacher qualifications and teacher consent for the assignment. These provisions will become inoperative two years after the CTC adopts regulations to implement the modified credential program standards or by August 31, 2011, whichever occurs first.

AB 131 (Ch. 487) addresses the qualifications of teachers of autistic children ages 3-4. Prekindergarten service had not previously been included in the education specialist credential for moderate/severe disabilities. AB 131 authorizes teachers who hold a valid education specialist credential authorizing them to teach K-12 students with autism to teach children ages 3-4 if they meet specified criteria.

Upcoming issues

State Board of Education waivers

At its September 2008 meeting, the State Board of Education adopted a “streamlined waiver” process which will allow requests submitted by districts that meet certain criteria to be placed on the SBE’s consent calendar instead of having to be heard individually by the SBE. Although many waivers are for





just one year, waivers approved under this process will be for two years, less one day. Districts that have a score of 800 or higher in the current scoring cycle on the state's API will qualify for this expedited process. In addition, individual schools within the district may qualify if they have an API score of 800 or more in the current scoring cycle or successfully met API growth targets in three out of the past five years; however, such schools cannot independently apply for the waiver and still must go through the local district board.

There are many unanswered questions as to how this new policy will be implemented by the state. The process of applying to the CDE for a waiver has not changed and districts still need to follow the same process locally to develop the waiver application (i.e., public hearing, inclusion of the exclusive representative and site council, as appropriate). In addition, it is not clear whether the SBE will eventually identify certain Education Code statutes that will be waived under this policy. The SBE has formed a working group to identify sections of the Education Code that are impediments to student achievement.

CSBA will continue to track this issue and will revise BP 1431 – Waivers as needed.

Americans with Disabilities Act

On September 25, the president signed S. 3406 (the ADA Amendments Act of 2008, P.L. 110-325), effective January 1, 2009. The legislation expands the scope of the federal law and purposefully overturns several controversial court decisions.

Although the changes are substantial, the impact on California school districts and other employers will likely be minimal since California's Fair Employment and Housing Act (Government Code 12900-12996) has long provided more protection than federal law. For example, the federal ADA defines disability as a "physical or mental impairment that substantially limits a major life activity," while California law does not require "substantial limitation." In addition, like current California law, the federal amendments now specify that a person's disability must be examined without respect to mitigating measures (i.e., glasses, prosthetics).

Because it reflects California law, AR 4032 – Reasonable Accommodation did not need to be revised to reflect S. 3406. However, the new legislation directs the Equal Employment Opportunity Commission to revise its regulations and guidance and, once finalized, CSBA will again review AR 4032 to determine if revisions are necessary.

CDE clarifies high school P.E. requirement

Since state law requires only two years of physical education for high school graduation, do students who take P.E. courses in grades 9 and 10 still need to take P.E. in grades 11 and 12? CSBA has received this question from a number of districts, and now a Q & A section on the CDE's Web site (www.cde.ca.gov/ta/tg/pf/pftqanda.asp) clarifies the department's position.

Education Code 51225.3 requires students to complete two years of P.E. during grades 9-12 to be eligible to graduate from high school. (Of course, a district may set a higher graduation standard for its students.) Nevertheless, the CDE cites other law (Education Code 51222) which requires all students in grades 7-12 to attend P.E. courses for at least 400 minutes every 10 school days unless the board grants an exemption as authorized by law.

The only circumstances under which a student may be allowed to not enroll in P.E. are when (1) the student is granted a temporary, two-year or permanent exemption under specified conditions (Education Code 51241); (2) the student is engaged in a regular school-sponsored interscholastic athletic program carried on wholly or partially after regular school hours (Education Code 51242); (3) the student is participating in driver training (Education Code 51222); or (4) the student attends a regional occupational center or program and attendance in P.E. results in hardship because of the travel time involved (Education Code 52316).

To be eligible for the two-year exemption, students must satisfactorily meet five of the six standards of the state's physical fitness test (the FITNESSGRAM[®]). Note that SB 602 (Ch. 32) made a technical revision in Education Code 51241 to clarify that in order to qualify for the two-year exemption, a student must meet "at least" five of six standards rather than "any" five of six.

Thus, regardless of the graduation requirement, high school students need to take P.E. every year unless they meet the conditions specified in law.

See BP/AR 6142.7 – Physical Education and BP 6146.1 – High School Graduation Requirements.

Funding strategies for retiree benefits

Districts that provide retired employees and/or board members with nonpension, “other postemployment benefits” (e.g., medical, dental, vision, long-term disability benefits) are required by Governmental Accounting Standards Board Statement 45 to report these OPEBs as a current expense during the working years of an employee or board member and, to the extent that the OPEBs are not prefunded in a designated fund or irrevocable trust, they must be reported as a liability on the district's financial statements. The reporting requirement is effective in fiscal year 2007-08 for districts with revenues over \$100 million, 2008-09 for districts with revenues between \$10-100 million, and 2009-10 for districts with revenues under \$10 million, based on their revenues as of June 30, 2000. See the November update of AR 3460 – Financial Reports and Accountability.

Funding the OPEB debt is a separate matter from reporting it, however, and is now addressed in BP 3100 – Budget. The manner in which the district will fund its obligations for such benefits is at the discretion of the district. The district may pay the premiums as they fall due (“pay-as-you-go”) or may prefund the debt using a method and level to be determined by the board.

CSBA recommends that districts adopt a specific, written funding strategy for addressing their OPEB obligations. A district that completes a management plan describing how it will meet its OPEB obligations may apply for state funding to reimburse up to \$15,000 of its costs for developing the plan. The district's plan must be reviewed by the county office of education and submitted to CDE. The deadline to apply is June 15, 2009.

As a public service to CSBA and California districts, the Independent Actuaries of California have provided 10 sample funding statements that provide a framework for district action. These samples are available on CSBA's web site at www.csba.org/Services/Services/DistrictServices/GASB45.aspx, along with information about CSBA's GASB 45 Solutions program which provides access to qualified actuaries and consultants and a GASB 45-compliant trust to prefund future obligations.

Parent involvement partnership

The CDE has formed a partnership with parent and school advocacy groups to help mobilize school, family and community partnerships around closing the achievement gap and increasing graduation rates. The California Action Team for Partnerships (CATP) is composed of representatives from the CDE; federal, state and regional projects and organizations; California State PTA; school districts; and community and nonprofit organizations.

The CATP has met with CDE's P-16 Council staff to share its action plan for partnerships and align the goals of the two groups. The action plan proposes a systematic, research-based, statewide initiative for establishing productive school, family and community partnerships at the state, regional and local levels. It promotes the National Network of Partnership Schools framework, established by Johns Hopkins University, as an effective approach for organizing partnerships. For further information on this model, see www.csos.jhu.edu/p2000.

Among the specific recommendations in the action plan are that CDE recognize and showcase successful partnership programs, include family involvement as a required goal for the Single Plan for Student Achievement, and support the preparation of state parent involvement standards for consideration and approval by the SBE.

For further information, contact CSBA Policy Services consultant Kevin Brown, who serves as CSBA's liaison to the partnership, at kbrown@csba.org.





Preschool curriculum

The CDE's Child Development Division is now seeking public input on preschool curriculum frameworks which cover the domains of social-emotional development, language and literacy, English-language development and mathematics. The frameworks will be aligned with the related preschool "learning foundations" (i.e., research-based knowledge and skills that children are expected to exhibit as they complete their first or second year of preschool), which were issued in January 2008.

At the same time, public input is being sought on the second phase of preschool learning foundations. Drafts of the visual and performing arts, physical development and health domains will be available online at www.cde.ca.gov/sp/cd/re/psfoundations.asp until mid-January 2009.

Public hearings on both the curriculum frameworks and learning foundations will be held in the south and north parts of the state on Jan. 12 and 14, 2009. CSBA encourages its members to submit suggestions for consideration in the development process.

The history/social science and science domains will be the final set of foundations to be developed.

Contact Marguerite Noteware, CSBA research consultant, at mnoteware@csba.org for more information.

What's new at CSBA

Policy briefs

CSBA issued two policy briefs in November designed to help districts promote student achievement by promoting student health. Both are available on CSBA's Web site at www.csba.org/Services/Services/PolicyServices/PolicyAdvisoriesBriefs.aspx.

Expanding Access to School Health Services: Policy Considerations for Governing Boards presents background information and policy considerations for governance teams that have established or are considering establishing school health services, such as a health center on or near a school campus or a mobile van that serves multiple campuses. The policy brief describes existing models and case studies in California and raises issues that districts should consider in the provision of school health services, such as funding, facilities, scope of services, procedures for third-party reimbursement of costs, partnerships with health providers and local agencies/organizations to deliver services, consent and confidentiality, and program evaluation. This project was supported by a grant from The California Endowment.

CSBA also revised and expanded its March 2007 policy brief addressing oral health assessments for school entry to present data on the first year of assessment results. *Promoting Oral Health for California's Students: New Roles, New Opportunities for Schools* also provides examples of "best practices" for increasing access to oral health services through schools. CSBA is subcontracting with the Dental Health Foundation, in a project funded by the Robert Wood Johnson Foundation, to create an awareness among governance teams about the importance of improving oral health in school-age children and to provide guidance that enables school districts to develop a policy framework for action.

Support for DAIT districts

CSBA has entered into a partnership with the California County Superintendents Educational Services Association to serve 15 pilot districts that have been identified for Program Improvement under the No Child Left Behind Act or are at risk of being identified for Program Improvement. These districts are working with an external district assistance and intervention team (DAIT) to complete a comprehensive needs assessment, prioritize a set of action steps in their local educational agency plan and receive support for implementation of these systemic district changes to improve student achievement.

As part of this work, CSBA is conducting a special professional development clinic at the 2008 Annual Education Conference, is providing comprehensive governance consultation with one district, and will create a policy development resource guide to help districts ensure that policies support the key reform elements needed to create and sustain systemic changes necessary for district success in educating all students.

Policies Parents Should Know

CSBA has released the 2008 edition of *Policies Parents Should Know*, a compilation of English and Spanish versions of over 90 CSBA sample board policies, administrative regulations and exhibits on parent involvement issues. The updated edition includes revisions of BP/AR 0450 – Comprehensive Safety Plan, AR/E 1312.4 – Williams Uniform Complaint Procedures, BP 5030 – Student Wellness, BP/AR 5125 – Student Records, BP/AR 6163.4 – Student Use of Technology and more.

CSBA is also developing a summary of the most important policies that enable parents to be better involved or engaged in their child's education. This resource will be applicable to most, if not all, districts and will be easily customizable to include more specific school or district materials.

To order, contact Pat Mortensen at pmortensen@csba.org or (800) 266-3382.

Policy Roadmap workshops

CSBA's popular Policy Roadmap workshops are currently being scheduled for 2009. Save the date to take advantage of this opportunity to learn how to keep district policies updated. Workshop times and registration information will be available on CSBA's Web site at www.csba.org in the Events Calendar section.

- Feb. 18 | Fresno County Office of Education
- Mar. 16 | West End Educational Service Center, Rancho Cucamonga
- Mar. 17 | Los Angeles County Office of Education
- Apr. 23 | Santa Clara County Office of Education
- May 6 | CSBA, East Training Room, West Sacramento

Grant news

Strengthening physical education and activity

CSBA, in partnership with California Project LEAN, received a \$498,155 grant from The California Endowment to work with school decision-makers to improve opportunities for physical education and physical activity (P.E./P.A.).

The purpose of this project, which runs from October 2008 through September 2010, is to support collaborative research, capacity building and advocacy to address the barriers and opportunities that school districts face in establishing and sustaining improved physical education and opportunities for physical activity for school-age children throughout California.

The expected outcomes of this project include an increased awareness about and elevated importance of P.E./P.A. among school decision-makers; stronger evidence, skills and tools to act to improve P.E./P.A. in schools; and an increased number of school districts establishing new policies to support P.E./P.A. and/or improving implementation and monitoring of existing policies.

In order to achieve these outcomes, CSBA will:

- conduct formative research to identify perceived barriers and opportunities to develop, implement and monitor comprehensive policies that address P.E./P.A.;
- review and revise sample policies and conduct trainings that address different strategies for P.E./P.A., including safe routes to school, joint-use agreements, increasing moderate to vigorous physical activity, and before/after school programs;
- disseminate communications pieces such as articles, fact sheets, policy briefs, advisories and research briefs; and
- collaborate with stakeholder organizations to ensure a comprehensive approach is used to strengthen P.E./P.A..





Healthy Communities - Healthy Students Initiative

The Healthy Communities - Healthy Students Initiative, which began in March 2008 and is funded by the Vitamin Cases Consumer Settlement Fund, focuses on the community leadership responsibility of school board members in supporting a healthier community around nutrition and physical activity. The project will provide board members with the knowledge, resources and tools needed to garner community support and initiate collaborative solutions designed to make community-wide changes.

In collaboration with the Cities, Counties and Schools (CCS) Partnership, CSBA will produce a Healthy Communities - Healthy Students resource guide, due for completion in Spring 2009, and follow up with a series of 15 to 20 regional and statewide trainings and workshops for school board members. In addition, a Web-based resource center will be developed to provide tools for ongoing learning.

Link to Learning newsletter

CSBA launched an online newsletter, *Link to Learning: Healthy Students, Ready to Learn*, in November 2008. This inaugural newsletter seeks to build awareness around the link between children's health and student learning, to communicate CSBA's comprehensive and coordinated efforts on school health and student wellness, and to provide expanded and ongoing support to school boards, district administrators, community members and other key stakeholders through the dissemination of resources and information.

This newsletter will be disseminated via e-mail tri-annually to CSBA members and other key stakeholder groups throughout the state. It will also be posted to CSBA's Web site at www.csba.org.

Governance and research: It's time

Christopher Maricle, Senior Consultant, cmaricle@csba.org

The quality of educational research has been growing steadily for the last few decades, providing an increased understanding about what works in education. This research has influenced K-12 education at every level.

Research shows, for example, that teachers matter and that improving student learning is strongly linked to instructional practice in the classroom. Research also demonstrates that effective school administration is positively correlated with improving student learning. At the systems level, there is strong evidence for best practices at the district office. Recent research reveals a statistically significant relationship between district leadership and student achievement, and provides evidence for a positive correlation between superintendent tenure and improving student achievement.

But what about the governing board? Researchers are only just now beginning to explore the relationship between board governance and student achievement. Marzano and Waters report that "In districts with higher levels of student achievement, the local board of education is aligned with and supportive of the non-negotiable goals for achievement and instruction. They ensure these goals remain the primary focus of the district's efforts and that no other initiatives detract attention or resources from accomplishing these goals." (J. Timothy Waters, Ed.D., & Robert J. Marzano, Ph.D, *School District Leadership that Works: The Effect of Superintendent Leadership on Student Achievement, A Working Paper*, 2006, available at www.mcrel.org/pdf/LeadershipOrganizationDevelopment/4005RR_Superintendent_Leadership.pdf)

In this difficult time of diminishing resources and increasingly challenging standards for student performance, research on the effective practices of local boards seems to be more than simply the next logical step in educational research. It is an important research topic that requires focus and attention to inform the practice of our locally elected trustees as they face these challenges. School boards, charged with the governance of our schools, deserve what teachers, principals and superintendents have—research that demonstrates what works.

