

governance & POLICY SERVICES

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Policy implications of categorical program flexibility

As part of the 2009-10 state budget package signed in February, SBX3 4 grants flexibility in 39 Tier 3 categorical programs by authorizing districts and county offices of education to use funds received for any of these programs for “any educational purpose.” Many governing boards have already taken advantage of this flexibility in their 2009-10 budget approval process. In order to exercise this flexibility, SBX3 4 requires that the board first hold a public hearing to discuss the proposed use of the funding. CSBA has issued a new sample policy (BP 3110 – Transfer of Funds) that expresses the board’s intent to exercise the categorical flexibility in accordance with law, including the requirement for a public hearing.

In addition, SBX3 4 grants flexibility in categorical program requirements by specifying that districts shall be “deemed in compliance with the program and funding requirements contained in statutory, regulatory and provisional language” for each of the Tier 3 categorical programs for the 2008-09 through 2012-13 fiscal years. Therefore, during the period of categorical flexibility, districts may choose to suspend the requirements specified in law for any Tier 3 categorical program, even one from which the district has not transferred funds.

CSBA sample board policies and administrative regulations currently reflect legal requirements for these programs, and many of these requirements may not be applicable during this period of flexibility. A district’s policies and regulations based on CSBA’s samples may also be affected.

CSBA has already identified over 40 sample policies and regulations subject to this flexibility, including policies on supplemental instruction, professional development, peer assistance and review, counseling, continuation education, gifted and talented education program and community day schools.

The state’s ongoing fiscal crisis adds to the confusion. The Legislature and the Governor have reopened the 2009-10 budget and have discussed “clean-up” legislation for categorical program flexibility already granted as well as additional programs that might be added to the flexibility. As of this writing, state budget discussions are still ongoing and the effect of these discussions on categorical flexibility is unknown.

Once the state budget is finalized, CSBA will develop a sample “umbrella policy” authorizing the temporary suspension of policies and regulations, or some provisions within the policies and regulations, based on the categorical program flexibility. Subscribers to CSBA’s Policy Services will be receiving an advisory and, as necessary, revised sample policies and regulations in the upcoming months.

“Although CSBA can identify the affected CSBA sample policies, it will be necessary for each district accepting the flexibility to determine which program requirements it wishes to suspend during the period of categorical flexibility and which requirements it deems essential to program integrity and the best interests of students,” cautions Judy Cias, CSBA’s director of Policy Update Service and assistant general counsel. “Districts may need to either revise each of their affected policies and regulations to reflect program changes, or somehow temporarily flag each of those affected policies and regulations so that anyone reading them will be aware that some or all of the provisions may not be applicable during the flexibility period.”

Further information, including a list of the Tier 3 categorical programs, is available in CSBA’s March 2009 budget advisory, “Flexibility Provisions in the 2008 and 2009 State Budget: Policy Considerations for Governance Teams,” at www.csba.org/LegislationAndLegal/Legislation/LegislativeNews/2009.aspx. Also see the California Department of Education’s advisory and frequently asked questions at www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp.



Medicaid reimbursements continue

A federal rule that would have virtually eliminated Medicaid reimbursements to districts for related administrative and transportation costs has been rescinded (74 Fed. Reg. 124), CSBA and other advocates for public education fought the rule ever since it was issued in December 2007 by the Centers for Medicare and Medicaid Services and secured a moratorium on its enforcement. That moratorium was set to expire July 1, 2009, but the controversy ended with the rescission of the rule announced by Department of Health and Human Services Secretary, Kathleen Sebelius.

California schools have received more than \$100 million annually under the program in recent years. The secretary's announcement noted that the rescission of the rule "reflects concern that the rule could limit the Medicaid administrative outreach activities of schools, and that the overall budgetary impact on schools could potentially impact their ability to offer Medicaid services to students."

For further information about the Medi-Cal and Medicaid billing option and Medi-Cal Administrative Activities option, see www.csba.org/DistrictServices.aspx and click on the Practi-Cal link.

Nutrition standards effective in July

Districts are reminded that nutrition standards pertaining to beverages in high schools and to foods containing artificial trans fat went into effect on July 1, 2009.

On that date, beverage standards specified in Education Code 49431.5 became applicable to *all* beverages sold in high schools from one-half hour before the start of the school day until one-half hour after the end of the school day. Previously, districts were required to ensure that 50 percent of beverages sold in high schools were of the types specified in the standards.

At the same time, Education Code 49431.7 requires that foods sold outside the National School Lunch and Breakfast Programs not contain or be prepared using more than 0.5 grams of artificial trans fat, including vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil. This standard had previously been applicable only to meals reimbursed through the free and reduced-price meal program.

These requirements apply to foods and beverages provided through the district's food services program and through vending machines. For further information, see CSBA sample AR 3550 – Food Service/Child Nutrition Program and AR 3554 – Other Food Sales.

As districts work to ensure that their food services programs meet the requirements of state law, they should also be aware that the federal Child Nutrition and WIC Reauthorization Act of 2004, which authorizes all the federal school meal programs, is up for review this fall. The National School Lunch and Breakfast Programs and the Special Milk Program are permanently authorized and will continue without Congressional action, but are reviewed by Congress every five years.

"The 2004 reauthorization resulted in significant program changes, including changes in nutritional standards and a new requirement for the development of local school wellness policies," says Martin Gonzalez, CSBA's assistant executive director, Governance and Policy Services. "This fall CSBA will again monitor the discussions and proposed legislation to ensure that the nutritional needs of children are appropriately addressed."

"Red Flag" rule on identity theft

CSBA has received inquiries from school districts concerned about whether the Federal Trade Commission's "Red Flag" rule (16 CFR 681), implementing the federal Fair and Accurate Credit Transaction Act (FACTA) dealing with identity theft prevention, applies to districts. Implementation of the rule has been delayed several times, but the new rule is scheduled to take effect August 1, 2009. Some vendors have been advising school districts that this new rule requires districts to purchase data security systems; however, that is not the case. The purpose of the new rule is to address fraud detection. While a data security system might be a worthwhile purchase, it is not required by this law.

This rule requires financial institutions and creditors to develop and implement a written identity theft prevention program and has limited applicability to school districts. There are two narrow circumstances under which districts may need to address the Red Flag rule:

If the district uses consumer reports, it needs to be prepared to respond to a notification from a consumer reporting agency regarding an address discrepancy. According to Lisa Soronen, senior staff attorney at the National School Boards Association, districts are considered users of consumer reports if they request credit checks or background checks from a consumer reporting agency, such as part of the employee hiring process. If the district gives the consumer reporting agency an address that does not match the address the agency has on record, the district will then receive notification from the agency regarding the discrepancy. Under certain circumstances, the district may be required to reconcile the address discrepancy by reviewing its own records, verifying the address directly with the individual or through a third party, or using other reasonable means.

Districts that use consumer reports may need to develop and implement policies to handle the receipt of address discrepancy notices. However, an article by NSBA notes that districts have considerable leeway in developing reasonable policies (*Inquiry & Analysis*, September 2008).

If the district is a “creditor” as defined in law, it needs to develop an identity theft prevention program. School districts generally do not sell products or services that are paid for by consumers over time or after the product or service has been used. However, Soronen suggests a scenario under which a district might be considered a creditor for the purpose of this identity theft prevention program (*Inquiry & Analysis*, March 2009). If district policy does not require prepayment for the food services program (e.g., the district allows students to eat all month and then bills them at the end of the month), the district might be considered a creditor subject to the Red Flag rule. This requirement would not apply to a district that allows students to eat school meals when they are not current on their payments, as long as the district’s policy and practice is to require prepayment (see AR 3551 - Food Service Operations/Cafeteria Fund).

Districts that might be considered creditors should carefully review the Red Flag rule and, as necessary, develop a program to (1) identify red flags or warning signs of identity theft that are specific to the district’s operations; (2) implement procedures to detect red flags in day-to-day operations; and (3) reasonably respond to any red flags detected. The program must be periodically evaluated and updated.

Soronen indicates that the district’s program need not be detailed or complicated and gives some examples:

“Relevant red flags in the school meals program might include things like the presentation of suspicious documents to open or use an account or change account information, a student claiming a bill does not belong to him or her or is for an incorrect amount, or a notice from the police or a student that his or her identity has been stolen.

“Steps taken to detect red flags in the school meals program might be as simple as verifying a student’s identity when setting up a school meals account and verifying a student’s identity when charging a school meal to a student’s account.

“Responding appropriately to red flags in the school meals program might include investigating a claim that a bill a student received does not belong to him or her or is inaccurate, not requiring a student to pay a bill that appears to be the result of identity theft, and opening a new account with a new account number for a student who has been the subject of identity theft.”

CSBA is reviewing the policy implications of the new rule and will provide suggested policy language as needed. For further information, see www.ftc.gov/opa/2004/11/facta.shtml.

Ban on use of school mailboxes for political materials

In a victory for school district and county office of education governing boards, the California Supreme Court has upheld a district’s policy banning the use of school mailboxes to distribute political materials endorsing school board candidates.

CSBA’s Education Legal Alliance filed an amicus brief in support of the district. According to Richard L. Hamilton, director of the Alliance, the ruling is helpful to school districts.





“The court’s ruling clarifies the law prohibiting the use of district resources—in this case, mailboxes deemed district equipment—for political endorsement even if it is the union using district mailboxes under the guise of communicating with its members,” Hamilton said.

The San Leandro Teachers Association regularly used district mailboxes to communicate with its members. However, in this case the union used the mailboxes to distribute a newsletter that endorsed a slate of school board candidates in an upcoming election. The district advised SLTA that Education Code 7054 prohibited use of the mailboxes for political purposes. The union filed an unfair labor practice charge and, pursuing a separate tactic, also sued. The case advanced on to the appellate court, which ruled in favor of the district, and the state Supreme Court agreed to review the case.

The California Supreme Court agreed with the district’s and Alliance’s position that allowing the union to use the mailboxes to endorse candidates unfairly benefits those candidates because no other candidates or organization has similar access to the boxes. The court held that the union’s special access to an internal channel of district communication is the type of abuse that the Education Code was designed to guard against—the use of taxpayer dollars for political advantage. Furthermore, the court held that the district’s ban was an authorized and reasonable regulation of a union’s right to communicate with its members.

Hamilton said the court was careful to emphasize that its ruling was narrow and did not apply to endorsements of ballot measures or union literature that urges members to become involved in upcoming elections.

“This ruling confirms the status quo,” Hamilton said. “Boards have long understood that the district could not use its own district equipment, including mailboxes, to urge the support or defeat of a candidate. If the ruling had gone the other way it could have created a real problem, since the union would have one-sided access and the district would have been unable to respond in kind.”

Read a copy of the court’s ruling at www.courtinfo.ca.gov/opinions/documents/S156961.pdf.

Review CSBA’s advisory, “Guidelines for Political Activity: Ballot Measures and Candidates,” at www.csba.org/LegislationAndLegal/Legal/~media/Files/LegislationLegal/Legal/Guidelinespoliticalactivity2.ashx.

Reprinted from CSBA’s California School News, June 23, 2009. For a sample board policy and administrative regulation related to prohibitions against the use of public funds for dissemination of political campaign materials, see BP/AR 4119.25/4219.25/4319.25 – Political Activities of Employees.

Preparing for pandemic flu

The H1N1 (swine flu) virus caused school closings throughout the United States this spring and the threat is expected to continue. On July 9, at a national H1N1 Influenza Preparedness Summit, Department of Health and Human Services Secretary Kathleen Sebelius announced that school children will be targeted for H1N1 flu shots as soon as they are available this fall.

“Public health officials are looking to schools as sites for mass vaccinations because private health providers are unlikely to have the capacity to serve as primary vaccinators of school-aged children as rapidly as necessary,” says Joan Edelstein, CSBA’s senior health consultant. “CSBA encourages districts to take the time now, before school starts, to plan ahead and coordinate with their local health departments to prepare for pandemic flu, including working to set up flu shot clinics. District plans and policies should be reviewed and updated as necessary to ensure that districts are focused on prevention and education to limit the spread of influenza and are also prepared to respond in the event of an emergency.”

To assist districts in preparing for H1N1 flu, CSBA developed a fact sheet and hosted a Webinar to discuss the virus and actions to take in the event of school closure during flu outbreaks. The fact sheet, Webinar and other flu outbreak resources can be found at www.csba.org/wellness.aspx.

CSBA education opportunities

School Wellness Conference and Pre-Conference

CSBA, in a collaborative partnership with the California Department of Education, California Department of Public Health, and numerous other sponsors and partners, is co-sponsoring a two-day conference Oct. 6-7 in Anaheim that will highlight critical components of school wellness. The 2009 School Wellness Conference, "Leveraging Wellness Policies to Create a Healthy School Environment," will build upon the inaugural 2007 event.

The conference will:

- assess critical health issues and their link to student achievement;
- focus on district governance;
- bring together school and community leaders to share collaborative approaches; and
- address health disparities and support a cultural shift toward healthier students.

Keynote speakers include John Ratey, author of *SPARK: The Revolutionary New Science of Exercise and the Brain*, and Pedro Noguera, renowned speaker, author and education expert.

Over 100 workshops and poster sessions will be offered which address the following strands: community/family engagement, health services/education, healthy and safe school environment, mental health, nutrition education/services, physical education/activity, student wellness policies and staff wellness. A compendium of workshop programs will serve as a resource guide and be distributed at the conference.

A special Pre-Conference event on Oct. 5, "Finding Common Ground: Collaborating to Prevent Childhood Obesity," will explore the foundations of collaboration among schools, cities and others. Specifically, strategies for collaboration around nutrition, physical activity, joint use of indoor and outdoor recreational facilities, as well as safe routes to school will be addressed.

The Pre-Conference event is based on a new collaboration guide developed by CSBA with the Cities Counties Schools Partnership and with funding from the Vitamin Cases Consumer Settlement Fund. The guide, *Building Healthy Communities: A School Leader's Guide to Collaboration and Community Engagement*, will be distributed to all attendees at the Pre-Conference event.

Space is limited for the Pre-Conference event. The session will be offered free of charge on a first-come basis to those who register for the School Wellness Conference.

For information regarding the 2009 School Wellness Conference registration and hotel accommodations, visit <http://swc.csba.org>.

Annual Education Conference

Until Aug. 23, board members, superintendents and district staff may take advantage of discounted registration fees for CSBA's 2009 Annual Education Conference and Trade Show.

The Annual Education Conference will be held Dec. 3-5 at the San Diego Convention Center and will feature workshops, critical issue sessions and clinics in the areas of effective governance; finance, facilities and revenue generating strategies; green schools; partnerships and collaborations; school, student and staff wellness; and student learning and achievement.

For further information, see <http://aec.csba.org>.

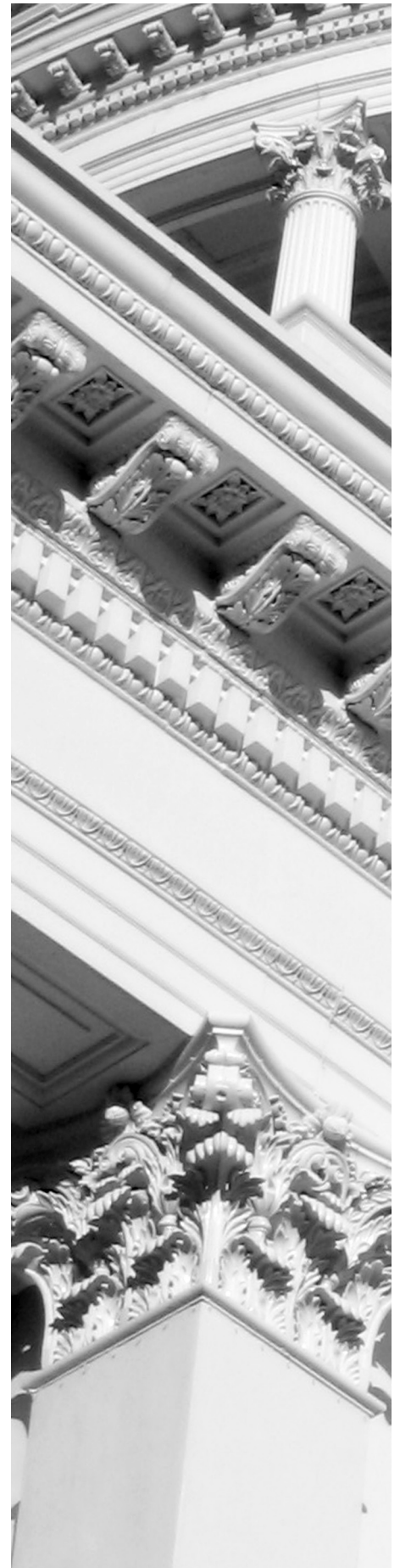
Roadmap to Policy Updates

CSBA's complimentary Roadmap to Policy Updates workshop helps districts maximize the benefits they receive from CSBA's policy services. Participants will explore and discuss best practices and procedures for keeping the district's policy manual current through CSBA's GAMUT Online and Manual Maintenance services and discover ways to access district policies online.

Upcoming workshops will be held:

- Sept. 22 | Siskiyou County Office of Education
- Sept. 23 | Tehama County Office of Education

All workshops are scheduled from 1:30 – 4:00 p.m. For further information or to register, see the Events Calendar section on CSBA's Web site at www.csba.org.





Student wellness resources

Physical activity survey results

Earlier this year, CSBA and California Project LEAN (Leaders Encouraging Activity and Nutrition) conducted an online survey of California school board members to gain a better understanding of opportunities and barriers for physical activity and physical education in district policy and school-based programs. CSBA and CPL are developing a research brief that outlines the key findings from the survey and provides policy recommendations.

The survey findings show that board members believe physical activity has a significant positive impact on overall student health and academic achievement. Respondents cite physical activity policies and practices as one of their top wellness priorities. However, they also identify a number of barriers to making physical activity and physical education a priority in their districts at this time, including budget restrictions, limited time in the school day and competing priorities. In significant numbers of districts, especially lower income districts, physical activity and physical education were negatively affected in the 2008-09 school year, such as by reducing staff, increasing class size or reducing instructional time in these programs. There is a need for training and resources that increase awareness of existing funding opportunities and cost-effective solutions to improving physical activity opportunities.

The research brief is expected to be available in August on CSBA's Web site at www.csba.org/wellness.aspx.

Safe routes to school

One way to encourage students to be more physically active is to promote and facilitate walking and bicycling to school. In collaboration with local government agencies, community organizations, parents and others, districts can develop and implement strategies to make it easy, safe and enjoyable for students to walk and bicycle to and from school on a daily basis. Examples of these strategies appear in the new CSBA sample BP/AR 5142.2 – Safe Routes to School Program and a related policy brief co-authored with CPL entitled “Safe Routes to School: Program and Policy Strategies for School Districts.” These strategies focus on the “five E’s” recommended by the U.S. Department of Transportation’s Federal Highway Administration: education, encouragement, enforcement, engineering and evaluation.

The policy brief provides suggestions for how to get a program started, a case study highlighting a successful collaborative program, information about the role of the governing board in promoting physical activity programs and policies and a list of additional resources. The policy brief will be posted on CSBA's Web site at www.csba.org/wellness.aspx in August.

“Districts and communities that are interested in starting projects but concerned about finances should investigate state and federal Safe Routes to School funding mechanisms,” advises Jessica St. John, CSBA's physical education/physical activity consultant.

The state grants provide funding to cities and counties primarily for infrastructure projects (e.g., improvement or construction of sidewalks, crosswalks and bicycle lanes) in the vicinity of K-12 schools, with up to 10 percent allowable for noninfrastructure activities (e.g., promotional events, student education, safety enforcement). The federal grants focus on grades K-8 and support both infrastructure and noninfrastructure projects. The federal program is set to expire Sept. 1, 2009, but legislation to reauthorize the program is currently making its way through the legislative process.

“Districts should also be aware that there are many opportunities to support walking and bicycling to school that cost little or no money,” adds St. John. “Providing education on pedestrian and bicycle safety, promoting special events such as Walk to School Day, and organizing ‘walking school buses’ are some relatively easy ways that districts can get started. Also, districts should remember that they don’t have to do this alone. It’s important to work with other agencies and volunteers in the community, especially when assessing current conditions along routes to school, establishing priorities for physical improvements and applying for grants.”

Green schools

Recognizing that “green school” practices contribute to healthy school environments, improved student and staff performance, and conservation of natural resources, CSBA is working to increase awareness of the issue among governance teams and to identify actions that districts can take to promote green schools. CSBA has issued a new sample policy BP 3510 – Green School Operations and is preparing a related policy brief that provides additional background information and policy considerations.

CSBA currently provides a number of sample policies and administrative regulations that address environmental health, safety and conservation, such as BP/AR 3511 – Energy and Water Management, BP/AR 3511.1 – Integrated Waste Management, BP/AR 3514 – Environmental Safety, BP/AR 3514.1 – Hazardous Substances, AR 3514.2 – Integrated Pest Management, BP 6142.5 – Environmental Education and BP/AR 7150 – Site Selection and Development. The new policy brings these issues together—along with new policy language on green cleaning, environmentally preferable purchasing and green building standards—to provide a comprehensive, integrated approach within the district and provide an opportunity for boards to publicly demonstrate their commitment to these principles.

The policy brief, “Green Schools: An Overview of Key Policy Issues,” is expected to be available in August on CSBA’s Web site at www.csba.org/wellness.aspx.

NPLAN resources to fight childhood obesity

The National Policy & Legal Analysis Network (NPLAN) to Prevent Childhood Obesity, created by Public Health Law & Policy (PHLP) with funding from the Robert Wood Johnson Foundation, provides fact sheets, toolkits, model policies, model agreements and contracts, training, and technical assistance on legal and policy issues related to:

- encouraging nutrition and physical activity in child care settings and K-12 schools,
- reducing the marketing of unhealthy foods and beverages to children, and
- improving infrastructure in order to expand opportunities for physical activity and increase access to healthy foods in communities.

NPLAN’s priorities and strategies are based on a comprehensive needs assessment which included nearly 100 in-depth interviews with prospective stakeholders. The needs assessment identified challenges in preventing childhood obesity, lessons on how to move forward, and specific legal and policy strategies that a national resource center could address.

In the area of child care and K-12 school environments, NPLAN is currently addressing the following topics:

- developing and executing effective joint use agreements,
- restricting food and beverage advertising in schools,
- promoting students’ ability to walk and bicycle to schools,
- facilitating the availability of healthy beverages on school campuses, and
- establishing nutrition and physical activity standards in child care settings.

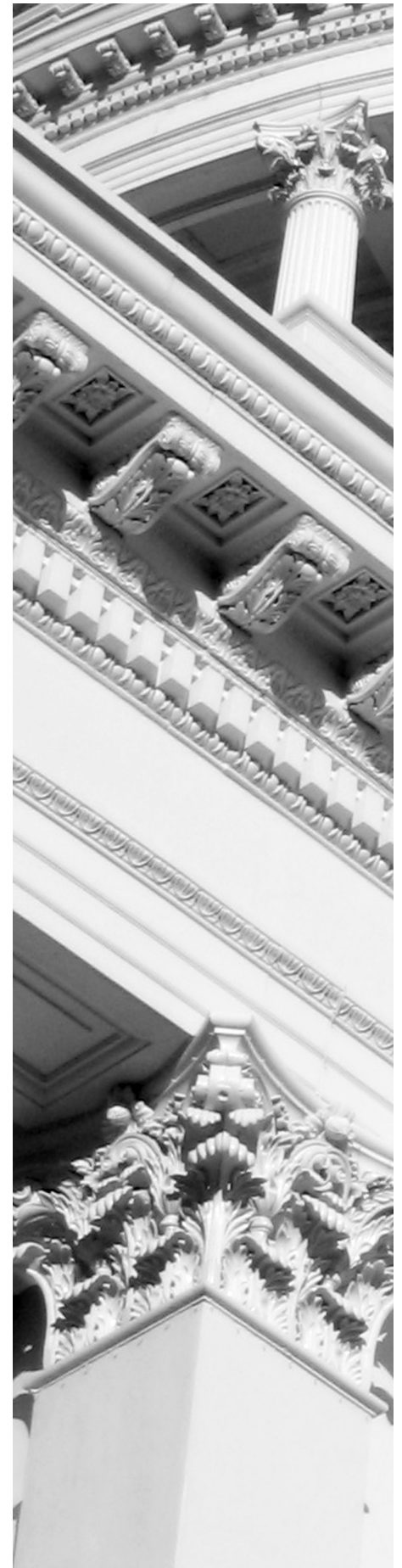
Technical assistance materials such as model joint use agreements, a model healthy beverage vending contract, and model physical activity standards are available for free on NPLAN’s Web site at <http://nplanonline.org>.

“Because schools are formative environments for children, school leaders are uniquely positioned and have a responsibility to promote healthy food choices and physical activity. An important goal of NPLAN is to offer a variety of practical tools that can help school districts implement their student wellness policies,” says Manel Kappagoda, deputy director of NPLAN. “What’s unique about NPLAN is that we bring together experts from different fields—attorneys, policymakers, wellness advocates and scientists—to work on policy interventions that will help reverse the childhood obesity epidemic.”

NPLAN and PHLP are sponsors of the upcoming School Wellness Conference and presenters in the Pre-Conference event (see above).

CDC publication on school connectedness

A new publication issued by the Centers for Disease Control and Prevention, *School Connectedness: Strategies for Increasing Protective Factors Among Youth*, suggests that efforts to improve child and adolescent health should pay greater attention to enhancing their “protective factors.” A protective





factor is a characteristic that can help reduce the effects of stressful life events, increase an individual's ability to avoid risks or hazards and promote social and emotional competence.

School connectedness is a particularly promising protective factor, according to the CDC. A national longitudinal study of students in grades 7-12 found that school connectedness was second in importance, after family connectedness, as a protective factor against emotional distress, eating disorders and suicidal thoughts and attempts.

The publication identifies four factors that can increase school connectedness—adult support, belonging to a positive peer group, commitment to education and school environment—and suggests strategies and actions that can be implemented to enhance these factors.

To download or order a free copy of the publication, go to www.cdc.gov/HealthyYouth.

Upcoming issues

Interdistrict transfers

Education Code 48300-48315, the laws authorizing the “school district of choice” program, have become inoperative as of July 1, 2009. As of this writing, proposed legislation to extend the law is still going through the legislative process. As urgency legislation, it would take effect immediately if passed.

Under this program, a district may elect to become a school district of choice and then accept transfers from students in other districts. The district in which the student resides can prohibit the student from transferring out only under limited circumstances, such as an impact on a desegregation plan. The district of residence also may limit the total number of students transferring out based on a percentage of ADA, as specified in Education Code 48307.

While some districts accepting transfer students like the program because of its ability to increase ADA, obviously there is a resulting negative impact on the ADA of the districts from which the students transfer out. Because of that dynamic, the program became part of the budget battle in 2007 and was reauthorized only until June 30, 2009, and only for districts that had previously elected to be school districts of choice prior to July 1, 2007.

CSBA is monitoring the legislation and will revise BP/AR 5117 – Interdistrict Attendance as necessary if the program is not extended or if its program requirements are amended.

The expiration of this legislation does not affect districts' authority to accept transfers through interdistrict attendance permits pursuant to Education Code 46600-46611.

GASB 54 and fund balance reporting

In March, the Governmental Accounting Standards Board, the national group responsible for establishing accounting and financial reporting standards for state and local governments, issued Statement 54 to enhance how fund balance information is reported and to improve its usefulness for decision making. The new rule is intended to establish fund balance classifications that are easier to understand and apply, clarify governmental fund types and clarify how amounts set aside for emergencies can be reported.

Districts will be required to implement Statement 54 for the first fiscal year beginning after June 15, 2010, applied retroactively to fund balances for all prior periods presented in the financial statement. However, GASB is encouraging early implementation, noting that the fund balance is one of the most widely used elements of government financial statements.

For further information about Statement 54, “Fund Balance Reporting and Governmental Fund Type Definitions,” see www.gasb.org.

