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## Local Control Funding Formula will impact policies

Along with the adoption of a new state budget this summer came a new formula for funding K-12 education beginning in the 2013-14 fiscal year. AB 97 (Ch. 47, 2013) replaces the existing revenue limit and categorical funding structure with the Local Control Funding Formula (LCFF), which not only changes the way districts and county offices of education (COEs) are funded but also makes programmatic requirements for certain categorical programs inapplicable and introduces new accountability provisions. A number of district/COE policies and administrative regulations may need to be updated to implement these provisions.

The LCFF continues to provide a base grant to districts based on average daily attendance. Then, toward the goal of helping to close the achievement gap, the LCFF adds supplemental grants based on the number of English learners, foster youth and students qualifying for free or reduced-price meals (students can be counted in one category only). In districts where such students comprise 55 percent or more of total enrollment, the district will receive additional funding through a concentration grant. Funding for COEs will be based on a two-part formula that considers the cost of providing regional services and alternative education programs. The State Board of Education (SBE) is required to adopt emergency regulations regarding expenditures of supplemental and concentration grant funds by Jan. 31, 2014.

Boards and superintendents will need to develop an understanding of the new funding formula and make informed decisions about how to spend the additional money on services that benefit the targeted student groups. CSBA has begun a full-scale effort to prepare districts/COEs for the changes ahead. Briefs, webinars, trainings and other activities have begun.

As boards begin making decisions about new budget and programmatic priorities, they should review and align their policies accordingly. In addition, CSBA is reviewing its sample policies and administrative regulations to reflect the legal requirements of AB 97. Although certain requirements will not be effective until 2014 or later, CSBA expects to begin updating some related sample policies and administrative regulations this fall. Among the issues that are expected to impact policy are:

- **Local Control and Accountability Plan.** By July 1, 2014 and annually thereafter, districts/COEs must develop a Local Control and Accountability Plan that aligns with their annual budget and identifies actions they will take to meet state priorities pertaining to teacher qualifications, implementation of the Common Core State Standards, parental involvement, student achievement, student engagement, school climate, student access to the course of study and student outcomes. The SBE is required to develop a template for this plan by the end of March 2014, but districts/COEs could begin now to put a process in place for developing the plan. AB 97 requires that the plan be developed through a process that includes consultation with teachers, principals, other



administrators, other school personnel, parents and students. Once the plan is developed, it must be posted on the district/COE website and submitted to the county superintendent of schools. Complaints of noncompliance regarding plan development must be addressed through uniform complaint procedures. *Potential policy impact: New policy will address development of the plan. Also BPI/AR 1312.3 – Uniform Complaint Procedures.*

- **Accountability/intervention.** At the request of the district board, or if the county superintendent does not approve the district's Local Control and Accountability Plan or a subsequent update of the plan, the county superintendent must provide technical assistance to the district. Such assistance may include identification of the district's strengths and weaknesses, assignment of academic expert(s) to help the district identify and implement effective programs and/or referral to the California Collaborative for Educational Excellence for advice and assistance. The Superintendent of Public Instruction (SPI) may provide technical assistance to COEs under the same conditions. Districts/COEs may ultimately be subject to state intervention based on persistent or acute inadequate performance or on failure or inability to implement the recommendations of the California Collaborative for Educational Excellence. In such circumstances, the SPI or an academic trustee designated by the SPI may make changes to the local plan and/or impose a budget revision or rescind district/COE actions in order to improve outcomes for targeted student groups. *Potential policy impact: BP 0500 – Accountability.*
- **Budget.** Consistent with state regulations to be adopted by the SBE to govern expenditures of supplemental and concentration grant funds, district/COE budgets will need to reflect an increase or improvement in services for targeted student groups in proportion to their increase in apportioned funds. Audit reports will include proper expenditure of LCFF funds. In addition, the SBE is required to revise budget standards and criteria by Jan. 1, 2014, which will be applicable starting in the 2014-15 fiscal year. *Potential policy impact: BP 3100 – Budget, BP 3110 – Transfer of Funds and BPI/AR 3460 – Financial Reports and Accountability.*
- **Categorical programs.** AB 97 redirects funding for specified categorical programs into the LCFF. These include the "Tier 3" categorical programs that had been subject to temporary flexibility through 2014-15. Thus, districts/COEs have considerable flexibility to eliminate or implement these programs at their discretion, consistent with any applicable federal requirements and collective bargaining agreements. A list of categorical programs folded into the LCFF is included in the Legislative Analyst's Office report *An Overview of the Local Control Funding Formula*, available at [www.lao.ca.gov/reports/2013/edu/lcff/lcff-072913.pdf](http://www.lao.ca.gov/reports/2013/edu/lcff/lcff-072913.pdf). CSBA is reviewing its sample policies and administrative regulations pertaining to these programs and will revise them as necessary. In the meantime, a new Cautionary Notice has been placed at the top of all affected policies to advise districts that some provisions of the policy are no longer required. *Potential policy impact: Numerous sample policies and administrative regulations related to categorical programs. This fall, CSBA plans to issue guidance regarding the sample materials that reflect provisions related to these programs.*
- **Charter schools.** AB 97 amends requirements related to the content of the charter petition, reports required by charter schools and consequences for a charter school's failure to meet state or school priorities for student subgroups. *Potential policy impact: AR 0420.4 – Charter School Authorization, BPI/E 0420.41 – Charter School Oversight and BP 0420.43 – Charter School Revocation.*
- **Class size.** As a condition of receiving an additional adjustment to the base grant for grades K-3, districts/COEs will need to make progress toward maintaining an average class size of no more than 24 students in those grade levels. That ratio must be achieved when LCFF is fully implemented in accordance with Education Code 42238.03(b)(4), unless a different ratio is negotiated with employee organizations. *Potential policy impact: BPI/AR 6151 – Class Size.*
- **Deferred maintenance.** AB 97 repeals a number of requirements (Education Code 17584-17584.2, 17585, 17587) related to deferred maintenance of school facilities. As a result, it also affects (1) the duties that may be assigned to a citizens' oversight committee established

whenever a general obligation bond is approved under the 55 percent threshold and (2) the board resolution required when excess deferred maintenance funds are transferred. *Potential policy impact: BP 3111 – Deferred Maintenance Funds, AR 7214 – General Obligation Bonds and E 9323.2 – Actions by the Board.*

CSBA will continue to monitor the implementation of the LCFF and update the related sample policies as needed. Also look for ongoing information about the LCFF on CSBA's website at [www.csba.org](http://www.csba.org).

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## Drug testing policy revised to reflect state law privacy protection

CSBA's sample board policy BP 5131.61 – Drug Testing has been updated to reflect greater privacy protections provided to students under the California Constitution compared to the U.S. Constitution. The previous version of the policy relied on U.S. Supreme Court precedents which found it lawful for districts to require students to submit to random, suspicionless drug testing (i.e., probable cause or reasonable suspicion need not be established prior to the test) as a condition of their participation in athletic programs or extracurricular activities on the basis that districts' custodial responsibility for students entrusted to their care outweighs the students' privacy right under the U.S. Constitution (*Vernonia School District v. Acton* and *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*). However, a California case calls into question whether the district's drug testing program can be extended beyond the context of athletics without some compelling justification.

In the unpublished California case, the court of appeal upheld a preliminary injunction against a district's drug testing program which required students who participated in certain competitive, nonathletic extracurricular activities to be subject to random, suspicionless drug tests. In granting the injunction, the court analyzed the district's policy under Article 1, Section 1 of the California Constitution which provides more individual privacy protection than the U.S. Constitution.

The implication is that a drug testing program which may be allowed under federal law may nevertheless violate California law, if the district does not have a compelling reason for drug testing students. While safety of students participating in athletics is well recognized as justification for drug testing athletes, districts will need to show evidence of drug use or other justification for testing students in other contexts such as extracurricular activities. It is recommended that districts consult legal counsel prior to adopting student drug testing policy or procedures.

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## USDA issues standards for all foods on campus

In June, the U.S. Department of Agriculture (USDA) issued its interim final rule providing minimum nutrition standards for all foods and beverages sold at school, other than those sold through the lunch and breakfast programs. The federal Healthy, Hunger-Free Kids Act of 2010 required the USDA to develop such standards consistent with the most recent Dietary Guidelines for Americans.

The "Smart Snacks in School" standards, incorporated into 7 CFR parts 210 and 220, must be implemented beginning July 1, 2014. Districts may voluntarily begin phasing in the standards prior to this date.

The standards apply to foods and beverages sold through vending machines, school stores, snack shops, a la carte lines, and any other venue where foods and beverages are sold at





school—from before school until 30 minutes after the end of the school day. They also apply to fundraisers, but provide an exception for “infrequent” school-sponsored fundraisers (with “infrequent” to be defined by each state) provided that foods or beverages are not sold in competition with school meals in the food service area. Activities occurring more than 30 minutes after school, such as athletic events, are not subject to the standards, nor are class parties or other celebrations where foods are not “sold.”

The nutrition standards require lower levels of fat, sugar and sodium and more fruits, vegetables, whole grains, low-fat dairy products, and lean proteins. Portion size and caffeine content vary by age group.

In addition, the new standards implement existing federal law (42 USC 1758) requiring schools that participate in the National School Lunch Program to make free drinking water available during lunch service (see AR 3550 – Food Service/Child Nutrition Program). They also amend 7 CFR 220.8 to require the availability of drinking water during breakfast, but only when breakfast is served in the cafeteria. Schools are encouraged to provide water during breakfast in other settings and to provide water during after-school programs.

The complete rule is available at [www.fns.usda.gov/cnd/Governance/Legislation/allfoods\\_interimfinal.pdf](http://www.fns.usda.gov/cnd/Governance/Legislation/allfoods_interimfinal.pdf). CSBA is reviewing the policy implications of the new rule and may update BP/AR 3554 – Other Food Sales, AR 3550 – Food Service/Child Nutrition Program and BP 5030 – Student Wellness as necessary.

For additional information about nutrition in schools, see CSBA’s *Student Wellness: A Healthy Food and Physical Activity Policy Resource Guide* and *Monitoring for Success: A Guide for Assessing and Strengthening Student Wellness Policies*, available at [www.csba.org/GovernanceAndPolicyResources/ConditionsOfChildren/StudentPhysicalHealthWellness/StudentWellnessPolicy.aspx](http://www.csba.org/GovernanceAndPolicyResources/ConditionsOfChildren/StudentPhysicalHealthWellness/StudentWellnessPolicy.aspx).

## Students with food allergies may be “disabled” under Section 504

Reflecting 2012 guidance from the U.S. Department of Education’s Office of Civil Rights (OCR), BP/AR 5141.27 – Food Allergies/Special Dietary Needs has been updated to explain the circumstances under which students with a food allergy that substantially limits one or more major life activities may be considered to be “disabled” under Section 504 of the federal Rehabilitation Act (29 USC 794).

The definitions of “disability” and “substantially limits” for Section 504 purposes were revised when the Americans with Disabilities Act was amended in 2008. As defined in 42 USC 12102, a determination of disability now must be made without regard to the ameliorative effects of any mitigating measures (e.g., allergy shots, frequent hand washing, bringing lunch from home, or other measures). If a student’s allergy would substantially limit a major life activity such as respiratory function without those mitigating measures, then he/she meets the definition of “disabled.”

Prior to 2008, fewer students with food allergies were identified as disabled because their allergies could be controlled. With mitigating factors no longer a consideration, the number of students with food allergies qualifying as disabled has grown considerably.

Whenever a student meets the definition of “disabled” under Section 504, the district needs to evaluate the student to determine if he/she needs related services and to develop an accommodation plan if necessary. Regardless of whether any services are needed, a student identified as disabled is protected against discrimination, harassment, intimidation and bullying under Section 504 and other federal and state laws; see BP 0410 - Nondiscrimination in District Programs and Activities, AR 1312.3 – Uniform Complaint Procedures, BP 5131.2 – Bullying and BP 5145.3 – Nondiscrimination/Harassment.

According to the national organization Food Allergy Research and Education (FARE), approximately one-third of children with food allergies report that they have been bullied because of their allergy. Stories range from teasing and name-calling to more dangerous incidents in which perpetrators have intentionally exposed a student to an allergen (e.g., spreading peanut butter on an allergic student's forehead). In May 2013, FARE launched a national educational program, "It's Not a Joke," targeted at stopping food allergy bullying. For further information about this campaign and related issues, go to [www.foodallergy.org](http://www.foodallergy.org).

Districts cannot tolerate any harassment of an allergic student. In addition to intervening when a bullying incident occurs and consistently enforcing established complaint procedures, districts should consider providing health education to students regarding the dangers that some students face when exposed to certain foods.

To read the OCR's guidance on these issues, see the Dear Colleague letter at [www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.html](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.html) and the accompanying Questions and Answers at [www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html](http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html).

## Administrative regulation reflects pregnancy disability leave requirements

CSBA's sample administrative regulation AR 4161.8/4261.8/4361.8 – Family Care and Medical Leave has been updated to reflect state law and recently amended state regulations (Register 2012, No. 48) governing pregnancy disability leave (PDL).

Provisions related to such leave are complicated by the fact that PDL under federal law is part of the Family and Medical Leave Act (FMLA), whereas under state law it is separate and distinct from the California Family Rights Act (CFRA). Thus, under federal law a female employee's use of leave for purposes of pregnancy, childbirth or a related medical condition counts against her FMLA leave. The PDL and any other use of FMLA leave cannot total more than 12 work weeks during a 12-month period. However, state law and regulations grant an employee up to four months of PDL, which may be followed by up to 12 work weeks of CFRA leave for the birth of the child. Where there is a conflict between state and federal law, the law that grants the greatest benefits generally controls.

As amended, 2 CCR 7291.9 clarifies that the four months of PDL to which an employee is entitled under state law means the number of days or hours that the employee would normally work within one-third of a year. For a full-time employee who works 40 hours per week, "four months" equals 693 hours of leave entitlement (i.e., 40 hours per week times 17 1/3 weeks). For a part-time employee, the four months is calculated on a proportional basis (e.g., 20 hours per week times 17 1/3 weeks).

Districts are encouraged to consult legal counsel as necessary when there is a question regarding the amount of leave to which an employee is entitled or any other provision related to such leave.

## New resources

### Summer Learning and Wellness Resource Guide

CSBA's new *Summer Learning and Wellness Resource Guide* compiles all of CSBA's previously published resources on summer learning and wellness and adds new materials designed to support implementation of summer programs. The interactive guide, available at [www.csba.org/summerlearning](http://www.csba.org/summerlearning), includes:

- All the articles in CSBA's 2013 Summer Learning Series, including "Why do summer learning and wellness programs matter?", "What constitutes an effective summer program?", "How





can boards provide leadership and funding for summer programs?”, and “Effective summer learning programs: Case studies”

- Related CSBA policy briefs *School's Out, Now What? How Summer Programs Are Improving Student Learning and Wellness* and *Providing Access to Nutritious Meals During Summer*
- CSBA sample policies and administrative regulations BP 6177 – Summer Learning Programs and BP/AR 3552 – Summer Meal Program
- A timeline for developing and implementing summer programs
- A training facilitator’s guide for conducting a “Summer Matters” workshop
- An annotated literature review which describes useful resources related to summer learning and wellness

This resource guide is supported by a grant from the David and Lucile Packard Foundation.

### **Governance brief on student assessment**

California’s student assessment system will likely be undergoing significant changes in the next few years. With the Standardized Testing and Reporting (STAR) program scheduled to sunset in July 2014, Superintendent of Public Instruction Tom Torlakson and others see an opportunity to replace the STAR program with a new assessment system, the California Measurement of Academic Performance and Progress for the 21st Century (CalMAPP21). If new legislation (AB 484) is passed, administration of the STAR tests would be limited in 2013-14 to specified assessments in grades 3-8 that are necessary to satisfy the adequate yearly progress requirements of federal law and assessments in grade 11 that have been augmented for use in the Early Assessment Program. Starting in 2014-15, students would be assessed using computer-based tests aligned to the Common Core State Standards in English language arts and mathematics, developed by the multistate Smarter Balance Assessment Consortium. In addition, the state would begin developing plans and timelines for updated assessments in other subject areas as well as primary language assessments and alternate assessments for students with disabilities.

Board members and district staff should be aware of the recommendations and the potential impact on district programs. CSBA has issued a governance brief, *Supporting Student Achievement, Issue 1: Student Assessment System in Flux*, which provides detailed background information and discusses the implications for curriculum and instruction, underprivileged and English learner students, governance, funding and the state’s accountability system. This brief is available at [www.csba.org/GovernanceAndPolicyResources](http://www.csba.org/GovernanceAndPolicyResources).

### **New research on physical activity**

A new fact sheet from CSBA, *New Study Examines Best Practices for Supporting Physical Activity in Schools*, summarizes the findings, conclusions, and recommendations of University of California San Diego researchers who recently surveyed nearly 100 elementary schools in southern California regarding their physical activity policies and practices.

The study assessed how the number of minutes of physical activity of students ages 6-10 years was impacted by various school physical activity practices, including whether the school had a physical education teacher, provided the minimum required amount of PE (100 or more minutes per week), had an adequate PE class size (30 or fewer students per teacher), trained teachers to provide moderate to vigorous physical activity in PE, had recess supervised by a non-classroom teacher, provided 20 or more minutes per recess period, had an adequate student-to-supervisor ratio in recess (75 or fewer students per supervisor), provided activities during recess, and had classroom teachers implement classroom physical activity breaks.

Results of the study showed that students at schools implementing multiple practices had twice as much physical activity per day than students at schools implementing only one practice.

Furthermore, schools with higher socioeconomic families were more likely to have a PE teacher and to provide more physical activity opportunities than lower SES schools.

The fact sheet is available at [www.csba.org/PNB](http://www.csba.org/PNB).

## CSBA education opportunities

### AgendaOnline webinar

This complimentary, no-obligation webinar will showcase CSBA's *AgendaOnline* service which enables easy development and dissemination of board meeting information. The webinar will explain features of the service, such as creating meeting templates, electronic submission of agenda items, attaching and linking supporting documents, recording minutes, and more. Participants will learn how districts/COEs are saving time and money using this service.

The one-hour webinar is scheduled for Sept. 17 at 11 a.m. and Nov. 7 at 2 p.m. To register, go to [www.csba.org/Events](http://www.csba.org/Events).

### Annual Education Conference and Trade Show

Registration is now open for the 2013 Annual Education Conference and Trade Show, to be held Dec. 5-7 in San Diego. AEC is the only professional development event in the state that prepares board members, superintendents, student board members and executive assistants for the work ahead.

The conference will showcase innovative and successful programs in the following major strands:

- Common Core
- Community partnerships, engagement and advocacy
- The digital age
- Funding, finance and facilities
- Leadership through governance
- School safety
- Student achievement

Special pre-conference activities on Dec. 4 include the Board Presidents Workshop, the Legal Symposium for Experienced Board Members, and the Orientation for New Trustees.

The full-day executive assistants program is scheduled for Friday, Dec. 6. This year's program focuses on best practices among top executive assistants across the state, an exclusive session with technology guru Jim Spellos, plenty of time for networking and collaboration, and a choice of valuable breakout sessions including Google-licious, Brown Act: The Basics and Beyond, Hiring a New Superintendent: Understanding the Search Process and more.

To register, secure housing or obtain further information, go to [aec.csba.org](http://aec.csba.org). The preliminary program booklet has been mailed to districts and is also available online.

## CSBA Policy Services news

Dianna Parker, CSBA's Director of Governance Technology, retired in June after serving more than 25 years in CSBA's Policy Services Department. During her tenure she led the development and revamping of the GAMUT CD and then GAMUT Online policy information service, as well as the creation of the *AgendaOnline* electronic board meeting agenda service.





Look for the newly redesigned GAMUT Online, with its enhanced search and formatting capabilities, coming soon. The testing is nearing completion and the new GAMUT Online should be available to all clients this summer.

CSBA is always available to assist member districts with their policy needs. Contact our staff by calling (800) 266-3382 or by email:

Policy Services questions or comments: **[Policy@csba.org](mailto:Policy@csba.org)**

GAMUT Online: **[GAMUT@csba.org](mailto:GAMUT@csba.org)**

Manual Maintenance drop box for policy processing: **[polycymaintenance@csba.org](mailto:polycymaintenance@csba.org)**

AgendaOnline: **[Agenda@csba.org](mailto:Agenda@csba.org)**

### **Meet our staff:**

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