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Teacher tenure, layoff and dismissal in flux

On June 10, Los Angeles Superior Court Judge Rolf M. Treu tentatively ruled that aspects of California's teacher tenure, layoff and dismissal statutes result in disadvantaged and minority students being placed with less effective teachers, thereby violating those students' constitutional rights. The ruling in *Vergara v. State of California* cited problems with:

- » **Teacher eligibility for tenure after two years of probation.** The court cited evidence that two years is not "nearly enough time for an informed decision to be made regarding the decision of tenure" and that the probationary period is actually shorter than two years since decisions must be made by March 15. The court concluded that teachers could be reelected under this timeline who would not be reelected if the district had more time to evaluate the teacher's performance.
- » **Layoff based on seniority.** State law generally requires that, when layoffs are necessary for economic reasons specified in law, teachers with less seniority must be laid off before those with greater seniority. There is no exception based on teacher effectiveness, which the court called "unfathomable."
- » **Teacher dismissal process.** Finding the teacher dismissal process time-consuming and costly, the court concluded that districts may be reluctant to begin dismissal procedures, resulting in "grossly ineffective" teachers being left in the classroom. The court acknowledged that teachers should be afforded reasonable due process but noted that classified employees are granted due process without a "tortuous process."

The court's 16-page decision may be found at <http://bit.ly/1sZXEOy>. Also, a CSBA-sponsored archived webcast on this case and related issues may be viewed at www.csba.org/EdInsights.

It is important to note that the ruling was a "tentative decision." The final decision is not expected before September. Additionally, the decision is stayed pending appeal, which is expected to take years.

While the ultimate outcome of the court case is still unknown, legislative solutions are being considered. CSBA President Josephine Lucey called the *Vergara* decision "a call for all stakeholders to work together to ensure that all of California's six million school children have an equal opportunity to a quality education." She added that "we should not and cannot afford to wait for the appellate courts to address these critical issues. Regardless of the legal outcome, the education community should immediately begin working with the governor and the California Legislature to resolve these important issues of inequality in education."

CSBA updated BP 4117.3 - Personnel Reduction in August to clarify current law, and anticipates updating AR 4117.4 - Dismissal and AR 4118 - Suspension/Disciplinary Action to reflect the *Vergara* case as well as new legislation (AB 215) addressing suspension and dismissal procedures. CSBA will continue to monitor any further developments in the *Vergara* case for policy implications.



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Teacher support programs needed despite elimination of categorical programs

Among the categorical programs eliminated through the establishment of the Local Control Funding Formula (LCFF) were several programs that provided support to teachers, including the Certificated Staff Mentoring Program, the Peer Assistance and Review (PAR) program, and the Teacher Credentialing Block Grant which funded the Beginning Teacher Support and Assessment (BTSA) induction program. Although specific categorical funding is no longer provided, districts should be aware of continuing requirements to provide support and guidance to certain teachers, including:

- » **Teachers with a short-term staff permit, provisional internship permit or emergency permit.** As a condition of hiring a person with such a permit, the district must verify to the Commission on Teacher Credentialing (CTC) that it will provide that person with an orientation and mentoring. AR 4112.2 - Certification, updated in August, clarifies the teacher support requirements for persons holding any of these permits.
- » **Teacher interns participating in a university or district intern program.** New state regulations (5 CCR 80033, as added by Register 2014, No. 7) require a memorandum of understanding between the district and college/university partner which details the support and supervision that will be provided to interns. For interns who do not have a valid English learner authorization, bilingual authorization or crosscultural, language and academic development certificate, 5 CCR 80033 specifies additional requirements addressing the needs of English learners. BP/AR 4112.21 - Interns was updated in August to reflect these new state regulations.
- » **Beginning teachers who possess a preliminary teaching credential and are in their first or second year of teaching.** Even though BTSA has been eliminated, Education Code 44259 still requires beginning teachers to complete a CTC-approved induction program in order to fulfill the requirements for a clear teaching credential. If a district does not sponsor an induction program, teachers may fulfill the induction requirement by enrolling in an induction program offered online or by a college or university, a neighboring district or a county office of education, or by completing a general education clear credential program through an accredited teacher preparation program at a California college or university.

The CTC has expressed concerns that changes in program funding may result in declines in program quality and in the availability of induction programs in some areas of the state. During the time that BTSA was included in "Tier 3" categorical flexibility (2009-10 through 2012-13), the number of induction programs declined and more than half of school districts responding to a Legislative Analyst's Office survey reported that they had used the categorical flexibility to shift some amount of funding away from BTSA programs. Now, under the LCFF, some programs are no longer enrolling first-year teachers and many programs will be charging a fee to participating teachers (CTC meeting, February 2014). The CTC and stakeholders are continuing to discuss strategies to ensure that beginning teachers are provided with induction opportunities.

In addition to ensuring that teacher support programs are provided as required by law, districts should consider other circumstances in which individual teachers may need coaching, mentoring or other support to be successful. Teacher support and guidance programs have proved beneficial for increasing both teacher quality and retention and thus can contribute to the attainment of district goals for student learning.

CSBA deleted sample board policies and administrative regulations that reflected legal requirements for the BTSA, PAR and mentoring programs and folded the key concepts of these programs into a new BP 4131.1 - Teacher Support and Guidance.



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District not required to publicly identify individual teacher ratings

In a court ruling issued in July, a state appellate court found that a district does not need to publicly release the names of teachers in connection with their performance ratings. The *Los Angeles Times* had sued the Los Angeles Unified School District for access under the California Public Records Act to district ratings of individual teacher performance in boosting students' academic achievement, as measured by state standardized test scores. The district had originally provided aggregate teacher performance ratings by grade, school and subject matter as well as anonymous ratings for individual teachers (i.e., using individual teacher codes), but had redacted teacher names and the school/classroom to which each teacher was assigned. The court decision found a stronger public interest in keeping the names confidential, citing the potential negative effect on teacher recruitment and retention and other issues.

Previously the superior court judge had ruled that the district must release the teachers' names to the newspaper and, in a very brief opinion, the appellate court initially upheld that decision. The district appealed the appellate decision to the California Supreme Court, with CBSA's Education Legal Alliance filing a friend of the court letter on behalf of the district. The California Supreme Court vacated and remanded the decision back to the appellate court, which led to the recent decision in favor of the district.

The decision means that the district will not be required to release the names that correspond to the individual teacher codes. However, the decision also remanded back to the superior court the question of whether the district must disclose the school site code that corresponds to the individual teacher code.

Teacher evaluation criteria and processes are addressed in BP 4115 - Evaluation/Supervision, updated in August. Also see AR 4112.6/4212.6/4312.6 - Personnel Files and AR 1340 - Access to District Records.

CSBA updates uniform complaint procedures and related policies

CSBA is working with the California Department of Education (CDE) and the U.S. Department of Education's Office for Civil Rights to revise sample uniform complaint procedures and related policies. As soon as they are completed, CSBA will reissue BP/AR 1312.3 - Uniform Complaint Procedures, BP 5131.2 - Bullying, BP/AR 5145.3 - Nondiscrimination/Harassment and BP/AR 5145.7 - Sexual Harassment.

As revised, these materials will reflect state regulations (5 CCR 4610, as amended by Register 2013, No. 38) which require districts to adopt a uniform system of procedures that meet specified requirements for receiving, investigating and resolving complaints alleging discrimination, harassment, intimidation and bullying as well as noncompliance with state law prohibiting the charging of student fees. In addition, BP/AR 1312.3 will incorporate requirements to use uniform complaint procedures to resolve complaints alleging noncompliance related to development of the Local Control and Accountability Plan (LCAP) (also see BP 0460 - Local Control and Accountability Plan).

New state regulations (5 CCR 4622, as amended by Register 2013, No. 38) and state law (Education Code 52075, as added by AB 97, 2013) also expand the required content of the annual uniform complaints notification. As districts prepare to send the annual notice of uniform complaint procedures to students, parents/guardians, employees and others, they should update the notice to include statements that:



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- » A student enrolled in a public school shall not be required to pay a fee for his/her participation in an educational activity that constitutes an integral fundamental part of the district's educational program, including curricular and extracurricular activities.
- » The board is required to adopt and annually update the LCAP in a manner that includes meaningful engagement of parents/guardians, students, and other stakeholders in the development and/or review of the LCAP.

State adopts new rules for calculating direct costs for use of school facilities

State law authorizes districts to charge an amount "not exceeding" direct costs for the use of school facilities or grounds by community groups and entities, or "at least" direct costs if the group will be using school facilities for religious services. The calculation of direct costs for these purposes is clarified in new state regulations (5 CCR 14037-14042, as added by Register 2014, No. 19) effective July 1, 2014.

To determine direct costs that districts may charge, new state regulations require districts to determine the "proportionate share" of allowable operational and capital direct costs. Operational direct costs include estimated costs of supplies, utilities, janitorial services, other services of district employees and/or contracted workers, and salaries and benefits paid to district employees directly operating and maintaining school facilities and grounds for community use. Capital direct costs include the estimated costs of maintenance, repair, restoration and refurbishment of nonclassroom-space facilities or grounds. Organizations providing instruction during school hours or classroom-based programs after school hours (e.g., after-school, tutoring and child care programs) cannot be charged capital direct costs.

The governing board is required to adopt a fee schedule that specifies the hourly fee to be charged by the district, either for specific school facilities or grounds or for types or categories of school facilities or grounds (e.g., all gymnasiums or playgrounds).

In August, CSBA updated BP 1330 - Use of School Facilities to reflect these new rules.

CDE encourages suicide prevention policies

Calling attention to the alarming statistics on youth suicide, State Superintendent of Public Instruction Tom Torlakson is encouraging all governing boards to consider adopting a policy on suicide prevention based on CSBA's sample BP/AR 5141.52 - Suicide Prevention. In correspondence sent to all superintendents and charter school administrators on July 21, 2014, Torlakson reported that, each year in California, about 172 youth die by suicide and over 11,000 suicide attempts result in emergency room visits and hospitalizations.

BP/AR 5141.52 include strategies for suicide prevention, intervention and staff development. Education Code 49604 encourages suicide prevention training for each counselor in middle and high schools. Suicide prevention training for teachers is also recommended, even though the Professional Development Block Grant, which authorized funding for this purpose, was eliminated by AB 97 (2013).

For additional resources on suicide prevention, see the CDE's website at <http://bit.ly/1qaz0rs>.



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Supreme Court issues new ruling on cell phone searches

A recent ruling by the U.S. Supreme Court regarding cell phone searches, while not directly addressing searches and seizures of student cell phones by school officials on school grounds, is a useful reminder of student privacy issues regarding such searches.

In *Riley v. California* (June 25, 2014), the court concluded that a police officer may not search the cell phone data of an arrested person without a search warrant, except under “exigent circumstances.” The Fourth Amendment to the U.S. Constitution protects the public from unreasonable searches and seizures by the government, but exceptions have permitted officers to conduct warrantless searches of arrested persons in limited circumstances (e.g., to remove weapons or prevent concealment or destruction of evidence). However, with respect to cell phone data, the court has determined that the government’s interest in a warrantless search of an arrested person’s cell phone does not outweigh the individual’s privacy rights because of the amount and type of material that may be stored there.

Even though *Riley* does not apply directly to the school setting, the court’s emphasis on the privacy interest makes it important to narrowly tailor student cell phone searches. The “reasonableness” standard of the Fourth Amendment has been used to determine the legality of searches of a student or his/her property. Generally, school officials may search students’ personal property, including cell phones, when there is individualized suspicion that the search will lead to evidence that the student is violating a specific school rule. However, the scope of the search must be reasonably related to that violation and minimally intrusive in light of the student’s age and/or the seriousness of the infraction.

Districts should ensure that school staff understand the limitations on searches and should consult with legal counsel as necessary in developing or implementing policy and administrative regulations related to searches. Matters related to searches of student property are addressed in BP/AR 5145.12 - Search and Seizure.

State graduation rate increases

Recently released data from the 2012-13 school year indicate that, for the fourth year in a row, California’s graduation rate continued to increase as the dropout rate fell. Over a one-year period between 2011-12 and 2012-13, the graduation rate rose by 1.3 percent, from 78.9 to 80.2 percent, and the dropout rate fell from 13.1 to 11.6 percent.

While dropout rates are still highest for students of color, significant improvement was noted. Dropout rates fell about 2 percent for both African American and Hispanic student populations over the past year.

See www.cde.ca.gov/nr/ne/yr14/yr14rel42.asp for the data tables and comments by State Superintendent of Public Instruction Tom Torlakson.

Despite the promising results, districts should be aware of the need to continually evaluate and refine their strategies to address the needs of at-risk students. The Pupil Retention Block Grant was eliminated by AB 97 (2013), but at the same time AB 97 requires that districts and county offices of education address student engagement in their LCAP, as measured by school attendance rates, chronic absenteeism rates, middle school and high school dropout rates, and high school graduation rates. Strategies for dropout prevention, intervention and recovery are described in BP 5147 - Dropout Prevention, updated in August.



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CSBA education opportunities

Back-to-School webcast

CSBA's live Back-to-School webcast will bring governance teams up to speed on the latest education issues, including information about the LCFF and strategies for closing the achievement gap. Scheduled for September 18, 10:00 a.m. to noon, the webcast will provide a comprehensive overview from CSBA governmental relations experts of what governance teams need to know to prepare for action in the new school year. A question-and-answer session will allow participants to engage with presenters.

Registration is complimentary, but is required. For further information, check the online learning opportunities at www.csba.org/TrainingAndEvents.

Annual Education Conference

Registration is now open for CSBA's Annual Education Conference and Trade Show, the association's premier continuing education program. See <http://aec.csba.org> for additional information and online registration.

The conference will be held Dec. 14-16 in San Francisco. General sessions, workshops, critical issue sessions and table talks will deliver practical solutions to help governance teams from districts and county offices of education improve student learning and achievement. Major strands of the conference include opportunity and achievement; student learning; funding, finance and facilities; leadership through governance; and partnerships and collaborations. Executive assistants are invited to attend a special one-day program for executive assistants on Dec. 15.

In addition, CSBA staff will be available at the conference to demonstrate Gamut Online and Agenda Online and answer questions.

New resources from CSBA

Sample LCAP policy for county offices

Recognizing that county offices of education are subject to certain unique requirements related to the LCAP, CSBA has developed and distributed a sample policy on the LCAP specifically for county boards. County board policy BP 0460 - Local Control and Accountability Plan provides information about plan adoption as well as continuing requirements to monitor the county office's progress toward LCAP goals, develop an annual update to the plan, and seek technical assistance from the Superintendent of Public Instruction as needed.

In addition, CSBA has developed a related exhibit which may be approved by county superintendents for county office use as an administrative regulation. The exhibit addresses county superintendents' responsibilities related to the development and annual update of the county office LCAP, as well as their responsibility to review and approve district LCAPs.

The policy was developed with input from the executive committee of California County Boards of Education (CCBE) and is available on CCBE's website at www.theccbe.org/Resources/SamplePolicies.aspx.



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Healthy relationships

Promoting Healthy Relationships for Adolescents: Board Policy Considerations, a new governance brief jointly published by CSBA and the Partnership to End Domestic Violence, looks at the implications of dating abuse for schools and suggests actions that districts can take related to preventing dating abuse and intervening when it occurs. The brief defines dating abuse and reviews research on the extent and nature of the problem, including findings that nearly half of students who experience dating violence say some of the abuse took place on school grounds. Recommended district actions include, but are not limited to, educating students, staff and others about dating abuse; fostering a respectful school climate; and providing support and appropriate referrals for students who have experienced or perpetrated abuse.

The brief is available at www.csba.org/GovernanceAndPolicyResources.aspx.

After-the-bell breakfast programs

Research shows a link between eating breakfast and student learning and provides evidence that school breakfast programs increase student access to healthy meals. One type of breakfast program that shows promising results is the after-the-bell model. Examples of after-the-bell programs include breakfast in the classroom, grab-and-go programs offering prepackaged breakfasts that students may pick up at certain locations on campus, and second-chance breakfast programs that offer a mid-morning nutrition break. Information about such programs is provided in a new joint publication of CSBA and California Food Policy Advocates, *Starting a Breakfast After the Bell Program*, available at www.csba.org/GovernanceAndPolicyResources.aspx.

The brief includes program descriptions, case studies of successful programs, considerations for determining whether an after-the-bell program would be a viable option for the district, and actions that the governance team can take to promote student wellness.



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