

## All Personnel

AR 4112.61(a)

4212.61

## EMPLOYMENT REFERENCES

4312.61

The Superintendent or designee shall be responsible for processing requests for employment references, letters of recommendation, or information about the reasons for separation regarding all district employees other than himself/herself. All letters of recommendation to be issued on behalf of the district for current or former employees shall be approved by the Superintendent or designee. At his/her discretion, the Superintendent or designee may refuse to give a recommendation.

The Superintendent or designee may communicate information about the job performance or qualifications of a current or former district employee when such information is based upon credible evidence and is given to a prospective employer without malice and at the prospective employer's request. (Civil Code 47)

Any reference, letter of recommendation, or information provided about the reasons for separation issued on behalf of the district shall provide a truthful and accurate account of the employee's job performance and qualifications.

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*

*(cf. 4117.5/4217.5/4317.5 - Termination Agreements)*

No certificated employee shall write or sign any letter or memorandum which intentionally omits significant facts, or which states as facts matters which the writer does not know of his/her own knowledge to be true, relating to the professional qualifications or personal fitness to perform certificated services of any person who the writer knows will use the letter or memorandum to obtain professional employment. (5 CCR 80332)

No certificated employee shall agree to provide a positive letter of recommendation which misrepresents facts as a condition of another employee's resigning or withdrawing action against the district. (5 CCR 80332)

*Legal Reference:*

LABOR CODE

*1050-1054 Reemployment privileges*

CIVIL CODE

*47 Privileged communication*

CODE OF CIVIL PROCEDURE

*527.3 Labor disputes*

CODE OF REGULATIONS, TITLE 5

*80332 Professional candor and honesty in letters or memoranda of employment recommendation*

COURT DECISIONS

*Randi W. v. Muroc Joint Unified School District et al.*, (1997) 14 Cal. 4th 1066

Regulation  
approved:

BERRYESSA UNION SCHOOL DISTRICT  
San Jose, California

## **All Personnel**

BP 4112.8(a)

4212.8

## **EMPLOYMENT OF RELATIVES**

4312.8

The Board of Trustees desires to maximize staff and community confidence in district hiring, promotion, and other employment decisions by promoting practices that are free of conflicts of interest or the appearance of impropriety.

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 9270 - Conflict of Interest)*

The Board prohibits the appointment of any person to a position for which his/her relative maintains management, supervisory, evaluation, or promotion responsibilities and prohibits an employee from participating in any decision that singularly applies to any of his/her relatives.

*(cf. 4111/4211/4311 - Recruitment and Selection)*

*(cf. 4115 - Evaluation/Supervision)*

*(cf. 4215 - Evaluation/Supervision)*

*(cf. 4315 - Evaluation/Supervision)*

For purposes of this policy, *relative* includes the individual's spouse, domestic partner, parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, aunts, uncles, nieces, nephews, and the similar family of the individual's spouse or domestic partner.

In addition, the Superintendent or designee may determine, on a case-by-case basis, whether to appoint a person to a position in the same department or facility as an employee with whom he/she maintains a personal relationship when that relationship has the potential to create (1) an adverse impact on supervision, safety, security, or morale of other district employees or (2) a conflict of interest for the individuals involved which is greater because of their relationship than it would be for another person.

An employee shall notify his/her supervisor within 30 days of any change in his/her circumstances that may constitute a violation of this policy.

*Legal Reference: (see next page)*

BP 4112.8(b)  
4212.8  
4312.8

## **EMPLOYMENT OF RELATIVES (continued)**

### *Legal Reference:*

#### EDUCATION CODE

35107 School district employees

#### FAMILY CODE

297-297.5 Rights, protections, benefits under the law; registered domestic partners

#### GOVERNMENT CODE

1090-1098 Prohibitions applicable to specified officers

12940 Unlawful employment practices

#### CODE OF REGULATIONS, TITLE 2

7292.0-7292.6 Marital status discrimination, especially:

7292.5 Employee selection

### *Management Resources:*

#### WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

Institute for Local Government: <http://www.cacities.org/index.jsp?zone=ilsg>

## **All Personnel**

BP 4112.9(a)

4212.9

## **EMPLOYEE NOTIFICATIONS**

4312.9

The Board of Trustees believes that providing clear communications to staff is essential to establishing a professional, positive work environment and enhancing their job performance. The Superintendent or designee shall provide district employees all notifications required by law and any other notifications he/she believes will promote staff knowledge of the district's policies, programs, activities, and operations.

When required by law, Board policy, or administrative regulation, district employees shall be asked to sign an acknowledgment indicating receipt of the notification. Such acknowledgments shall be retained in each employee's personnel file.

(cf. 3580 - District Records)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

### *Legal Reference:*

#### EDUCATION CODE

231.5 Sexual harassment policy

17612 Notification of pesticide use

22455.5 STRS information to potential members

22461 Postretirement compensation limitation

35031 Nonreelection of superintendent, assistant superintendent, or manager of classified services

35171 Notice of regulations pertaining to certificated employee evaluations

37616 Notice of public hearing on year-round schedule

44031 Personnel file contents, inspection

44663-44664 Evaluation of certificated employees

44842 Reemployment notices, certificated employees

44896 Transfer of administrator or supervisor to teaching position

44916 Written statement of employment status

44929.21 Reelection or nonreelection of probationary employee after second year

44934 Notice of disciplinary action for cause

44934.1 Suspension or dismissal for egregious misconduct 44938 Notice of unprofessional conduct and opportunity to correct

44936 Notice of suspension or dismissal 44940.5-44941 Notification of suspension and intent to dismiss

44948.3 Dismissal of probationary employees

44949 Cause, notice and right to hearing

44951 Continuation in position unless notified, administrative or supervisory personnel

44954 Nonreelection of temporary employees

44955 Reduction in number of employees

45113 Notification of charges, classified employees

45117 Notice of layoff, classified employees

45169 Employee salary data, classified employees

45192 Industrial and accident leave

45195 Additional leave

46162 Notice of public hearing on block schedule

*Legal Reference continued: (see next page)*

**EMPLOYEE NOTIFICATIONS (continued)**

*Legal Reference: (continued)*

**EDUCATION CODE (continued)**

49013 *Complaints regarding student fees*

49079 *Notification to teacher; student who has engaged in acts re: grounds suspension or expulsion*

49414 *Epinephrine auto-injectors*

49414.3 *Administration of opioid antagonist*

**CIVIL CODE**

1798.29 *District records, breach of security*

**GOVERNMENT CODE**

1126 *Incompatible activities of employees*

3100-3109 *Oath or affirmation of allegiance*

8355 *Certification of drug-free workplace, including notification*

12950 *Sexual harassment*

21029 *Retirement credit for period of military service*

54957 *Complaints against employees; right to open session*

54963 *Unauthorized disclosure of confidential information*

**HEALTH AND SAFETY CODE**

1797.196 *Automated external defibrillators; notification of use and locations*

104420 *Tobacco-free schools*

120875 *Information on AIDS, AIDS-related conditions, and hepatitis B*

120880 *Notification to employees re AIDS, AIDS-related conditions, and hepatitis B*

**LABOR CODE**

245-249 *Healthy Workplaces, Healthy Families Act of 2014*

2800.2 *Notification of availability of continuation health coverage*

3550-3553 *Notifications re: workers' compensation benefits*

5401 *Workers' compensation; claim form and notice of potential eligibility*

**PENAL CODE**

11105 *Access to criminal history information*

11105.2 *Subsequent arrest notification*

11165.7 *Child Abuse and Neglect Reporting Act; notification requirement*

11166.5 *Employment; statement of knowledge of duty to report child abuse or neglect*

**UNEMPLOYMENT INSURANCE CODE**

2613 *Disability insurance; notice of rights and benefits*

**CODE OF REGULATIONS, TITLE 2**

11023 *Nondiscrimination in employment*

11024 *Sexual harassment*

11049 *Notice of right to request pregnancy disability leave or transfer*

11091 *California Family Rights Act, designation notice*

11096 *Notice of right to request family care leave*

**CODE OF REGULATIONS, TITLE 5**

4622 *Uniform complaint procedures*

80303 *Reports of change in employment status, alleged misconduct*

**CODE OF REGULATIONS, TITLE 8**

3204 *Employees exposed to bloodborne pathogens, access to exposure and medical records*

5191 *Chemical hygiene plan*

5193 *California bloodborne pathogens standard*

5194 *Hazard communication program*

*Legal Reference continued: (see next page)*

BP 4112.9(c)  
4212.9  
4312.9

## **EMPLOYEE NOTIFICATIONS (continued)**

*Legal Reference: (continued)*

CODE OF REGULATIONS, TITLE 13

1234 Reports regarding school buses and bus drivers

2480 Vehicle idling, limitations

UNITED STATES CODE, TITLE 38

4334 Uniformed Services Employment and Reemployment Rights Act, notice requirement

UNITED STATES CODE, TITLE 41

8101-8106 Drug-Free Workplace Act

CODE OF FEDERAL REGULATIONS, TITLE 29

825.300 Family and Medical Leave Act; notice requirement

CODE OF FEDERAL REGULATIONS, TITLE 34

84.205-84.210 Drug-free workplace statement

104.8 Nondiscrimination

104.8 Nondiscrimination

106.9 Dissemination of policy, nondiscrimination on basis of sex

CODE OF FEDERAL REGULATIONS, TITLE 40

763.84 Asbestos inspections, response actions and post-response actions

763.93 Asbestos management plans

CODE OF FEDERAL REGULATIONS, TITLE 49

382.601 Controlled substance and alcohol use and testing notifications

Policy  
adopted:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California

**All Personnel**

E 4112.9(a)  
4212.9  
4312.9

**EMPLOYEE NOTIFICATIONS**

Note: The following exhibit lists notices which the law requires be provided to employees. See the referenced Board policy, administrative regulation, or Board bylaw for further information about related program and notice requirements.

<b>When/Whom to Notify</b>	<b>Education or Other Legal Code</b>	<b>Board Policy/ Administrative Regulation #</b>	<b>Subject</b>
<b>I. To All Employees</b>			
At the beginning of school year or upon employment	Education Code 231.5; Government Code 12950; 2 CCR 11024	AR 4119.11 4219.11 4319.11	The district's policy on sexual harassment, legal remedies, complaints
Annually to all employees, and 72 hours before pesticide application	Education Code 17612	AR 3514.2	Use of pesticide product, active ingredients, Internet address to access information
To all employees, prior to implementing year-round schedule	Education Code 37616	BP 6117	Public hearing on year-round program
To all employees, prior to implementing alternative schedule	Education Code 46162	AR 6112	Public hearing on alternative schedule
Annually to all employees	Education Code 49013; 5 CCR 4622	AR 1312.3 BP 0460 BP 3260	Uniform complaint procedures, appeals, civil law remedies, coordinator, complaints about student fees and local control and accountability plan
Annually to all employees	Education Code 49414	AR 5141.21	Request for volunteers to be trained to administer epinephrine auto-injectors
At least once per year	Education Code 49414.3	AR 5141.21	Request for volunteers to be trained to administer opioid antagonist
To all employees	Government Code 1126	BP 4136 4236 4336	Prohibition of activities that are inconsistent, incompatible, in conflict with, or inimical to duties; discipline; appeal

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## EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
<b>I. To All Employees</b> (continued)			
Prior to beginning employment	Government Code 3102	AR 4112.3 4212.3 4312.3	Oath or affirmation of allegiance required of disaster service workers
To all employees	Government Code 8355; 41 USC 8102; 34 CFR 84.205, 84.210	BP 4020 BP 4159 4259 4359	District's drug- and alcohol-free workplace; actions to be taken if violated; available employee assistance programs
Upon employment	Government Code 21029	None	Right to purchase PERS service credit for military service performed prior to public employment
Upon placement of automated external defibrillator (AED) in school, and annually thereafter	Health and Safety Code 1797.196	AR 5141	Proper use of AED; location of all AEDs on campus, sudden cardiac arrest, school's emergency response plan
To all employees, if the district receives Tobacco-Use Prevention Education funds	Health and Safety Code 104420	AR 3513.3	District's tobacco-free schools policy and enforcement procedures
Annually to all employees, or more frequently if there is new information	Health and Safety Code 120875, 120880	AR 4119.43 4219.43 4319.43	AIDS and hepatitis B, including methods to prevent exposure
To all employees, with each paycheck	Labor Code 246	AR 4161.1 4361.1 AR 4261.1	Amount of sick leave available
To covered employees and former employees	Labor Code 2800.2	AR 4154 4254 4354	Availability of COBRA/ Cal-COBRA continuation and conversion coverage; statement encouraging careful examination of options before declining coverage
To every new employee, either at the time employee is hired or by end of first pay period	Labor Code 3551	BP 4157.1 4257.1 4357.1	Workers' compensation benefits, how to obtain medical care, role of primary physician, form for reporting personal physician/chiropractor



E 4112.9(c)  
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## EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
<b>I. To All Employees</b> (continued)			
Prior to beginning employment	Penal Code 11165.7, 11166.5	AR 5141.4	Status as a mandated reporter of child abuse, reporting obligations, confidentiality rights, copy of law
Upon employment, and when employee goes on leave for specified reasons	Unemployment Insurance Code 2613	AR 4154 4254 4354	Disability insurance rights and benefits
To all employees and job applicants	2 CCR 11023; 34 CFR 104.8, 106.9	BP 0410 BP 4030	District's policy on nondiscrimination and related complaint procedures
To all employees via employee handbook, or to each new employee	2 CCR 11091, 11095; 29 CFR 825.300	AR 4161.8 4261.8 4361.8	Benefits through Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA); obligation to provide 30 days' notice of need for leave when possible
Annually to all employees	40 CFR 763.84, 763.93	AR 3514	Availability of asbestos management plan; inspections, response actions, post-response actions planned or in progress
<b>II. To Certificated Employees</b>			
To eligible certificated employees in a timely manner, and to part-time and substitute certificated employees within 30 days of hire	Education Code 22455.5	AR 4121	Criteria for membership in retirement system; right to elect membership at any time
Upon employment of a retired certificated individual	Education Code 22461	AR 4117.14 4317.14	Postretirement earnings limitation or employment restriction; monthly report of compensation
To certificated employees	Education Code 35171	AR 4115 BP 4315	District regulations related to performance evaluations

E 4112.9(d)  
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## **EMPLOYEE NOTIFICATIONS (continued)**

<b>When/Whom to Notify</b>	<b>Education or Other Legal Code</b>	<b>Board Policy/ Administrative Regulation #</b>	<b>Subject</b>
<b>II. To Certificated Employees (continued)</b>			
30 days before last day of school year for instructional staff, or by June 30 for noninstructional certificated staff, in any year in which employee is evaluated	Education Code 44663	AR 4115	Copy of employee's evaluation
To a certificated employee with unsatisfactory evaluation, once per year for probationary employee or at least once every other year for permanent employee	Education Code 44664	AR 4115	Notice and description of the unsatisfactory performance
By May 30, if district issues reemployment notices to certificated employees	Education Code 44842	AR 4112.1	Request that the employee notify district of intent to remain in service next year
To certificated employees upon employment, and to nonpermanent employees in July of each school year	Education Code 44916	AR 4112.1 AR 4121	Employment status and salary
To probationary employees in district with ADA of 250 or more by March 15 of employee's second consecutive year of employment	Education Code 44929.21	AR 4117.6	Whether or not employee is reelected for next school year
When certificated employee is subject to disciplinary action for cause, at any time of year or, for charge of unsatisfactory performance, during instructional year	Education Code 44934, 44934.1, 44936	BP 4118 AR 4118	Notice of charges, procedures, and employee rights; intent to dismiss or suspend 30 days after notice
To certificated employee charged with unprofessional conduct, at least 45 days prior to suspension/dismissal notice	Education Code 44938	BP 4118	Notice of deficiency and opportunity to correct
To certificated employee charged with unsatisfactory performance, at least 90 days prior to suspension/dismissal notice or prior to last quarter of school year	Education Code 44938	BP 4118	Notice of deficiency and opportunity to correct

E 4112.9(e)  
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4312.9

## **EMPLOYEE NOTIFICATIONS (continued)**

<b>When/Whom to Notify</b>	<b>Education or Other Legal Code</b>	<b>Board Policy/ Administrative Regulation #</b>	<b>Subject</b>
<b>II. To Certificated Employees (continued)</b>			
To certificated employee charged with mandatory leave of absence offense, within 10 days of entry of judgment in proceedings	Education Code 44940.5	AR 4118	Notice of intent to dismiss 30 days from notice unless employee demands hearing
To probationary employees 30 days prior to dismissal during school year, but not later than March 15 for second-year probationary employees	Education Code 44948.3	AR 4118	Reasons for dismissal and opportunity to appeal
By March 15 when necessary to reduce certificated personnel, with final notice by May 15	Education Code 44949, 44955	BP 4117.3	Reasons for personnel reduction and employees' right to hearing; final notice of Board decision re: termination
On or before June 30, to temporary employee who served 75 percent of school year but will be released	Education Code 44954	BP 4121	District's decision not to reelect employee for following school year
To teacher, when a student engages in or is reasonably suspected of specified acts	Education Code 49079	AR 4158 4258 4358	Student has committed specified act that constitutes ground for suspension or expulsion
To certificated employee upon change in employment status due to alleged misconduct or while allegation is pending	5 CCR 80303	AR 4117.7 4317.7	Contents of state regulation re: report to Commission on Teacher Credentialing
<b>III. To Classified Employees</b>			
To classified employee charged with mandatory leave of absence offense, in merit system district	Education Code 44940.5	AR 4218	Notice of intent to dismiss in 30 days
When classified employee is subject to disciplinary action for cause, in nonmerit district	Education Code 45113	AR 4218	Notice of charges, procedures, and employee rights

E 4112.9(f)  
4212.9  
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## **EMPLOYEE NOTIFICATIONS (continued)**

<b>When/Whom to Notify</b>	<b>Education or Other Legal Code</b>	<b>Board Policy/ Administrative Regulation #</b>	<b>Subject</b>
<b>III. To Classified Employees (continued)</b>			
To classified employees at least 60 days prior to layoff, or by April 29 for specially funded program that expires at end of school year	Education Code 45117	AR 4217.3	Notice of layoff and reemployment rights
To classified employees upon employment and upon each change in classification	Education Code 45169	AR 4212	Employee's class specification, salary data, assignment or work location, duty hours, prescribed workweek
To classified permanent employee whose leave is exhausted	Education Code 45192, 45195	AR 4261.1 AR 4261.11	Exhaustion of leave, opportunity to request additional leave
To school bus drivers and school activity bus drivers prior to expiration of specified documents	13 CCR 1234	AR 3542	Expiration date of driver's license, driver's certificate and medical certificate; need to renew
To school bus drivers and school activity bus drivers upon employment and at least once per year thereafter	13 CCR 2480	AR 3542	Limitations on vehicle idling; consequences of not complying
To school bus drivers, prior to district drug testing program and thereafter upon employment	49 CFR 382.601	BP 4112.42 4212.42 4312.42	Explanation of federal requirements for drug testing program and district's policy
<b>IV. To Administrative/Supervisory Personnel</b>			
To deputy, associate, or assistant superintendent or senior manager of classified service, at least 45 days before expiration of contract	Education Code 35031	BP 4312.1	Decision not to reelect or reemploy upon expiration of contract or term
Upon request by administrative or supervisory employee transferred to teaching position	Education Code 44896	AR 4313.2	Statement of the reasons for the release or reassignment
By March 15 to employee who may be released/reassigned the following school year	Education Code 44951	AR 4313.2	Notice that employee may be released or reassigned the following school year

E 4112.9(g)  
4212.9  
4312.9

## EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
<b>V. To Individual Employees Under Special Circumstances</b>			
In the event of a breach of security of district records, to affected employees	Civil Code 1798.29	BP 3580	Types of records affected, date of breach, description of incident, and, as applicable, contact information for credit reporting agencies
Prior to placing derogatory information in personnel file	Education Code 44031	AR 4112.6 4212.6 4312.6	Notice of derogatory information, opportunity to review and comment
To employees who volunteer to administer epinephrine auto-injector	Education Code 49414	AR 5141.21	Defense and indemnification from civil liability by the district
To employees returning from military leave of absence, within 30 days of return	Government Code 20997	AR 4161.5 4261.5 4361.5	Right to receive PERS service credit for military service; application form
24 hours before Board meets in closed session to hear complaints or charges against employee	Government Code 54957	BB 9321	Employee's right to have complaints/charges heard in open session
When taking disciplinary action against employee for disclosure of confidential information	Government Code 54963	BP 4119.23 4219.23 4319.23	Law prohibiting disclosure of confidential information obtained in closed session
Within one working day of work-related injury or victimization of crime	Labor Code 3553, 5401	BP 4157.1 4257.1 4357.1	Potential eligibility for workers' compensation benefits, claim form
When adverse employment action is based on DOJ criminal history information or subsequent arrest notification	Penal Code 11105, 11105.2	AR 4112.5 4212.5 4312.5	Copy of DOJ notification
To any employee with exposure to blood or other potentially infectious materials, upon initial employment and at least annually thereafter	8 CCR 3204, 5193	AR 4119.42 4219.42 4319.42	The existence, location, and availability of exposure and medical records; person responsible for maintaining and providing access to records; right to access records

E 4112.9(h)  
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## EMPLOYEE NOTIFICATIONS (continued)

When/Whom to Notify	Education or Other Legal Code	Board Policy/ Administrative Regulation #	Subject
<b>V. To Individual Employees Under Special Circumstances</b> (continued)			
To any employee assigned to a work area where hazardous chemicals are present, upon initial assignment and upon new exposure situation	8 CCR 5191	AR 3514.1	Location and availability of chemical hygiene plan, exposure limits, signs and symptoms of exposure, location of reference material
To any employee who may be exposed to hazardous substances in the work area, upon initial assignment and when new hazard is introduced into work area	8 CCR 5194	AR 3514.1	Any presence of hazardous substances in the work area, location and availability of hazard communication program, new material safety data sheet, employee rights
To employee eligible for military leave	38 USC 4334	AR 4161.5 4261.5 4361.5	Notice of rights, benefits, and obligations under military leave
Within five days of employee's request for FMLA leave, receipt of supporting information, or district's knowledge that the requested leave may qualify as FMLA leave	29 CFR 825.300; 2 CCR 11049, 11091	AR 4161.8 4261.8 4361.8	Designation of leave as FMLA or non-FMLA; if not eligible, reason not eligible; requirement to use paid leave; any requirement for fitness-for-duty certification; any subsequent changes in designation notice
Whenever notice of eligibility for FMLA is provided to employee	29 CFR 825.300	AR 4161.8 4261.8 4361.8	Rights and responsibilities re: use of FMLA; consequences of failure to meet obligations

**ASSIGNMENT**

In order to serve the best interests of students and the educational program, the Board of Trustees authorizes the Superintendent or designee to assign certificated personnel to positions for which their preparation, certification, professional experience, and aptitude qualify them.

*(cf. 4112.2 - Certification)*

*(cf. 4112.21 - Interns)*

*(cf. 4112.22 - Staff Teaching English Learners)*

*(cf. 4112.23 - Special Education Staff)*

*(cf. 4112.8/4212.8/4312.8 - Employment of Relatives)*

Teachers may be assigned to any school within the district in accordance with the collective bargaining agreement or Board policy.

*(cf. 4141/4241 - Collective Bargaining Agreement)*

**Assignment to Courses/Classes**

The Superintendent or designee shall assign teachers to courses based on the grade level and subject matter authorized by their credentials.

When there is no credential authorization requirement for teaching an elective course, the Superintendent or designee shall select the credentialed teacher whose knowledge and skills best prepare him/her to provide instruction in that subject.

When specifically authorized by law or regulation, the Superintendent or designee may assign a teacher, with his/her consent, to a position outside his/her credential authorization in accordance with the local teaching assignment options described in the Commission on Teacher Credentialing's (CTC) Administrator's Assignment Manual. Assignments made pursuant to Education Code 44256, 44258.2, and 44263 shall be annually approved by Board resolution. In such cases, the Superintendent or designee shall reference in district records the statute or regulation under which the assignment is authorized.

*(cf. 3580 - District Records)*

The Superintendent or designee shall periodically report to the Board on teacher assignments and vacancies, including the number and type of assignments made outside a teacher's credential authorization through a local teaching assignment option. Whenever district misassignments and vacancies are reviewed by the County Superintendent of Schools or CTC, as applicable, the Superintendent or designee shall report the results to the Board and shall provide recommendations for remedying any identified issues.

*(cf. 1312.4 - Williams Uniform Complaint Procedures)*

**ASSIGNMENT** (continued)

**Equitable Distribution of Qualified Teachers**

The Superintendent or designee shall ensure that highly qualified and experienced teachers are equitably distributed among district schools, including those with higher than average levels of low-income, minority, and/or academically underperforming students. He/she shall annually report to the Board comparisons of teacher qualifications across district schools, including the number of teachers serving under a provisional internship permit, short-term staff permit, intern credential, emergency permit, or credential waiver.

*(cf. 0520.2 - Title I Program Improvement Schools)*

Strategies for ensuring equitable access to experienced teachers may include, but are not limited to, incentives for voluntary transfers, provision of professional development, and/or programs to recruit and retain effective teachers.

*(cf. 0460 - Local Control and Accountability Plan)*

*(cf. 4111 - Recruitment and Selection)*

*(cf. 4114 - Transfers)*

*(cf. 4131 - Staff Development)*

*(cf. 4131.1 - Teacher Support and Guidance)*

*(cf. 6171 - Title I Programs)*

*Legal Reference: (see next page)*



## ASSIGNMENT (continued)

### *Legal Reference:*

#### EDUCATION CODE

33126 School accountability report card  
35035 Additional powers and duties of superintendent  
35186 Complaint process  
37616 Assignment of teachers to year-round schools  
44225.6 Commission report to the legislature re: teachers  
44250-44277 Credentials and assignments of teachers  
44314 Subject matter programs, approved subjects  
44824 Assignment of teachers to weekend classes  
44955 Reduction in number of employees

#### GOVERNMENT CODE

3543.2 Scope of representation

#### CODE OF REGULATIONS, TITLE 5

80003-80005 Credential authorizations  
80020-80020.5 Additional assignment authorizations  
80335 Performance of unauthorized professional services  
80339-80339.6 Unauthorized certificated employee assignment

#### UNITED STATES CODE, TITLE 20

6311 State plan  
6312 Local educational agency plans  
6601-6651 Teacher and Principal Training and Recruiting Fund

### *Management Resources:*

#### CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

*California State Plan to Ensure Equitable Access to Excellent Educators*  
*Every Student Succeeds Act 2016-17 School Year Transition Plan, April 2016*

#### COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

*Administrator's Assignment Manual - Updates and Revisions, May 2014*  
*The Administrator's Assignment Manual, rev. September 2007*

#### U.S. DEPARTMENT OF EDUCATION GUIDANCE

*Transitioning to the Every Student Succeeds Act (ESSA): Frequently Asked Questions, rev. May 4, 2016*

*Improving Teacher Quality State Grants: ESEA Title II, Part A, rev. October 5, 2006*

#### WEB SITES

CSBA: <http://www.csba.org>  
California Department of Education: <http://www.cde.ca.gov>  
Commission on Teacher Credentialing: <http://www.ctc.ca.gov>  
U.S. Department of Education: <http://www.ed.gov>

**ASSIGNMENT**

**Assignment to Departmentalized Classes Outside Credential Authorization**

Any holder of a credential other than an emergency permit may be assigned, with his/her consent, to teach departmentalized classes in grades K-12 regardless of the designations on his/her teaching credential, provided that their subject matter knowledge is verified prior to the assignment. (Education Code 44258.3)

Procedures for verifying a teacher's subject matter knowledge shall be developed and implemented by the Superintendent or designee with the involvement of appropriate subject matter specialists, including curriculum specialists, resource teachers, classroom teachers certified to teach the subject, staff assigned to regional subject matter projects or curriculum institutes, or college faculty. (Education Code 44258.3)

Procedures to be used for this purpose shall specify: (Education Code 44258.3)

1. One or more of the following ways in which subject matter competence shall be assessed:
  - a. Observation by subject matter specialists
  - b. Oral interviews
  - c. Demonstration lessons
  - d. Presentation of curricular portfolios
  - e. Written examinations
2. Specific criteria and standards for verifying subject matter knowledge by any of the above methods. These criteria shall include, but need not be limited to, evidence of the individual's knowledge of the subject matter to be taught, including demonstrated knowledge of the curriculum framework for the subject and the specific content of the district's course of study for the subject at the grade level to be taught.

*(cf. 4115 - Evaluation/Supervision)*

Whenever a teacher is assigned to teach departmentalized classes pursuant to Education Code 44258.3, the Superintendent or designee shall notify the exclusive representative of the district's certificated employees. (Education Code 44258.3)

*(cf. 4140/4240/4340 - Bargaining Units)*

**ASSIGNMENT** (continued)

**Assignment to Elective Courses Outside Credential Authorization**

A full-time teacher with special skills and preparation outside his/her credential authorization may, with his/her consent and the prior approval of a district committee on assignments, be assigned to teach an elective course in the area of the special skills or preparation, excluding a course in English, mathematics, science, or social studies. (Education Code 44258.7)

The Superintendent or designee shall establish a committee on assignments, consisting of an equal number of teachers selected by teachers and school administrators selected by school administrators, to approve such assignments. (Education Code 44258.7)

Committee members shall serve a two-year term but may be reappointed using the same procedure as the initial appointment.

When determining whether a teacher is qualified for an assignment pursuant to Education Code 44258.7, the committee may consider the teacher's education, prior experience, observation by subject matter specialists, oral interviews, demonstration lessons, presentation of curricular portfolios, and/or written examinations.

Assignments approved by the committee shall be for a maximum of one school year, but may be extended by action of the committee upon application by the principal and teacher. (Education Code 44258.7)

**Assignment to Special Schedules**

The Superintendent or designee shall make every reasonable effort to accommodate the preferences of certificated staff when assigning them to schools with year-round or regular schedules. (Education Code 37616)

*(cf. 6117 - Year-Round Schedules)*

Full-time probationary or permanent classroom teachers employed by the district prior to implementation of weekend classes shall not, without their written consent, be required to teach for more than 180 full days during a school year or for more than the number of full days during the preceding school year, whichever is greater. No teacher shall be assigned to work on a Saturday or Sunday if he/she objects in writing that such assignment would conflict with his/her religious beliefs or practices. (Education Code 44824)

*(cf. 6176 - Weekend/Saturday Classes)*

Regulation  
approved:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California

## **TRANSFERS**

The Superintendent or designee may transfer a teacher from one district school to another when he/she determines the transfer is in the best interest of the district. (Education Code 35035)

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4113 - Assignment)*

Such transfers shall be determined in accordance with the district's collective bargaining agreement with certificated employees.

*(cf. 4141/4241- Collective Bargaining Agreement)*

### **Voluntary Transfers**

The Superintendent or designee may establish processes and deadlines for the submission of transfer requests to facilitate staff assignments with minimal disruption to the educational program.

Upon receipt of a written transfer request by a teacher, the Superintendent or designee may consider the input of the principals at the current school and the requested school, alignment of the teacher's qualifications with needs of the school(s).

*(cf. 4112.2 - Certification)*

*(cf. 4112.22 - Staff Teaching English Learners)*

*(cf. 4112.23 - Special Education Staff)*

However, if the principal of a school ranked in deciles 1-3 on the Academic Performance Index refuses to accept a transfer request, the Superintendent or designee shall not transfer the teacher. (Education Code 35036)

*(cf. 0500 - Accountability)*

*(cf. 0520.2 - Title I Program Improvement Schools)*

After April 15 prior to the school year that a transfer would become effective, no teacher who requests to be transferred to another school shall have priority over other qualified teachers who have applied for positions requiring certification qualifications at that school. (Education Code 35036)

### **Involuntary Transfers**

Involuntary transfers may become necessary when programs are reduced or cancelled, when schools are closed, or when otherwise required in order to accommodate the school's staffing needs.

*(cf. 4117.3 - Personnel Reduction)*

**TRANSFERS** (continued)

If a teacher objects to a transfer, he/she may request a meeting with the Superintendent or designee and the principal.

*Legal Reference:*

**EDUCATION CODE**

*35035 Additional powers and duties of superintendent, transfer authority*

*35036 Voluntary transfers*

*35186 Complaint process, teacher vacancy or misassignment*

*37616 Assignment of teachers to year-round schools*

**GOVERNMENT CODE**

*3543.2 Scope of representation*

**EVALUATION/SUPERVISION**

The Board of Trustees believes that regular, comprehensive evaluations designed to hold instructional staff accountable for their performance are key to improving their teaching skills and raising students' levels of achievement.

*(cf. 4141/4241 - Collective Bargaining Agreement)*

*(cf. 4315 - Evaluation/Supervision)*

Evaluations shall be used to recognize the exemplary skills and accomplishments of staff and to identify areas needing improvement. When areas needing improvement are identified, the Board expects employees to accept responsibility for improving their performance and encourages them to take initiative to request assistance as necessary, including participation in appropriate staff development and/or individualized teacher support and guidance programs.

*(cf. 4117.6 - Decision Not to Rehire)*

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 4131 - Staff Development)*

*(cf. 4131.1 - Teacher Support and Guidance)*

The Superintendent or designee shall assess the performance of certificated instructional staff as it reasonably relates to the following criteria: (Education Code 44662)

1. Students' progress toward meeting district standards of expected achievement for their grade level in each area of study and, if applicable, towards the state-adopted content standards as measured by state-adopted criterion-referenced assessments

*(cf. 6011 - Academic Standards)*

*(cf. 6162.5 - Student Assessment)*

*(cf. 6162.51 - State Academic Achievement Tests)*

2. The instructional techniques and strategies used by the employee
3. The employee's adherence to curricular objectives
4. The establishment and maintenance of a suitable learning environment within the scope of the employee's responsibilities
5. The unit member's ability to communicate effectively
6. The fulfillment of professional responsibilities

The California Standards for the Teaching Profession (CSTP) shall be utilized to evaluate teachers.

*(cf. 4119.21/4219.21/4319.21 - Professional Standards)*

*(cf. 4140/4240/4340 - Bargaining Units)*

## **EVALUATION/SUPERVISION (continued)**

The evaluation of certificated employee performance shall not include the use of publishers' norms established by standardized tests. (Education Code 44662)

Noninstructional certificated employees shall be evaluated on their performance in fulfilling their defined job responsibilities. (Education Code 44662)

The Superintendent or designee shall ensure that evaluation ratings have uniform meaning and are uniformly applied throughout the district.

### *Legal Reference:*

#### EDUCATION CODE

33039 *State guidelines for teacher evaluation procedures*

35171 *Availability of rules and regulations for evaluation of performance*

44660-44665 *Evaluation and assessment of performance of certificated employees (the Stull Act)*

#### GOVERNMENT CODE

3543.2 *Scope of representation*

### *Management Resources:*

#### COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

*California Standards for the Teaching Profession, 2009*

#### WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

California Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

National Board for Professional Teaching Standards: <http://www.nbpts.org>

**EVALUATION/SUPERVISION**

Evaluation of certificated employees shall be conducted in accordance with the procedures established in this administrative regulation and applicable collective bargaining agreements. To the extent that any of those provisions conflict, the procedures in the collective bargaining agreement shall be implemented.

*(cf. 4141/4241 - Collective Bargaining Agreement)*

The Superintendent or designee shall print and make available to certificated employees written regulations related to the evaluation of their performance in their assigned duties. (Education Code 35171)

*(cf. 4112.9 - Employee Notifications)*

**Frequency of Evaluations**

Each probationary certificated employee shall be evaluated at least once each school year. (Education Code 44664)

*(cf. 4116 - Probationary/Permanent Status)*

*(cf. 4117.6 - Decision Not to Rehire)*

Each certificated employee with permanent status shall be evaluated and assessed at least every other year. If the employee receives an unsatisfactory evaluation, he/she shall be annually evaluated until he/she achieves a positive evaluation or is separated from the district. (Education Code 44664)

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

Alternatively, a permanent employee who has been employed by the district at least 10 years and who was rated in his/her previous evaluation as meeting or exceeding standards shall be evaluated at least every five years, if he/she and the evaluator so agree. Either the evaluator or the employee may withdraw consent for the alternative schedule at any time. (Education Code 44664)

**Evaluation Results**

Certificated instructional employees shall receive a written copy of their evaluation no later than 30 days before the last scheduled school day of the school year in which the evaluation takes place. Before the last scheduled school day of the school year, the employee and the evaluator shall meet to discuss the evaluation. (Education Code 44663)

Noninstructional certificated staff members employed on a 12-month basis shall receive a copy of their evaluation no later than June 30 of the year in which the evaluation takes place. Before July 30, the employee and the evaluator shall meet to discuss the evaluation. (Education Code 44663)



## **EVALUATION/SUPERVISION (continued)**

Instructional and noninstructional certificated employees shall have the right to respond in writing to their evaluation. This response shall become a permanent attachment to the employee's personnel file. (Education Code 44663)

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*

Evaluations shall include recommendations, if necessary, as to areas in need of improvement in the employee's performance. If an employee is not performing satisfactorily according to teaching standards approved by the Board of Trustees pursuant to Education Code 44662, the Superintendent or designee shall so notify the employee in writing and shall describe the unsatisfactory performance. The Superintendent or designee shall confer with the employee, make specific recommendations as to areas needing improvement, and endeavor to provide assistance to the employee in his/her performance. (Education Code 44664)

The Superintendent or designee may require any certificated employee who receives an unsatisfactory rating in the area of teaching methods or instruction to participate in a program designed to improve appropriate areas of performance and to further student achievement and the district's instructional objectives. (Education Code 44664)

*(cf. 4131 - Staff Development)*

*(cf. 4131.1 - Teacher Support and Guidance)*

### **Qualifications of Evaluators**

The Superintendent or designee shall assign the principal or other appropriate supervisory personnel to evaluate certificated staff. He/she shall ensure that the evaluator:

1. Possesses a valid administrative credential
2. Is competent in the instructional methodologies used by the teachers being evaluated
3. Is skilled in the supervision of instruction and in techniques and procedures related to the evaluation of instruction
4. Is familiar with district curriculum priorities and practices, district standards for student progress, and district policies and procedures related to personnel supervision, performance evaluation, and staff development

**PROBATIONARY/PERMANENT STATUS**

**Probationary Status**

Probationary employees shall receive training, assistance and evaluations consistent with their needs as new teachers. Such training and assistance may consist of inservice training and/or meetings with the employee's evaluator to discuss areas of strength and areas requiring improvement. Inservice training may be provided during school hours as part of a comprehensive staff development program.

The performance of each probationary employee shall be evaluated and assessed at least once every school year.

*(cf. 4115 - Evaluation/Supervision)*

*(cf. 4131 - Staff Development)*

**Permanent Status**

Granting of permanent status shall be based on completion of the probationary period in accordance with applicable law. Employees granted permanent status acquire specific rights under the Education Code, including those relating to discipline and dismissal. (Education Code 44932-44988)

*(cf. 4117.6 - Decision Not to Rehire)*

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

*Legal Reference:*

**EDUCATION CODE**

*44466 Status of university interns*

*44850.1 No tenure in administrative or supervisory position*

*44885.5 Status of district interns*

*44908 Complete year for probationary employees*

*44911-44913 Service not computed in eligibility for permanent status*

*44915 Classification of probationary employees*

*44917-44921 Status of substitute or temporary employees*

*44929.20 Continuing contracts (not to exceed four years - ADA under 250)*

*44929.21 Districts of 250 ADA or more*

*44929.23 Districts with less than 250 ADA*

*44929.28 Employment by another district*

*44930-44988 Resignations, dismissals and leaves of absence, especially:*

*44948.2 Election to use provisions of Section 44948.3*

*44948.3 Dismissal of probationary employees*

**PROBATIONARY/PERMANENT STATUS**

**Permanent Status**

A probationary teacher who has been employed by the district in a position or positions requiring certification for two complete consecutive school years and is then rehired for the next succeeding school year shall become a permanent employee at the beginning of the third year. (Education Code 44929.21)

**Interns**

A person employed as a district or university intern shall be classified as a probationary employee. Following completion of the internship, if he/she is reelected by the district to serve in a position requiring certification qualifications for the next succeeding school year, he/she shall continue to be classified as a probationary employee during that year. (Education Code 44466, 44885.5)

*(cf. 4112.21 - Interns)*

A person who has completed an internship and at least one complete school year in a position requiring certification qualifications within the district shall be granted permanent status when he/she is reelected for the next succeeding school year to a position requiring certification qualifications. (Education Code 44466, 44885.5)

**PRERETIREMENT PART-TIME EMPLOYMENT**

When the Board of Trustees has adopted the reduced workload program, any certificated employee may reduce his/her workload from full time to part time in accordance with applicable law, district regulations, and collective bargaining agreement.

Any such certificated employee who is a member of the defined benefit program of the California State Teachers' Retirement System (STRS) may continue to receive the service credits and maintain the retirement and health and welfare benefits that he/she would have received if employed on a full-time basis, provided the following conditions exist: (Education Code 22713, 44922)

*(cf. 4154/4254/4354 - Health and Welfare Benefits)*

1. The option to reduce the employee's workload shall be exercised at the request of the employee and the agreement to reduce the workload shall be in effect at the beginning of the school year.
2. Prior to the reduction in workload, the employee shall have a minimum of 10 years of credited service, of which the immediately preceding five years shall be full-time employment.
3. The employee shall not have had a break in service during the five years immediately preceding the reduction in workload. Sabbaticals, other approved leaves of absence, and unpaid absences from full-time employment for personal reasons shall not constitute a break in service. However, any period of time during which an employee is retired shall constitute a break in service and the employee shall be required to be employed to perform creditable service on a full-time basis for at least five school years preceding the workload reduction if he/she reinstates from retirement.

*(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)*

4. The employee shall have reached the age of 55 years prior to the workload reduction.
5. The employee shall not hold a position with a salary above that of a school principal.
6. The reduced workload shall be equal to at least one-half of the time the district requires for full-time employment, in accordance with Education Code 22138.5, pursuant to the employee's contract of employment during his/her last year of full-time employment preceding the reduction in workload.
7. The employee shall be paid compensation that is the pro rata share of the creditable compensation he/she would have earned had he/she not reduced his/her workload.

**PRERETIREMENT PART-TIME EMPLOYMENT** (continued)

8. For each school year that the employee's workload is reduced, the district and/or employee shall make any payment or contribution necessary for the employee's retention of a benefit to which he/she is entitled if employed full time, in the same manner as if the employee were employed full time.
9. The agreement may be revoked only by mutual consent of the employee and the district.

However, an employee who has entered into a formalized agreement with the district to have his/her contribution into the defined benefit program paid (picked up) by the district may not terminate the agreement to reduce his/her workload except by one of the following:

- a. Terminating his/her service
  - b. Retiring from service under the defined benefit program
  - c. Continuing to perform creditable service under a new reduced workload arrangement for at least one-half of the time the district requires for full-time employment in accordance with Education Code 22138.5
  - d. Returning to full-time employment
10. The period of the reduced workload shall not exceed 10 years.

Prior to the reduction of an employee's workload, the Superintendent or designee shall verify the employee's eligibility in conjunction with the administrative staff of STRS and/or the Public Employees' Retirement System. (Education Code 22713)

The Superintendent or designee shall maintain the necessary records to separately identify each employee who participates in the reduced workload program. (Education Code 22713)

*Legal Reference: (see next page)*

**PRERETIREMENT PART-TIME EMPLOYMENT** (continued)

*Legal Reference:*

EDUCATION CODE

22119.5 Creditable service, definition

22138.5 Full-time, definition

22713 Part-time employment; reduction of workload from full-time; credit

22903 Payment of contributions by employer for tax deferred purposes

44922 Regulations; reduction to part-time employment

44924 Regulations; prohibition against waiver of benefits

GOVERNMENT CODE

21110-21120 Reduced workload, partial service retirement under PERS

53201 Health and welfare benefits: election by officers and employees

COURT DECISIONS

Praiser v. Biggs Unified School District (2001) 87 Cal.App.4<sup>th</sup> 398

United Teachers-Los Angeles v. Los Angeles Unified School District (1994) 24 Cal.App.4<sup>th</sup> 1510

*Management Resources:*

WEB SITES

California Public Employees' Retirement System: <http://www.calpers.ca.gov>

California State Teachers' Retirement System: <http://www.calstrs.com>

**EARLY RETIREMENT OPTION**

When it is beneficial to the district, the Board of Trustees may offer certificated employees the option to retire early in accordance with law.

**Two Years of Service Credit Retirement Incentive**

As an incentive to early retirement for certificated employees participating in the State Teachers' Retirement System (STRS), the Board may offer such employees an additional two years of service credit. (Education Code 22714, 44929)

Before taking formal action to approve this service incentive, the Board shall determine that encouraging early retirement would be in the best interest of the district due to the curtailment of services or changes in the manner in which services are performed and that the retirement will result in a net savings to the district. The Board shall demonstrate and certify to the County Superintendent of Schools that the formal action taken would result in a net savings to the district. (Education Code 22714, 44929)

The Board may also consider the impact of the early retirement option on the staffing needs of district schools.

To be eligible for the two years of service credit option, the employee must have five or more years of service credit and must retire during a period of 60 to 120 days after the Board takes formal action to implement the option. (Education Code 22714)

In providing the early retirement option, the district shall meet all conditions as specified in Education Code 22714 and 44929.

*Legal Reference:*

EDUCATION CODE

22714 Service credit under STRS; additional two years

44929 Service credit under STRS; additional two years

UNITED STATES CODE, TITLE 20

6319 Highly qualified teachers

COURT DECISIONS

United Teacher of Los Angeles v. Los Angeles Unified School District (1994) 24 Cal.App. 4<sup>th</sup> 1510

*Management Resources:*

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM PUBLICATIONS

Retirement Incentive Program, Frequently Asked Questions

WEB SITES

California State Teachers' Retirement System: <http://www.calstrs.com>

**POSTRETIREMENT EMPLOYMENT**

When necessary, the Board of Trustees may hire a qualified retired certificated individual who possesses the knowledge and experience needed to perform creditable service for the district as an employee, the employee of a third party, or an independent contractor/consultant, provided that all applicable restrictions specified by the California State Teachers' Retirement System (CalSTRS) are met. Applicable CalSTRS restrictions include, but are not limited to, a requirement that a retired member be paid compensation comparable to that for active employees for comparable duties and prohibitions against the hiring of a retired member within 180 days of his/her retirement and for the classified service, except as an aide pursuant to Education Code 45134. Additional restrictions and rules may apply to other employment situations, such as when CalSTRS retired members are employed as employees of third parties, independent contractors, or consultants. The Superintendent or designee should consult legal counsel when dealing with such employment situations. (Education Code 22119.5, 22164.5, 24214, 24214.5)

*(cf. 3600 - Consultants)*

*(cf. 4111/4211/4311 - Recruitment and Selection)*

*(cf. 4112 - Appointment and Conditions of Employment)*

Any retired member of the defined benefit program of CalSTRS who is hired by the district to perform retired member activities as defined pursuant to Education Code 22164.5 shall be paid at an annualized rate of pay that shall not be below the minimum or exceed the maximum paid to other district employees performing comparable duties. However, such a retired individual shall not make contributions to the CalSTRS retirement fund or accrue service credit based on compensation earned from the retired member activity. (Education Code 24214)

No retired member of the CalSTRS defined benefit program shall be hired by the district for at least 180 calendar days after his/her retirement from service, unless he/she has attained the normal retirement age and qualifies for an exemption to the 180-day waiting period. To seek this exemption, the Board shall, during the open session of a Board meeting, adopt a resolution which shall include the following information and findings: (Education Code 24214.5)

1. A statement expressing the Board's intent to seek an exemption to the 180-day waiting period
2. A description of the nature of the employment of the retiree
3. A finding that the retiree has reached the normal retirement age
4. A finding that the appointment of the retiree is necessary to fill a critically needed position before the 180-day waiting period has passed
5. A finding that the retired individual did not receive additional service credit pursuant to Education Code 22714 or 22715 or any financial inducement to retire. Financial inducement to retire shall include, but is not limited to, cash or any form of



## **POSTRETIREMENT EMPLOYMENT (continued)**

compensation or other payment directly or indirectly paid by any public employer to the retired individual before or after his/her retirement, if the individual retires for service on or before a specific date or range of dates established by the public employer on or before the date the inducement is offered

6. A finding that the retired individual's termination of employment with the district is not the basis for the need to acquire the services of the retired individual

The resolution shall not be adopted through the Board's consent agenda. (Education Code 24214.5)

*(cf. 9320 - Meetings and Notices)*

When employing a retired individual who is eligible for exemption from the 180-day waiting period, the Superintendent or designee shall submit all required documentation to substantiate eligibility for the exemption to CalSTRS before the retired member begins performing any retired member activities. The Superintendent or designee may contact CalSTRS to request information as to whether the retired member qualifies for the exemption after 30 days of submitting the required documentation to CalSTRS. (Education Code 24214.5)

### **Postretirement Compensation Limitation, Notice, and Report**

All CalSTRS retirees performing creditable service for the district shall be subject to the applicable CalSTRS earnings limit. Monies earned in excess of the limit may subject the CalSTRS retiree to a reduction in his/her retirement allowance. Compensation subject to the earnings limitation includes, but is not limited to, salary or wages, deferred compensation plans, purchase of an annuity contract, tax-deferred retirement plan or insurance program, and other plans or contributions when the cost is covered by a district. (Education Code 22119.5, 22164.5, 24214)

Whenever the district retains the services of a CalSTRS retiree as a district employee, employee of a third party, or an independent contractor, the Superintendent or designee shall: (Education Code 22461, 24214)

1. Advise the retired individual of the postretirement earnings limitation or employment restriction set forth in Education Code 22714, 24214, or 24214.5 or any other applicable law

*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

**POSTRETIREMENT EMPLOYMENT** (continued)

2. Maintain accurate records of the retired individual's compensation and report it monthly to CalSTRS and the individual, regardless of the method of payment or the fund from which the payments are made

*Legal Reference:*

EDUCATION CODE

22119.5 Creditable service, definition

22131 Employer; employing agency, definition

22164.5 Retired member activities, definition

22461 Notice of earnings limitation

22714 Encouragement of retirement

22715 Additional service credit

22716 Unpaid services

24214 Creditable service by retiree

24214.5 Postretirement compensation limit; members below normal retirement age

26113 Creditable service, definition

35046 Consultancy contracts

44830 Employment of certificated employees

44830.3 Employment of district interns

44929 Service credit under STRS; additional two years

44929.1 2+2 service and year credit option under STRS

45134 Age limits

CODE OF REGULATIONS, TITLE 5

27000-27009 Penalties and interests for late remittances and late and unacceptable reporting by employers

*Management Resources:*

WEB SITES

California State Teachers' Retirement System: <http://www.calstrs.com>

## All Personnel

BP 4117.2

4217.2

## RESIGNATION

4317.2

Any district employee who desires to resign his/her position shall submit, in writing, a letter of resignation which indicates the date which the employee intends as his/her last day at work. The Board of Trustees encourages employees to provide advance notice that is appropriate for the position they hold.

The Board authorizes the Superintendent or designee to accept an employee's written or verbal resignation and to set its effective date. Once the Superintendent or designee has accepted and set an effective date for this resignation, the resignation may not thereafter be withdrawn by the employee.

The effective date of the resignation shall be a date not later than the close of the school year during which the resignation is received. However, an employee and the Board may agree that a resignation will be accepted at a mutually agreed upon date not later than two years beyond the close of the school year during which the resignation is received by the Board. (Education Code 44930, 45201)

(cf. 4117.7/4317.7 - *Employment Status Reports*)

### *Legal Reference:*

#### EDUCATION CODE

35161 Board delegation of any powers or duties

44242.5 Reports of change in employment status, alleged misconduct

44420 Failure to fulfill contract as ground for suspension of diplomas and certificates

44433 Unauthorized departure from service as unprofessional conduct

44930 Acceptance and date of resignation

45201 Power to accept resignation

#### CODE OF REGULATIONS, TITLE 5

80303 Reports of change in employment status

80304 Notice of sexual misconduct

#### COURT DECISIONS

American Federation of Teachers, Local #1050 v. Board of Education of Pasadena Unified School District, (1980) 107 Cal.App.3d 829

**PERSONNEL REDUCTION**

The Board of Trustees may reduce the number of probationary and permanent certificated employees when, in its opinion, any of the following conditions makes such reduction necessary:

1. Average daily attendance (ADA) in all of the schools in the district during the first six months of the school year has declined below the level for the same period in either of the previous two school years. (Education Code 44955)
2. A particular kind of service is to be reduced or discontinued not later than the beginning of the following school year. (Education Code 44955)
3. Attendance in the district will decline in the following year as a result of the termination of an interdistrict tuition agreement. (Education Code 44955)
4. An amendment of state law requires modification of the curriculum. (Education Code 44955)
5. During the time period between five days after the enactment of the Budget Act and August 15 of that fiscal year, the Board determines that the district's total revenue limit per ADA for the fiscal year of that Budget Act has not increased by at least two percent. (Education Code 44955.5)

**Determination of the Order of Layoffs**

When it is necessary to reduce the number of certificated employees for any of the reasons listed above, the services of employees shall be terminated in the inverse of the order in which they were employed by the district in probationary status, except as otherwise authorized by law. (Education Code 44844, 44955)

The Superintendent or designee shall maintain the seniority list for this purpose and shall make it available upon request.

Unless otherwise provided by law, a permanent employee shall have the right to be retained over a probationary employee or any employee with less seniority if the position is one for which he/she is certificated and competent to render service. (Education Code 44955)

*(cf. 4112.2 - Certification)*

*(cf. 4112.22 - Staff Teaching English Learners)*

*(cf. 4112.23 - Special Education Staff)*

*(cf. 4113 - Assignment)*

*(cf. 4116 - Probationary/Permanent Status)*

To determine the order of termination between employees who first rendered paid service on the same date, the Board shall rank order those employees solely on the basis of the needs of

## **PERSONNEL REDUCTION** (continued)

the district and students. Upon the request of an employee whose order of termination is to be determined based on such ranking, the Board shall furnish the employee, no later than five days prior to the commencement of the administrative hearing on the layoff, a written statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking the employee relative to the other employees in the group. (Education Code 44955)

The district may deviate from terminating certificated employees in order of seniority for either of the following reasons: (Education Code 44955, 44956)

1. To fill a demonstrated specific need for personnel to teach a specific course or courses of study, or to provide services authorized by a services credential with a specialization in either student personnel services or health for a school nurse, when the certificated employee has the necessary special training and experience which others with more seniority do not possess
2. To maintain or achieve compliance with constitutional requirements related to equal protection of the law

### **Notice and Hearing Rights**

When it becomes necessary to reduce the number of permanent and/or probationary employees pursuant to Education Code 44955 as specified in items #1-4 above, the district shall give notice to the affected employees, no later than March 15, stating the reasons for the action and the employees' right to a hearing. The district shall adhere to the notice, hearing, and layoff procedures in Education Code 44949, 44955, and other applicable provisions of law.

*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

When an employee has requested a hearing before an administrative law judge regarding the reduction or discontinuation of services, the Board shall make a final decision regarding the sufficiency of the cause and disposition of the layoff upon receipt of the administrative law judge's proposed decision. None of the findings, recommendations, or determinations of the administrative law judge shall be binding on the Board. (Education Code 44949)

The Board may conduct its own hearing, adopt the administrative law judge's proposed decision, refer the case back to the administrative law judge for additional evidence, or reject or modify the proposed decision and make its own determination based upon its review of the record.

Following the Board's decision, the Superintendent or designee shall give final notice, in the manner specified, to the affected employees before May 15 unless the parties agree otherwise in accordance with procedures required by law. (Education Code 44955)

## **PERSONNEL REDUCTION** (continued)

When layoffs become necessary pursuant to Education Code 44955.5 as specified in item #5 above, layoff proceedings shall be carried out as required by law but in accordance with a schedule of notice and hearing adopted by the Board. (Education Code 44955.5)

### **Reappointment**

If the number of employees is increased or the discontinued service reestablished, permanent certificated employees shall have the right to reappointment, in order of seniority, for 39 months from the date of termination. Probationary certificated employees shall have the same right for 24 months after being terminated, subject to the prior reappointment rights of permanent employees. (Education Code 44846, 44956, 44957)

During the period of the preferred right to reappointment, permanent certificated employees shall, in the order of original employment, be offered first opportunity for substitute service during the absence of any employee who has been granted a leave of absence or who is temporarily absent from duty. Such substitute service may be terminated upon the return to duty of the other employee. Such substitute service shall not affect the retention of the employees' previous classification and rights. Probationary certificated employees shall have the same right to substitute service during the period of preferred right to reappointment to the extent required by law, subject to the rights of permanent certificated employees. (Education Code 44918, 44956, 44957)

*(cf. 4121 - Temporary/Substitute Employees)*

Before reappointing any certificated employee to teach a subject which he/she has not previously taught and for which he/she does not have a teaching credential or which is not within the employee's major area of postsecondary study, the Board shall require the employee to pass a subject matter competency test in the appropriate subject. (Education Code 44956)

Reappointed certificated employees shall not be subject to any requirements that were not imposed on employees who continued in service. Their period of absence shall be treated as a leave of absence and not considered a break in the continuity of their service. (Education Code 44956, 44957)

*Legal Reference: (see next page)*

## **PERSONNEL REDUCTION (continued)**

### *Legal Reference:*

#### EDUCATION CODE

44830 *Employment of certificated persons*

44949 *Dismissal of probationary employees*

44955 *Reduction in number of permanent employees*

44955.5 *Termination of certificated employees*

44956-44959.5 *Rights of employees*

#### GOVERNMENT CODE

3543.2 *Scope of representation*

#### UNEMPLOYMENT INSURANCE CODE

1089 *Notification of unemployment insurance benefits*

#### CODE OF REGULATIONS, TITLE 22

1089-1 *Notification of unemployment insurance benefits*

#### COURT DECISIONS

*Vergara v. State of California*, (2014) Superior Court State of California, County of Los Angeles, Case. No. BC 484642

*California Teachers Association v. Vallejo City Unified School District*, (2007) 149 Cal.App.4th 135

*Bakersfield Elementary Teachers Association v. Bakersfield City School District*, (2006) 145 Cal.App.4th 1260

*Cousins v. Weaverville Elementary School District*, (1994) 24 Cal.App.4th 1846

*Forker v. Board of Trustees*, (1984) 160 Cal.App.3d 13

*Moreland Teachers Assoc. v. Kurze*, (1980) 109 Cal.App.3d 648

*King v. Berkeley Unified School District*, (1979) 89 Cal.App.3d 1016

### *Management Resources:*

#### WEB SITES

CSBA: <http://www.csba.org>

## All Personnel

AR 4117.5

4217.5

## TERMINATION AGREEMENTS

4317.5

If a termination settlement agreement has been made with an employee, the Superintendent or designee shall inform prospective employers, upon request for an employment reference, that an agreement exists and that he/she may only provide information as provided for in the agreement.

(cf. 1340 - Access to District Records)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

(cf. 4112.61/4212.61/4312.61 - Employment References)

Cash settlements made upon the termination of a contract shall never exceed an amount equal to the employee's monthly salary multiplied by the number of months, up to 18, in the unexpired term of the contract. This amount is a maximum ceiling, not to be construed as a target amount for settlement agreements. (Government Code 53260)

Settlement agreements shall not include noncash items other than health benefits, which the district may offer to continue for the unexpired term up to 18 months or until the employee finds other employment, whichever comes first. (Government Code 53261)

Copies of settlement agreements with a superintendent, deputy superintendent, assistant superintendent, associate superintendent or other similar chief administrative officer or chief executive officer shall be made available to the public upon request. (Government Code 53262)

(cf. 2121 - Superintendent's Contract)

(cf. 4312.1 - Contracts)

### *Legal Reference:*

#### CIVIL CODE

47 Privileged communication

#### GOVERNMENT CODE

53260-53264 Employment contracts

#### LABOR CODE

1198.5 Inspection of personnel files by employees

#### CODE OF REGULATIONS, TITLE 5

80303 Reports of dismissal, resignation and other terminations for cause

80332 Professional honesty in letters of employment recommendation

#### COURT DECISIONS

Randi W. v. Muroc Joint Unified School District, (1997) 14 Cal.4th 1066

Board of Trustees of Leland Stanford Junior University v. Superior Court, (1981) 119 Cal. App. 3d 516

Regulation  
approved:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California



**DECISION NOT TO REHIRE**

The Superintendent or designee shall provide the Board of Trustees with his/her recommendations regarding the rehiring of probationary certificated personnel.

The Board may decide not to rehire a probationary employee for a second school year and give written notice of its decision to the employee at any time during his/her first year of employment. If the Board does not give written notice, the employee shall be deemed reelected for the next succeeding school year.

The Board may decide not to rehire a probationary employee for a third year and give written notice to the employee on or before March 15 of his/her second complete consecutive school year of employment. If the Board does not give written notice on or before March 15, the employee shall be deemed reelected for the next succeeding school year. (Education Code 44929.21, 44929.23)

(cf. 4112.21 - Interns)

(cf. 4116 - Probationary/Permanent Status)

(cf. 4117.3 - Personnel Reduction)

*Legal Reference:*

**EDUCATION CODE**

44885.5 District interns

44929.21 Districts with 250 ADA or more; notice of reelection decision

44929.23 Districts with daily attendance less than 250

44948.2 Election to use provisions of Education Code 44948.3

44948.3 Dismissal of probationary employees (over 250 ADA)

44949 Cause, notice and right to hearing required for dismissal of probationary employee

44955 Reduction in number of permanent employees

**COURT DECISIONS**

Hoschler v. Sacramento City Unified School District, (2007) 149 Cal. App. 4<sup>th</sup> 258

Fischer v. Los Angeles Unified School District (1999) 70 Cal.App.4<sup>th</sup> 87

Bellflower Education Assn. v. Bellflower Unified School District (1991) 228 Cal.App.3d 805

Fontana Teachers Assn. v. Fontana Unified School District (1988) 201 Cal.App.3d 1517

Grimsley v. Board of Trustees (1987) 189 Cal.App.3d 1440

**EMPLOYMENT STATUS REPORTS**

The Superintendent shall report to the Commission on Teacher Credentialing (CTC) any change in the employment status of a certificated employee who, while working in a position requiring a credential and as a result of an allegation of misconduct or while an allegation of misconduct is pending: (Education Code 44030.5, 44242.5; 5 CCR 80303)

1. Is dismissed or nonreelected

*(cf. 4116 - Probationary/Permanent Status)*

*(cf. 4117.6 - Decision Not to Rehire)*

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

2. Resigns

*(cf. 4117.2 - Resignation)*

3. Is suspended or placed on unpaid administrative leave for more than 10 days as a final adverse employment action

4. Retires

5. Is otherwise terminated by a decision not to employ or reemploy

*(cf. 4119.21/4219.21/4319.21 - Professional Standards)*

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

This report is not required when the change in employment status is due solely to unsatisfactory performance pursuant to Education Code 44932 or a reduction in force pursuant to Education Code 44955-44958. (Education Code 44030.5, 44242.5; 5 CCR 80303)

*(cf. 4115 - Evaluation/Supervision)*

*(cf. 4117.3 - Personnel Reduction)*

When required, the report of a change in employment status shall be submitted not later than 30 days after the employment action. The report shall be made using a form provided by the CTC and shall include all known information about each alleged act of misconduct by the employee. The report shall contain the name and current address of the certificated employee, name of the district, last school or district assignment, an explanation of the allegation of misconduct or pending allegation of misconduct, current contact information for all persons who may have information relating to the alleged misconduct, and any and all documentation related to the case. (Education Code 44030.5; 5 CCR 80303)

Upon a change in employment status as a result of alleged misconduct or while an allegation of misconduct is pending, the Superintendent shall, in writing, inform the employee of the contents of 5 CCR 80303. (5 CCR 80303)

*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

## **EMPLOYMENT STATUS REPORTS (continued)**

### **Additional Reports of Employee Misconduct**

The Superintendent or designee shall submit a report to the CTC, using a form provided by the CTC and attaching all relevant documents, whenever:

1. An employee, by complaint, information, or indictment filed in court, is charged with a "mandatory leave of absence offense," defined as a sex or drug offense specified in Education Code 44940. (Education Code 44242.5, 44940, 44940.5)

Not later than 10 days after receipt of such a complaint, information, or indictment regarding an employee, the Superintendent or designee shall forward a copy of the received documents to the CTC. In addition, he/she shall report to the CTC any action taken in connection with extending the employee's mandatory leave beyond the initial period. (Education Code 44940, 44940.5)

If the offense results in a change in employment status, the Superintendent shall submit an employment status report in addition to the report of the mandatory leave of absence offense.

2. An employee refuses, without good cause, to fulfill a valid employment contract, or departs from district service without the consent of the Superintendent or Board of Trustees. (Education Code 44242.5, 44420)

As appropriate, the Superintendent or designee also shall notify the CTC of any of the following:

1. A complaint filed with the district regarding a certificated employee's alleged sexual misconduct (Education Code 44242.5)

The notice to the CTC shall contain all of the following information: (5 CCR 80304)

- a. Name of the employee alleged to have engaged in the sexual misconduct
- b. Name, age, and address of each victim of the alleged sexual misconduct
- c. A summary of all information known to the district regarding the alleged sexual misconduct
- d. A summary of the action, if any, taken at the district level in response to the complaint of sexual misconduct

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*

*(cf. 5145.7 - Sexual Harassment)*

**EMPLOYMENT STATUS REPORTS** (continued)

2. An employee's knowing and willful use of school records of student data in connection with, or in implicit or explicit attempts to recruit a student to be a customer for, any business owned by the certificated employee or in which the certificated employee is an employee (Education Code 44242.5, 44421.1)

*(cf. 5125 - Student Records)*

3. An employee's knowing and willful reporting of false fiscal expenditure data relative to the conduct of any educational program (Education Code 44242.5, 44421.5)
4. An employee's subversion or attempt to subvert any licensing examination or the administration of an examination (Education Code 44242.5, 44439)

*Legal Reference:*

EDUCATION CODE

44009 Conviction of specified crimes  
44010 Sex offense, definitions  
44011 Controlled substance offense, definitions  
44030.5 Employment status reports  
44225 Powers and duties of the CTC  
44242.5 Reports and review of alleged misconduct  
44420-44440 Adverse actions by CTC against credential holder  
44932 Causes for dismissal  
44940 Sex offenses and narcotic offenses; compulsory leave of absence  
44940.5 Compulsory leave of absence  
44955-44958 Reduction in force  
CODE OF REGULATIONS, TITLE 5  
80303 Reports of change in employment status, alleged misconduct  
80304 Notice of sexual misconduct

*Management Resources:*

COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

California's Laws and Rules Pertaining to the Discipline of Professional Certificated Personnel, 2013

WEB SITES

CSBA: <http://www.csba.org>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

Regulation  
approved:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION**

The Board of Trustees expects all employees to perform their jobs satisfactorily, exhibit professional and appropriate conduct, and serve as positive role models both at school and in the community. A certificated employee may be disciplined for conduct or performance in accordance with law, the applicable collective bargaining agreement, Board policy, and administrative regulation.

*(cf. 4000 - Concepts and Roles)*

*(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)*

*(cf. 4119.21/4219.21/4319.21 - Professional Standards)*

*(cf. 4141/4241 - Collective Bargaining Agreement)*

Disciplinary action shall be based on the particular facts and circumstances involved and the severity of the conduct or performance. Disciplinary actions may include, but are not limited to, verbal warnings, written warnings, reassignment, suspension, freezing or reduction of wages, compulsory leave, or dismissal.

*(cf. 4114 - Transfers)*

The Superintendent or designee shall ensure that disciplinary actions are taken in a consistent, nondiscriminatory manner and are appropriately documented.

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*

*(cf. 4119.1/4219.4319.1 - Civil and Legal Rights)*

*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*

*Legal Reference:*

EDUCATION CODE

44008 Effect of termination of probation

44009 Conviction of specified crimes

44010 Sex offense; definitions

44011 Controlled substance offense; definitions

44242.5 Reports and review of alleged misconduct

44425 Conviction of a sex or narcotic offense

44660-44665 Evaluation and assessment of performance of certificated employees

44830.1 Criminal record summary certificated employees

44929.21 Notice of reelection decision; districts with 250 ADA or more

44929.23 Reelection and dismissal of probationary employees; districts with ADA less than 250

44930-44988 Resignations, dismissal, and leave of absence

45055 Drawing of warrants for teachers

48907 Exercise of free speech, expression

48950 Speech and other communication

51530 Advocacy or teaching of communism

## **DISMISSAL/SUSPENSION/DISCIPLINARY ACTION (continued)**

### *Legal Reference: (continued)*

#### GOVERNMENT CODE

1028 Advocacy of communism

3543.2 Scope of representation

11505-11506 Hearing

#### HEALTH AND SAFETY CODE

11054 Schedule I; substances included

11055 Schedule II, substances included

#### HEALTH AND SAFETY CODE (continued)

11056 Schedule III, substances included

11357-11361 Marijuana

11363 Peyote

11364 Opium

11370.1 Possession of controlled substances with a firearm

#### PENAL CODE

187 Murder

291 School employees arrest for sex offense

667.5 Prior prison terms, enhancement of prison terms

1192.7 Plea bargaining limitation

11165.2-11165.6 Child abuse or neglect; definitions

#### CODE OF REGULATIONS, TITLE 5

80303 Reports of change in employment status

80304 Notice of sexual misconduct

#### COURT DECISIONS

Vergara v. California (Los Angeles Super.Ct.) BC484642

Crowl v. Commission on Professional Competence, (1990) 225 Cal. App. 3d 334

Morrison v. State Board of Education (1969) 1 Cal.3d 214

### *Management Resources:*

#### COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

California's Laws and Rules Pertaining to the Discipline of Professional Certificated Personnel, 2007

#### WEB SITES

CSBA: <http://www.csba.org>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION**

**Causes for Suspension or Dismissal**

A certificated employee with permanent status may be suspended without pay or dismissed only for one or more of the following causes: (Education Code 44932)

1. Immoral conduct including, but not limited to, egregious misconduct that is the basis for a sex offense or controlled substance offense described in Education Code 44010 or 44011 or child abuse and neglect as described in Penal Code 11165.2-11165.6
2. Unprofessional conduct
3. Commission, aiding, or advocating the commission of acts of criminal syndicalism
4. Dishonesty
5. Unsatisfactory performance
6. Evident unfitness for service
7. Physical or mental condition unfitting the employee to instruct or associate with children

*(cf. 4112.4/4212.4/4312.4 - Health Examinations)*

8. Persistent violation of or refusal to obey the school laws or regulations of the state or district
9. Conviction of a felony or of any crime involving moral turpitude
10. Violation of Education Code 51530 or Government Code 1028 (advocacy of communism)
11. Alcoholism or other drug abuse that makes the employee unfit to instruct or associate with children

*(cf. 4115 - Evaluation/Supervision)*

An employee may be suspended or dismissed on grounds of unprofessional conduct consisting of acts or omissions not listed above if the charge specifies instances of behavior deemed to constitute unprofessional conduct. (Education Code 44933)

**DISMISSAL/SUSPENSION/DISCIPLINARY ACTION** (continued)

An employee shall not be suspended, disciplined, reassigned, transferred, dismissed, or otherwise retaliated against solely for acting to protect a student, or for refusing to infringe on a student's protected conduct, when that student is exercising his/her free speech or press rights pursuant to Education Code 48907 or 48950. (Education Code 48907, 48950)

*(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)*  
*(cf. 5145.2 - Freedom of Speech/Expression)*

**Compulsory Leave of Absence**

Upon being informed by law enforcement that a certificated employee has been charged with a "mandatory leave of absence offense," the Superintendent or designee shall immediately place the employee on a leave of absence. A mandatory leave of absence offense includes: (Education Code 44830.1, 44940)

1. Any sex offense as defined in Education Code 44010
2. Violation or attempted violation of Penal Code 187 (murder)
3. Any offense involving the unlawful sale, use, or exchange to minors of controlled substances as listed in Health and Safety Code 11054, 11055, and 11056

*(cf. 4117.7/4317.7 - Employment Status Reports)*



## **All Personnel**

BP 4119.1(a)

4219.1

## **CIVIL AND LEGAL RIGHTS**

4319.1

The Board of Trustees believes that the personal life of an employee is not an appropriate concern of the district, except as it may directly relate to the employee's performance of his/her duties.

An employee's personal beliefs and activities, including religious, political, cultural, social, or other beliefs or activities, or lack thereof, shall not be grounds for disciplinary action against the employee, provided that the beliefs or activities do not violate law, Board policy, or administrative regulation.

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4119.21/4219.21/4319.21 - Professional Standards)*

*(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)*

The district shall make no inquiry concerning the personal values, attitudes, and beliefs of district employees or their sexual orientation or political or religious affiliations, beliefs, or opinions except when authorized by law. In addition, no district employee shall be required to provide critical appraisals of other individuals with whom the employee has a familial relationship. However, the district reserves the right to access any publicly available information about any employee.

No employee shall be disciplined or retaliated against solely for acting to protect a student engaged in conduct authorized under Education Code 48907 or 48950.

When necessary to protect the health, welfare, or safety of students and staff, school officials may search district property under an employee's control.

*(cf. 3515 - Campus Security)*

*(cf. 4040 - Employee Use of Technology)*

## **Whistleblower Protection**

An employee shall have the right to disclose to a Board member, a school administrator, a member of the County Board of Education, County Superintendent of Schools, or the Superintendent of Public Instruction any improper governmental activity by the district or a district employee that violates state or federal law, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. When the employee has reasonable cause to believe that the information discloses a violation of state or federal statute or a violation of or noncompliance with a state or federal rule or regulation, he/she has the right to disclose such information to a government or law enforcement agency or to refuse to participate in any such activity. (Education Code 44112, 44113; Labor Code 1102.5)

The Superintendent or designee shall prominently display in lettering larger than size 14 point type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline maintained by the office of the California Attorney General. (Labor Code 1102.8)

## **CIVIL AND LEGAL RIGHTS (continued)**

No employee shall use or attempt to use his/her official authority or influence to intimidate, threaten, coerce, or command another employee for the purpose of interfering with that employee's right to disclose improper governmental activity. (Education Code 44113)

*(cf. 4118 - Suspension/Disciplinary Action)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

An employee who has disclosed improper governmental activity and believes that he/she has subsequently been subjected to acts or attempted acts of reprisal shall file a written complaint in accordance with the district's complaint procedures. After filing a complaint with the district, the employee may also file a copy of the complaint with local law enforcement and/or seek civil law remedies against the supervisor or administrator who retaliated or attempted to retaliate against him/her, in accordance with Education Code 44114.

*(cf. 1312.1 - Complaints Concerning District Employees)*

*(cf. 1312.3 - Uniform Complaint Procedures)*

*(cf. 4144/4244/4344 - Complaints)*

### **Protection Against Liability**

No employee shall be liable for harm caused by his/her act or omission when he/she is acting within the scope of employment or district responsibilities; when the employee's act or omission is in conformity with federal or state law, district policy, or administrative regulation; or when the employee's act or omission is in furtherance of an effort to control, discipline, expel, or suspend a student or to maintain order or control in the classroom or school.

*(cf. 3320 - Claims and Actions Against the District)*

*(cf. 9260 - Legal Protection)*

The protection against liability shall not apply when:

1. The employee acted with willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to rights or safety of the individual harmed.
2. The employee caused harm by operating a motor vehicle or other vehicle requiring license or insurance.
3. The employee was not properly licensed, if required, by state law for such activities.
4. The employee was found by a court to have violated a federal or state civil rights law.

**CIVIL AND LEGAL RIGHTS** (continued)

5. The employee was under the influence of alcohol or any drug at the time of the misconduct.
6. The misconduct constituted a crime of violence pursuant to 18 USC 16 or an act of terrorism for which the employee has been convicted in a court.
7. The misconduct involved a sexual offense for which the employee has been convicted in a court.
8. The misconduct occurred during background investigations, or other actions, involved in the employee's hiring.

*Legal Reference: (see next page)*

## **CIVIL AND LEGAL RIGHTS (continued)**

### *Legal Reference:*

#### EDUCATION CODE

200-262.4 Prohibition of discrimination

7050-7058 Political activities of school officers and employees

44040 Discrimination based on employee's appearance before certain boards or committees

44110-44114 Reporting by school employees of improper governmental activity

48907 Student freedom of expression; employee's protection of student rights

48950 Speech and other communication

49091.24 Teacher rights to refuse evaluation/survey of personal life

#### CIVIL CODE

51 Unruh Civil Rights Act

#### GOVERNMENT CODE

815.3 Intentional torts

820-823 Tort claims act

825.6 Indemnification of public entity

3540.1 Public employment definitions

3543.5 Interference with employee's rights prohibited

12650-12656 False claims actions

12940-12951 Discrimination prohibited; unlawful practices

#### LABOR CODE

1102.5-1106 Whistleblower protections

#### UNITED STATES CODE, TITLE 18

16 Crime of violence defined

#### UNITED STATES CODE, TITLE 20

6731-6738 Teacher liability protection

#### UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act

2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended

2000h-2000h-6 Title IX, 1972 Education Act Amendments

12101-12213 Americans with Disabilities Act

#### COURT DECISIONS

Hartnett v. Crosier, (2012) 205 Cal.App.4<sup>th</sup> 685

Johnson v. Poway Unified School District, (2011) 658 F.3d 954

Ohton v. CSU San Diego, (2007) 56 Cal.Rptr.3d 111

Garcetti v. Ceballos, (2006) 543 U.S. 1186

O'Conner v. Ortega, (1987) 480 U.S. 709

New Jersey v. T.L.O., (1985) 468 U.S. 325

### *Management Resources:*

#### WEB SITES

California Attorney General: <http://www.oag.ca.gov>

## **All Personnel**

BP 4119.11(a)

4219.11

## **SEXUAL HARASSMENT**

4319.11

The Board of Trustees prohibits sexual harassment of district employees. The Board also prohibits retaliatory behavior or action against district employees or other persons who complain, testify, or otherwise participate in the complaint process established pursuant to this policy and accompanying administrative regulation. This policy shall apply to all district employees and, when applicable, to interns, volunteers, and job applicants.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*

*(cf. 4030 - Nondiscrimination in Employment)*

The Superintendent or designee shall take all actions necessary to ensure the prevention, investigation, and correction of sexual harassment, including but not limited to:

1. Providing training to employees in accordance with law and administrative regulation
2. Publicizing and disseminating the district's sexual harassment policy to staff

*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

3. Ensuring prompt, thorough, and fair investigation of complaints
4. Taking timely and appropriate corrective/remedial action(s), which may require interim separation of the complainant and the alleged harasser and subsequent monitoring of developments

All complaints and allegations of sexual harassment shall be kept confidential to the extent necessary to carry out the investigation or to take other subsequent necessary actions. (2 CCR 11023)

Any district employee who feels that he/she has been sexually harassed or who has knowledge of any incident of sexual harassment by or against another employee shall immediately report the incident to his/her supervisor, the principal, district administrator, or Superintendent.

A supervisor, principal, or other district administrator who receives a harassment complaint shall promptly notify the Superintendent or designee.

Complaints of sexual harassment shall be filed in accordance with AR 4030 - Nondiscrimination in Employment. An employee may bypass his/her supervisor in filing a complaint where the supervisor is the subject of the complaint.

Any district employee who engages or participates in sexual harassment or who aids, abets, incites, compels, or coerces another to commit sexual harassment in violation of this policy is subject to disciplinary action, up to and including dismissal.

*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

*Legal Reference: (see next page)*

## **SEXUAL HARASSMENT (continued)**

### *Legal Reference:*

#### EDUCATION CODE

200-262.4 *Prohibition of discrimination on the basis of sex*

#### GOVERNMENT CODE

12900-12996 *Fair Employment and Housing Act, especially:*

12940 *Prohibited discrimination*

12950.1 *Sexual harassment training*

#### LABOR CODE

1101 *Political activities of employees*

1102.1 *Discrimination: sexual orientation*

#### CODE OF REGULATIONS, TITLE 2

11009 *Employment discrimination*

11021 *Retaliation*

11023 *Harassment and discrimination prevention and correction*

11024 *Sexual harassment training and education*

11034 *Terms, conditions, and privileges of employment*

#### CODE OF REGULATIONS, TITLE 5

4900-4965 *Nondiscrimination in elementary and secondary education programs receiving state financial assistance*

#### UNITED STATES CODE, TITLE 42

2000d-2000d-7 *Title VI, Civil Rights Act of 1964*

2000e-2000e-17 *Title VII, Civil Rights Act of 1964, as amended*

2000h-2-2000h-6 *Title IX, 1972 Education Act Amendments*

#### CODE OF FEDERAL REGULATIONS, TITLE 34

106.9 *Dissemination of policy*

#### COURT DECISIONS

*Department of Health Services v. Superior Court of California*, (2003) 31 Cal.4th 1026

*Faragher v. City of Boca Raton*, (1998) 118 S.Ct. 2275

*Burlington Industries v. Ellreth*, (1998) 118 S.Ct. 2257

*Gebser v. Lago Vista Independent School District*, (1998) 118 S.Ct. 1989

*Oncale v. Sundowner Offshore Serv. Inc.*, (1998) 118 S.Ct. 998

*Meritor Savings Bank, FSB v. Vinson et al.*, (1986) 447 U.S. 57

### *Management Resources:*

#### OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

*Protecting Students from Harassment and Hate Crime*, January 1999

#### WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

Equal Employment Opportunity Commission: <http://www.eeoc.gov>

U.S. Department of Education, Office for Civil Rights:

<http://www.ed.gov/about/offices/list/ocr/index.html>

This administrative regulation shall apply to all allegations of sexual harassment involving employees, interns, volunteers, and job applicants, but shall not be used to resolve any complaint by or against a student.

**Definitions**

*Prohibited sexual harassment* includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the work or educational setting when: (Education Code 212.5; Government Code 12940; 2 CCR 11034)

1. Submission to the conduct is made explicitly or implicitly a term or condition of the individual's employment.
2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual.
3. Submission to or rejection of the conduct is used as the basis for any decision affecting the individual regarding benefits, services, honors, programs, or activities available at or through the district.

*Prohibited sexual harassment* also includes conduct which, regardless of whether or not it is motivated by sexual desire, is so severe or pervasive as to unreasonably interfere with the victim's work performance or create an intimidating, hostile, or offensive work environment.

Examples of actions that might constitute sexual harassment in the work or educational setting, whether committed by a supervisor, a co-worker, or a non-employee, include, but are not limited to:

1. Unwelcome verbal conduct such as sexual flirtations or propositions; graphic comments about an individual's body; overly personal conversations or pressure for sexual activity; sexual jokes or stories; unwelcome sexual slurs, epithets, threats, innuendoes, derogatory comments, sexually degrading descriptions, or the spreading of sexual rumors
2. Unwelcome visual conduct such as drawings, pictures, graffiti, or gestures; sexually explicit emails; displaying sexually suggestive objects
3. Unwelcome physical conduct such as massaging, grabbing, fondling, stroking, or brushing the body; touching an individual's body or clothes in a sexual way; cornering, blocking, leaning over, or impeding normal movements

## **SEXUAL HARASSMENT** (continued)

### **Training**

The Superintendent or designee shall ensure that all employees receive training regarding the district's sexual harassment policies when hired and periodically thereafter. The training shall include the procedures for reporting and/or filing complaints involving an employee, employees' duty to use the district's complaint procedures, and employee obligations when a sexual harassment report involving a student is made to the employee.

*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 4030 - Nondiscrimination in Employment)*  
*(cf. 5145.7 - Sexual Harassment)*

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment. All such newly hired or promoted employees shall receive training within six months of their assumption of the new position. (Government Code 12950.1)

A *supervisory employee* is any employee having the authority, in the interest of the district, to hire, transfer, suspend, lay off, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, adjust their grievances, or effectively recommend such action, when the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Government Code 12926)

*(cf. 4300 - Administrative and Supervisory Personnel)*

The district's sexual harassment training and education program for supervisory employees shall be aimed at assisting them in preventing and effectively responding to incidents of sexual harassment, as well as implementing mechanisms to promptly address and correct wrongful behavior. The training shall include, but is not limited to, the following: (Government Code 12950.1; 2 CCR 11024)

1. Information and practical guidance regarding federal and state laws on the prohibition, prevention, and correction of sexual harassment, the remedies available to sexual harassment victims in civil actions, and potential district and/or individual exposure or liability
2. The types of conduct that constitute sexual harassment and practical examples which illustrate sexual harassment, discrimination, and retaliation using training modalities such as role plays, case studies, and group discussions, based on factual scenarios taken from case law, news and media accounts, and hypotheticals based on workplace situations and other sources



**SEXUAL HARASSMENT** (continued)

3. A supervisor's obligation to report sexual harassment, discrimination, and retaliation of which he/she becomes aware and what to do if the supervisor himself/herself is personally accused of harassment
4. Strategies for preventing harassment, discrimination, and retaliation and appropriate steps to ensure that remedial measures are taken to correct harassing behavior, including an effective process for investigation of a complaint
5. The essential elements of the district's anti-harassment policy, including the limited confidentiality of the complaint process and resources for victims of unlawful sexual harassment, such as to whom they should report any alleged sexual harassment, and how to use the policy if a harassment complaint is filed
6. A copy of the district's sexual harassment policy and administrative regulation, which each participant shall acknowledge in writing that he/she has received
7. The definition and prevention of abusive conduct that addresses the use of derogatory remarks, insults, or epithets, other verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, and the gratuitous sabotage or undermining of a person's work performance

The Superintendent or designee shall retain for at least two years the records of any training provided to supervisory employees. Such records shall include the names of trained employees, date of the training, the type of training, and the name of the training provider. (2 CCR 11024)

**Notifications**

A copy of the Board policy and this administrative regulation shall: (Education Code 231.5)

1. Be displayed in a prominent location in the main administrative building, district office, or other area of the school where notices of district rules, regulations, procedures, and standards of conduct are posted
2. Be provided to every district employee at the beginning of the first quarter or semester of the school year or whenever a new employee is hired

*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

3. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct

## **SEXUAL HARASSMENT** (continued)

All employees shall receive either a copy of information sheets prepared by the California Department of Fair Employment and Housing (DFEH) or a copy of district information sheets that contain, at a minimum, components on: (Government Code 12950)

1. The illegality of sexual harassment
2. The definition of sexual harassment under applicable state and federal law
3. A description of sexual harassment, with examples
4. The district's complaint process available to the employee
5. The legal remedies and complaint process available through DFEH and the Equal Employment Opportunity Commission (EEOC)
6. Directions on how to contact DFEH and the EEOC
7. The protection against retaliation provided by 2 CCR 11021 for opposing harassment prohibited by law or for filing a complaint with or otherwise participating in an investigation, proceeding, or hearing conducted by DFEH and the EEOC

In addition, the district shall post, in a prominent and accessible location, DFEH's poster on discrimination in employment and the illegality of sexual harassment. (Government Code 12950)

### **Confidentiality**

The district will respect the confidentiality of the complainant and the individual(s) against whom the complaint is made as much as possible. The district will respect confidentiality within the limits of its legal obligations, including investigating sexual harassment allegations, and taking remedial and corrective action.

### **Reporting Procedures**

Any person who believes that a district student or employee has sexually harassed them or any person who knows or believes that they have knowledge of conduct that may constitute sexual harassment should report the alleged acts immediately.

## **SEXUAL HARASSMENT** (continued)

### **1. Student Reports**

The district encourages any adult who witnesses sexual harassment to intervene on the victim's behalf and immediately report the harassing conduct. The district does not, however, require any person to directly confront the harasser.

Any student who believes that they are a sexual harassment victim, or who knows of conduct that may constitute sexual harassment should report the alleged acts to a teacher, counselor, principal, or designated District Compliance Officer.

The report may be verbal or written. Using a formal reporting form is not required. If a student wants to use a form, one is available from the school office, school library, counseling office, and the District Compliance Officer.

Any teacher or counselor to whom alleged sexual harassment is reported shall immediately notify the school principal of the alleged acts, or if the complaint involves the principal, immediately notify the District Compliance Officer.

The principal shall immediately forward written reports to the District Compliance Officer. If the principal receives a verbal report, the principal shall immediately notify the District Compliance Officer and, as soon as possible, forward a written report to the District Compliance Officer. The report shall not be screened or investigated before it is forwarded to the District Compliance Officer. Failure to forward any sexual harassment report or complaint shall result in disciplinary action.

### **2. Employee Reports**

The district encourages any employee who believes that they are a sexual harassment victim to directly inform the harasser that the conduct is unwelcome and must stop. A co-worker or other employee who witnesses sexual harassment should either intervene on the victim's behalf or immediately report the harassing conduct. The district does not, however, require the employees or witnesses to confront the harasser.

An employee who believes they are a sexual harassment victim, or who knows of conduct that may constitute sexual harassment should report the alleged conduct to his or her immediate supervisor, or to any supervisor or manager, or to the District Compliance Officer.

The report may be verbal or written. Using a formal reporting form is not required, although one is available from the work place, the district's Human Resources office, or the District Compliance Officer if the employee wants to use a written form.

## **SEXUAL HARASSMENT** (continued)

A supervisory or management employee receiving a written sexual harassment complaint shall immediately forward it to the designated District Compliance Officer. If a supervisory or management employee receives a verbal complaint, they shall notify the District Compliance Officer immediately and, as soon as possible, forward a written report to the District Compliance Officer. The report shall not be screened or investigated before it is forwarded to the District Compliance Officer. Failure to forward any sexual harassment report or complaint shall result in disciplinary action.

### **3. Designation of "District Compliance Officer"**

The Assistant Superintendent of Human Resources is designated as the "District Compliance Officer" to receive sexual harassment reports or complaints. If the sexual harassment complaint involves the designated District Compliance Officer, the complaint shall be reported to the district Superintendent or the Superintendent's designee. If the complaint involves the Superintendent, the Superintendent's designee, or a Board member, the Superintendent shall notify the Board. The Board may choose to designate an independent third party to investigate the sexual harassment complaint.

## **Investigation**

After receiving a sexual harassment report or complaint, the District Compliance Officer shall immediately authorize an investigation. The investigation may be conducted by district officials or by a third party designated by the district. At the investigation's conclusion, the investigator shall prepare a written report, which shall:

1. Describe the circumstances giving rise to the complaint;
2. Describe the complainant's allegations;
3. Describe the accused's response;
4. Summarize the testimony provided by other persons interviewed, including any witnesses the complainant or the accused identified;
5. Conclude whether persons interviewed are credible;
6. Describe any other factual information the investigator deems appropriate;
7. Report findings of fact and supporting evidence;

**SEXUAL HARASSMENT** (continued)

8. Conclude whether sexual harassment did or did not occur with respect to each allegation in the complaint; and
9. Recommend corrective action.

**District Action**

After receiving the investigator's report, the Superintendent shall determine and implement an appropriate remedial and corrective response. The Superintendent shall report in writing the investigation's result and any proposed remedial and corrective action to the complainant.

If the sexual harassment complaint involved the Superintendent, the Board shall determine and implement the appropriate remedial response, and report in writing the investigation's result and any proposed remedial action to the complainant.

Any district action taken in response to a determination that sexual harassment has occurred will be consistent with district policies and regulations, applicable collective bargaining agreements, and state and federal law.

**Reprisals and Retaliation Forbidden**

The district will discipline any individual, student, or employee who retaliates against any person who: (1) reports alleged sexual harassment; or (2) assists or participates in an investigation or proceeding relating to a sexual harassment complaint. Retaliation includes all forms of intimidation, reprisal, or harassment.

**Right to Alternative Complaint Procedures**

The procedures contained in this policy are intended to supplement and not replace any applicable state and federal laws and regulations. Any individual may seek the remedies available under state and federal law by filing formal complaints with the following state and federal agencies:

Department of Fair Employment and Housing Headquarters  
2218 Kausen Drive, Suite 100  
Elk Grove, CA 95758

Equal Employment Opportunity Commission (EEOC)  
96 North 3rd Street  
San Jose, California 95112

## **SEXUAL HARASSMENT** (continued)

### **Sexual Harassment as Child Abuse**

In some circumstances, sexual harassment may also constitute child abuse or other criminal conduct. The district will comply with reporting requirements and other obligations under state law.

### **Policy Distribution**

A copy of this sexual harassment policy shall be displayed in prominent locations in the district's main administrative building and other work sites and school sites where notices regarding the district's rules, regulations, procedures, and standards of conduct are usually posted.

A copy of this policy shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable. A copy of this policy shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that a new employee is hired.

A copy of this policy on sexual harassment shall appear in all district publications that set forth district rules, regulations, procedures, and standards of conduct.

## **All Personnel**

BP 4119.21(a)

4219.21

## **PROFESSIONAL STANDARDS**

4319.21

The Board of Trustees expects district employees to maintain the highest ethical standards, behave professionally, follow district policies and regulations, abide by state and federal laws, and exercise good judgment when interacting with students and other members of the school community. Employees shall engage in conduct that enhances the integrity of the district, advances the goals of the district's educational programs, and contributes to a positive school climate.

*(cf. 0200 - Goals for the School District)*

*(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)*

*(cf. 5131 - Conduct)*

*(cf. 5137 - Positive School Climate)*

The Board encourages district employees to accept as guiding principles the professional standards and codes of ethics adopted by educational or professional associations to which they may belong.

*(cf. 2111 - Superintendent Governance Standards)*

*(cf. 9005 - Governance Standards)*

Each employee is expected to acquire the knowledge and skills necessary to fulfill his/her responsibilities and to contribute to the learning and achievement of district students.

*(cf. 4112.2 - Certification)*

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

## **Inappropriate Conduct**

Inappropriate employee conduct includes, but is not limited to:

1. Engaging in any conduct that endangers students, staff, or others, including, but not limited to, physical violence, threats of violence, or possession of a firearm or other weapon

*(cf. 0450 - Comprehensive Safety Plan)*

*(cf. 3515.7 - Firearms on School Grounds)*

*(cf. 4158/4258/4358 - Employee Security)*

2. Engaging in harassing or discriminatory behavior towards students, parents/guardians, staff, or community members, or failing or refusing to intervene when an act of discrimination, harassment, intimidation, or bullying against a student is observed

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*

*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*

*(cf. 5131.2 - Bullying)*

**PROFESSIONAL STANDARDS** (continued)

*(cf. 5145.3 - Nondiscrimination/Harassment)*

*(cf. 5145.7 - Sexual Harassment)*

3. Physically abusing, sexually abusing, neglecting, or otherwise willfully harming or injuring a child
4. Engaging in inappropriate socialization or fraternization with a student or soliciting, encouraging, or maintaining an inappropriate written, verbal, or physical relationship with a student
5. Possessing or viewing any pornography on school grounds, or possessing or viewing child pornography or other imagery portraying children in a sexualized manner at any time
6. Using profane, obscene, or abusive language against students, parents/guardians, staff, or community members
7. Willfully disrupting district or school operations by loud or unreasonable noise or other action

*(cf. 3515.2 - Disruptions)*

8. Using tobacco, alcohol, or an illegal or unauthorized substance, or possessing or distributing any controlled substance, while in the workplace, on district property, or at a school-sponsored activity

*(cf. 3513.3 - Tobacco-Free Schools)*

*(cf. 3513.4 - Drug and Alcohol Free Schools)*

*(cf. 4020 - Drug and Alcohol-Free Workplace)*

*(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)*

*(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)*

9. Being dishonest with students, parents/guardians, staff, or members of the public, including, but not limited to, falsifying information in employment records or other school records
10. Divulging confidential information about students, district employees, or district operations to persons or entities not authorized to receive the information

*(cf. 3580 - District Records)*

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*

*(cf. 5125 - Student Records)*

*(cf. 5125.1 - Release of Directory Information)*



**PROFESSIONAL STANDARDS** (continued)

11. Using district equipment or other district resources for the employee's own commercial purposes or for political activities

*(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)*

12. Using district equipment or communications devices for personal purposes while on duty, except in an emergency, during scheduled work breaks, or for personal necessity

Employees shall be notified that computer files and all electronic communications, including, but not limited to, email and voice mail, are not private. To ensure proper use, the Superintendent or designee may monitor employee usage of district technological resources at any time without the employee's consent.

*(cf. 4040 - Employee Use of Technology)*

13. Causing damage to or engaging in theft of property belonging to students, staff, or the district

14. Wearing inappropriate attire

*(cf. 4119.22/4219.22/4319.22 - Dress and Grooming)*

**Reports of Misconduct**

An employee who observes or has evidence of another employee's inappropriate conduct shall immediately report such conduct to the principal or Superintendent or designee. An employee who has knowledge of or suspects child abuse or neglect shall file a report pursuant to the district's child abuse reporting procedures as detailed in AR 5141.4 - Child Abuse Prevention and Reporting.

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

Any reports of employee misconduct shall be promptly investigated. Any employee who is found to have engaged in inappropriate conduct in violation of law or Board policy shall be subject to disciplinary action and, in the case of a certificated employee, may be subject to a report to the Commission on Teacher Credentialing. The Superintendent or designee shall notify local law enforcement as appropriate.

*(cf. 4117.7/4317.7 - Employment Status Reports)*  
*(cf. 4118 - Dismissal/Suspension/Disciplinary Action)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

**PROFESSIONAL STANDARDS (continued)**

An employee who has knowledge of but fails to report inappropriate employee conduct may also be subject to discipline.

The district prohibits retaliation against anyone who files a complaint against an employee or reports an employee's inappropriate conduct. Any employee who retaliates against any such complainant, reporter, or other participant in the district's complaint process shall be subject to discipline.

**Notifications**

The section(s) of the district's employee code of conduct addressing interactions with students shall be provided to parents/guardians at the beginning of each school year and shall be posted on school and/or district web sites. (Education Code 44050)

(cf. 1113 - District and School Web Sites)

(cf. 5145.6 - Parental Notifications)

*Legal Reference:***EDUCATION CODE**

200-262.4 Prohibition of discrimination

44050 Employee code of conduct; interaction with students

44242.5 Reports and review of alleged misconduct

48980 Parental notifications

**PENAL CODE**

11164-11174.4 Child Abuse and Neglect Reporting Act

**CODE OF REGULATIONS, TITLE 5**

80303 Reports of dismissal, resignation and other terminations for alleged misconduct

80331-80338 Rules of conduct for professional educators

*Management Resources:***COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS**

California Professional Standards for Educational Leaders, February 2014

California Standards for the Teaching Profession, 2009

**COUNCIL OF CHIEF STATE SCHOOL OFFICERS PUBLICATIONS**

Professional Standards for Educational Leaders, 2015

**NATIONAL EDUCATION ASSOCIATION PUBLICATIONS**

Code of Ethics of the Education Profession, 1975

**WESTED PUBLICATIONS**

Moving Leadership Standards into Everyday Work: Descriptions of Practice, 2003

**WEB SITES**

CSBA: <http://www.csba.org>

Association of California School Administrators: <http://www.acsa.org>

California Department of Education: <http://www.cde.ca.gov>

*California Federation of Teachers: <http://www.cft.org>*

BP 4119.21(e)

4219.21

4319.21

## **PROFESSIONAL STANDARDS (continued)**

### *Management Resources: (Continued)*

*California School Employees Association: <http://www.csea.com>*

*California Teachers Association: <http://www.cta.org>*

*Commission on Teacher Credentialing: <http://www.ctc.ca.gov>*

*Council of Chief State School Officers: <http://www.ccsso.org>*

*WestEd: <http://www.wested.org>*

Policy  
adopted:

Berryessa Union School District  
San Jose, California

**PROFESSIONAL STANDARDS**

**CODE OF ETHICS OF THE EDUCATION PROFESSION**

**Preamble**

The educator, believing in the worth and dignity of each human being, recognizes the supreme importance of the pursuit of truth, devotion to excellence, and the nurturing of democratic principles. Essential to these goals is the protection of freedom to learn and to teach and the guarantee of equal educational opportunity for all. The educator accepts the responsibility to adhere to the highest ethical standards.

The educator recognizes the magnitude of the responsibility inherent in the teaching process. The desire for the respect and confidence of one's colleagues, of students, of parents, and of the members of the community provides the incentive to attain and maintain the highest possible degree of ethical conduct. The Code of Ethics of the Education Profession indicates the aspiration of all educators and provides standards by which to judge conduct.

**Principle I. Commitment to the Student**

The educator strives to help each student realize his/her potential as a worthy and effective member of society. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals.

In fulfillment of the obligation to the student, the educator:

1. Shall not unreasonably restrain the student from independent action in the pursuit of learning
2. Shall not unreasonably deny the student access to varying points of view
3. Shall not deliberately suppress or distort subject matter relevant to the student's progress
4. Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety
5. Shall not intentionally expose the student to embarrassment or disparagement
6. Shall not on the basis of race, color, creed, gender, national origin, marital status, political or religious beliefs, family, social, or cultural background, or sexual orientation, unfairly:
  - a. Exclude any student from participation in any program
  - b. Deny benefits to any student

**PROFESSIONAL STANDARDS** (continued)

- c. Grant any advantage to any student
- 7. Shall not use professional relationships with students for private advantage
- 8. Shall not disclose information in the course of professional service unless disclosure serves a compelling professional purpose or is required by law

**Principle II. Commitment to the Profession**

The education profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service.

In the belief that the quality of the services of the education profession directly influences the nation and its citizens, the educator shall exert every effort to raise professional standards, to promote a climate that encourages the exercise of professional judgment, to achieve conditions that attract persons worthy of the trust to careers in education, and to assist in preventing the practice of the profession by unqualified persons.

In fulfillment of the obligation of the profession, the educator:

- 1. Shall not in any application for a professional position deliberately make a false statement or fail to disclose a material fact related to competency and qualifications
- 2. Shall not misrepresent his/her professional qualifications
- 3. Shall not assist any entry into the profession of a person known to be unqualified in respect to character, education, or other relevant attribute
- 4. Shall not knowingly make a false statement concerning the qualifications of a candidate for a professional position
- 5. Shall not assist a noneducator in the unauthorized practice of teaching
- 6. Shall not disclose information about colleagues obtained in the course of professional service unless disclosure serves a compelling professional purpose or is required by law
- 7. Shall not knowingly make false or malicious statements about a colleague
- 8. Shall not accept any gratuity, gift, or favor that might impair or appear to influence professional decisions or action

*Source: National Education Association, 1975*

## All Personnel

BP 4119.22

4219.22

## DRESS AND GROOMING

4319.22

The Board of Trustees believes that appropriate dress and grooming by district employees contribute to a productive learning environment and model positive behavior. During school hours and at school activities, employees shall maintain professional standards of dress and grooming that demonstrate their high regard for education, present an image consistent with their job responsibilities and assignment, and not endanger the health or safety of employees or students. All employees shall be held to the same standards unless their assignment provides for modified dress as approved by their supervisor.

(cf. 4118 - *Suspension/Disciplinary Action*)

(cf. 4119.25/4219.25/4319.25 - *Political Activities of Employees*)

(cf. 4218 - *Dismissal/Suspension/Disciplinary Action*)

(cf. 5132 - *Dress and Grooming*)

### *Legal Reference:*

#### EDUCATION CODE

35160 Authority of governing boards

35160.1 Broad authority of school districts

#### GOVERNMENT CODE

3543.2 Scope of representation

12949 Dress standards, consistency with gender identity

#### COURT DECISIONS

San Mateo City School District v. PERB (1983) 33 Cal. 3d 850

Domico v. Rapides Parish School Board (5th Cir. 1982) 675 F.2d 100

East Hartford Education Assn. v. Board of Education (2d Cir. 1977) 562 F. 2d 856

Finot v. Pasadena Board of Education (1967) 250 Cal.App.2d 189

#### PUBLIC EMPLOYMENT RELATIONS BOARD DECISIONS

Santa Ana Unified School District (1998) 22 PERC P29, 136

Inglewood Unified School District (1985) 10 PERC P17, 000

### *Management Resources:*

#### WEB SITES

Public Employment Relations Board: <http://www.perb.ca.gov>

## **All Personnel**

BP 4119.23(a)

4219.23

## **UNAUTHORIZED RELEASE OF CONFIDENTIAL/ PRIVILEGED INFORMATION**

4319.23

The Board of Trustees recognizes the importance of keeping confidential information confidential. Staff shall maintain the confidentiality of information acquired in the course of their employment. Confidential/privileged information shall be released only to the extent authorized by law.

### **Disclosure of Closed Session Information**

An employee shall not disclose confidential information acquired by being present during a closed session to a person not entitled to receive such information, unless the Board authorizes disclosure of that information. (Government Code 54963)

*Confidential information* means a communication made in a closed session that is specifically related to the basis for the Board to meet lawfully in closed session. (Government Code 54963)

*(cf. 9011 - Disclosure of Confidential/Privileged Information)*

*(cf. 9321 - Closed Session Purposes and Agendas)*

An employee who willfully discloses confidential information acquired during a closed session may be subject to disciplinary action if he/she has received training or notice as to the requirements of this policy. (Government Code 54963)

*(cf. 4118 - Suspension/Disciplinary Action)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

The Superintendent or designee shall provide all employees who attend closed sessions a copy of this policy. New employees who may attend closed sessions shall also receive a copy of this policy.

The district shall not take disciplinary action against any employee for disclosing confidential information acquired in a closed session, nor shall the disclosure be considered a violation of the law or Board policy, when the employee is: (Government Code 54963)

1. Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts necessary to establish the illegality or potential illegality of a Board action that has been the subject of deliberation during a closed session

*(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)*

2. Expressing an opinion concerning the propriety or legality of Board action in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action

**UNAUTHORIZED RELEASE OF CONFIDENTIAL/  
PRIVILEGED INFORMATION (continued)**

3. Disclosing information that is not confidential

**Other Disclosures**

An employee who willfully releases confidential/privileged information about the district, students or staff shall be subject to disciplinary action.

No employee shall disclose confidential information acquired in the course of his/her official duties. Confidential information includes information that is not a public record subject to disclosure under the Public Records Act, information that by law may not be disclosed, or information that may have a material financial effect on the employee.

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*  
*(cf. 4112.5/4212.5/4312.5 - Criminal Record Check)*  
*(cf. 4143/4243 - Negotiations/Consultation)*  
*(cf. 5125 - Student Records)*  
*(cf. 5125.1 - Release of Directory Information)*  
*(cf. 5141.4 - Child Abuse Prevention and Reporting)*  
*(cf. 6164.2 - Guidance/Counseling Services)*

Any action by an employee which inadvertently or carelessly results in release of confidential/privileged information shall be recorded, and the record shall be placed in the employee's personnel file. Depending on the circumstances, the Superintendent or designee may deny the employee further access to any privileged information and shall take any steps necessary to prevent any further unauthorized release of such information.

*Legal Reference: (see next page)*



BP 4119.23(c)  
4219.23  
4319.23

**UNAUTHORIZED RELEASE OF CONFIDENTIAL/  
PRIVILEGED INFORMATION (continued)**

*Legal Reference:*

EDUCATION CODE

35010 Control of district; prescription and enforcement of rules

35146 Closed sessions

35160 Authority of governing boards

44031 Personnel file contents and inspection

44932 Grounds for dismissal of permanent employees

44933 Other grounds for dismissal

45113 Rules and regulations for classified service

49060-49079 Pupil records

GOVERNMENT CODE

1098 Public officials and employees: confidential information

6250-6270 Inspection of public records

54950-54963 Brown Act

UNITED STATES CODE, TITLE 20

1232g Family Education Rights and Privacy Act

*Management Resources:*

WEB SITES

CSBA: <http://www.csba.org>

## All Personnel

BP 4119.25

4219.25

## POLITICAL ACTIVITIES OF EMPLOYEES

4319.25

The Board of Trustees respects the right of school employees to engage in political discussions and activities on their own time and at their own expense. On such occasions, employees shall make it clear that they are acting as individuals and not as representatives of the district.

(cf. 1160 - Political Processes)

Like other community members, employees may use school facilities for meetings under the Civic Center Act.

(cf. 1330 - Use of School Facilities)

Employees shall refrain from prohibited activities identified in law and administrative regulations. Employees who engage in these activities shall be subject to disciplinary action and/or criminal penalties.

(cf. 1325 - Advertising and Promotion)

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

### Legal Reference:

#### EDUCATION CODE

7050-7057 Political activities of school officers and employees

38130-38139 Civic Center Act

51520 Prohibited solicitations on school premises

#### GOVERNMENT CODE

3543.1 Rights of employee organizations

#### COURT DECISIONS

Downs v. Los Angeles Unified School District, (9th Cir. 2000) 228 F.3d 1003

California Teachers Association v. Governing Board of San Diego Unified School District, (1996) 45 Cal.App. 4th 1383

L.A. Teachers Union v. L.A. City Board of Education, (1969) 71 Cal.2d 551

#### ATTORNEY GENERAL OPINIONS

84 Ops.Cal.Atty.Gen. 106 (2001)

84 Ops.Cal.Atty.Gen. 52 (2001)

77 Ops.Cal.Atty.Gen. 56 (1994)

#### PERB RULINGS

California Federation of Teachers, Local 1931 v. San Diego Community College District (2001) PERB Order #1467 (26 PERC 33014)

### Management Resources:

#### CSBA PUBLICATIONS

Political Activities of School Districts: Legal Issues, 1998, revised 2001

#### WEB SITES

CSBA: <http://www.csba.org>

Office of the Attorney General, Dept. of Justice: <http://caag.state.ca.us/>

Public Employment Relations Board: <http://www.perb.ca.gov>

Policy  
adopted:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California

**All Personnel**

AR 4119.25(a)

4219.25

**POLITICAL ACTIVITIES OF EMPLOYEES**

4319.25

District employees shall not:

1. Use district funds, services, supplies or equipment to urge the passage or defeat of any ballot measure or candidate, including any candidate for election to the Board of Trustees (Education Code 7054)

*(cf. 1160 - Political Processes)*

2. During working hours and on district property, solicit or receive any political funds or contributions to promote the passage or defeat of a ballot measure that would affect the rate of pay, hours of work, retirement, civil service or other working conditions (Education Code 7056)
3. During working hours and on district property, solicit or receive any political funds or contributions to promote the passage or defeat of other types of ballot measures
4. Use district time to urge the passage or defeat of any ballot measure or candidate
5. Use district equipment for the preparation or reproduction of political campaign materials, even if the district is reimbursed

*(cf. 3512 - Equipment)*

6. Post or distribute political campaign materials on district property
7. Disseminate political campaign materials through the district's mail service, e-mail or staff mailboxes

*(cf. 4040 - Employee Use of Technology)*

8. Use students to write, address or distribute political campaign materials
9. Present viewpoints on particular candidates or ballot measures in the classroom without giving equal time to the presentation of opposing views

*(cf. 6144 - Controversial Issues)*

10. Wear buttons or articles of clothing that express political opinions on ballot measures or candidates during instructional time

However, teachers shall not be prohibited from wearing political buttons during noninstructional time, such as Back-to-School Night.

Nothing in Board policy or administrative regulation shall be construed to prevent employees from soliciting or receiving funds or contributions for political purposes during nonworking time, including before and after school, the lunch period or other scheduled work intermittency during the school day. (Education Code 7056)

AR 4119.25(b)  
4219.25  
4319.25

## **POLITICAL ACTIVITIES OF EMPLOYEES** (continued)

### **Employee Organizations**

Employee organizations may use district mailboxes and other means to communicate with employees, subject to reasonable regulation. Employee organizations may have access at reasonable times to areas in which employees work; may use institutional bulletin boards, mailboxes, and other means of communication and may use district facilities at reasonable times for the purpose of meetings. (Government Code 3543.1)

However, employee organizations shall not use district funds, services, supplies or equipment, such as the district mail system, to urge the passage or defeat of any ballot measure or candidate, including any candidate for election to the Board. (Education Code 7054)

*(cf. 4140/4240/4340 - Bargaining Units)*

Access to district communication channels shall be limited in cases where such access would be disruptive to district operations.

In the event of a concerted action or work stoppage, political activities by employee organizations and individual employees shall be restricted to peaceful informational picketing and other activities allowed by law.

*(cf. 4141.6/4241.6 - Concerted Action/Work Stoppage)*

## **All Personnel**

BP 4119.41(a)

4219.41

## **EMPLOYEES WITH INFECTIOUS DISEASE**

4319.41

The Board of Trustees desires to promote the health of district students and staff in order to reduce absenteeism and enhance employee and student performance. The Superintendent or designee shall develop strategies to prevent the outbreak or spread of infectious diseases at district schools.

*(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)*

*(cf. 4261.1 - Personal Illness/Injury Leave)*

*(cf. 5113 - Absences and Excuses)*

*(cf. 5113.1 - Chronic Absence and Truancy)*

An *infectious disease* is one that is caused by a microorganism and is potentially transmittable to another individual, whether through airborne transmission, bloodborne transmission, skin-to-skin contact, foodborne transmission, or other casual or noncasual means. A *communicable infectious disease*, such as influenza or chicken pox, is contagious and can be readily transmitted by infectious bacteria or viral organisms.

In accordance with law, job applicants shall be required to provide evidence that they are free of tuberculosis or any other communicable infectious disease prior to beginning employment.

*(cf. 4112.4/4212.4/4312.4 - Health Examinations)*

To prevent the outbreak or spread of infectious diseases, the Superintendent or designee may provide infection prevention supplies and information to employees, including information about recommended vaccinations. Employees also shall observe universal precautions to avoid contact with potentially infectious blood or other bodily fluids.

*(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)*

*(cf. 4119.43/4219.43/4319.43 - Universal Precautions)*

*(cf. 4131 - Staff Development)*

*(cf. 4231 - Staff Development)*

*(cf. 4331 - Staff Development)*

Plans for addressing a communicable infectious disease outbreak, including, but not limited to, plans for addressing employee shortages during such an outbreak, shall be included in the district's emergency preparedness plan.

*(cf. 3516 - Emergencies and Disaster Preparedness Plan)*

*(cf. 5112.2 - Exclusions from Attendance)*

*(cf. 5141.22 - Infectious Diseases)*

*(cf. 5141.31 - Immunizations)*

The Superintendent or designee shall immediately report to the local health officer the presence or suspected presence of any communicable infectious disease. In addition, a school nurse or other health care provider who knows of or is in attendance on a case or suspected

BP 4119.41(b)  
4219.41  
4319.41

## **EMPLOYEES WITH INFECTIOUS DISEASE (continued)**

case of any of the diseases or conditions listed in 17 CCR 2500 shall make a report to the local health officer. If no health care provider is in attendance, any individual having knowledge of a person who is suspected to be suffering from one of the specified diseases or conditions may make a report to the local health officer. (17 CCR 2500, 2508)

*(cf. 5141.6 - School Health Services)*

### **Nondiscrimination/Reasonable Accommodation**

The district shall not discriminate against any employee or job applicant who has an infectious disease that meets the federal or state definition of a disability under the Americans with Disabilities Act, California Fair Employment and Housing Act, or Section 504 of the Federal Rehabilitation Act. (Government Code 12900-12996; 29 USC 794; 42 USC 12101-12213)

*(cf. 4030 - Nondiscrimination in Employment)*

Upon request, any qualified person with a disability shall be provided reasonable accommodation to perform the essential duties of his/her position in accordance with the criteria and processes described in AR 4032 - Reasonable Accommodation.

*(cf. 4032 - Reasonable Accommodation)*

*Legal Reference: (see next page)*

## **EMPLOYEES WITH INFECTIOUS DISEASE (continued)**

### *Legal Reference:*

#### EDUCATION CODE

44839 Medical certificate; periodic medical examination

44839.5 Requirements for employment of retirant

49406 Examination for tuberculosis (employees)

#### CIVIL CODE

56-56.37 Confidentiality of medical information

#### GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

#### HEALTH AND SAFETY CODE

120975-121020 Mandated blood testing and confidentiality to protect public health

#### CODE OF REGULATIONS, TITLE 2

7293.5-7294.2 Discrimination based on disability

#### CODE OF REGULATIONS, TITLE 5

5502-5504 Medical certification

#### CODE OF REGULATIONS, TITLE 17

2500 Reportable diseases and conditions

2508 Reporting of communicable diseases; duty of schools

#### UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act of 1973

#### UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

#### COURT DECISIONS

Chevron USA v. Echazabal, (2002) 536 U.S. 73, 122 S.Ct. 2045

School Board of Nassau County, Florida v. Arline, (1987) 408 U.S. 273

### *Management Resources:*

#### CSBA PUBLICATIONS

H1N1 Influenza (Swine Flu), Fact Sheet, April 2009

Pandemic Influenza, Fact Sheet, September 2007

#### CALIFORNIA DEPARTMENT OF PUBLIC HEALTH PUBLICATIONS

California HIV/AIDS Laws, 2009, January 2010

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION PUBLICATIONS

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, October 2002

#### WEB SITES

CSBA: <http://www.csba.org>

California Department of Public Health: <http://www.cdph.ca.gov>

California School Nurses Organization: <http://www.csno.org>

Centers for Disease Control and Prevention: <http://www.cdc.gov>

Equal Employment Opportunity Commission: <http://www.eeoc.gov>

U.S. Department of Health and Human Services: <http://www.hhs.gov>

**All Personnel**

BP 4119.42

4219.42

**EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

4319.42

As part of its commitment to provide a safe and healthful work environment, the Board of Trustees recognizes the importance of developing an exposure control plan. The Superintendent or designee shall establish a written exposure control plan in accordance with state and federal standards for dealing with potentially infectious materials in the workplace to protect employees from possible infection due to contact with bloodborne pathogens, including but not limited to hepatitis B virus, hepatitis C virus and human immunodeficiency virus (HIV).

*(cf. 4119.43/4219.43/4319.43 - Universal Precautions)*

*(cf. 4157/4257/4357 - Employee Safety)*

The Superintendent or designee shall determine which employees have occupational exposure to bloodborne pathogens and other potentially infectious materials. In accordance with the district's exposure control plan, employees having occupational exposure shall be offered the hepatitis B vaccination.

*Legal Reference:*

**LABOR CODE**

*142.3 Authority of Cal/OSHA to adopt standards*

*144.7 Requirement to amend standards*

**CODE OF REGULATIONS, TITLE 8**

*3204 Access to employee exposure and medical records*

*5193 California bloodborne pathogens standards*

**CODE OF FEDERAL REGULATIONS, TITLE 29**

*1910.1030 OSHA bloodborne pathogens standards*

*Management Resources:*

**CDE ADVISORIES**

*1016.89 Guidelines for Informing School Employees about Preventing the Spread of Infectious Diseases, including Hepatitis B and AIDS/HIV Infections and Policies for Dealing with HIV-Infected Persons in School Settings*

**WEB SITES**

*OSHA: <http://www.osha.gov>*

*Cal/OSHA: [http://www.dir.ca.gov/occupational\\_safety.html](http://www.dir.ca.gov/occupational_safety.html)*

*Centers for Disease Control and Prevention: <http://www.cdc.gov>*

Policy  
adopted:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California



## **All Personnel**

AR 4119.42(a)

4219.42

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

4319.42

### **Purpose**

The purpose of this document is to serve as the Berryessa Union School District's Exposure Control Plan in compliance with Cal-OSHA guidelines for "Bloodborne Pathogens." This plan ensures that designated employees (as defined herein) are:

1. Aware of potential hazards from exposure to bloodborne pathogens.
2. Advised of appropriate procedures to avoid exposure.
3. Advised of school district's responsibility in the event of exposure.

### **Background**

Bloodborne pathogens are certain pathogenic microorganisms which are present in human blood and can cause disease in humans. The bloodborne pathogens may be transmitted from the infected individual to other individuals by blood or certain body fluids that carry the risk of infection; individuals whose occupational duties place them at risk of exposure to blood and other potentially infectious materials are also at risk of becoming infected with these bloodborne pathogens. The most significant bloodborne pathogens are Hepatitis B virus (HBV), Hepatitis C virus (HCV), and Human Immunodeficiency Virus (HIV).

Very few Berryessa Union School District employees are likely to be at risk of exposure to bloodborne pathogens. However, to minimize this risk to our employees, Berryessa Union School District has implemented the Exposure Control Plan.

### **Exposure Determination**

All employees in the following job classifications have occupational exposure to bloodborne pathogens:

- Administrative Secretary-Principal
- Computer Clerk
- Coach
- Day Custodian
- Health Clerk
- Lead Custodian
- Night Custodian
- Nurse
- Paraeducator I & II
- School Clerk
- Special Day Class Teacher

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS (continued)**

Employees in the job categories listed above have occupational exposure to bloodborne pathogens when performing the following tasks and procedures:

1. cleaning waste from bodily fluid spills, i.e. vomit;
2. cleaning area where blood spills may have occurred administering first aid; and
3. utilizing needles in injections for bee sting allergy or general allergy.

*Occupational Exposure* means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or potentially infectious materials that may result from the performance of an employee's duties, (Parenteral means piercing mucous membranes or the skin barrier through such events as needle sticks, human bites, cuts and abrasions).

Other *Potentially Infectious Materials* include the following human body fluid: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids. (In a school district environment it is highly unlikely employees will be exposed to these materials).

### **Exposure Control Practice/Methods of Compliance**

Effective immediately, the following Exposure Control Practices are to be followed at all times:

#### **Universal Precautions**

Universal Precautions is an approach to infection control. According to the concept of Universal Precautions, all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV, HCV, and other bloodborne pathogens.

Universal precautions shall be used to prevent contact with blood or other potentially infectious materials. Under circumstances in which differentiation between body fluids is difficult or impossible, all body fluids should be considered infectious materials.

All procedures involving blood or other body fluids shall be performed in such a manner as to minimize splashing, spraying, splattering, and generation of droplets of these substances.

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS (continued)**

### **Hand Washing**

Hand washing is the single most effective means of preventing the spread of infections.

All employees must wash their hands and other exposed skin with soap and water, or flush mucous membranes with water as soon as feasible, following contact with blood or other potentially infectious materials. When hand-washing facilities are not feasible, employees named in the above classifications will be supplied with antiseptic hand cleanser and clean paper towels or antiseptic towelettes. When antiseptic hand cleansers or towelettes are used, employees are still required to wash his/her hands with soap and running water as soon as feasible after exposure may have occurred.

### **Barrier Precautions/Personal Protective Equipment**

Appropriate barrier precautions shall be routinely used to prevent skin and mucous membrane exposure when contact with blood or other body fluids is anticipated.

#### **1. Gloves**

Latex gloves must be worn when touching blood and body fluids, mucous membranes, or broken skin, or for handling items or touching surfaces moist with blood or body fluids. Gloves must be worn when giving injections. Care must be taken to avoid contacting other objects with contaminated gloves. New gloves must be worn for each student receiving aid. Hands must be washed after glove removal. The use of gloves is also required under the following circumstances:

- a. if provider's hands are abraded, chapped or cut;
- b. when examining abraded or non-intact skin with active bleeding; and
- c. during cleansing of body fluids or decontaminating procedures.

#### **2. Equipment**

Needles and other sharp instruments must be handled with extreme caution to prevent infection with HIV, Hepatitis, or other bloodborne diseases. Contaminated sharp instruments are not to be recapped, purposely bent or broken, removed from disposable syringes or otherwise manipulated by hand. Contaminated needles are never to be placed in a pocket.

Sharp instruments are to be disposed of in puncture-resistant containers, which shall be located as close as practical to the area of use (health room in school office.)

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS (continued)**

### **Handling Biohazardous Waste**

Items that contain dried blood are considered non-regulated waste and can be disposed in plastic-lined trash containers. Dispose of fluid blood and other body fluids by carefully pouring them down a drain connected to a sanitary sewer (toilet). Then, clean the surface with soap and water, and disinfect with a solution of one part bleach to ten parts water. Keep trash containers closed until they are emptied, and be sure to disinfect mops and cleaning tools. Place "sharps" (needles) in a labeled, puncture-and-leak-proof container, and properly dispose of them.

### **Vaccination Against Bloodborne Pathogens**

1. All employees assigned to classifications identified in Section C above shall be offered at no cost to themselves vaccination against Hepatitis B virus (HBV). This vaccination will be offered within ten days of initial assignment.
2. Hepatitis B vaccine and vaccination series will be made available at a location designated by the Berryessa Union School District and will be performed by or under the supervision of a licensed physician or by or under the supervision of another licensed health care professional.
3. The Hepatitis B vaccine and vaccination series will be provided according to current recommendations of the U.S. Public Health Service at the time it is provided.
4. Employees accepting or declining the vaccine must complete the Hepatitis B Vaccination Form. (See attachments)
5. If an employee declines and later, while still employed in Berryessa Union School District, decides to accept the vaccine, it will be provided to her/him at no cost.
6. If a routine booster dose of Hepatitis B vaccine is recommended by the U.S. Public Health Service at some future date, such a booster dose shall be made available at no cost to the employee.

### **Post-Exposure Evaluation And Follow-Up For Unvaccinated First Aid Responders**

1. Each employee is required to immediately report any exposure incident to the school office/health room or immediate supervisor. This incident should be reported on the "Incident Log" maintained in the nurse's office. An exposure incident is a specific eye, mouth, or mucous membrane, non-intact skin or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties.

**EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS (continued)**

2. Following a report of an exposure incident, the employee should follow the policy for making a Worker's Compensation claim and seeing a physician for follow-up care and counseling.
3. The medical evaluation and follow-up will be performed at a medical facility designated by Berryessa Union School District pursuant to an appointment made by the employee, within 24 hours of incident.
4. The medical examination shall include:
  - a. document of the route(s) and circumstance of exposure;
  - b. identification of the source individual, unless Berryessa Union School District determines that identification is not feasible or prohibited by law;
  - c. prompt testing of the source individual's blood for HBV, HCV, and HIV as soon as consent is obtained. If consent cannot be obtained, this shall be documented. If the source of individual's HBV, HCV, or HIV status is known to be positive, repeat testing need not be done. Results of the source individual's testing shall be made available to the exposed employee, along with information about the applicable laws and regulations regarding disclosure of identity and infectious status of the source individual;
  - d. prompt testing of the exposed employee's blood for HBV, HCV, and HIV shall be done as soon as consent is obtained; and
  - e. if the employee does not consent to blood testing, consent to take a blood sample may be given. The sample shall be preserved untested for at least 90 days. If within 90 days of the exposure incident the employee elects to have the sample tested, such testing shall be done as soon as possible.

**Information Provided to the Health Care Professional**

Berryessa Union School District shall provide to the health care professional responsible for an employee's Hepatitis B vaccination the following information:

1. A copy of the OSHA Bloodborne Pathogen regulations.
2. A description of the exposed employee's duties as they relate to the exposure incident.

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS (continued)**

3. Documentation of the route(s) of exposure and circumstances under which the exposure occurred.
4. Results of the source individual's blood testing, if available; and
5. All medical records relevant to the appropriate treatment of the employee including vaccination status which is maintained by the employer.

### **Written Opinion**

Berryessa Union School District shall obtain and provide the employee with a copy of the physician's written opinion within 15 days of the completion of the evaluation. The written opinion shall be limited to the following:

1. whether HBV vaccination is indicated and if the employee has received it;
2. that the employee has been informed of the results of the evaluation; and
3. that the employee has been informed about any medical condition resulting from exposure which requires further evaluation or treatment.

Note: All other findings or diagnosis shall remain confidential and shall not be included in the written report.

### **Employee Training And Information**

Berryessa Union School District will provide training and information to all employees covered under this standard. Training will be provided during work hours and at no cost to the employee. Training will be provided at the time of the initial assignment, annually thereafter, and whenever modifications of tasks or procedures affect the employee's occupational exposure.

The training program will contain the following elements:

1. A general explanation of the epidemiology and symptoms of bloodborne diseases.
2. An explanation of the modes of transmission of bloodborne pathogens.
3. An explanation of the employee's Exposure Control Plan and information as to where an employee can obtain a copy.

## **EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS (continued)**

4. An explanation of the appropriate methods of recognizing tasks and other activities that may involve exposure.
5. An explanation of the use and limitations of methods that will prevent or reduce exposure including, appropriate engineering controls, work practices and personal protective equipment.
6. Information on the types, proper use, location, removal, handling, decontamination, and disposal of personal protective equipment.
7. An explanation of the basis for selection of personal protective equipment.
8. Information on the Hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine and vaccination will be offered free of charge.
9. Information on the appropriate actions to take, and persons to contact, in an emergency involving exposure.
10. An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow-up that will be made available.
11. Information on the post-exposure evaluation and follow-up.
12. An explanation of the signs and labels and/or color coding required to label regulated waste (if applicable).

The training will allow an opportunity for interactive questions and answers. Attendance shall be recorded.

### **Record Keeping**

1. Medical records

Berryessa Union School District will establish and maintain medical records that will include the following:

- a. the name and social security number of the employee;

**EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS (continued)**

- b. a copy of the employee's Hepatitis B vaccination status, including the dates of all Hepatitis B vaccinations and any medical records relative to the employee's ability to receive the vaccination;
- c. a copy of results of examinations, medical testing, and follow-up procedures;
- d. a copy of the health care professional's written opinion; and
- e. a copy of the information provided to the health care professional by the employer.

These medical records shall be maintained by Berryessa Union School District for at least the duration of employment plus 30 years in accordance with the law.

2. Incident log

An incident log must be maintained on all first aid incidents in which exposure to bloodborne pathogens may have occurred.

This log shall include:

- a. name of first aid responder;
- b. description of the incident;
- c. date and time of the incident; and
- d. determination of whether or not an exposure occurred.

3. Training Logs

Berryessa Union School District shall maintain the following training records:

- a. the dates of the training sessions;
- b. the contents and/or summary of the training session;
- c. the names and qualifications of persons conducting the training; and
- d. the names and job titles of all persons attending the training sessions.



AR 4119.42(i)  
4219.42  
4319.42

**EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS (continued)**

Training records shall be maintained for three years from the date on which the training occurred.

Employee training records shall be provided upon request for examination and copying to employees and employee representatives.

Employee medical records shall be provided upon request for examination and copying to the subject employee and to anyone having written consent of the subject employee.

Berryessa Union School District shall ensure that all records required to be maintained by this section shall be made available upon request to the Chief of Cal-OSHA for examination.

This Exposure Control Plan shall be reviewed and updated at least annually and whenever necessary to reflect new or modified tasks and procedures which affect occupational exposure and to reflect new or revised employee positions within occupational exposure.

Regulation  
approved:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California

All Personnel

E(1)4119.42

4219.42

**EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

4319.42

***PLEASE PRINT, SIGN AND DATE THIS FORM AND RETURN TO PERSONNEL SERVICES  
YOU MAY FAX THIS FORM TO PERSONNEL SERVICES AT 408-251-4053***

**BLOODBORNE PATHOGENS TRAINING COMPLIANCE FORM  
NOTICE OF RIGHT TO TRAINER ACCESS**

I understand I will be completing a 30-minute online training course on the topic of Bloodborne Pathogens. I understand that according to OSHA regulations, during the training session I must be given the opportunity to ask questions of a qualified trainer if necessary.

I understand that **Personnel Services** can be reached at **408-923-1850** to answer any questions that I have related to bloodborne pathogens training during these times: **8:30 am to 4:00 pm, Monday through Friday.**

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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**HEPATITIS B VACCINE FORM**

Upon completion of the online training course on the topic of Bloodborne Pathogens, complete this form, sign below, and return to Personnel Services. The use of this form is mandatory.

I, the undersigned, have completed the Berryessa Union School District BLOODBORNE PATHOGENS ONLINE TRAINING. I have received Board Policy 4021 and Administrative Regulations 4021.

Check one:

\_\_\_\_\_ **Accept** – I understand due to my occupational exposure to blood or other potentially infectious materials, I may be at risk of acquiring Hepatitis B Virus (HBV). I have been given the opportunity to be vaccinated with the Hepatitis B vaccine, at no charge to myself. I **accept** the Hepatitis B vaccination at this time. The vaccine will be made available through a medical facility designated by the District. If a routine booster dose of Hepatitis B vaccine is recommended by U.S. Public Health Services at some future date, such booster shall be made available at no charge to me.

\_\_\_\_\_ **Decline** – I understand due to my occupational exposure to blood or other potentially infectious materials, I may be at risk of acquiring Hepatitis B Virus (HBV). I have been given the opportunity to be vaccinated with the Hepatitis B vaccine, at no charge to myself. However, I **decline** the Hepatitis B vaccination at this time. I understand by declining this vaccine, I continue to be at risk of acquiring Hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials, and I want to be vaccinated with the Hepatitis B vaccine, I can receive the vaccination series at no charge to me. The vaccine will be made available through a medical facility designated by the District.

Employee Name (printed):

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Exhibit  
version:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California

All Personnel

E(2)4119.42

4219.42

EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS

4319.42

***PLEASE SIGN THIS FORM***

**BLOODBORNE PATHOGENS TRAINING COMPLIANCE FORM  
NOTICE OF RIGHT TO TRAINER ACCESS**

I understand I will be completing a training course on the topic of Bloodborne Pathogens. I understand that according to OSHA regulations, during the training session I must be given the opportunity to ask questions of a qualified trainer if necessary.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

---

**HEPATITIS B VACCINE FORM**

Upon completion of the training course on the topic of Bloodborne Pathogens, complete this form, sign below, and return to Instructor. The use of this form is mandatory.

I, the undersigned, have completed the Berryessa Union School District BLOODBORNE PATHOGENS TRAINING. I have received Board Policy 4021.

Check one:

\_\_\_\_\_ **Accept** – I understand due to my occupational exposure to blood or other potentially infectious materials, I may be at risk of acquiring Hepatitis B Virus (HBV). I have been given the opportunity to be vaccinated with the Hepatitis B vaccine, at no charge to myself. I **accept** the Hepatitis B vaccination at this time. The vaccine will be made available through a medical facility designated by the District. If a routine booster dose of Hepatitis B vaccine is recommended by U.S. Public Health Services at some future date, such booster shall be made available at no charge to me.

\_\_\_\_\_ **Decline** – I understand due to my occupational exposure to blood or other potentially infectious materials, I may be at risk of acquiring Hepatitis B Virus (HBV). I have been given the opportunity to be vaccinated with the Hepatitis B vaccine, at no charge to myself. However, I **decline** the Hepatitis B vaccination at this time. I understand by declining this vaccine, I continue to be at risk of acquiring Hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials, and I want to be vaccinated with the Hepatitis B vaccine, I can receive the vaccination series at no charge to me. The vaccine will be made available through a medical facility designated by the District.

Employee Name (printed): \_\_\_\_\_

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Exhibit  
version:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California

**All Personnel**

E(3)4119.42

4219.42

**EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

4319.42

**BERRYESSA UNION SCHOOL DISTRICT**

**INCIDENT LOG: BLOODBORNE PATHOGENS**

The following information must be maintained on all first aid incidents in which possible exposure to bloodborne pathogens may have occurred.

Incident: \_\_\_\_\_ Date/Time \_\_\_\_\_

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Name of Responder: \_\_\_\_\_

Exposure Occurred: Yes \_\_\_\_\_ No \_\_\_\_\_

Incident: \_\_\_\_\_ Date/Time \_\_\_\_\_

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Name of Responder: \_\_\_\_\_

Exposure Occurred Yes \_\_\_\_\_ No \_\_\_\_\_

**Form can be duplicated if needed.**

Exhibit  
version:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California

**All Personnel**

E(4)4119.42

4219.42

**EXPOSURE CONTROL PLAN FOR BLOODBORNE PATHOGENS**

4319.42

**BERRYESSA UNION SCHOOL DISTRICT**

**MEDICAL RECORD DOCUMENTATION: BLOODBORNE PATHOGENS**

As a requirement of the Berryessa Union School District responsibility to document records as they relate to Bloodborne Pathogens, the following will be established and maintained.

1. The name and social security number of the exposed employee;
2. A copy of the employee's Hepatitis B vaccination status, including the dates of all Hepatitis B vaccinations and any medical records relative to the employee's ability to receive the vaccination;
3. A copy of all results of examinations, medical testing, and follow-up procedures;
4. A copy of the health care professional's written opinion; and
5. A copy of the information provided to the health care professional by the employer.

Regulation  
approved:

**BERRYESSA UNION SCHOOL DISTRICT**  
San Jose, California

## All Personnel

BP 4119.43

4219.43

## UNIVERSAL PRECAUTIONS

4319.43

In order to protect employees from contact with potentially infectious blood or other body fluids, the Board of Trustees requires that universal precautions be observed throughout the district.

Universal precautions are appropriate for preventing the spread of all infectious diseases and shall be used regardless of whether bloodborne pathogens are known to be present.

(cf. 4157/4257/4357 - *Employee Safety*)  
(cf. 5141 - *Health Care and Emergencies*)  
(cf. 5141.22 - *Infectious Diseases*)  
(cf. 5141.24 - *Specialized Health Care Services*)  
(cf. 5141.6 - *School Health Services*)  
(cf. 6145.2 - *Athletic Competition*)

Employees shall immediately report any exposure incident or first aid incident in accordance with the district's exposure control plan or other safety procedures.

(cf. 4119.42/4219.42/4319.42 - *Exposure Control Plan for Bloodborne Pathogens*)

### *Legal Reference:*

#### HEALTH AND SAFETY CODE

117600-118360 *Handling and disposal of regulated waste*

120875 *Providing information to school districts on AIDS, AIDS-related conditions and Hepatitis B*

120880 *Information to employees of school district*

#### CODE OF REGULATIONS, TITLE 8

5193 *California bloodborne pathogens standard*

#### CODE OF FEDERAL REGULATIONS, TITLE 29

1910.1030 *OSHA bloodborne pathogens standards*

### *Management Resources:*

#### CDE PROGRAM ADVISORIES

1016.89 *Guidelines for Informing School Employees about Preventing the Spread of Infectious Diseases, including Hepatitis B and AIDS/HIV Infections and Policies for Dealing with HIV-Infected Persons in School Settings*

#### WEB SITES

*Centers for Disease Control and Prevention: <http://www.cdc.gov>*

## **All Personnel**

AR 4119.43(a)

4219.43

## **UNIVERSAL PRECAUTIONS**

4319.43

### **Definitions**

*Universal precautions* are an approach to infection control. All human blood and certain human body fluids, including but not limited to semen, vaginal secretions and any body fluid that is visibly contaminated with blood, are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), hepatitis C virus (HCV) and other bloodborne pathogens. (8 CCR 5193(b))

*Personal protective equipment* includes specialized clothing or equipment worn or used for protection against a hazard. General work clothes such as uniforms, pants, shirts or blouses not intended to function as protection against a hazard are not considered to be personal protective equipment. (8 CCR 5193(b))

A *sharp* is any object that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident. (8 CCR 5193(b))

*Engineered sharps* injury protection is a physical attribute built into a needle device or into a non-needle sharp which effectively reduces the risk of an exposure incident. (8 CCR 5193(b))

### **Employee Information**

The Superintendent or designee shall distribute to employees information provided by the California Department of Education regarding acquired immune deficiency syndrome (AIDS), AIDS-related conditions, and hepatitis B. This information shall include, but not be limited to, any appropriate methods employees may use to prevent exposure to AIDS and hepatitis B, including information concerning the availability of a vaccine to prevent contraction of hepatitis B, and that the cost of this vaccination may be covered by the health plan benefits of the employees. Information shall be distributed at least annually, or more frequently if there is new information supplied by the California Department of Education. (Health and Safety Code 120875, 120880)

(cf. 4112.9/4212.9/4312.9 - *Employee Notifications*)

(cf. 4119.42/4219.42/4319.42 - *Exposure Control Plan for Bloodborne Pathogens*)

### **Infection Control Practices**

The Superintendent or designee shall ensure that the worksite is effectively maintained in a clean and sanitary condition, and shall implement an appropriate written schedule for cleaning and decontamination of the worksite. (8 CCR 5193(d))

Where occupational exposure remains after the institution of engineering and work practice controls, the Superintendent or designee shall provide appropriate personal protective

## **UNIVERSAL PRECAUTIONS** (continued)

equipment at no cost to the employee. Such equipment may include gloves, gowns, masks, eye protection, and other devices that do not permit blood or other potentially infectious materials to pass through or reach the employee's clothes, skin, eyes, mouth or other mucous membranes under normal conditions of use. The Superintendent or designee shall maintain, repair, make accessible and require employees to use and properly handle protective equipment. (8 CCR 5193(d))

The Superintendent or designee shall provide handwashing facilities which are readily accessible to employees. When provision of handwashing facilities is not feasible, the Superintendent or designee shall provide an appropriate antiseptic hand cleanser in conjunction with clean cloth or paper towels, or antiseptic towelettes. (8 CCR 5193(d))

For the prevention of infectious disease, employees shall routinely: (8 CCR 5193(d))

1. Perform all procedures involving blood or other potentially infectious materials in such a manner as to minimize splashing, spraying, spattering, and generating droplets of these substances.
2. Use personal protective equipment as appropriate.

- a. Appropriate clothing, including but not limited to, gowns, aprons, lab coats, clinic jackets or similar outer garments, shall be worn in occupational exposure situations.

If a garment becomes penetrated by blood or other potentially infectious materials, the employee shall remove the garment immediately or as soon as feasible. All personal protective equipment shall be removed prior to leaving the work area. When removed, it shall be placed in an appropriately designated area or container for storage, washing, decontamination or disposal.

- b. Gloves shall be worn when it can be reasonably anticipated that the employee may have hand contact with blood, other potentially infectious materials, mucous membranes and nonintact skin, and when handling or touching contaminated items or surfaces.

Disposable gloves shall be replaced as soon as practical when contaminated, or as soon as feasible if they are torn, punctured, or when their ability to function as a barrier is compromised. They shall not be washed or



## UNIVERSAL PRECAUTIONS (continued)

decontaminated for reuse. Utility gloves may be decontaminated for reuse if the integrity of the gloves is not compromised, but must be discarded if they are cracked, peeling, torn, punctured, or exhibit other signs of deterioration or when their ability to function as a barrier is compromised.

- c. Masks in combination with eye protection devices or face shields shall be worn whenever splashes, spray, spatter, or droplets of blood or other potentially infectious materials may be generated and eye, nose or mouth contamination can be reasonably anticipated.
3. Wash hands and other skin surfaces thoroughly with soap and running water:
    - a. Immediately or as soon as feasible following contact of hands or any other skin or mucous membranes with blood or other potentially infectious materials
    - b. Immediately after removing gloves or other personal protective equipment

When handwashing facilities are not available, the employee shall use antiseptic hand cleanser in conjunction with clean cloth or paper towels, or antiseptic towelettes. In such instances, hands shall be washed with soap and running water as soon as feasible.
  4. Refrain from eating, drinking, smoking, applying cosmetics or lip balm, or handling contact lenses in work areas with a reasonable likelihood of occupational exposure.
  5. Clean and decontaminate all equipment and environmental and work surfaces after contact with blood or other potentially infectious material, no later than the end of the shift or more frequently as required by state regulations.
  6. Rather than using the hands directly, use mechanical means such as a brush and dust pan, tongs or forceps to clean up broken glassware which may be contaminated.
  7. Use effective patient-handling techniques and other methods designed to minimize the risk of a sharps injury in all procedures involving the use of sharps in patient care.

*(cf. 5141.21 - Administering Medication and Monitoring Health Conditions)*

*(cf. 5141.24 - Specialized Health Care Services)*

- a. Needleless systems shall be used to administer medication or fluids, withdraw body fluids after initial venous or arterial access is established, and conduct any other procedure involving the potential for an exposure incident for which a needleless system is available as an alternative to the use of needle devices. If needleless systems are not used, needles or non-needle sharps with engineered sharps injury protection shall be used.

**UNIVERSAL PRECAUTIONS** (continued)

- b. Contaminated needles or other sharps shall not be broken, bent, recapped, removed from devices, or stored or processed in a manner that requires employees to reach by hand into the containers where these sharps have been placed.
  - c. Disposable sharps shall not be reused.
8. Handle, store, treat and dispose of regulated waste in accordance with Health and Safety Code 117600-118360 and other applicable state and federal regulations.
- a. Immediately or as soon as possible after use, contaminated sharps shall be placed in containers meeting the requirements of 8 CCR 5193(d)(3)(D). Containers shall be easily accessible, maintained upright throughout use where feasible, and replaced as necessary to avoid overfilling.
  - b. Specimens of blood or other potentially infectious material shall be placed in a container which prevents leakage during collection, handling, processing, storage, transport or shipping.

*(cf. 4157/4257/4357 - Employee Safety)*  
*(cf. 5141 - Health Care and Emergencies)*  
*(cf. 5141.22 - Infectious Diseases)*  
*(cf. 5141.6 - School Health Services)*  
*(cf. 6145.2 - Athletic Competition)*