



Handbook

School Liability: Student Activities and Employment Issues



PRISM

Public Risk Innovation,
Solutions, and Management



Lozano Smith

ATTORNEYS AT LAW

2021 PRISM School Liability:
Student Activities and Employment Issues Handbook
July 2021

Welcome to the 2021 edition of PRISM's *School Liability: Student Activities and Employment Issues Handbook ("Handbook")*. The 2021 edition includes certain supplemental updates to the original Handbook. Most notably, the changes reflect recent legislation, regulations, cases and Attorney General Opinions regarding educational equity, LGBTQ+, Title IX, student discipline, and employee hiring considerations. Additionally, this edition incorporates liability considerations for using industrial arts and technology materials in classrooms.

We recognize that recipients of the 2021 Handbook may be concerned about changes in the law and potential liability related to the COVID-19 pandemic. However, due to the evolving nature of this public health emergency, executive orders, laws, and regulatory changes may quickly become outdated. Therefore, we recommend consulting with your legal counsel on the liability issues related to operating schools during the current public health emergency.

The following highlights general text changes and featured topics, among others, to the Handbook.

Module 1: Risk Management considerations regarding use of dangerous instruments by students on a school campus, conducting hazard assessments, and liability of school employees/volunteers.

Module 2: Providing a safe school environment related to dangerous instrumentalities as part of school curriculum, negligence claims based on non-athletic school competitions or class electives and student clubs, and implementation of "safety contracts" specific to dangerous instrumentalities.

Module 3: Expansion of educational equity, including definitions, associated terms, legal mandates, and litigation. This section includes new requirements under Assembly Bill 1767 to provide a suicide prevention policy for kindergarten and elementary students and Assembly Bill 34 to provide bullying, discrimination, harassment, and suicide prevention information on school websites. Regarding student discipline, Module 3 addresses changes

to the student discipline process, including the requirement that students suspended for two or more days be provided homework and class assignments upon request, as well as an expanded ban on suspensions for “willful defiance” and “disruption” in grades 4-8. Updates to this section also include discussion of new laws regarding a student’s right to possess and use a smartphone at school, as well as a school’s right to discipline a student for off-campus speech. Additionally, Module 3 addresses California’s new anti-discrimination law regarding “hair texture and protective hairstyles” as provided in Senate Bill 188, otherwise known as the CROWN Act. Finally, a new section was added to specifically discuss student gender identity rights and the current state of the law in California.

Module 4: Salary schedule placement for new hires, including overview of the Federal Equal Pay Act, use of prior salary to justify pay disparity, equal and fair pay under California law, and training for teachers on how to maintain a safe working environment.

TABLE OF CONTENTS

MODULE 1: SCHOOL ACTIVITIES AND THE LAW

Risk Management Basics.....	2
School Law Basics.....	4
Discrimination, Harassment, and Retaliation Laws	8
Liability of School Districts.....	11
Liability of School Employees/Volunteers	14
Module Footnotes.....	20

MODULE 2: PROTECTING AND SUPERVISING STUDENTS

The Child Abuse and Neglect Reporting Act	25
Student Supervision Basics.....	33
Providing a Safe Physical Environment	41
Notice of Risks of Injury and Informed Consent	46
Medical Issues in the School Setting.....	50
Module Footnotes.....	82

MODULE 3: ADDITIONAL RISK MANAGEMENT CONCERNS

Field Trips and Off-Site School Sponsored Activities.....	97
Educational Equity.....	105
Sexual Harassment.....	111
Student Discipline	120
Staff Speech in Interactions with Students and Parents.....	136
Parent Rights and Student Rights	142
Module Footnotes.....	156

MODULE 4: EMPLOYMENT ISSUES FOR SCHOOL DISTRICTS

Hiring Employees	169
Background Checks and Criminal Disqualifications for Certificated and Classified Job Applicants	173
Fair and Equal Pay.....	175
Training for Certificated and Classified Employees	177
Evaluating School Employees.....	180
Disciplinary Action for School Employees	184
Employee Separation from a School District.....	191
Appointment of School Volunteers	200
Information Regarding the Employment of Persons for Credentialed Positions.....	207
Module Footnotes.....	210

MODULE 5: FORMS AND TEMPLATES

Sample Emergency Information Form.....	A
Sample Accident Incident Form.....	B
Sample Conflict/Bullying Form.....	C
Sample Investigation Report.....	D
School-Sponsored Activity Transportation Checklist.....	E
Sample Field Trip/Excursion Form	F
When to Call 9-1-1 for Injuries or Illnesses	G
Child Abuse Reporting Form and Guidelines	H
CANRA Reporting Checklist.....	I
Parent/Guardian Permission Slip.....	J
Sample Orientation Guidelines for Sports or Activities.....	K
Sample Guidelines for Heat-Related Illnesses.....	L
Sample Guidelines on Bloodborne Pathogens and Diseases.....	M
Medicine Administration Chart.....	N
Concussion Fact Sheets for Coaches	O
CIF Return to Learn Protocol and Physician Letter to School	P
CIF Return to Play Protocol.....	Q
CIF Concussion Information Sheet.....	R
CIF Information Sheet and Signature Form for Sudden Cardiac Arrest.....	S
Hiring Classified Employees: Arrests and/or Convictions.....	T
Hiring Certificated Employees: Arrests and/or Convictions.....	U

Please note that the guidance and best practices provided in this Manual do not materially affect a member district's obligation to exercise reasonable care, as required by law, in its school operations. Further, a member administrator's knowledge or lack of knowledge regarding the information provided in this Manual does not affect the legally applicable standard of "reasonable care" expected of an administrator of similar training and experience.

Please also note that, as used in this Manual, the terms "shall," "must," and "required" generally indicate and/or restate existing statutory or regulatory mandates. Likewise, terms such as "advised" and "should" generally indicate recommendations or describe best practices.

Updates as of July 2021 have been made only to specific sections of this handbook and may not reflect all changes in the law affecting all modules since the original publication in 2017. Please refer to the publication memo distributed with this handbook for a list of changes made in July 2021.



School Activities and the Law



PRISM

Public Risk Innovation,
Solutions, and Management



Lozano Smith

ATTORNEYS AT LAW

RISK MANAGEMENT BASICS

Nearly one thousand public school districts in the State of California educate over six million students each year.¹ Each school district is governed by a local school board, which is annually responsible for, among other things, employing hundreds of teachers, staff, and students, and managing million-dollar budgets. As a steward of public tax dollars and the educator of today's youth, each school district has an obligation to manage its operations in a cost-conscious manner that promotes a safe environment for students, employees, and others and to ensure that every student has an opportunity to receive public schooling on an equal basis.² Each school is required to provide an educational program of a quality that meets prevailing statewide standards.³

Successful school districts adopt a long-term vision of success (often called a mission statement) as well as a strategic plan (or goals and objectives) by which the school district can fulfill its vision or mission. While student success and instructional excellence are critical elements of a strategic plan, a school district must also plan to support the non-instructional aspects of school operations. Among other things, this includes an emphasis on sound financial management, competent management of property and operations, and thorough risk management. These functions form the backbone of school operations and they provide the framework within which educational excellence can be achieved.

In the school setting, the term risk management describes the policies and actions taken by a school and its employees to minimize potential liability that can result from conducting its operations. Risk management is important for schools of all sizes and grade levels. In 2014-15, the average enrollment at a California public high school was 1,328 students.⁴ With the addition of teachers, staff, administrators, parents, and visitors, the number of weekly interactions and activities occurring at a single school site can create many opportunities for conflicts, accidents, injuries, and damages.

It is obvious that no list could be drafted to include each and every source of potential liability for a school district. However, in addition to the legal challenges arising from employment decisions and special education services, common sources for claims against a school district include:

- Athletic Activities: According to the Centers for Disease Control and Prevention ("CDC"), more than 2.6 million children receive emergency care each year for injuries related to sports and recreational activities.⁵ In prior years, the CDC found that high school athletes had the highest injury rates in football (4.36 injuries per 1,000 athlete exposures), wrestling (2.50), boys' (2.43)

- and girls' (2.36) soccer, and girls' basketball (2.01).⁶ These sports injuries include abrasions, muscle tears, and fractured bones. They also include sports-related concussions that, per CDC estimates, occur at a frequency of about 300,000 each year.⁷
- Employee-Student Interactions: In the 21st century, students and parents are increasingly aware of the potential for inappropriate treatment of students by school district staff. School employees must be careful when communicating with students and cautious when engaging in any physical contact with students. While relatively uncommon, school sexual abuse cases continue to receive great attention and often result in large judgments or settlements. In 2016, California's largest school district settled sexual molestation lawsuits brought against two teachers for \$88 million, on the heels of paying \$175 million to settle similar claims against another teacher.⁸ While most school districts will never have to defend against such claims, it is important to understand that these lawsuits have devastating effects on parent-teacher relationships, school morale and achievement, and financial resources.
 - School Violence: In 2014, students between 12 and 18 years of age experienced approximately 486,400 nonfatal violent altercations and 363,700 thefts.⁹ In 2015, nearly 8% of students in 9th – 12th grade reported being in a physical fight on school property within the last 12 months.¹⁰ As alarming as it sounds, this is a small percentage of all students in the sampled age group. Nonfatal school violence can result in physical injuries (including contusions, bone fractures, brain injuries, and non-lethal wounds from knives and guns) and psychological injuries (such as anxiety, depression, and other mental illnesses).
 - Off-Site Activities and Transportation: According to the National Highway Traffic Safety Administration, over 1,300 people were killed in school-transportation-related crashes in the period from 2003 to 2014.¹¹ In 2006, researchers at the Center for Injury Research and Policy at Columbus Children's Hospital estimated that approximately 17,000 children received school bus-related injuries each year.¹²
 - Playground Facilities: The CDC reports that more than 200,000 children ages 14 and younger are treated each year for playground-related injuries.¹³ These types of injuries are more likely to occur in children between ages 5 – 9, when children are climbing on playground equipment, and slightly more often for girls (55%) than boys.¹⁴ Factors that are often associated with playground injuries include broken steps, railings, fall surfaces, and poor maintenance.

- Use of Dangerous Instruments: Less common are claims raised against school districts for failing to warn a student about the potential for injury while using a dangerous instrument, tool, or device, or failing to properly instruct the student about related safety practices. This may include claims regarding employee failures to instruct students to wear eye protection while performing science experiments¹⁵, failure to teach students how to lift and lower heavy items¹⁶, or failing to provide adequate supervision during cooking demonstrations.¹⁷

Everyone who has been a child knows that a “good idea” can quickly turn into a “worst-case scenario,” and we’ve all heard the old saying, “It’s all fun and games until... [fill in the blank.]” Unfortunately, there is truth to that maxim and the function of risk management is to minimize the likelihood of a worst-case scenario, and to minimize a school district’s legal liability if the worst-case comes to pass. There is no way to completely eliminate a school district’s potential liability – short of closing down its operations – but an effective risk management program can significantly reduce potential liability by providing general guidelines for the uniform treatment of risks.

Every school district employee has a responsibility to support their school district’s risk management efforts. From the playground supervisor breaking up a fight, to the teacher supervising a field trip, to the football coach observing his quarterback getting sacked, or to the special education aide helping a student use machinery and tools in woodshop class, each employee will encounter situations where he/she must make a decision that can affect their school district’s potential liability. It is our hope that this series of training modules will provide you with a solid understanding of the common liability risks facing school districts and general principles to follow when faced with those situations.

SCHOOL LAW BASICS

School operations can be a complicated business that involves the application of countless laws from the federal and state government. School laws are so complicated that some attorneys specialize exclusively in representing educational agencies. As a school employee or volunteer, you are not expected to know everything about school law. But you should have a general understanding of the legal system and ways that you might become involved in the legal system as a result of your school affiliation.

There are several “types” of law that can affect a school district.

- Civil law: Generally speaking, the term “civil law” describes the legal parameters within which citizens must abide and which are enforced through litigation between two or more parties. Civil law protects the rights of individuals to engage in their private pursuits and prohibits individuals from engaging in conduct that will harm others or society in general. Civil law is based on the California and United States Constitutions, state and federal statutes (also called codes), and in administrative regulations. Civil law is also based on precedential court decisions that interpret the Constitutions, codes, and regulations. Contract law and tort law are types of civil law.

- Contract law: This term describes the rules governing the formation of an enforceable agreement (usually in oral or written form) between two or more parties, and remedies available to a party when another party has breached the agreement. School districts regularly enter into contracts with outside vendors, consultants, employees, and unions.

Case example: A school district entered into a written agreement with a contractor to modernize and improve one of the district’s school sites. A disagreement arose between the contractor and the district regarding payment for the work performed. The contractor sued the school district for breach of contract, and the court determined that the school district materially breached the contract.¹⁸

- Tort law: This term describes the non-criminal rules against one person engaging in harmful acts toward another person. Differentiated by the element of “intent,” there are three main types of claims under tort law: negligence and strict liability (both requiring no intent), and intentional torts (requiring intent).
 - Negligence: The law of negligence establishes a minimum set of expectations (called a “standard of care”) for each person in his/her interactions with others. The ordinary standard of care describes what a “reasonable person” would do in the defendant’s shoes, but a higher standard of care is applied when there is a special relationship between the parties (e.g., teacher/student, counselor/patient, accountant/client). A defendant’s intentions are not relevant to prove a negligence claim. Generally speaking, a plaintiff can prevail if he/she proves that the defendant acted below the standard of care and that the acts caused the plaintiff damages. Schools may receive

claims of negligent supervision, negligent hiring, and/or negligent maintenance of school grounds.

Case example: High school students were “slap boxing” in the school gymnasium during their lunch period, when one of the students hit his head on the gymnasium floor and died. The school district failed to assign a teacher to supervise the school gymnasium during that lunch period. As a result, no school district personnel were present when the “slap boxing” occurred. The court held that the evidence in the case was sufficient to support a finding of negligent supervision against the school district.¹⁹

- Deliberate indifference: This term describes conduct that is more culpable than negligence and is applied in student claims against a school district for failing to prevent harassment in spite of having knowledge of the condition. “A school's response amounts to deliberate indifference when it is clearly unreasonable in light of the known circumstances such that the official decision is not to remedy the violation.”²⁰

Case example: Two high school freshmen endured “severe, pervasive and offensive” harassment from their peers as a result of their sexual orientation. The harassment included death threats, physical violence, vandalism of personal property, and anti-gay epithets. The court found that the school district acted with deliberate indifference by failing to take the appropriate steps to prevent the harassment.²¹

- Reckless disregard: This term is often used with or in place of the term deliberate indifference. Reckless disregard describes a level of fault that is higher than general negligence, and has been called a “conscious choice of a course of action . . . with knowledge of the serious danger to others involved in it.”²²

Case example: A bus driver pulled into a pep rally at 30 mph and failed to slow down or apply his brakes in an attempt to avoid a collision with attendees. In such cases, a driver’s failure to avoid the collision can be found to demonstrate a “reckless disregard” for the safety of attendees.

- Strict liability: This term describes a finding of liability that, generally, is applied to inherently dangerous activities and which attaches when a plaintiff can prove that the defendant took a particular action which caused damages to the plaintiff. Under tort law, the alleged action is deemed to be so dangerous or wrong that liability attaches upon proving causation, regardless of fault. The most common school district application of strict liability is in the sexual harassment context, where an employer is strictly liable for a supervisor's harassment of a subordinate.

Case example: An eighth grade special education student was sexually molested by another student in a campus bathroom prior to the start of the school day. The school district provided "general supervision" at the time, but no adult was specifically responsible for supervision of the students on campus. The court found the school district liable because the district owed the student a duty of care to protect him from this assault.²³

- Intentional torts: This term describes a person's act toward another, in which the person intended to engage, and which caused harm to the other person. Common intentional torts include battery, assault, false imprisonment, defamation, invasion of privacy, and intentional infliction of emotional distress.

Case example: A student was sexually molested by the school district's custodian on school grounds. The court found that while the custodian committed an intentional tort against the student, the school district was not liable for the custodian's actions because the actions were not within the scope of his employment.²⁴

- Administrative law: This term describes the procedural rules and the substantive rights of government agencies and their employees. The state of California has established quasi-administrative agencies that apply administrative law in disciplinary hearings, grievance arbitrations, and other procedures involving school districts. Examples of these agencies include the California Public Employment Relation's Board, which hears disputes regarding public employees, and the Office of

Administrative Hearings, which hears disputes regarding special education students.

- Criminal law: This term describes the state or federal laws that define prohibited conduct and establish penalties and punishments for violating the prohibitions. Criminal laws address offenses against society that are deserving of prosecution by the state or federal government rather than an aggrieved individual. Schools may have to address potential criminal issues such as theft, embezzlement, fraud, assault, sexual molestation, and child abuse and neglect.

Case example: A school district accountant was found guilty of embezzling 1.8 million dollars in student lunch money from the district.²⁵

DISCRIMINATION, HARASSMENT AND RETALIATION LAWS

STUDENT DISCRIMINATION LAWS

California public schools serve a student population that reflects the growing diversity of the state itself.²⁶ Students come from varied ethnic backgrounds, nationalities, gender and sexual orientations, and religious traditions. Students also reflect varied socio-economic levels and may self-identify as a disabled person under state and federal law.

Under the Education Code, a school district is legally obligated to provide an educational environment that is free from discrimination, harassment, and retaliation based upon certain characteristics.²⁷ The educational environment includes any program or activity of a school district that receives, or benefits from, state financial assistance, or enrolls students who receive state student financial aid. This protection extends to online class sessions and activities coordinated and conducted by a school. The Education Code’s list of protected characteristics for public school students includes:

- Disability
- Gender
- Gender Identity
- Gender Expression
- Immigration Status
- Nationality
- Race or Ethnicity
- Religion
- Sexual Orientation

Currently, our society is experiencing an increase in tension between people on the basis of protected classes and general differences with each other. Schools are not immune to the detrimental effects of a growing distrust of others, a heightened sensitivity to perceived inequities, and a general lack of courtesy, respect, and professionalism.

According to a poll of 2,000 teachers taken by the Southern Poverty Law Center in spring 2016, students of color expressed an increased level of fear, anxiety, and racial/ethnic tensions coinciding with the advent of the 2016 national election.²⁸ The respondents also reported an increase in school bullying, harassment and intimidation of students whose races, religions or nationalities have been the verbal targets of national candidates.²⁹

A 2017 poll of approximately 6,000 middle school and high school students conducted by the National Center for Educational Statistics found that one in five students reported being bullied.³⁰ Bullied students reported that bullying occurred in the hallway or stairwell at school (43%), inside the classroom (42%), in the cafeteria (27%), outside on school grounds (22%), online or by text (15%), in the bathroom or locker room (12%), and on the school bus (8%).³¹ However, a 2019 poll of nearly 5,000 middle school and high school students shows a concerning trend of over one in three students being bullied or harassed online or by text.³²

Sections 200 and 220 of the Education Code prohibit the discrimination of students on the basis of a protected class. However, a discrimination claim under these statutes is commonly framed as a claim of harassment or bullying of the student. To successfully prove a harassment claim under Sections 200 and 220, a plaintiff must prove that: (1) He/she was the subject of severe, pervasive, and offensive harassment based on a protected class that effectively deprived him/her of the right of equal access to educational benefits and opportunities; (2) The school district had actual knowledge of that harassment; and (3) The school district acted (or failed to act) with deliberate indifference to his/her plight, in spite of having knowledge of the harassment.³³

Under Title 5 of the California Code of Regulations, a school district must commence an investigation of alleged student bullying, discrimination, harassment, or intimidation on the basis of a protected class pursuant to the district's uniform complaint procedure ("UCP").³⁴ A school board must locally adopt a UCP pursuant to the Title 5 Regulations and provide annual notice of the UCP to students and parents. The UCP should follow the Title 5 requirements, including the filing of a complaint within 6 months of a bullying, discrimination, harassment, or intimidation incident,³⁵ the completion of an impartial investigation, and the issuance of a final "investigation report," also known as a findings letter, to the complainant within 60 days of the filing. Further, the findings letter must include notice to the complainant regarding his/her right to appeal the final decision to the California Department of Education within 30 days.

Notably, public school students are often the recipient of mistreatment by their peers. School districts should be careful to avoid the influence or consideration of pre-existing biases or prejudice when investigating a claim of bullying, discrimination, harassment, or intimidation. An investigator should avoid relying on the perception of biases or prejudice in a witness, and should pursue further questions to obtain specific factual information from each witness. If needed, a school district may use an outside investigator to avoid any perception of bias or prejudice against a complainant or a respondent, or due to the complexity of the allegations.

It is unlawful for anyone to retaliate against a student for filing a discrimination complaint under Sections 200 and 220, or for participating in the investigation or adjudication of a discrimination complaint. When a student complains of bullying, harassment, discrimination or intimidation, the school district should take prompt action to prevent any further harassment of the complainant and to protect students from any retaliatory action.

EMPLOYMENT DISCRIMINATION LAWS

Under the California Fair Employment and Housing Act³⁶ (“FEHA”) and Title VII of the federal Civil Rights Act, as amended (“Title VII”), school district employers are likewise obligated by law to provide their employees with a workplace that is free from discrimination, harassment, and retaliation based on those protected characteristics.³⁷ For school employees, the list of “protected classes” includes:

- Race
- Color
- National Origin
- Religion
- Sex / Gender
- Gender Identity
- Gender Expression
- Sexual Orientation
- Genetic Information
- Physical Disability
- Mental Disability
- Medical Condition
- Marital Status
- Pregnancy
- Age
- Veteran Status
- Political Affiliation
- Protected Activities

Discrimination claims under FEHA and Title VII are commonly based on allegations of either disparate treatment or a hostile work environment. To prove a discrimination claim of disparate treatment, a plaintiff must show that: (1) he/she was an applicant or employee; (2) the defendant took adverse action against the plaintiff (e.g., refusing to hire, refusing to promote, or firing plaintiff); (3) the plaintiff’s actual or perceived membership in a protected class was a motivating reason for the adverse action; (4) that plaintiff was harmed by the action; and (5) that the defendant/employer’s conduct was a substantial factor in causing the harm.

To prove a discrimination/harassment claim based upon a hostile work environment, a plaintiff must show that: (1) he/she was an applicant or employee; (2) he/she received unwanted harassing conduct because he/she was, was believed to be, or was associated with, a member of a protected class; (3) the conduct was so severe or pervasive that a reasonable person would have considered it a hostile or abusive work environment (a single act of harassment may be sufficient); (4) he/she actually did believe that it was hostile or abusive; (5) the defendant knew or should have known of the conduct and failed to promptly and appropriately respond; (6) that the plaintiff suffered harm; and (7) that defendant's conduct was a substantial factor in causing the plaintiff's harm. When a supervisor harasses a subordinate, FEHA will impose strict liability upon an employer (effectively eliminating elements 5 and 7, above). A plaintiff no longer needs to prove that their work productivity was negatively impacted by the alleged harassment, but can now simply show that a "reasonable person" subjected to the alleged unlawful conduct would find the conduct to be such that it is difficult to work in the environment.

Under FEHA and Title VII, an employer should promptly investigate claims of and take remedial action to stop and prevent harassment from occurring. All school districts should have a sexual harassment policy that includes a procedure for receiving, investigating, and resolving complaints of harassment. It is unlawful for any person to retaliate against an applicant or employee for their filing of a complaint or participating in the investigation process.

FEHA requires every employer, with at least five (5) employees, to provide at least two hours of interactive classroom training and education (or an effective interactive online equivalent) regarding sexual harassment, discrimination, and workplace bullying to all supervisory employees, and at least one hour of such training to all nonsupervisory employees.³⁸ The training must occur every two years for currently employed individuals, and within the first six months of an employee's initial employment.³⁹ For seasonal employees, temporary employees, and any employee hired to work for less than six months, the training must occur within 30 calendar days of hire or within 100 hours worked, whichever comes first.⁴⁰

LIABILITY OF SCHOOL DISTRICTS

School districts are public agencies that are created and operated by virtue of the California Constitution and California statutes. School districts have the right to sue, and to be sued, as allowed by statute. Through its enactment of the California Government Claims Act ("Claims Act"),⁴¹ the California Legislature limited the potential liability of public agencies by stating:

“Except as otherwise provided by statute[,] [a] public agency is not liable for an injury, whether such injury arises out of an act or omission of the public agency or a public employee or any other person.”⁴²

Following this broad pronouncement, the Claims Act lists circumstances in which a public agency is liable for the actions of its employees and agents, including:

- Act or Omission Within the Scope of Employment: When an injury is caused by an employee’s act or omission, undertaken within the scope of his/her employment,⁴³ and if the act or omission would normally create a right to sue the employee if he/she was not a public employee.⁴⁴
- Act or Omission Within the Scope of Agency: When an injury is proximately caused by an independent contractor’s act or omission, to the same extent that the public entity would be subject to such liability if it were a private person.⁴⁵
- Act or Omission Within the Scope of a Mandatory Duty: Where a public entity is under a mandatory statutory duty that is designed to protect against the risk of a particular kind of injury, and an injury of that kind is proximately caused by the entity’s failure to discharge that duty, unless the public entity exercised reasonable diligence to discharge the duty.⁴⁶

For purposes of these training materials, it is important to know that the Claims Act makes a school district liable for the tortious acts of its employees if the employee was acting within the scope of his/her employment. A majority of these tort claims allege that the school district, by and through its employees, negligently caused an injury or damages to a student, employee, or member of the public.

For example, a school district and its employees have the duty to exercise reasonable care in the supervision of students. If the employees have acted below the standard of care, and proximately caused injury or damages to a student, the school district and employees have been negligent and they may be held liable for the injury or damages.⁴⁷ A plaintiff must establish four basic elements to prove that a school district was negligent. He/she must prove that:

- (1) The school district owed the plaintiff a duty of care;
- (2) The school district breached that duty;
- (3) The school district’s breach caused the plaintiff’s injury; and
- (4) The plaintiff suffered damages as a result of that injury.⁴⁸

If the plaintiff's evidence can satisfy these elements, the school district will be held liable for the plaintiff's damages unless it can successfully assert other appropriate legal defenses. Note that the Claims Act preserves certain legal immunities for the school employer, so that a school district will not be liable for damages if: (1) an employee has acted outside of the scope of employment,⁴⁹ (2) an employee is immune from liability, except as otherwise provided by statute,⁵⁰ (3) they constitute punitive damages,⁵¹ or (4) they arise from misrepresentations by an employee.⁵²

The elements of a negligence claim can be explained in "real terms" by analyzing the commonly made claim of "negligent supervision." In essence, a negligent supervision claim alleges that a school district acted below the standard of care expected of a school district when supervising students while on school grounds. The four elements of a negligence claim would be viewed in the following way:

- Duty of care: School districts are required to exercise that degree of care "which a person of ordinary prudence, charged with [comparable] duties, would exercise under the same circumstances."⁵³ Statutes and regulations requiring school supervision also may be used to establish the acceptable standard of due care.⁵⁴ In prior lawsuits, schools have been found to have a duty to supervise children on school grounds, to enforce the rules and regulations necessary for their protection, and to take all reasonable steps to protect its students where it knows or should know of certain risks to students.⁵⁵ This may require protecting students from gang violence or other injuries, and may extend to preventing off-site and after school injuries that may result from the school's negligent supervision while the student was on school premises.⁵⁶ The most reliable way to prove the duty of care has been met will be through documentation and recordkeeping of risk control activities.
- Breach: School districts breach their duty of care by failing to perform the tasks required to fulfill that duty. A total lack of supervision would likely constitute a failure to exercise ordinary care, but most lawsuits will involve more ambiguous facts. Typically, this involves an analysis about whether the injury that occurred was reasonably foreseeable based on the lack of or insufficiency of supervision⁵⁷, or whether school employees had knowledge or notice of the particular dangerous practice or activity that led to the injury.⁵⁸
- Causation: Even if a school district has breached its duty of care, the plaintiff must still prove that the breach directly caused the plaintiff's injury, rather than some other cause outside of the school district's control. If an unforeseeable act occurs after the school's negligent act, and that subsequent act produces

the plaintiff's injury, the "chain of causation" may be broken. If plaintiff's injury is caused by that superseding cause, the school district is not liable.⁵⁹ Note that the specific injury does not have to be foreseeable, but rather, it must be found that a reasonably prudent person could have foreseen a similar injury in the absence of safety precautions taken by the employee.⁶⁰ For example, a school district's liability may still be impacted when it knows a student has made a threat to physically injure another student but instead alters the chemicals or cooking supplies that the victim student is using.

- **Damages:** Upon proving the first three elements of a negligence claim, a plaintiff will be required to prove that he/she suffered damages that are attributable to the school district's negligence. The purpose of tort law, and the reason for this element of a negligence claim, is to provide a way for a plaintiff to be restored to the condition in which he/she would have had in the absence of the negligent act. A plaintiff must produce evidence that he/she suffered the damages, and that those damages were attributable to the school district's negligence.

While a school district has an overall duty to exercise reasonable care in supervising students, each situation is reviewed on a case-by-case basis to determine whether reasonable care was provided.

LIABILITY OF SCHOOL EMPLOYEES/VOLUNTEERS

School employees and volunteers frequently express concern about the school district's ability to defend against claims arising from their school affiliation, and the potential that they may be found personally liable for such claims. In Modules 2 and 3, we will address the general expectations and standards of care for school employees and volunteers.

Preliminarily, note that school districts are required by statute to obtain insurance to cover the personal liability of school officers and employees for damages caused by their negligent acts or omissions that occur within the scope of their official duties or employment.⁶¹ While the Education Code does not require such coverage for the personal liability of school volunteers, a school district's general liability coverage will typically address a claimant's demands if the claim is clearly based upon the school-sanctioned acts or omissions of a volunteer.

School districts should also consider instituting proactive measures to prevent injuries such as by identifying all potential hazards in the classroom or school site, and then selecting appropriate mitigation controls. In other words, the district should conduct

a hazard assessment. Hazard assessments may include consideration of routine circumstances (e.g., maintenance of facilities, custodial operations) and non-standard events and situations such as school shutdowns, power outages, fires, and extreme weather incidents. The Centers for Disease Control and Prevention (CDC) has developed a series of checklists⁶² to assist schools with these assessments, but districts should be sure to include the controls listed below for consideration during a hazard assessment.

When performing the hazard assessment, consider:

- The actual and the potential exposure of students to the hazard (e.g., how many students may be exposed, what that exposure is/will be, and how often they will be exposed);
- The measures and procedures necessary to control such exposure by means of engineering controls, work practices, personal protective equipment, and emergency response equipment (e.g., eye wash station, fire blankets, fire extinguisher, etc.)
- The duration and frequency of the task (how long and how often a task is performed);
- The location where the task is performed;
- The machinery, tools, and materials used during the task
- Any possible interactions with other activities in the area, and if the task could affect others (e.g., custodians, visitors, etc.);
- The lifecycle of the product, process, or service (e.g., design, construction, uses, decommissioning); and
- How a person would react in a particular situation (e.g., what would be the most common reaction by a person if the machine failed or malfunctioned).

The results of these hazard assessments can then be addressed through the school district's comprehensive safety plan which is mandated by the Education Code and must include specified components.⁶³ It is recommended that risks be categorized by determining the likelihood of harm or illness that could result from each hazard and its impact on the individual or school. Clear direction should then be given to staff regarding how often to inspect tools, equipment, and the work area(s) for unsafe conditions and hazards; the development of protocols to correct unsafe conditions and hazards; and the development and maintenance of forms and documentation recording how and who performed any fixes. Specific risks of death or serious bodily injury should be addressed in consultation with law enforcement officials as part of a tactical response plan in accordance with Education Code section 32281.

Further, school districts should give careful thought as to where emergency response equipment should be located. For example, if there is a possibility of corrosive materials or chemicals coming into contact with a student's eyes, an emergency eyewash station and a deluge shower will be necessary to minimize injury. These should be located within ten seconds of unobstructed travel by the student and periodic testing should be conducted to ensure they are working correctly. Fire extinguishers, fire blankets, first aid kits should be available in each classroom depending on the risk of exposure. School districts should also consider personal protective equipment (PPE) needs for its students and staff, including meeting regulations and emergency temporary standards set by the California Occupational Safety and Health Standards Board (Cal/OSHA).

The issues of defense, indemnity, and personal liability for employees and volunteers are addressed below.

SCHOOL EMPLOYEES

Defense and Indemnity

As a rule of thumb, school employees have the right to a school-funded defense and indemnity against lawsuits arising from school employment. Employees may also have statutory immunities that absolve them from individual liability. However, if an employee's alleged acts or omissions were committed outside of the scope of his/her employment, the employee may be personally liable for the damages without a right to reimbursement or recovery from his/her school employer.

Under the Government Code, an employee is entitled to ask his/her school district employer to defend and/or indemnify them against lawsuits arising from their school-related actions.⁶⁴ An employee must reasonably cooperate with the school-funded defense in order to remain entitled to the defense and indemnity.

If the school district questions whether the acts/omissions arise within the scope of school business, the school district can agree to defend him/her under a "reservation of rights."⁶⁵ This means that the school district reserves the right to seek reimbursement of the defense costs from the employee if it is later determined that the acts/omissions were outside of the scope of employment. The school district may also deny the employee's request, subject to reimbursing the employee for his/her defense costs if the employee later prevails and can prove that:

- (1) The employee's alleged acts or omissions occurred within the scope of his/her employment; and

- (2) The school district cannot prove that his/her acts or omissions constituted actual fraud, corruption or actual malice, or that he/she willfully failed or refused to conduct his/her defense in good faith, or that he/she failed to reasonably cooperate in good faith in the school district's defense in the action.⁶⁶

Under limited circumstances, the District may recover payments it made towards claims or judgments made against that employee.⁶⁷ These circumstances are:

- Reservation of Rights: If the school district provided a defense "with a reservation of rights," the school district may recover the payment from the employee unless the employee can prove that the acts were within the scope of his/her employment and the school district is unable to prove that the employee acted or failed to act because of actual fraud, corruption or actual malice, or that the employee willfully failed or refused to reasonably cooperate in good faith with the school district-funded defense.⁶⁸
- No Reservation of Rights: If the school district provided a defense "without a reservation of rights," the District may recover the payment from the employee if the school district can prove that the employee willfully failed or refused to reasonably cooperate in good faith with the school district-funded defense.⁶⁹
- No Defense: If the school district did not provide a defense, the school district may recover the payment from the employee if it is established that the employee acted or failed to act because of actual fraud, corruption or actual malice, or that the employee willfully failed or refused to conduct the defense of the claim or action in good faith.⁷⁰

Personal Liability

Under California law, public school employees can be held personally liable for their own negligent and/or intentional acts. The Claims Act specifically allows a public employee to be liable for an injury caused by their own act or omission to the same extent that liability would attach to any private person, except as otherwise provided by statute.⁷¹ However, a public employee's liability based on torts committed within the scope of his or her employment, generally does not result in personal loss to the employee because of the employer's obligation to defend and indemnify the employee.

Additionally, state and federal law provide immunity to public school employees in certain enumerated situations.

- State Immunity: Government Code section 820.2 provides “discretionary immunity” from liability to a public school employee that performs an act within the individual’s discretion. It provides:

*Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.*⁷²

Accordingly, public employees are immune from personal liability for alleged injuries resulting from their exercise of discretion as a part of their duties. For instance, a decision to expel a student is generally entitled to discretionary immunity.

- Federal Immunity: School officials are also afforded immunity from personal liability in federal court for acts performed within the course and scope of employment. This immunity stems from the Eleventh Amendment to the United States Constitution and applies to officials acting in their official capacities because such individuals act as agents of the state.⁷³

Criminal Liability

Most cases of criminal prosecution of a school employee involve allegations of criminal misconduct in relation to school employment. The school district rarely, if ever, is called upon to assist the employee in his/her defense. The school employer has no obligation to defend the school employee against criminal charges.

While it is unlikely to be applied, note that Section 1222 of the Government Code provides that every willful omission to perform any duty required of a public officer or employee is punishable as a misdemeanor, if there is not otherwise a special provision for punishment. In certain cases, law enforcement officers could have sufficient interest in a school situation to issue a misdemeanor citation for an employee’s clear failure to perform a mandatory duty under law.

SCHOOL VOLUNTEERS

As transitory affiliates of a school employer, volunteers are not afforded the same general rights to a defense and indemnity that employees receive under the Education Code. Nevertheless, it may be in a school district’s interest to fund a volunteer’s defense and indemnity against claims relating to a school-sponsored activity and/or volunteer conduct that may have been taken at the direction of a school employee. School volunteers may ask a school district to provide a defense

and indemnity if they are sued for acts or omissions taken in the course of their volunteer activities.

School volunteers can be held personally liable for their own negligent and/or intentional acts. Negligence claims against a school volunteer will be judged upon the same elements described above and, if a volunteer has acted within the acceptable standard of care, no liability should attach.

-
- ¹ *Fingertip Facts on Education in California – CalEdFacts* (September 21, 2015) California Department of Education <<http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp>> [as of Aug. 18, 2016].
- ² *Butt v. State of California* (1992) 4 Cal.4th 668, 685; *Serrano v. Priest* (1971) 5 Cal.3d 584, 608-609; *Jackson v. Pasadena City School Dist.* (1963) 59 Cal.2d 876, 880.
- ³ *Butt, supra*, at 686-89.
- ⁴ *Fingertip Facts on Education in California – CalEdFacts* (September 21, 2015) California Department of Education <<http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp>> [as of Aug. 18, 2016].
- ⁵ *Sports Safety* (April 30, 2016) Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Division of Unintentional Injury Prevention <http://www.cdc.gov/safekid/sports_injuries/index.html> [as of Aug. 18, 2016].
- ⁶ *Sports-Related Injuries Among High School Athletes* (September 29, 2006) Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report <<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5538a1.htm>> [as of Aug. 18, 2016].
- ⁷ *Sports-Associated Recurrent Brain Injuries -- United States* (March 14, 1997) Centers for Disease Control and Prevention <<https://www.cdc.gov/mmwr/preview/mmwrhtml/00046702.htm>> [as of Aug. 18, 2016].
- ⁸ Winton and Blume, *L.A. School District Reaches \$88-Million Settlement In Sex Misconduct Cases At Two Campuses* (May 16, 2016) Los Angeles Times <<http://www.latimes.com/local/lanow/la-me-ln-la-school-abuse-settlements-20160516-snap-story.html>> [as of Aug. 18, 2016].
- ⁹ Zhang et al., *Indicators of School Crime and Safety* (May 2016) National Center for Education Statistics <<http://nces.ed.gov/pubs2016/2016079.pdf>> [as of Aug. 18, 2016].
- ¹⁰ *Understanding School Violence – Fact Sheet* (2016) Centers for Disease Control and Prevention, Division of Violence Prevention <https://www.cdc.gov/violenceprevention/pdf/school_violence_fact_sheet-a.pdf> [as of Aug. 18, 2016].
- ¹¹ *School-Transportation-Related Crashes* (June 2014) United States Department of Transportation, National Highway Traffic Safety Administration <<https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811890>> [as of Aug. 18, 2016].
- ¹² *Nonfatal School Bus-Related Injuries To Children More Common Than Previously Thought* (November 6, 2006) Nationwide Children’s Hospital <<http://www.nationwidechildrens.org/news-room-articles/nonfatal-school-bus-related-injuries-to-children-more-common-than-previously-thought?contentid=46025>> [as of Aug. 18, 2016].
- ¹³ *Playground Injuries – Fact Sheet* (January 19, 2009) Centers for Disease Control and Prevention National Center for Injury Prevention and Control <<https://www.cdc.gov/homeandrecreationsafety/Playground-Injuries/playgroundinjuries-factsheet.htm>> [as of Aug. 18, 2016].
- ¹⁴ *Ibid.*

-
- ¹⁵ See, e.g., *Scott v Independent School Dist.* (1977, Minn) 256 NW2d 485.
- ¹⁶ See, e.g., *Pratt v. Board of Co-op. Educ. Services* (App. Div. 3d Dep't 1998) 674 N.Y.S.2d 838.
- ¹⁷ See, e.g., *Wetsel on behalf of Wetsel v Independent School Dist.* (1983, Okla) 670 P2d 986
- ¹⁸ *Mepco Services, Inc. v. Saddleback Valley Unified School Dist.*, (2010) 189 Cal. App. 4th 1027
- ¹⁹ *Dailey v. Los Angeles Unified Sch. Dist.*, (1970) 2 Cal. 3d 741.
- ²⁰ *Garcia v. Clovis Unified School District* (E.D. Cal. 2009) 627 F. Supp.2d 1187, 1196.
- ²¹ *Donovan v. Poway Unified School Dist.*, (2008) 167 Cal. App. 4th 567
- ²² *Delaney v. Baker* (1999) 20 Cal.4th 23, 31-32.
- ²³ *M.W. v. Panama Buena Vista Union School Dist.*, (2003) 110 Cal. App. 4th 508
- ²⁴ *Alma W. v. Oakland Unified School Dist.*, (1981) 123 Cal. App. 3d 133.
- ²⁵ *Rialto Unified: Lunch Money Embezzler Judith Oakes Gets 5 Years in Jail* (January 1, 2015) The Sun <<http://www.sbsun.com/general-news/20150108/rialto-unified-lunch-money-embezzler-judith-oakes-gets-5-years-in-jail>> [as of Oct. 6, 2016.]
- ²⁶ CDE reports that, in 2014-15, seventy-five percent (75%) of California's public school students were of a non-white ethnic background, and at least thirty percent (30%) of teachers hailed from a non-white ethnic background. California students and school employees also come from varied religious backgrounds, gender and sexual orientations, and many qualify for accommodations due to physical, psychological, and learning disabilities.
- ²⁷ Ed. Code, §§ [200](#), [220](#).
- ²⁸ *The Trump Effect: The Impact of the Presidential Campaign on Our Nation's Schools* (April 13, 2016) Southern Poverty Law Center <<https://www.splcenter.org/20160413/trump-effect-impact-presidential-campaign-our-nations-schools>> [as of Aug. 18, 2016].
- ²⁹ *Ibid.*
- ³⁰ <<https://nces.ed.gov/pubs2019/2019054.pdf>> [as of Sept. 7, 2020].
- ³¹ <<https://www.pacer.org/bullying/resources/stats.asp>> [as of Sept. 7, 2020].
- ³² <<https://cyberbullying.org/2019-cyberbullying-data>> [as of Sept. 7, 2020].
- ³³ *Donovan v. Poway Unified School District* (2008) 167 Cal. App. 4th 567, 602.
- ³⁴ See Cal. Code Regs., tit. 5, § 4600, et seq.
- ³⁵ [There are a variety of other allegations subject to a District's UCP. \(See Cal. Code Regs., tit. 5, § 4610, subd. \(b\).\) These other allegations, such as complaints about pupil fees, have a one-year statute of limitations. Notably, these allegations do not include special education complaints and child nutrition programs.](#)

³⁶ [Gov. Code, § 12940, et seq.](#)

³⁷ [42 U.S.C. § 2000e, et seq.](#)

³⁸ [Gov. Code, § 12950.1; Cal.Code Regs., tit. 2, § 11024.](#)

³⁹ [Gov. Code, § 12950.1](#), subd. (a).

⁴⁰ [Gov. Code, § 12950.1](#), subd. (h)(1).

⁴¹ Gov. Code, §§ [810-996.6](#).

⁴² [Gov. Code, § 815, subd. \(a\).](#)

⁴³ Conduct is within the scope of employment or agency if it is reasonably related to the kinds of tasks that the employee/agent was employed to perform; or it is reasonably foreseeable in light of the employer's business or the agent's/employee's job responsibilities.

⁴⁴ [Gov. Code, § 815.2, subd. \(a\).](#)

⁴⁵ [Gov. Code, § 815.4.](#)

⁴⁶ [Gov. Code, § 815.6.](#)

⁴⁷ See *Acosta v. Los Angeles Unified School District* (1995) 31 Cal.App.4th 471, 477; *Leger v. Stockton Unified School District* (1988) 202 Cal.App.3d 1448, 1459; *Hoyem v. Manhattan Beach City School District* (1978) 22 Cal.3d 508, 513.

⁴⁸ *Premo v. Grigg* (1965) 237 Cal.App.2d 192, 195.

⁴⁹ [Gov. Code, § 815.2, subd. \(b\).](#)

⁵⁰ [Gov. Code, § 815.2, subd. \(b\).](#)

⁵¹ [Gov. Code, § 818.](#)

⁵² [Gov. Code, § 818.8.](#)

⁵³ *Dailey v. Los Angeles Unified School District* (1970) 2 Cal.3d 741, 747.

⁵⁴ See [Cal. Code Regs., tit. 5, § 5552](#) (where playground supervision is not otherwise provided, principal of school must provide for supervision by certificated employees of pupils on the school grounds during recess and other intermissions and before and after school).

⁵⁵ *Virginia G. v. ABC Unified School District* (1993) 15 Cal.App.4th 1848, 1853.

⁵⁶ *Brownell v. Los Angeles Unified School District* (1992) 4 Cal.App.4th 787, 795.

⁵⁷ *Luna v Needles Elementary School Dist.* (1957) 154 Cal App 2d 803; *Woodsmall v Mt. Diablo Unified School Dist.* (1961) 188 Cal App 2d 262.

⁵⁸ *Luna v Needles Elementary School Dist.* (1957) 154 Cal App 2d 803; *Woodsmall v Mt. Diablo Unified School Dist.* (1961) 188 Cal App 2d 262.

⁵⁹ 6 Witkin, *Summary of Cal. Law* (9th Ed. 1988) Torts, § 975, p. 366.

⁶⁰ *Ziegler v Santa Cruz City High School Dist.* (1959) 168 Cal App 2d 277; *Beck v San Francisco Unified School Dist.* (1964) 225 Cal App 2d 503.

⁶¹ [Ed. Code, § 35208, subd. \(a\)\(2\).](#)

⁶² <https://www.cdc.gov/niosh/docs/2004-101/indexalpha.html>.

⁶³ [Ed. Code, §§ 32280-32289.](#)

⁶⁴ [Gov. Code, § 825, subd. \(a\).](#)

⁶⁵ [Gov. Code, §§ 825, subd. \(a\), 995.2, subd. \(a\).](#)

⁶⁶ [Gov. Code, § 825.2.](#)

⁶⁷ [Gov. Code, § 825.6, subd. \(a\).](#)

⁶⁸ [Gov. Code, § 825.6, subd. \(a\)\(2\).](#)

⁶⁹ [Gov. Code, § 825.6, subd. \(a\)\(3\).](#)

⁷⁰ [Gov. Code, § 825.6, subd. \(a\)\(1\).](#)

⁷¹ [Gov. Code, § 820, subd. \(a\).](#)

⁷² [Gov. Code, § 820.2.](#)

⁷³ *Belanger v. Madera Unified School District* (9th Cir. 1992) 963 F.2d 248.



Protecting and Supervising Students



PRISM

Public Risk Innovation,
Solutions, and Management



Lozano Smith

ATTORNEYS AT LAW

THE CHILD ABUSE AND NEGLECT REPORTING ACT

The Child Abuse and Neglect Reporting Act (CANRA) is set out in California Penal Code sections 11164-11174.3 and requires certain professionals, designated as “mandated reporters,” to report known or suspected cases of child abuse or neglect to law enforcement. For the purposes of the CANRA, “child” means any person under the age of eighteen (18).¹

WHO IS A MANDATED REPORTER?

The CANRA includes a wide-ranging list of professionals who are designated as mandated reporters. For K-12 schools and post-secondary institutions, the list of mandated reporters includes, but is not limited to the following:²

- A teacher (including a Head Start program teacher)
- An instructional aide
- A teacher’s aide or assistant at any public or private school
- A classified employee of any public school
- An administrative officer or supervisor of child welfare and attendance
- A certificated pupil personnel employee of any public or private school
- Any county office of education employee whose duties bring them into contact with children on a regular basis
- A licensee, administrator, or employee of a licensed community care or child day care facility
- An employee of a school district police or security department
- Any person who works in a child abuse prevention program in a public or private school
- An employee or administrator of a public or private postsecondary institution whose duties bring them into contact with children on a regular basis, or requiring supervision of such positions³
- An athletic coach, athletic administrator or athletic director of a public or private school serving any combination of students in grades K-12

- An athletic coach, assistant coach or graduate assistant involved in coaching at a public or private postsecondary institution.

School volunteers—even those who supervise or have direct contact with children—are not mandated reporters, but they are *encouraged* to report suspected instances of child abuse or neglect.⁴ School districts are encouraged to provide their volunteers with training on how to identify and report child abuse and neglect.⁵ The same online training available to school personnel is also available to volunteers.⁶

Prior to beginning employment, every person who is a mandated reporter must sign a statement, supplied by the employer, saying that the employee knows of the duty to report child abuse and neglect, and that he or she will comply with that duty. The statement shall inform the employee that he or she is a mandated reporter and shall describe the reporting obligations and confidentiality rights. It shall be kept on file by the employer.⁷

WHAT MUST BE REPORTED?

A mandated reporter shall make a report whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, **“has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.”**⁸ In other words, mandated reporters must report any **reasonable suspicion** of child abuse or neglect.

“Child abuse or neglect” has a broad definition, including:⁹

1. Non-accidental physical injury inflicted on a child;
2. Sexual abuse;
3. Neglect;
4. Willful cruelty or unjustifiable punishment; and
5. Unlawful corporal punishment or injury.

Child abuse or neglect does not include:¹⁰

1. Fighting between minors; and
2. Injury caused by reasonable and necessary force used by peace officers acting within the scope of employment.

The fact that a child is homeless or is classified as an unaccompanied minor is not, in and of itself, a sufficient basis for reporting child abuse or neglect.¹¹

WHAT MAY BE REPORTED?

While not required by law, CANRA provides that a mandated reporter **may** make a report if the reporter has knowledge, or reasonably suspects that a child is suffering from **serious emotional damage** or is at risk of suffering serious emotional damage, "as evidenced by states of being or behavior, including but not limited to severe anxiety, depression, withdrawal, or untoward aggressive behavior towards self or others."¹²

Although "serious emotional damage" is not as clearly defined in the statute as other forms of abuse and neglect, it is generally understood to mean a pattern of behavior by a caretaker that impairs a child's emotional or psychological development.¹³ These patterns may be due to other causes, but professionals advise that the suspicion of emotional abuse should not be dismissed.¹⁴

If there is a question as to whether a child is suffering from serious emotional damage, reporters may want to file a report out of an abundance of caution. It will be up to the child protective agency to investigate and determine if the acts in question constitute emotional abuse. As discussed further below, mandated reporters are immune from legal liability for good faith reporting.

WHAT IS REASONABLE SUSPICION?

Under CANRA, "**reasonable suspicion**" means that "it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect."¹⁵ "Reasonable suspicion" can be distilled into four elements. It exists when:

- based on the facts,
- a person in a similar position,
- drawing on his or her training and experience (when appropriate),
- suspects child abuse or neglect.

The law goes on to state: "Reasonable suspicion' does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any 'reasonable suspicion' is sufficient."¹⁶

Reasonable suspicion is fact-specific and may differ from person to person. For example, an experienced teacher will have had more training and experiences than a novice teacher, and may have better intuitive skills to determine if a situation does or does not raise a reasonable suspicion of abuse.

However, the intent of the law is clear: **if you suspect, report**. A reporter is not required to prove that abuse has occurred. That determination will be made through an investigation by the child welfare agency or law enforcement.¹⁷

Note: The online CANRA training module developed by the California Department of Social Services (CDSS) includes detailed definitions and examples designed to assist mandated reporters in identifying child abuse and neglect.¹⁸

MAKING A REPORT

The CANRA requires a mandated reporter to make an initial **phone call** immediately or as soon as practicably possible to the police department, sheriff's department, county probation department, or county welfare department.¹⁹ It is advisable for school site administrators to have a list with these CANRA reporting phone numbers available at any time for staff members to use.

The mandated reporter should be prepared to give his or her name, business address, telephone number and position; the child's name and address, school, grade and class, and present location (if known); the names, addresses and telephone numbers of the child's parents and of the person(s) who might have abused the child; and the facts that led to the reporter's reasonable suspicion of child abuse or neglect.

If the child is living in a home or institution that the reporter knows or reasonably suspects is unsuitable for the child because of abuse or neglect, the reporter must bring that condition to the attention of the agency when making the report.²⁰

The mandated reporter must then **complete the required mandated reporter form** (Form SS 8572: Suspected Child Abuse Report) and submit it electronically or by fax—within 36 hours of receiving the information concerning the incident—to law enforcement or other designated local agencies (e.g., Child Protective Services).²¹

The mandated reporter form and instructions for completing the form are available on the California Attorney General's website.²² A copy of the form and instructions for completing the form are also provided for reference as Attachment H in Module 5 of this Manual.

INDIVIDUAL DUTY TO REPORT

The duty to report is specific to the individual who suspects the child abuse. However, if a group of employees jointly have knowledge of or suspect child abuse or neglect, they may agree among themselves that a selected one will make the report on behalf of them all.²³ Any employee within this group must make the report if they become aware that the selected one failed to do so.²⁴

The CANRA requires each reporter to use his or her own judgment as to whether a report is necessary, and an employer cannot prohibit a mandated reporter from submitting a report if he or she believes it is required.²⁵

Reporting the information about suspected abuse or neglect to an employer, supervisor, school principal, school counselor or co-worker is not a substitute for a mandated reporter's obligation to make a report.²⁶

Similarly, a mandated reporter may not rely on the advice of others, including legal counsel, to determine whether or not a report is required.

PENALTIES FOR FAILING TO REPORT

A mandated reporter who **fails to report** an incident of known or reasonably suspected child abuse or neglect is guilty of a **misdemeanor**. Punishment is up to six months in jail, a fine of one thousand dollars, or both. If a mandated reporter intentionally conceals his or her failure to report an incident known by the reporter to be abuse or severe neglect, the failure to report is a continuing offense until discovered.²⁷

The Commission on Teacher Credentialing can privately admonish, publicly reprove, revoke or suspend a certificated person's credential for persistent defiance of, or refusal to obey, the laws regulating the duties of persons serving in the public school system, including the duty to make mandated reports.²⁸

Under certain circumstances, a mandated reporter may be held civilly liable for failing to make a required report.²⁹

Although rare, educators can be charged with failing to report abuse or neglect.

Example: In 2012, a public school principal was convicted in a Santa Clara County Superior Court of a criminal misdemeanor for failing to report sexual abuse of an eight year old girl who had described, in explicit detail, a sex act that a teacher had allegedly performed on her after making her lie down on the classroom floor after she was blindfolded. When interviewed by the principal, the teacher denied the allegation and claimed that he had been working on a lesson about Helen Keller. The principal admonished the teacher to use better judgment and did not report the incident. Three months later, another child reported being attacked in a similar fashion by the same teacher.

The jury found that the facts known to the principal amounted to a reasonable suspicion of sexual misconduct by the teacher against a student. Although the judge could have imposed both jail time and a monetary fine, the principal was sentenced to two years of probation and a public service requirement of 100 hours. The principal will have a criminal record as a result of the conviction. Significantly, evidence at the trial suggested that neither the principal nor the school district's human resources director had ever received training on the duties of mandatory reporters.

LEGAL PROTECTION FOR REPORTERS AND VOLUNTEERS

Immunity

Mandated reporters have civil and criminal immunity for any report made under the CANRA, unless it can be proven that a false report was made and the mandated reporter knew the report was false or it was "made with reckless disregard for the truth."³⁰ Mandated reporters also have immunity from civil and criminal liability for providing a government agency investigating a report of suspected abuse or neglect with access to the victim of the suspected abuse or neglect.³¹ Similarly, a volunteer who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, provides the requesting agency with access to the victim of a known or suspected instance of child abuse, is shielded from civil and criminal liability.³²

The consequences for children subject to abuse or neglect, and the civil and criminal penalties for mandated reporters who fail to report suspicious incidents of child abuse or neglect are very serious in nature. As such, if an employee is uncertain as to whether reasonable suspicion exists, it is advisable to make the report in good faith and allow the proper agency to conduct an investigation to determine if child abuse or neglect exists.

Am I Liable for Reporting an Unfounded Suspicion?

The CANRA allows for and expects mandated reporters to sometimes make “unfounded reports,” given that the purpose of the Act is to protect children.³³ Unfounded reports are those that an investigator determines to be false, inherently improbable, involve accidental injury, or do not constitute child abuse or neglect.³⁴

Remember: Mandated reporters do not have to be sure that child abuse or neglect is occurring before filing a report. The reporter only needs a “reasonable suspicion.”³⁵

Confidentiality

The CANRA also includes confidentiality provisions to protect the identity of the mandated reporter as well as the report itself. A person making a mandated report must give his/her name, but his/her identity is kept confidential.

The reports themselves are also kept confidential and may only be disclosed to those agencies and persons authorized by law to receive them, such as agencies charged with investigating reports and prosecutors.³⁶ Violation of this confidentiality requirement is a misdemeanor punishable by up to six months in jail, a fine of five hundred dollars, or both.³⁷

Example: In a 2013 lawsuit brought by a divorced mother of two students, a school district and its employee were found to have violated the law by disclosing to the students’ father a child abuse report that named the mother.³⁸

This means that school personnel should not tell a parent about a report, even if the reporter does not suspect that the parent is responsible. If the parent asks the school district about the facts and circumstances surrounding a CANRA report (e.g., Who made the report? What were the facts? Why wasn’t I notified?), school personnel are advised to respond by stating that information concerning filing of reports is confidential and that the school cannot release any information.

Likewise, those agencies and persons with lawful access to mandated reports may not disclose the identity of the reporter or his or her employer, except with the reporter’s consent or by court order.³⁹

DUTY TO INVESTIGATE AND INVESTIGATIVE PROCESS

Law enforcement and/or Child Protective Services (CPS) are required to investigate all reports of suspected child abuse and neglect. Cases may also be investigated by Child Welfare Services (CWS) when allegations involve abuse or neglect within families.⁴⁰

Questioning and Removal of a Child

A suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, by a person authorized to investigate a report of possible abuse or neglect.⁴¹

The investigator must inform the child of his or her right to select any adult member of the school staff to be present during the questioning.⁴² The staff member does not participate in the interview, but only lends support, and he or she is subject to all confidentiality requirements.⁴³

If it is necessary for a social worker to take the child into temporary custody, the school should have the worker sign the appropriate form, indicating the legal basis for removing the child. It is the social worker's responsibility to notify the parent.⁴⁴

If the child is released to a peace officer, the school must immediately notify the parent. However, if the parent is the one suspected of abuse, notification of the parent should be handled by the officer.⁴⁵

SCHOOL DISTRICT RESPONSIBILITIES

Training Requirements for the CANRA

School districts, charter schools, county offices of education, state special schools and diagnostic centers operated by the California Department of Education (CDE) must provide training within the first six weeks of each school year or of new employment, to their employees who are mandated reporters.⁴⁶ Educational agencies either must use the [online training module](#) developed by the California Department of Social Services (CDSS) or they must report to the CDE the kind of training that is being used in its place.⁴⁷

In either situation, the annual training must include information explaining that failure to report an incident of known or reasonably suspected child abuse or neglect, as required by [Penal Code section 11166](#), is a misdemeanor punishable by up to six months in county jail, or by fine of one thousand dollars, or by both imprisonment and a fine.⁴⁸

In addition, new or renewing credential applicants are required to attest by either electronic or actual signature that they have read and understand a statement about their duties under the CANRA.⁴⁹

Dissemination of Guidelines

Upon request, a school district must disseminate to parents and guardians the guidelines adopted by the CDE for filing a complaint of child abuse. The Superintendent of Public Instruction has recently issued his revised "[Child Abuse Reporting Procedures](#)." The guidelines, which must be provided in the primary language of the parent or guardian, are available on the CDE website.⁵⁰

BEST PRACTICES FOR CANRA COMPLIANCE

- Trust your instincts—if there is reasonable suspicion, make the report.
- Write down facts to help you in determining whether a report is necessary and in making an accurate report, if necessary.
- Do not investigate the suspected abuse or neglect yourself.
- Keep a copy of your written report in a confidential and secure location.
- Do not tell the parent about the report, even if you do not suspect that the parent is responsible.

We have provided a *CANRA Reporting Checklist* for your reference as Attachment I in Module 5 of this Manual.

STUDENT SUPERVISION BASICS

Historically, school districts stand *in loco parentis* (Latin for "in the place of a parent") during the school day. This principle originated in English common law and, as adopted in our legal history, allows schools to stand in the role of parents, to a certain extent, during the school day.⁵¹ This generally means that school districts are responsible for the safety of the students in their care.

California courts have consistently held that a "special relationship" exists between school districts and their students. This relationship results in an affirmative duty on the part of a school district to take all reasonable steps to protect its students. This duty arises, in part, based on the compulsory nature of education.⁵² Accordingly, a school district has the duty to exercise reasonable care in the supervision of students and may be held liable for injuries proximately caused by the failure to exercise such

care.⁵³ This duty does not end at the minute classes are dismissed for the day,⁵⁴ but includes all instances where students are engaging in school district activities. California courts have held that school districts must generally exercise reasonable care in supervising students; however courts will review each situation on a case-by-case basis. Below, we provide an overview of a school district's duty of supervision both on and off school grounds.

STUDENTS ON SCHOOL GROUNDS

School districts have an obligation to supervise students on school grounds during school hours. Title 5 of the California Code of Regulations provides that a principal is responsible for the supervision and administration of his or her school and must provide for the supervision by certificated employees of the conduct, safety, and direction of play of students who are on school grounds during recess or other intermissions and before and after school.⁵⁵ A district may use recreational, non-certificated personnel to supervise pupils during breakfast, lunch, or other nutrition periods, as well as for playground supervision during recess and other intermissions and before and after school.⁵⁶ The school district's supervisory obligations require school district employees to protect students from foreseeable harm.⁵⁷

Example: In *Leger v. Stockton Unified School Dist.* a student was attacked by a nonstudent while changing clothes in the school bathroom. The court found that the school district had a duty to protect the student from attack by a nonstudent in a restroom located on school grounds, because the district "knew or should have known the bathroom was an unsupervised location unsafe for students and that attacks by nonstudents were likely to occur there."⁵⁸

If a school district's failure to adequately supervise students on school premises proximately causes a student's injury off campus, the school district may be found liable.

Example 1: In *Hoyem v. Manhattan Beach City School District*, a ten-year-old student attending summer school in the district left school grounds early *during the school day*. While off school grounds, he was struck and injured by a motorcycle. Though the injury occurred off school grounds, the California Supreme Court found that the district could be held liable if it failed to adequately supervise the student on school premises, and that its failure proximately caused the student's injury off campus.⁵⁹

Example 2: In *Perna v. Conejo Valley Unified School District*, two students were asked by a teacher to stay after school to assist in grading papers. By the time the teacher released the students to walk home, the crossing guard was off duty and the students were struck by a vehicle while crossing a street. The court held that the district could be found liable for the off campus injuries as a result of the district's failure to supervise the students on the school grounds.⁶⁰

The school district's duty to adequately supervise students on school premises applies regardless of the type of class. This duty exists regardless of whether the class is mandatory for graduation or grade promotion, if it is elective and voluntary, or if it takes place indoors or outdoors.

STUDENTS OFF SCHOOL GROUNDS

Generally speaking, school districts do not have an obligation to supervise students who are not on school property unless one of the following apply.

- The school district has undertaken to provide transportation to and from school; or
- The school district has undertaken to sponsor a school activity off school premises; or
- The school district has otherwise specifically assumed responsibility.⁶¹

STUDENTS COMING TO AND LEAVING SCHOOL

School districts should be mindful of their responsibility for students coming to and leaving school. While a school district generally does not have a duty to supervise students arriving to and leaving school, it may be responsible if it specifically has undertaken a duty to supervise students being dropped off, waiting to be picked up, or while walking to school or home from school.

Example 1: In *Guerrero v. South Bay Union School District*, a student was dismissed from school at 2:25 p.m. and then waited with her siblings on the school campus to be picked up by her parent.⁶² Within five minutes from dismissal, the student crossed the street from the school to get a closer look at another child playing with a toy.⁶³ As she crossed the street back to the school campus, she was struck by a car and injured.⁶⁴ The court held that a district is not liable for injuries off campus and after school “unless they were the result of the District’s negligence occurring on school grounds or were the result of some specific undertaking by the District, which was then performed in a negligent manner.”⁶⁵ Ultimately, the court did not extend such a duty to supervise where the injured student had been properly dismissed from school and the district did not undertake a specific duty to supervise students after school on the public street until family picked them up or they were safely escorted home.⁶⁶

Example 2: In *Brownell v. Los Angeles Unified School District*, a student was shot by a gang member while standing in front of a high school after school. The court held that a school district met its duty to supervise students after school by taking reasonable precautions to minimize known gang-related problems in the area by prohibiting gang colors and confiscating weapons found on school grounds. Also, the school district met its duty of care because the shooting was not foreseeable as school personnel had no advance knowledge of potential gang violence involving the student.⁶⁷

A school district should evaluate how it assigns personnel to monitor pick-up and drop-off of students, as well as where it stations crossing guards. A school district should also consider the conditions present when students are released from after-school detention or remedial sessions when employees or volunteers are no longer present to monitor students leaving school.⁶⁸ Advance notice should be given to parents and guardians of the specific times and locations where the school is undertaking supervision of students coming to and leaving school. School districts should consult with their legal counsel about other safety measures to implement to prevent after-school gang violence.

DISTRICT TRANSPORTATION OF STUDENTS

Generally, school districts are not required to provide student transportation. However, once the school district undertakes to provide transportation for its pupils, it has a duty to exercise reasonable care under the circumstances.⁶⁹

Example: In *Farley v. El Tejon Unified School District*, a student was killed crossing a highway after being dropped off by a school bus. Although the school bus had left and the students were not under the immediate and direct supervision of a school employee, the school had known that students were forced to cross the dangerous highway due to the location of the bus stop. The court thus held that the school district could be found liable if a jury determined that the student should have been under the supervision of a school employee, given the school's undertaking to provide transportation and knowledge of the specific danger of the highway crossing.⁷⁰

SCHOOL SPONSORED ACTIVITIES VS. FIELD TRIPS & EXCURSIONS

School districts have a duty to supervise students engaged in **school-sponsored activities** off of school premises.⁷¹ A "school sponsored activity" is defined as an activity "that requires attendance and for which attendance credit may be given."⁷² Factors that generally point towards a trip being categorized as a school-sponsored activity include: (1) the student's attendance is required by the school, or the student is given attendance credit for participating in the trip; (2) the student receives a grade for participating in the trip; (3) the school specifically selects individual students for participation in the trip; and (4) the trip is part of a class in which the student is enrolled. A school's duty to supervise generally extends to after-school sports.⁷³

On the other hand, school districts are generally not liable for the conduct and safety of students who attend field trips or excursions. California law specifically provides that individuals attending field trips or excursions "shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion."⁷⁴ A "field trip" has been defined by California courts as a visit made by students for purposes of first hand observation such as to a factory, farm or museum. An "excursion" has been defined as a school district run journey chiefly for recreation.⁷⁵ Field trips and excursions are discussed in greater detail in Module 3 of this Manual.

Example: In *Wolfe v. Dublin Unified School District* a first grader was injured in a car accident while on a field trip to a family farm. The court found the school district was not liable because the trip was a field trip, not a school sponsored activity. In reaching its conclusion that this was a field trip, the court pointed to the fact that the visit was made by students and teachers; students did not have to attend; and students who stayed behind in alternative activities would receive attendance credit.⁷⁶

OTHERWISE ASSUMED RESPONSIBILITY

If a school district specifically assumes responsibility for supervision, liability is only imposed “while such pupil is or should be under the immediate and direct supervision of an employee of such district or board.”⁷⁷ Examples of instances where a school district assumes responsibility may include an independently run math camp, where the school district offers to provide supervision, or an academic scavenger hunt where the school district offers to provide supervision. Overnight trips and trips abroad are discussed in greater detail in Module 3 of this Manual.

STUDENT USE OF PUBLIC TRANSPORTATION

Because student transportation is not required to be provided by school districts in California, students may use public transportation, such as city buses, to get to and from school. School districts may view use of public transportation systems as a cost-saving measure in lieu of adding or chartering new buses, or as a way to reduce traffic congestion or the environmental impact of vehicles traveling to and from a school site. School districts are advised to communicate with law enforcement and municipal transit authorities about different transit hubs and stops to ascertain the level and risk of crime, determine whether there is sufficient police or security coverage in the area during times of high student participation, and the availability of GPS tracking and video recordings.

Partnering with Public Transportation Systems. A primary concern is what liability, if any, a school district may be exposed to when its students use a public transportation system through a program offered in partnership with the district, such as when a district enters into an agreement with a municipal transit agency to provide discounted or free transit passes or tickets for students. While the risk to a school district is likely low, liability may not be completely eliminated in the event an injury occurs during the transport of students through public transportation.

While a school district is not under a legal duty to supply transportation to its students, once it does decide to undertake the provision of student transportation, a concomitant obligation to provide a reasonably safe system of transportation arises.⁷⁸ Moreover, the school district must obtain written permission from the student’s parent or guardian for the student’s participation in the transportation program.⁷⁹ Arguably, a school district’s partnership with a transit agency in a program to provide bus or transit passes to its students is an “undertaking” which places obligations on the school district. However, liability for the safety of a student likely only exists if the student is or should be under the immediate and direct supervision of an employee of the school district.

Out of an abundance of caution, in order to avoid liability claims related to students using a transit pass or ticket to ride public transit to and from school, school districts should avoid creating an “agency relationship” with the public transit system. An agency relationship could vicariously subject the district to liability because the agent (i.e., the transit agency) could be deemed to be directly supervising students on the school district’s behalf during their transport to school.

Applications or consent forms required for student bus or transit passes should include language disclaiming any agency relationship and providing that the district will not be liable for damage or injury incurred in connection with a student’s use of public transit. School districts should also notify parents when student record information may be disclosed to purchase a pass and communicate that the district will not be liable for the unauthorized use of a transit pass by a student. It would also be appropriate to affirmatively state that the transit agency’s employees are not acting as contracted school officials or employees of the school district.

A school district that is taking all of these precautions would be in a better position to argue that it has immunity from liability arising out of a student utilizing public transportation on the way to or from school because: (1) the school district is not actually providing the transportation; (2) students would not be under the direct supervision or control of the school district while on public transit; (3) the transportation is not a school-sponsored activity; (4) and the school district would not otherwise be engaging in any conduct that would evidence its undertaking of responsibility or liability for students during such public transportation.

Finally, any agreement with a mass transit system should also be mindful of federal policy. The Federal Transit Administration’s Federal Mass Transit Assistance Act of 1974 contains a rule known as the “tripper” rule, which prohibits a public mass transportation service from using federal public transit funds to provide exclusive public bus operations for students.⁸⁰ The tripper rule applies not only to transportation to and from school, but also to and from school-sponsored activities and field trips. School districts will therefore not be able to arrange for exclusive public transportation accommodations for most occasions. School districts are advised to consult with legal counsel for additional information.

Use of Public Transportation by Students with Disabilities. Some students with disabilities may have an Individualized Educational Program (“IEP”) which requires a school district to provide training in the use of public transportation as a service designed to assist the student in transitioning to adulthood. If such training using public transportation is provided to a student in order to meet a required IEP goal, the student’s use of public transportation may constitute a school-sponsored activity.

Ensuring that a special education student is able to travel safely using public transportation may require hands-on instruction and training, so this activity could be deemed to be under the immediate and direct supervision of a district employee.⁸¹

Use of Public Transportation by Foster Students. School districts are encouraged to consider “no-cost” or “low-cost” options in transporting foster students to their school of origin.⁸² School districts should consult with their legal counsel and local child welfare agencies on the liability risks related to public transportation of foster students in an individualized manner.

STUDENT USE OF RIDE-SHARING

While it is not unlawful for a parent to arrange for their child’s transportation to or from school by a vehicle ordered through a ridesharing app, a parent’s use of this type of service may violate a ridesharing company’s own policies which often set age restrictions.⁸³ In addition, California Public Utilities Decision 97-07-063 requires that entities specializing in the transportation of children conduct a background check of their drivers through the California Department of Justice.⁸⁴ Drivers of ride-sharing companies likely would be violating their own policies and state law by transporting unaccompanied minors without this background check. Districts should be aware of these concerns when it receives notice that a parent is arranging ride-sharing services for a child. Continuing to allow students to use ride-sharing services in such circumstances may be seen as failing to exercise reasonable care.

Further, many school districts have board policies and administrative regulations which provide that when a student’s parent or guardian is not available to pick up a student from school, the district may only release a student to an authorized adult listed on the student’s emergency card, and that the principal or designee must verify the adult’s identity. A ride-sharing driver may not be listed on the student’s emergency card and releasing the student without verifying the driver’s identity may result in liability. Illustrating this point is a recent case out of the Third Circuit where a teacher released a kindergarten student to a stranger without verifying their identity.⁸⁵ In that case, the school district was found liable for the harm that was ultimately caused to the kindergartner due to the “deliberate indifference” of the teacher, who had time to make an unhurried judgment to keep the student at the school while waiting for the stranger’s identification.

A school district must take reasonable precautions to protect students from foreseeable harm caused by a third party. A district should ensure parents and guardians are aware of district policies and procedures governing the release of students during the school day and should encourage parents to update the

student's emergency card to include persons who will be available in the event the parent(s) cannot be reached or are unable to pick up the student due to work or other obligations. Also, the school district should: (1) recommend parents and guardians review any ridesharing service's policies to determine if there are rider age limits or other requirements; (2) arrange a meeting with the parent/guardian to discuss other available transportation options; and (3) consider whether to require parents/guardians to provide a signed waiver and authorization form that limits liability for the school district when a child is being transported via a ridesharing service to and from school.

PROVIDING A SAFE PHYSICAL ENVIRONMENT

DUTY TO MAINTAIN SCHOOLS FREE OF DANGEROUS CONDITIONS

The Government Code defines, "property of a public entity" and "public property" as:

Real or personal property owned or controlled by the public entity, but does not include easements, encroachments and other property that are located on the property of the public entity, but are not owned or controlled by the public entity.⁸⁶

A "dangerous condition" means:

A condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.⁸⁷

School districts have a duty to maintain school sites free of dangerous conditions. A dangerous condition exists where a physical defect is present, and that physical defect creates a substantial risk of injury.⁸⁸ A school district may be found liable for a dangerous condition if:

- The property was in a dangerous condition at the time of the injury; and
- The injury was proximately caused by the dangerous condition; and
- The dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred; and
- Either:

- The school district employee created the dangerous condition through a wrongful act, act of negligence, or act of omission within the scope of his/her employment; or
- The school district had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition.⁸⁹

The threshold issue under the dangerous condition theory requires a showing that the district owned or controlled the property in question. If a student were injured on a sidewalk or crosswalk, such property would presumably be owned by the city rather than the district. However, circumstances may arise in which a school district could be found to have control of a crosswalk or sidewalk near a school, perhaps during school hours.

If an injury occurs on district property, a school district generally won't be held liable when students injure themselves while using district property that is free from any defects or dangerous conditions. When looking to see whether a dangerous condition exists, courts will review the facts on a case-by-case basis.

Example: In *Bartell v. Palos Verdes Peninsula School District*, a twelve year old boy and a friend gained access to a school playground after school hours, either through an unlocked gate or a hole in the fence.⁹⁰ The boy suffered fatal injuries when he fell while swinging from a rope and riding a skateboard. The court found that there were no inherently dangerous conditions on the property. The unlocked gate or fence in disrepair only provided access to the playground, and the boy's injuries were not caused by the gate or fence.⁹¹ Instead, the "injuries were the direct result of the dangerous conduct of plaintiff's son and his companion and not of any defective or dangerous condition of the property," and the court held that the district was not liable for the boy's fatal injuries.⁹²

While schools have a duty to maintain campuses free of dangerous conditions, the use of dangerous instrumentalities may be a part of the school curriculum. In such circumstances, the school district has a duty to exercise a standard of conduct required of an adult dealing with a child.

Example: In *Calandri v. Lone Unified School Dist.*, a student, under instruction and as part of a woodshop class, made a "toy cannon."⁹³ The teacher was aware of the project and saw it on the day it was completed and taken home. At home, the student loaded the cannon with powder from a shogun shell and rags before it accidentally

fired and injured the student's hand. The court found that the school owed the student a duty to warn him as to the dangerous potentialities of the instrument and to instruct him as to safety practices in using the instrument. The court did not find that the fact, on its own, that the injury occurred at the student's home to be an important factor.

School districts should therefore consider the liability risk in sending students home with school supplies, especially those that may foreseeably result in the student using the supplies as or with a dangerous instrumentality. Students should be provided safety instructions on how to properly read labels and use stovetops, mixers, and ovens prior to being sent home with cooking supplies. Students should be warned about electrical shocks when operating with robotics or other electronics.

DUTY TO CONTROL SPECTATORS AT SCHOOL SPONSORED ACTIVITIES

Though case law is limited on this question, at least one California court has determined that a school district was not liable for a student's injuries that occurred as the result of spectator misconduct.

Example: In *Weldy v. Oakland High School District*, a student was injured when attending a high school football game as a paying spectator. During the game, other fellow spectators seated around the student "engaged in a course of rowdiness and dangerous conduct," including throwing a heavy glass bottle that struck the student.⁹⁴ The court found that the district could only be liable to the injured student if the district was negligent. This could be established, for example, if the district should have known based on prior experience that football games were likely to be attended by rowdy crowds and result in injury to spectators. However, there was no indication the district should have foreseen that spectators were likely to injure others, or that even if aware of the spectators' conduct, district employees failed to act in a manner that amounted to negligence.⁹⁵ In dismissing the case, the court further articulated the principle that a school district is required to exercise reasonable supervision over its students while school is in session, but is not an insurer of their safety at play or elsewhere.⁹⁶

Nonetheless, as best practice, school districts are advised to ensure that athletic events are well-supervised and should take all reasonable steps to mitigate foreseeable injuries from third parties. Event supervisors should ask dangerously rowdy or inebriated attendees to leave the premises and should seek police assistance if necessary.

California Interscholastic Federation (CIF) policies and requirements are also relevant to the expectations of a school district to control spectators or third parties at a school-sponsored athletic event. CIF is a voluntary organization that consists of school and school-related personnel with responsibility for administering interscholastic athletic events in secondary schools.⁹⁷ CIF, in consultation with the CDE, is required to implement policies on various topics related to interscholastic sports and to report to the Legislature and Governor on issues including, among other things, the health and safety of pupils, coaches, officials and spectators.⁹⁸ CIF policies expect that unsportsmanlike conduct from anyone, including spectators, will not be tolerated by member schools.

School districts that are subject to CIF rules and regulations often have a Board Policy in place providing that:

The Board values the quality and integrity of the athletic program and the character development of student athletes. Student athletes, coaches, parents/guardians, spectators, and others are expected to demonstrate good sportsmanship, ethical conduct, and fair play during all athletic competitions. They shall also abide by the core principles of trustworthiness, respect, responsibility, fairness, caring, and good citizenship and the Codes of Conduct adopted by CIF.⁹⁹

CIF also suggests that school district board members and superintendents clearly hold all employees and individual school site staff accountable for promoting sportsmanship and fostering good character.¹⁰⁰ CIF standards also require that school boards, superintendents, school administrators, parents and school sports leadership establish standards for participation by adopting and enforcing codes of conduct for coaches, athletes, parents and spectators.¹⁰¹

Finally, with respect to school-sponsored activities, if the out-of-control spectator is a school district student, the district may have jurisdiction to discipline (i.e., suspend or expel) the student for certain conduct as set forth under the Education Code.¹⁰²

PARTICIPANTS IN SCHOOL SPONSORED ACTIVITIES

As a starting point, state law provides that public entities (such as school districts) and public employees are *not liable* to persons who participate in a “hazardous recreational activity” for any personal or property damage or injury arising out of the hazardous activity.¹⁰³ This includes any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to him or herself and was

voluntarily in the place of the risk, or failed to leave despite having the ability to do so.¹⁰⁴

However, California courts have confirmed that **school-sponsored sporting events** are *not* considered “hazardous recreational activities.”¹⁰⁵ Rather, they are “part and parcel of the school’s educational mission.”¹⁰⁶ Furthermore, extracurricular activities “constitute an integral component of public education.”¹⁰⁷ Therefore, with respect to school-sponsored athletic events, school districts are not automatically immune from liability for injury to students, spectators or third parties. Rather, the extent of liability, if any, depends on traditional negligence standards.¹⁰⁸

To establish negligence, an injured party would first have to prove that the school district owed him or her a “duty of care.” With respect to school-sponsored sporting events, a school district’s duty is to not “increase the risks inherent in the sport.”¹⁰⁹

Example: In *Avila v. Citrus Community College District*, the California Supreme Court found that a community college district was not liable for injuries sustained by a member of the visiting baseball team playing in a pre-season game. There, the athlete, a student of the visiting school, was injured when he was struck by a pitch thrown by the home team’s pitcher. The injured athlete alleged the pitcher intentionally hit him and claimed the community college district was negligent in failing to control the pitcher, failing to provide umpires to supervise and control the game, and failing to provide him with medical care.¹¹⁰

The court found that being hit by a pitch, even intentionally, is an “inherent risk of baseball” such that the defendant community college district owed no duty to prevent the pitcher from hitting batters.¹¹¹ The community college district also was not liable for failing to provide umpires, because such failure *did not increase* the risks already inherent in the game, and the district otherwise owed no duty to *decrease* the risks.¹¹² Finally, the community college district was not obligated to ensure that the visiting team member received medical attention. This was because the district itself did not cause the athlete’s injury and was not vicariously liable for the pitcher’s actions, and the injured athlete’s own coaches and trainers were present and had the authority to determine whether he need to be removed from the game to receive medical attention. Accordingly, the lawsuit against the community college district failed.

Additionally, a school district is required to provide each *member of its athletic teams* insurance protection for medical and hospital expenses resulting from accidental bodily injuries.¹¹³ The district is also required to provide notice about this insurance

protection to each member of its athletic teams and may charge a related fee if the district or student body does not pay for it, as long as costs for insurance are covered for those determined to be financially unable to pay.¹¹⁴ Otherwise, a school district may, *but is not required* to provide insurance for the following, as they are not considered members of an athletic team:

- organized rooting sections,
- student body members who are spectators, or
- other spectator students who are not actually participating in the conduct of the athletic event.¹¹⁵

A school district governing board *may* also provide or make available ambulance services, paid for out of school district funds, for pupils, instructors, spectators and other individuals in attendance at athletic activities under the jurisdiction of, or sponsored or controlled by, the district.¹¹⁶

NOTICE OF RISKS OF INJURY AND INFORMED CONSENT

As discussed in Module 2 of this Manual, the extent of a school district's liability for student injuries varies depending upon the nature of the activity, with the notable exception of field trips and excursions. "Although a school district is not an insurer of its pupils' safety, ... a school district bears a legal duty to exercise reasonable care in supervising students in its charge and may be held liable for injuries proximately caused by the failure to exercise such care."¹¹⁷

A school district can limit or reduce its liability for many activities by obtaining a written release from the student's parent or guardian. Written releases for activities (not classes) that are voluntary in nature are typically found to be enforceable.¹¹⁸ As discussed further, a valid written release requires informed consent from the parent or guardian. Accordingly, schools may wish to obtain informed consent in writing from parents for school-sponsored student activities and non-essential coursework and student club activities involving dangerous instrumentalities.

ADVANCE NOTICE OF RISKS

Common practices among school districts with regard to providing advance notice of risks run the gamut from no notice to comprehensive notice. Schools typically require parents to sign "permission slips" for field trips and releases of liability for participation in extracurricular school activities, including athletics. Within those documents, schools usually include acknowledgements of the possibility of injuries related to the student's participation in the activity. Some schools simply

acknowledge the possibility of injury, including serious bodily injury or death. Other schools additionally include examples of specific injuries that could result from the student's participation in the activity. The latter is consistent with best practices, as courts are more likely to find that a plaintiff has released his or her claims against a defendant if the release contains explicit language.

Typically, a district's liability for physical injuries caused during student activities takes the form of a claim of negligence. Recall the general discussion of the tort of negligence in Module 1 of this Manual. An action in negligence requires a showing that the defendant owed the plaintiff a **legal duty**, the defendant **breached** the duty, and the breach was a **proximate cause** of the injuries suffered by the plaintiff.¹¹⁹ Generally, persons are under a duty to exercise due care to avoid injury to others, and a defendant who breaches that duty may be held liable for injuries that arise from his or her careless conduct.¹²⁰

Negligence claims based on concussions in school athletic events have gained traction in recent years. In the context of sports in general, and especially contact sports, "conditions or conduct that otherwise might be viewed as dangerous often are an integral part of the sport itself."¹²¹ Consequently, "[a]lthough defendants generally have no legal duty to eliminate (or protect a plaintiff against) risks inherent in [a] sport itself, ... defendants generally do have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport."¹²²

Less common are negligence claims based on non-athletic school competitions or class electives¹²³ and student clubs¹²⁴ involving dangerous instrumentalities like home economics, woodshop, auto shop, or a robotics club. Arguably, the law provides that students assume the risk of a danger by voluntarily signing up for these elective courses, competitions, or clubs with actual knowledge of the inferred danger of the activity itself.¹²⁵ It is recommended that advance notice of the risks associated with the course, competition, or club be provided. Pursuing a waiver and release of claims for such activities should be done in consultation with legal counsel.

Preparing a Written Release

A written release of liability may include multiple provisions that protect a school district against negligence claims. Two such provisions are advance waivers of liability and express assumptions of risk. A sample permission slip for participation in off-campus events and activities that includes waiver and assumption of risk provisions is provided for reference as Attachment J of this Manual. (See Module 3 and Attachment F for field trips and excursions.)

Advance Waivers of Liability

By an advance waiver of liability, a potential plaintiff promises not to exercise the right to sue for harm caused in the future by the wrongful behavior of a potential defendant, eliminating a remedy for wrongdoing.¹²⁶

For example, a written release for a student in a school-sponsored fencing club might provide that the student and his or her parents waive any right to sue for bodily injuries incurred during the student activity.

Express Assumption of Risk

By an express assumption of risk, the potential plaintiff agrees that the defendant will not be held to any particular standard of care.¹²⁷

Using the fencing club example, a written release might explain the risks attendant to fencing, state that it is the student's responsibility to understand and mitigate those risks, and provide that the district will not be liable for any bodily injury that is the result of the district's negligence.

Both types of provisions constitute a plaintiff's acknowledgement that the district may act below the reasonable care standard, although an express assumption of risk goes further, more clearly authorizing this behavior. A school district may utilize them both.¹²⁸

Specificity of the Release

A liability release must be clear, unambiguous, and explicit in expressing the intent of the releasing party.¹²⁹ A release must not be buried in a lengthy document, hidden among other verbiage, or difficult to find.¹³⁰ Read as a whole, a written release must clearly provide notice of its effect.¹³¹

The express terms of the release do not need to state every possible specific act of negligence¹³² and a plaintiff needs not have had specific knowledge of the particular risk that ultimately caused the injury.¹³³ It is only necessary that the act of negligence be reasonably related to the purpose of the release.¹³⁴ Under an express release of liability, the district will owe no duty to protect the plaintiff from injury-causing risk.¹³⁵

Courts may differ in their interpretations of contracts and in their applications of the law. As discussed above, some courts may require informed consent to give effect to a release of liability. Courts may also set a high bar for the clarity of provisions describing the scope of the release.¹³⁶ The take-away is that school districts should err on the side of clarity. Releases should ideally identify the risks of an activity using

concrete examples of injuries and specify that the release bars any claims for bodily injury.

Gross Negligence

Although a written release may shield a school district from general negligence claims, a release cannot waive grossly negligent conduct.¹³⁷ Gross negligence requires “a want of even scant care or an extreme departure from the ordinary standard of conduct.”¹³⁸ For example, if a teacher fails to train a student to use a table saw correctly, and does not conduct regular inspections, but the student becomes injured while left unsupervised, litigation will likely ensue. Whereas a school might be shielded from liability if a child were to slip and fall on a field trip to the zoo, the release would not justify allowing a student to participate in an interactive lion taming demonstration. Releases must be received before operating equipment in the classroom or participating in unique dangerous activities on field trips and the releases must be consistent with existing district policies.

Providing Advance Notice of Risks

Students **and** parents should ideally understand the risks inherent in a student activity as well as any preventative steps that the student can take to avoid injury. During orientation to a sport or activity, schools might consider providing information sheets to parents describing typical risks and responses associated with an activity or sport. Sample orientation guidelines can be found as Attachment K in Module 5 of this Manual.

Parents of students in a course using dangerous instrumentalities should sign a “safety contract” at the beginning of each academic year. For example, a chemistry class’ safety contract may include:

- Information to the parent/guardian about the proposed student’s participation in lab activities;
- Outline the safety instruction and procedures followed by the teacher and the school;
- Obtain from the parent/guardian relevant information regarding any health problems having a bearing on the student’s ability to participate in classroom or lab activities; and
- List the contact information of the parent/guardian and a physician in case of emergency.

In addition to obtaining written releases and waivers, another preventative measure would be to provide advance notice of risks through safety trainings and demonstrations for students. The training could also require students to demonstrate their competency before using equipment and tools such as through a written safety exam and a direct supervised demonstration.

The Education Code requires that schools provide an annual concussion and head information sheet to student athletes and their parents or guardians.¹³⁹ Although not required by law, schools might also consider providing parents and students with information sheets describing other risks of participating in outdoor activities and sports, including information sheets regarding:

- Heat-related illness symptoms and prevention for outdoor activities.
- Tick/spider/mosquito bite symptoms and prevention for outdoor activities.
- Poison ivy/oak/sumac identification and symptoms for outdoor activities.
- Drowning symptoms and prevention for swimmers.
- Common orthopedic injuries for contact sports.

MEDICAL ISSUES IN THE SCHOOL SETTING

EMERGENCY PREPAREDNESS

School districts are required to develop and maintain current comprehensive school safety plans.¹⁴⁰ It is recommended that safety plans clearly identify a responsible school authority¹⁴¹ for first aid operations and one or more backups. As a best practice, the responsible school authority's role should be clearly defined as the first point of contact for student illnesses and injuries. He or she should also ideally be trained in first aid procedures.

School districts should ideally maintain an easily-accessible set of guidelines for first aid procedures that should include, at a minimum, contact information for police services, fire-rescue services, ambulance services, hospitals, and a responsible school authority. It is further recommended that the guidelines include the location of automatic external defibrillators (AEDs), first aid supplies, and student medication.

School districts are advised to maintain an emergency information card for each student that contains the following information:

- The student's name, grade, gender, and age.

- The student's parents'/guardians' information, including their names, relationships to the student, phone numbers, alternative phone numbers, and places of work.
- The student's alternate authorized emergency care provider's information, including their names, relationships to the student, phone numbers, alternative phone numbers, places of work, and whether they are authorized to take the child from the school.
- The student's physician's information, including the physician's name and contact information.
- The student's health insurance information, including the insurer's name and the student's policy information.
- Any conditions that the student is being treated for by a health care professional.
- Any medications that the student is currently taking.
- The student's parents'/guardians' authorization for the school district to provide emergency first aid treatment.
- The student's parents'/guardians' authorization for the school district to transport the student to the nearest emergency facility in the event of an emergency.
- The student's parents'/guardians' authorization for the school district to contact the student's physician in the event of an emergency.
- The student's parents'/guardians' authorization for the school district to disclose the student's medical conditions to district personnel as necessary in the event of an emergency.
- The student's parents'/guardians' authorization for district personnel to administer medications listed in the emergency information card as necessary in the event of an emergency.

A sample Student Emergency Information Form is included as Attachment A in Module 5 of this Manual. District board policies may require parents to update their children's emergency contact information annually.¹⁴²

School districts should also remain alert in case of a declared state of emergency, as the Governor has broad authority to issue orders and regulations to carry out the California Emergency Services Act, which have the force of law.¹⁴³ Further, state and local public health officials may, at times, adopt and enforce regulations to prevent the spread of contagious, infectious, or communicable diseases if the action is necessary for the protection of the public health.¹⁴⁴

LIABILITY FOR STUDENT TREATMENT

The Education Code limits a school district's liability for reasonable treatment of a child who becomes ill or injured during school hours. A school district may provide treatment without parental consent if the child's parent or guardian cannot be reached, unless the parent or guardian has previously filed with the district a written objection to any medical treatment other than first aid.¹⁴⁵ The Health and Safety Code also limits an individual's liability if he or she, in good faith, voluntarily renders emergency care at the scene of an emergency.¹⁴⁶ Although an untrained school employee could render emergency care with limited liability, it is a best practice to have a designated responsible school authority (such as a nurse) render the care, or to take over the provision of emergency care, whenever safely possible.

ASSESSING AN INJURY AND INITIATING A MEDICAL RESPONSE

The California Emergency Medical Services Authority's (EMSA) Emergency First Aid Guidelines for California Schools¹⁴⁷ provide a general overview of the recommended steps in an emergency situation and a step-by-step guide for emergency planning and response. The following guidelines are based in part on the EMSA Guidelines and are only intended as general guidance. **Nothing in this Manual is intended to substitute for good judgment, appropriate employee rescue training, and prompt provision of 911 emergency services.**

School employees who are present when a student becomes ill or injured are advised to take the following initial steps before the responsible school authority arrives on scene.

Before you assess the student's injury, bear in mind the following "dos and don'ts."

DO NOT:

- ***move the student*** unless you must do so for the student's immediate safety. If the student might have suffered a spinal injury, keep the student's neck straight if you must move him or her.
- ***administer medications*** unless the District has obtained prior written authorization from the student's parent or legal guardian and doctor.

DO:

- ***assess your surroundings first.*** Is the area safe for you? Do conditions such as fire, traffic, or chemicals present an immediate danger? If the area is unsafe, call 911.
- ***take all practical precautions*** to reduce the spread of infectious disease when handling the ill or injured student, including: washing your hands, wearing disposable gloves, avoiding hand-to-mouth and hand-to-eye contact, properly disposing of any bodily fluids and cleaning affected areas, and sending any soiled clothing home with the student in a double-bagged plastic bag.
- ***call 911 immediately*** in any emergency situation. Emergencies include: absent or labored breathing; choking; wheezing due to an allergic reaction; difficulty breathing after a near-drowning; difficulty breathing after a bee sting; loss of consciousness; uncontrolled bleeding; head injury with severe headache, vomiting, and/or change in behavior; possible poisoning; and seizure. Guidelines on when to call 9-1-1 for injuries or illnesses are included as Attachment G in Module 5.

RESPONDING TO SERIOUS ILLNESSES AND INJURIES

A school district is legally responsible for taking reasonable steps to protect the health and welfare of students during school-sponsored activities, during the school day and, to varying degrees, beyond the school day. When a student is seriously ill or injured, a school employee is advised to take the following steps once he or she arrives on scene (Again, these general guidelines are advisory only and do not substitute for good judgment, appropriate first aid and rescue training and the prompt provision of 911 emergency services):

Emergency Situations

Once you have determined that the area is safe, determine whether the student is conscious or unconscious. If the student is unresponsive, assess the student's airway, breathing and circulation. Administer cardiopulmonary resuscitation as necessary if you are trained and able.

Call 911 as soon as possible or recruit the help of someone nearby to do so. Contact a responsible school authority and parent or legal guardian as soon as possible. Ensure that a responsible adult stays at the scene until the responsible school authority arrives. Once the first medical responder arrives on scene, provide a copy of the student's emergency information card to him or her.

Contact the student's physician or hospital listed on the student's emergency information card and notify them to expect the student's arrival.

Document the illness or injury as required by school policies. A sample Accident/Incident Form is included as Attachment B in Module 5.

Non-Emergency Situations

If the situation is not an emergency, contact a responsible school authority and parent or legal guardian as soon as possible. Obtain or verify consent for administering any medications or transportation arrangements. Arrange for transportation of the ill or injured student. Ensure that a responsible adult stays at the scene until the responsible school authority arrives.

Document the illness or injury as required by school policies.

Heat-Related Illnesses

Anyone that is providing student supervision during an activity that could expose a student to heat should also be familiar with the signs and symptoms of heat-related illnesses. Physical activity can increase a participant's body temperature which can lead to a heat-related illness. When conducting practices or performances in the heat or where there is a possibility of increased body temperatures, as a best practice you should do the following:

- Limit outdoor activity, especially midday when the sun is hottest. Schedule workouts, practices and rehearsals earlier or later in the day when the temperatures are cooler.
- Encourage students/athletes to wear light-weight, light-colored clothing.
- Encourage students/athletes to protect themselves from sun exposure, practice or perform near shade if possible and use sun screen often.
- Pace activity. Start activities slow and pick up the pace gradually.
- Coaches, teachers, staff and volunteers should be familiar with the school district's policy/regulations and protocols for emergency response.
- Encourage students/athletes to hydrate prior to, during and after the activity. Also encourage students/athletes to drink more water than usual and recommend that they do not wait until they are thirsty. Muscle cramping may be an early sign of heat-related illness.¹⁴⁸

Additional information on heat-related illnesses is also attached as Attachment L in Module 5 of this Manual.

Protecting Yourself from Bloodborne Pathogens and Communicable Diseases

Should you be faced with a situation that requires you to provide CPR and/or first aid, it is advisable to always take precautions to protect yourself against bloodborne pathogens and communicable diseases. It is important to understand what the hazards of bloodborne pathogens are and what preventative measures you can take to protect yourself from exposure. You can protect yourself by taking these preventative measures:

1. Familiarize yourself with your school district's Exposure Control Plan. School district should make their Exposure Control Plans available to all employees within the school district and should update it annually.
2. Observe Universal Precautions (i.e., the concept that all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens).
3. Do not eat or drink and avoid other hand-to-mouth contact while you are providing treatment.
4. Wear appropriate personal protective equipment, including disposable single-use latex gloves, glasses/goggles, and barrier masks.
5. Use mechanical means such as a broom, dustpan, tongs, or forceps to clean up broken glass, needles, and other sharps in the area.
6. Before you remove your personal protective equipment, clean up any potentially infectious bodily fluids in the area with a disinfectant.
7. Once you have cleaned the area, handle trash, contaminated clothing, and other potentially infectious materials in accordance with your school district's Exposure Control Plan.
8. Wash your hands for 15-20 seconds with warm water and soap after providing treatment and disposing of any contaminants and potentially infectious materials.

An information sheet on bloodborne pathogens and communicable diseases is attached as Attachment M in Module 5 of this Manual.

School districts are encouraged to maintain a copy of the EMSA Guidelines for step-by-step guidance when addressing specific illnesses and injuries.¹⁴⁹ Schools are

further encouraged to develop their own guidelines to address any school-specific injury risks.

PROVIDING TREATMENT

District employees should follow the emergency protocols set forth in their district's board policies, emergency plans, and guidelines for emergency procedures (if applicable).

School management, athletic directors, and head coaches should be familiar with the Education Code's provisions regarding when and how district staff can administer prescribed medications, provide cardiopulmonary resuscitation (CPR), and use automated external defibrillators (AED).

Cardiopulmonary Resuscitation

The Education Code allows school districts or schools to provide comprehensive CPR training to students and/or employees.¹⁵⁰ Training must be based on standards that are at least equivalent to the standards currently used by the American Red Cross or the American Heart Association.¹⁵¹

Although state law shields an employee who renders emergency care at the scene of an emergency in good faith from civil liability, employees who have not received CPR training should not attempt to administer CPR.

Automated External Defibrillators

The Education Code allows school districts or schools maintain AEDs and to provide training to school employees regarding the use of AEDs.¹⁵² School district employees who render emergency care or treatment by the use of an AED in good faith and not for compensation are shielded from civil liability.¹⁵³ School districts that adhere to the requirements of Health and Safety Code § 1797.196, regarding AED placement and employee instruction, are also shielded from civil liability.¹⁵⁴ School districts should ensure that:

- School employees receive an annual brochure that describes the proper use of an AED;¹⁵⁵
- The brochure, which should have contents and style approved by the American Heart Association or American Red Cross (in at least 14-point type), should be posted next to every AED;¹⁵⁶
- School employees should be notified annually (in at least 14-point type) of the location of all AED units;¹⁵⁷ and

- Designated employee(s) are provided annual training in the use of AEDs.¹⁵⁸

Schools boards are advised to implement policies requiring district staff to develop guidelines regarding the proper usage, storage, and maintenance of AEDs.

Administration of Prescribed Medication to Students

As a best practice, school districts should educate personnel about when it is appropriate to administer prescribed medication to students and who may do so. State law generally allows a school nurse or other designated school personnel to assist in administering prescribed medication to students.¹⁵⁹ For the purposes of administering prescribed medication, “other designated school personnel” are school district employees who have consented to administer the medication to the pupil, and who may legally administer or assist in administering medication to the pupil.¹⁶⁰ In order for a nurse or other school personnel to administer medication to student, the school district must obtain:

- a written statement from the student’s physician and surgeon or physician assistant detailing:
 - the name of the medication, and
 - the method, amount and time schedules by which the medication is to be taken; and
- a written statement from the parent, foster parent or guardian indicating the desire for the school district to assist the pupil in the matters set forth in the statement from the physician.¹⁶¹

These written statements must be provided annually, and updated if the medication, dosage, frequency of administration, or reason for administration changes.

School districts are also permitted to establish their own additional specifications for either the parent’s or the physician’s required written statement, as well as to establish rules governing the designation of other school personnel who may be authorized to assist in administering medication. These additional specifications and rules are typically established in Board Policies and/or Administrative Regulations.¹⁶² Therefore, school districts should consult their specific Board Policies and Administrative Regulations to determine whether any other additional information or documentation is required before administering or assisting in administering medication to a pupil.

The Education Code has specific provisions regarding the administration of asthma medication,¹⁶³ glucagon for hypoglycemia,¹⁶⁴ epinephrine for anaphylaxis,¹⁶⁵ and opioid antagonists for opioid overdose.¹⁶⁶ Some of these provisions are addressed in detail below and are summarized in a chart included as Attachment N in Module 5 of this manual.

Administration of Asthma Medication

State law allows a school nurse or other designated school personnel to assist a student in administering *inhaled asthma medicine* specifically.¹⁶⁷ In order to assist in administering inhaled asthma medication, the school district must obtain the same written statements from the student's physician and parent as are required for prescribed medications generally, and as described above.¹⁶⁸ A student may self-administer an inhaler if the physician additionally confirms in writing that the student is able to self-administer the medication and the parent provides certain written releases.¹⁶⁹

Administration of Glucagon

State law and regulations also allow a school nurse or other unlicensed, but trained, school personnel to administer glucagon to students with diabetes suffering from severe hypoglycemia, consistent with written statements from the student's physician and with parent consent.¹⁷⁰

Specifically, if a credentialed school nurse or other licensed nurse is not available onsite at a school, the school district *may choose* to provide other school personnel with voluntary emergency medical training to provide emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia. "Emergency medical assistance" consists of the administration of glucagon to a pupil suffering from severe hypoglycemia.¹⁷¹ If a school employee does not *volunteer* to be trained and has not been trained, he or she may not be required to provide emergency medical assistance.

Any training to volunteer, unlicensed school personnel must be conducted by a physician, credentialed school nurse, registered nurse or certificated public health nurse, and must include:

- Recognition and treatment of hypoglycemia.
- Administration of glucagon.

- Basic emergency follow up procedures, including but not limited to calling 911 and contacting, if possible, the pupil's parent and licensed health care provider.¹⁷²

Any school employee who administers glucagon must notify the credentialed school nurse, or if there is no school nurse, the district's superintendent or designee.¹⁷³ All materials necessary to administer the glucagon must be provided by the student's parent or guardian.¹⁷⁴ The administration of glucagon to students is also subject to receipt of the same written statements from a physician and parent as required for asthma and other prescribed medications generally, as described above.

Administration of Anti-Seizure Medication

State law and regulations previously addressed who may provide emergency anti-seizure medication to students with epilepsy.¹⁷⁵ However, the applicable Education Code provision is **no longer in effect** as of January 1, 2017.¹⁷⁶ Unless and until the Legislature enacts a new statute specifically governing administration of anti-seizure medication, schools should adhere to the less-stringent requirements of the general statute governing administration of medicine, Education Code section 49423.¹⁷⁷

Administration of Epinephrine

State law and regulations also allow a school nurse or other unlicensed, but trained, school personnel to administer epinephrine to students suffering from anaphylaxis (a potentially life-threatening allergic reaction).¹⁷⁸

Specifically, if a credentialed school nurse or other licensed nurse is not available onsite at a school, the school district *may choose* to provide other school personnel with training regarding the storage and use of an epinephrine auto-injector from the school nurse or other qualified person designated by an authorizing physician and surgeon.¹⁷⁹ If a school employee does not *volunteer* to be trained and has not been trained, he or she may not be required administer epinephrine.

Volunteer training must include:

- Techniques for recognizing symptoms of anaphylaxis.
- Standards and procedures for the storage, restocking, and emergency use of epinephrine auto-injectors.
- Basic emergency follow up procedures.
- Recommendations on the necessity of instruction and certification in CPR.

- Instruction on how to determine whether to use an adult epinephrine auto-injector or a junior auto-injector.
- Written materials covering the information above.¹⁸⁰

Schools **must**, as of January 2016, obtain from an authorizing physician a prescription for epinephrine auto-injectors¹⁸¹ and adhere to statutory requirements regarding storage and maintenance of the auto-injectors.¹⁸²

Administration and Use of Medical Marijuana at School

Given that school districts may administer prescribed medications, and students may carry and self-administer their own medications, the question often arises of whether students may use marijuana for medicinal purposes at school.

California's Compassionate Use Act (CUA) allows Californians to use, possess, and cultivate marijuana for medicinal purposes.¹⁸³ However, under the CUA, physicians in California cannot actually *prescribe* marijuana—they may only recommend it.¹⁸⁴ Additionally, in comparison to California law, the federal Controlled Substance Act (CSA) places marijuana in the most restrictive category and classifies it as having no medicinal benefits.¹⁸⁵ Consequently, federal law prohibits the use, possession, distribution, and manufacturing of marijuana for medicinal purposes. Therefore, under federal law, a physician may not lawfully prescribe marijuana for a medicinal purpose. Accordingly, medicinal marijuana is not likely a type of *prescribed* medication that students may self-administer, or staff may assist in administering at school as described above.

Additionally, despite the decriminalization of medical marijuana, students are still prohibited from using, possessing or being under the influence of marijuana (medicinal or otherwise) at school.¹⁸⁶ In fact, under the CUA, no person is permitted to smoke medical marijuana in certain circumstances, including: in any place where smoking is prohibited by law; in or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence; or on a school bus.¹⁸⁷ Additionally, medicinal marijuana users remain subject to Education Code provisions that call for suspension and expulsion of students based on the use, sale, and *being under the influence* of "a controlled substance," including marijuana.¹⁸⁸

California's Control, Regulate and Tax Adult Use of Marijuana Act, passed by California voters in November 2016 as "Proposition 64", does not meaningfully impact laws pertaining to student discipline.¹⁸⁹ The Act permits the possession and use of marijuana by those 21 years of age and older¹⁹⁰ and explicitly states that it

shall not be interpreted to amend, repeal, affect, or preempt laws prohibiting those younger than 21 years of age from engaging in conduct otherwise permissible under the Act.¹⁹¹ Therefore, school districts may impose discipline on a student, even if they are using marijuana for medicinal purposes.

WHAT ARE FERPA AND HIPAA?

The Family Educational Rights and Privacy Act (FERPA)¹⁹² and the Health Insurance Portability and Accountability Act of 1996 (HIPAA)¹⁹³ are federal privacy laws that apply to school districts and other educational agencies and institutions receiving federal funding.

FERPA and the California Education Code

A parent or eligible student's rights to a student's records are governed by FERPA and the California Education Code.

FERPA affects public schools and their pupils in two ways. First, FERPA generally gives a parent and/or an eligible student certain rights to inspect and review a student's education records, to request corrections of the records, and to obtain copies of those records. Second, with some exceptions, FERPA prohibits a school from disclosing educational records to a third party without written consent from the parent or the eligible student. "Eligible student" is defined to mean a student who is 18 years of age or is attending a postsecondary institution.¹⁹⁴

FERPA applies to all public elementary and secondary schools, among other institutions, that receive federal funding under any program administered by the United States Department of Education.¹⁹⁵ Private and religious schools that do not receive federal funding are not subject to FERPA.

FERPA requires every school to annually notify parents and eligible students of their rights under FERPA. The notice must explain how parents and eligible students may: inspect and review education records; request correction of information in those records; provide consent to disclosure of education records; and file a complaint concerning a school's failure to comply with FERPA. The notice must also specify any criteria for determining who constitutes a "school official" and what constitutes a "legitimate educational interest."¹⁹⁶

FERPA requires a school to maintain a log listing all organizations and individuals who have requested access to a student's education records. Among other things, the log must include each requesting party's specific interest in those records.¹⁹⁷ FERPA prohibits a third party who is granted access to a student's education records

from disclosing the information to anyone else without the parent or eligible student's written consent.¹⁹⁸

Protected and/or Confidential Student Information under FERPA and the Education Code

FERPA and its regulations govern access, inspection and the confidentiality of student records. The Education Code and its implementing regulations contain similar provisions governing access and privacy of student records with respect to school districts, county offices of education, and special schools operated by the California Department of Education (CDE).^{199,200}

Under FERPA, education records are records that: (1) directly relate to a student; and (2) are maintained by an educational institution or someone acting on behalf of the institution.²⁰¹ Although the statute does not define "directly related to a student", it is generally understood to mean "personally identifiable information" as defined in the FERPA regulations.²⁰²

The Education Code defines "pupil records" similarly. A pupil record is defined as "any item of information directly related to an identifiable pupil, other than directory information, that is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm, or other means."²⁰³ Pupil records include a student's health record.²⁰⁴

Under the Education Code, schools must establish policies and procedures related to the identification, review, and security of pupil records and for providing access and copies of those records to parents and eligible students.²⁰⁵

In this Manual, "education records" and "pupil records" are collectively referred to as "student records."

Records Exempt from FERPA

Certain records are exempt from FERPA, including but not limited to:

- Directory information
- Grades on peer-graded papers before they are recorded by a teacher
- Records kept in the sole possession of the maker, used only as a memory aid, and that aren't accessible or revealed to anyone else except a temporary substitute for the maker

- Records created and maintained by a law enforcement unit of the educational agency for the purpose of law enforcement.²⁰⁶

Directory Information

Certain information in student records designated as “directory information” may be disclosed without consent. Directory information is information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

Directory information includes, but is not limited to, the student’s name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended.²⁰⁷

Directory information does not include a student’s social security number, but it may include a student’s ID number if the number cannot be used by itself to access education records.²⁰⁸

Under California law, schools may not release directory information concerning a student identified as a homeless child or youth, unless a parent or eligible student has provided written consent.²⁰⁹

Schools do not have to release directory information, but if they do, they must give public notice of: (1) the types of information it has designated as directory information; (2) the parent or eligible student’s right to restrict the disclosure of such information (opt out); and (3) the period of time within which a parent or eligible student has to notify the school that he or she “does not want any or all of those types of information designated as directory information.”²¹⁰

Secondary schools must provide students’ names, addresses and telephone numbers to military recruiters, postsecondary institutions, and potential employers upon request. However, students and parents must first be given the opportunity to opt out of disclosing this information.²¹¹ Similar to the federal requirements, California school districts cannot exclude the military from access to directory information.²¹²

Who Can Access Student Records?

Parents of students less than 18 years old have an absolute right to access their children’s education records. This includes non-custodial parents, unless there is a

court order that specifically revokes these rights.²¹³ In California, a school district may also permit access to a student's records to any person for whom the parent has provided written consent.²¹⁴

When a student turns 18 years of age or begins attending a postsecondary institution, the rights and consent required of parents under FERPA transfer to the student.²¹⁵

In addition, the parents of a dependent student 18 years old or older or a student age 16 or older who has completed the 10th grade may access a student's education record.²¹⁶

A school may also provide access to education records to other persons, agencies, or organizations in compliance with a court order or lawfully issued subpoena.²¹⁷

Exceptions Permitting Disclosure

As a general rule, an educational agency or institution may not disclose students records to a third party without written consent from a parent or eligible student. However, there are number of exceptions to this rule which permit disclosure of information from student records without consent, including but not limited to the following:

School Officials: An educational agency or institution may disclose student records to "school officials" within the institution who have a "legitimate educational interest" in the student. FERPA regulations allow the school to determine which individuals possess such an interest.²¹⁸

Contractors & Consultants: FERPA permits educational agencies and institutions to disclose student records to contractors, consultants, volunteers, or other parties who have a legitimate educational interest in the records so long as the individuals are performing an institutional service or function for which the agency would otherwise use employees and are under the direct control of the agency or institution.²¹⁹ However, California does not permit disclosure to "a volunteer or other party" and requires the school district to have a written agreement with contractors or consultants with legitimate educational interest to whom records are disclosed.

Other Educational Institutions: Student records may be disclosed without consent to another school or institution of postsecondary education in which a student seeks or intends to enroll.²²⁰ Records can be disclosed even if the student is already attending the new school, if the records are related to the student's enrollment.

Authorized Representatives: Student records may be disclosed to representatives of the Comptroller General of the United States, the Attorney General of the United States, the Secretary of the United States Department of Education, or other state or local officials.²²¹

Health and Safety Emergency: Under certain conditions, an educational agency or institution may disclose student records “to appropriate parties, including the parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals.”²²²

In determining if there is a health and safety emergency, a school must “take into account the totality of the circumstances” and must conclude “there is an articulable and significant threat to the health and safety of a student or other individuals.”²²³

Studies by Organizations: Under certain conditions, education records may be disclosed to organizations conducting studies for educational agencies or organizations in connection with the development or administration of predictive tests or other student aid programs, or studies that are intended to improve educational instruction. Such studies must not permit identification of parents or students by anyone outside of the organization. All personally identifiable information must be destroyed when no longer needed for the study.²²⁴

Other exceptions allow disclosure to accrediting organizations; in connection with student financial aid; and to authorities in the juvenile justice system in accordance with state law.²²⁵

Protected Medical Records and Protected Medical Information under HIPAA

HIPAA was enacted by Congress in 1996 in order to, among other things, establish standards and regulations for electronic health care transactions and requirements for the protection and confidential handling of protected health information.²²⁶

HIPAA requires covered entities to establish appropriate safeguards to protect health records and other identifiable health information and to set limits and conditions on the disclosure and use of such information without a patient’s consent.²²⁷ HIPAA also gives patients certain rights, including the right to inspect and obtain copies of their health records and to request corrections to those records.

“Covered entities” subject to HIPAA are: health plans, health care clearinghouses and health care providers that transmit health information in electronic form in connection with specified covered transactions.²²⁸ Health care providers include

institutional providers of health or medical services, such as hospitals, as well as non-institutional providers, such as physicians, dentists, and other practitioners, along with any other person or organization that furnishes, bills, or is paid for health care in the normal course of business.”²²⁹

In most cases, HIPAA does not apply to elementary or secondary schools because the only health records maintained by the school are “education records” or “treatment records” of students under FERPA, both of which are excluded from coverage under HIPAA.²³⁰ This includes records maintained by a school-operated health clinic and records maintained by a school nurse.²³¹ As a result, FERPA, not HIPAA, generally controls a school district’s treatment of student health records.

In 2008, the U.S. Department of Health and Human Services and the U.S. Department of Education issued *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records* (November 2008),²³² which includes additional information regarding the intersection of FERPA and HIPAA outside the scope of this Manual.

As discussed above, FERPA protects a student’s education records, including health records, but permits school districts to disclose student health information under certain circumstances, so long as the district employees, agents, or other recipients of the information have a “legitimate educational interest” in the records. In addition, health records may be disclosed pursuant to the “health and safety emergency” exception discussed above. However, the scope of the records that can be disclosed may be limited, as discussed below.

Other Important Student Privacy Rights

Confidentiality of Medical Information Act

The California Confidentiality of Medical Information Act (CMIA) imposes restrictions on the disclosure of student medical information and records if that information was compiled while the student was a patient of a district employee who is a “provider of health care,” such as a school nurse.²³³

With certain exceptions, the CMIA bars school nurses from disclosing information obtained while rendering medical services to students to anyone (except other health care providers) without first obtaining an authorization.²³⁴ This applies to disclosure of information to parents regarding medical procedures that a minor is authorized to obtain without parental consent.

The CMIA lists nine entities that can compel the disclosure of student medical records, and seventeen exceptions to the rule against disclosure absent patient authorization and permits disclosure “when otherwise specifically required by law.”²³⁵

The statute requires a provider of health care to release medical information, pursuant to a court order, a lawful administrative directive, a criminal, civil, or investigative subpoena, a lawful search warrant, to the patient or the patient’s representative, or to the coroner, under certain circumstances.²³⁶

Providers of health care *may* also release medical information to, among other entities, other health care providers and health care professionals and facilities for the purpose of diagnosis and treatment of the patient; public agencies, and investigators conducting epidemiological studies or bona fide research projects; and a probate court for the purposes of determining the need for conservatorship or guardianship.²³⁷

Due to the complex nature of the law, school districts are advised to consult legal counsel before releasing student medical records.

Right to Confidential Medical Services

The right to obtain medical services without parental consent is based on the California Constitution and the Family Code.²³⁸ The confidential medical services that minors may legally obtain without prior parental consent are delineated in the Family Code and include the following:

- Minors age 12 and over have the right to consent to mental health outpatient treatment or counseling or residential shelter services under certain conditions;
- Minors may give consent to medical care related to the prevention or treatment of pregnancy without a parent or guardian’s consent;
- Minors age 12 and over have the right to consent to treatment of sexually transmitted diseases;
- Minors age 12 and over have the right to consent to treatment for rape;
- Minors, at any age have the right to consent to treatment for sexual assault; and
- Minors age 12 and over have the right to consent to treatment for drug/alcohol abuse.

The California Supreme Court has ruled that *not* allowing a minor to seek confidential medical treatment without parental consent is a violation of the minor's Constitutional right to privacy. As a result, school districts that notify parents/guardians when their children are released for confidential medical services may be violating the students' Constitutional privacy rights. It follows that notification of in-school medical treatment regarding the same confidential medical services may also violate the students' privacy rights.

Although non-binding, the California Attorney General has supported the conclusion that "[n]ot only may minors seek sensitive medical treatment without parental consent, they have the right to keep the existence of such medical services confidential, even from their parents."²³⁹

Notably, the Attorney General's Office cites to the CMIA as a basis for its conclusion. The Attorney General has also opined that, "a district's notification of a parent regarding a student's absence to receive confidential medical services would destroy the confidentiality of the medical services[.]"²⁴⁰ These principles seemingly apply to any disclosure of "confidential" medical services obtained by a student from a district health care provider or information of same that is otherwise disclosed to a district health care provider.

In addition, if a student proves that he or she has a medical appointment, a school is required to release the student without requiring any additional information regarding the nature of the medical services or informing the student's parents; and absences from school for such purposes are, by statute, excused.²⁴¹

CONCUSSIONS AND SUDDEN CARDIAC ARREST DURING ATHLETIC ACTIVITIES

What is a Concussion?

A concussion is a type of traumatic brain injury caused by a bump, blow, or jolt to the head or a hit to another part of the body. This can cause the head and the brain to move back and forth rapidly, causing chemical changes and sometimes, damaging brain cells and disrupting the brain's normal functioning.²⁴² Most concussions are mild, but all are serious and may result in serious complications, or even death, if not recognized and treated promptly.²⁴³

A study published in the *Journal of Athletic Training* found that an estimated 300,000 sport-related traumatic brain injuries, predominantly concussions, occur annually in the United States.²⁴⁴ In high school sports played by both sexes, girls sustained a higher rate of concussions, and concussions were highest in the sports of football and soccer.²⁴⁵

Recognizing a Concussion

Concussions can occur during any sport or recreational activity and may result from a fall, a collision between players, or impact with an obstacle, such as a goalpost. Sometimes an athlete may not immediately recognize that he or she has suffered a concussion, but will later report symptoms.²⁴⁶

Common symptoms of concussion include: difficulty thinking clearly, feeling “slowed down”, difficulty concentrating, and difficulty remembering new information.²⁴⁷ Recovery may take days, weeks or longer and can be slower among older adults, young children, and teens. People who have suffered one concussion are at risk for another, and may experience a longer recovery.²⁴⁸

Coaches and coaching staff should be trained to watch for and ask others to report:

A forceful bump, blow, or jolt to the head that results in rapid movement of the head, and any concussion symptoms or changes in an athlete’s behavior, thinking, or physical functioning.²⁴⁹

Signs that may indicate that an athlete has suffered a concussion include:

- Dazed or stunned appearance
- Confusion about assignment or position
- Unsure about game, score, or opponent
- Clumsy movements
- Slow responses to questions
- Mood, behavior or personality changes
- Inability to recall event prior to or after hit or fall²⁵⁰

Concussion Prevention and Response

California law includes a number of requirements for student athletes related to concussions and head injuries. Underpinning these laws are legislative findings on the underreporting of concussions and head injuries, the potential long-term brain damage from concussions and head injuries, and the importance of recovery and rehabilitation. School districts should ensure athletic departments, athletic directors, coaches and other relevant staff are aware of these laws and understand the

importance of reporting concussions and head injuries to avoid student injury and liability.

Required Training for Coaches on Signs/Symptoms of Concussions

The Education Code requires coaches to complete training in recognizing the signs and symptoms of a concussion, and how to respond appropriately. The concussion training must be completed by coaches when renewing their CPR/First Aid certification every two years. Training may be fulfilled through entities offering free, online, or other types of training courses.²⁵¹ A concussion fact sheet for coaches prepared by the Centers for Disease Control (CDC) is attached as Attachment O in Module 5 of this Manual.

When a Student Suffers a Concussion

The Education Code requires that all student athletes participating in athletic programs (outside of their regular physical education courses or activities during the regular school day) suspected of sustaining a concussion or head injury shall be immediately removed from the activity and prohibited from returning until he or she is evaluated by a licensed health care provider. The athlete will be permitted to return only upon written clearance from the licensed health care provider. A “licensed health care provider” means a licensed health care provider *who is trained in the management of concussions and is acting within the scope of his or her practice*.²⁵² If the licensed health care provider determines that the athlete has suffered a concussion, the athlete must complete a graduated “return to play protocol” under the supervision of a licensed health care provider.”²⁵³ The “return to play protocol” is discussed in greater detail, below.

Return to Learn (RTL)

A student who has suffered a concussion may experience difficulties with memory, attention, concentration and organizational skills.²⁵⁴ A student may need to rest for one or more days at home without reading, texting, or playing video games, and may need to return to school on a reduced schedule. The student’s treating physician may recommend additional accommodations, such as reduced homework, that should be implemented until the physician clears the student to return to school without limitations.²⁵⁵

The California Interscholastic Federation (CIF) has developed a suggested Return to Learn (RTL) Protocol that sets out a graduated return to home, school, and physical activities.²⁵⁶ The CIF website also includes a template Physician Letter to School that the student’s treating physician may use to describe limitations on school and

physical activity.²⁵⁷ Copies of the Return to Learn Protocol and the Physician Letter to School are attached as Attachment P in Module 5 of this Manual.

Return to Play (RTP)

If the licensed health care provider determines that the athlete has suffered a concussion, then the athlete must “complete a graduated return-to-play protocol of no less than seven days under the supervision of a licensed health care provider.”²⁵⁸ The graduated return to play protocol typically involves step-by-step increases in physical activity, sports activities, and contact sports. The CIF’s Sports Medicine Advisory Committee has developed a recommended Return to Play (RTP) Protocol Form for athletes who have suffered a concussion. The Protocol sets out the following program of increasing physical activity for athletes recovering from a concussion:

- No physical activity for at least two full days after the student is seen by physician
- Light aerobic activity
- Moderate aerobic activity/Light resistance training
- Strenuous aerobic activity/Moderate resistance training
- Non-contact training with sport-specific drills/No restrictions for weightlifting
- Limited contact practice
- Full contact practice
- Return to play (competition)

If a student experiences symptoms during any stage of the RTP Protocol, the Protocol should be stopped. If there are no symptoms the following day, the Protocol can be resumed at the same stage where it was stopped.²⁵⁹

A Copy of the CIF Concussion Return to Play (RTP) Protocol is attached as Attachment Q in Module 5 of this Manual.

Concussion/Head Injury Information Sheets

In addition, all schools offering an athletic program are required to issue, on an annual basis, a concussion and head injury information sheet for athletes and their parents or guardians that must be signed and returned before the athlete begins

practice or competition. This requirement is not limited to contact sports or to students of a certain age.

The U.S. Centers for Disease Control (CDC) and the CIF have prepared comprehensive concussion and head injury information sheets for athletes and their parents/guardians to sign and return before the athlete begins practice or competition. A copy of the CIF's information sheet is attached as Attachment R in Module 5 of this Manual. Additional information sheets can be located on the [CDC's website](#).

Limits on Full-Contact Football Practices

Education Code section 35179.5 prohibits middle school and high school football teams from conducting more than two "full-contact" practices per week during the preseason and regular season. The full contact portions of a practice cannot exceed 90 minutes in a single day. In addition, full contact practices are prohibited during the off-season. The law defines a "full-contact practice" as "a practice where drills or live action is conducted that involves collisions at game speed, where players execute tackles and other activity that is typical of an actual tackle.

District Liability for Student Concussions

In most cases, when a parent or student brings a lawsuit against a school district for concussion related injuries, the lawsuit is based on a claim of general tort negligence.²⁶⁰ (Module 1 of this Manual includes a discussion of general tort negligence). Concussion lawsuits can be brought in all shapes and sizes, but often are based on two distinct issues: (1) whether the school district and its staff reasonably knew, or should have known, that a head injury had occurred, and (2) whether the school district and its staff knew, or should have known, that the student could further aggravate the injury by further participation in a given activity. These cases are often settled short of trial, and due to the infancy of concussion protocol legislation, there are very few instances where California courts have determined whether a school district was liable for a student's concussion-related injury.

In one such instance, the Second District Court of Appeal found that a high school coach acted reasonably and was not negligent after his player sustained a second head injury during a football game.²⁶¹

Example: In *Zemke v. Arreola*, a high school football player sustained a dislocated finger during a varsity game. The player reported his dislocated finger to the coaching and medical staff who promptly treated him. Unbeknownst to the

coaching and medical staff, the player had also suffered a head injury during the game. The player did not complain of, or demonstrate, any symptoms associated with a head injury to the coaching or medical staff. Shortly after being treated for the dislocated finger, the player returned to play, and then collapsed on the field from a subsequent impact. The court found that the coach did not act negligently when he allowed the player to return to the game because the coach could not have reasonably known that the player was suffering from an initial head injury and was therefore susceptible to second head injury.

Sudden Cardiac Arrest

The Eric Paredes Sudden Cardiac Arrest Prevention Act (the Act)²⁶² became operative on July 1, 2017. The Act requires the California Department of Education (CDE) to post on its website guidelines, videos, and an information sheet on sudden cardiac arrest symptoms and warning signs.²⁶³

Schools are now required to collect and retain a copy of the California Interscholastic Federation's (CIF) sudden cardiac arrest information sheet for each student participating in an athletic activity governed by CIF.²⁶⁴ Schools must do this before the student begins participating in the athletic activity.²⁶⁵ A copy of the CIF's information sheet and parent/student signature form is attached as Attachment S in Module 5 of this Manual.

For activities not governed by CIF, schools must collect a signed acknowledgement from participating students and their parents, acknowledging that they have received and reviewed the CDE's information sheet on sudden cardiac arrest.²⁶⁶ As of the date of publication of this Manual, the CDE has not yet produced the information sheet.

School districts and schools are encouraged to post the CDE's materials on their websites.²⁶⁷ The Act also permits schools to hold an informational meeting prior to the start of each athletic season regarding the symptoms and warning signs of sudden cardiac arrest, which is recommended as a best practice.²⁶⁸

Students who pass out or faint during or immediately following an athletic activity, or who are known to have fainted or passed out during or immediately following an activity, **must be** removed from participation at that time by the athletic director, coach, athletic trainer, or other authorized person.²⁶⁹ Students who exhibit other symptoms of sudden cardiac arrest **may be** removed by an athletic trainer or other authorized person if they reasonably believe the symptoms are cardiac related.²⁷⁰ In the absence of an athletic trainer or authorized person, a coach who observes such symptoms must notify the student's parent or guardian so the parent or guardian

can take the appropriate course of action.²⁷¹ A removed student cannot participate in the athletic activity until he or she is cleared to return in writing by a physician and surgeon, nurse practitioner, or physician assistant.²⁷²

Coaches must complete a CDE course on sudden cardiac arrest symptoms and warning signs and must retake the course every two years.²⁷³ Coaches that fail to do so are ineligible to coach athletic activities until they have completed training,²⁷⁴ and may be suspended from coaching pending completion of training if they have not completed a course by July 1, 2019.²⁷⁵

OTHER HEALTH-RELATED CONCERNS

Naturally, students can also be affected by variety of longer-term health conditions that might impact their education, such as drug or alcohol use, eating disorders, asthma, diabetes or seizure disorders. School districts should be aware that for some students, such health conditions could meet the applicable definitions of a “disability” or “impairment” under state and/or federal laws. Such laws prohibit discrimination on the basis of a disability and also require a school to district to accommodate, or otherwise provide a “free appropriate public education” to address the disability. Even if a health condition is not considered a “disability,” school personnel should be aware of the applicable laws and regulations for providing care or assisting in providing care to students.

ADA Accommodations and Section 504 Plans

A school district’s obligations to accommodate or otherwise address certain disabling health conditions are established by the Americans with Disabilities Act Amendments Act (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Individuals with Disabilities Education Improvement Act (IDEA), and related state law. Under these laws, and depending on the needs of the specific student, health conditions may be considered a type of disability against which a school district may not discriminate, and is also legally required to accommodate or otherwise support through the provision of special education and related services.

Introduction to ADA

The ADA prohibits discrimination in government programs and activities based on a disability. It applies to state and local government entities, including school districts.²⁷⁶ Overall, the ADA requires that “individuals with disabilities must be provided an equally effective opportunity to participate in or benefit from a public entity’s aids, benefits, and services.”²⁷⁷ Specifically, the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities

of a public entity, or be subjected to discrimination by any such entity.”²⁷⁸ A “qualified individual with a disability” is generally an individual with a disability who meets the essential eligibility requirements for the receipt of services or the participation in the programs or activities provided by the school district.²⁷⁹ The following additional definitions apply under the ADA:

Disability: A physical or mental impairment that substantially limits one or more of the major life activities of the individual; a record of such an impairment; or being regarded as having such impairment.²⁸⁰

Physical or mental impairment: Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

A physical or mental impairment includes but is not limited to orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism.²⁸¹

Major life activities: Functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.²⁸²

Under the ADA, public schools must make reasonable accommodations or modifications for disabled persons in order to allow them to participate in or benefit from a program or service.²⁸³ However, a school district is not required to admit persons into programs if their presence would pose a direct threat to the health and safety of others or require a fundamental alteration of the program.²⁸⁴

Introduction to Section 504

Similar to the ADA, Section 504 also prevents discrimination in programs and activities based on a disability.²⁸⁵ Section 504, however, applies only to public entities that receive federal funds, including school districts.²⁸⁶ Note, although the language of Section 504 technically refers to persons with a “handicap” or “impairment,” the United States Department of Education and school districts generally refer to students who are covered by Section 504 as “students with *disabilities*.”²⁸⁷ Thus, in

this Manual the terms students with “disabilities” and/or “handicapped persons” are used interchangeably and are not intended to refer to different classes of students.

Section 504 prohibits school districts from discriminating against an individual on the basis of an actual or perceived disability.²⁸⁸ Specifically, Section 504 protects “qualified handicapped persons.” Under Section 504, a “handicapped person” is a person who: (1) has a physical or mental impairment which substantially limits one or more major life activities; (2) has record of such impairment; or (3) is regarded as having such an impairment. The Section 504 definitions of “physical or mental impairment,” and “major life activities,” are nearly identical to those provided under the ADA.

In addition to the general anti-discrimination component described above, Section 504 also requires school districts specifically to *provide a free appropriate public education* (FAPE) to each qualified handicapped person in the school district’s jurisdiction, regardless of the nature or severity of the student’s handicap.²⁸⁹ For school districts, a “qualified handicapped person” is a handicapped person who:

- is of an age during which non-handicapped persons are provided preschool, secondary or adult educational services;
- of any age during which it is mandatory under state law to provide such services to handicapped persons; *or*
- to whom a state is required to provide a FAPE under the IDEA.

Under Section 504, a FAPE is the provision of regular or special education and related aids and services that are: (1) designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met, and (2) are based upon adherence to certain specified procedures required under Section 504, described in more detail below.²⁹⁰ The provision of educational and related services must also be without cost to the handicapped person or his or her parents, except for fees that are also imposed on non-handicapped persons or their parents.²⁹¹

Meeting Educational and Health Needs under Section 504 and ADA

As mentioned above, the key definitions relevant to students in public school districts are substantially similar under the ADA and under Section 504. As such, in most cases, a disabled student who qualifies for protections under the ADA will also qualify to receive a FAPE under Section 504. Furthermore, in many (but not all) situations, providing a FAPE under Section 504 will also satisfy a school district’s legal obligations

to accommodate disabilities under the ADA.²⁹² Accordingly, this Manual primarily addresses the standards for provision of a FAPE under Section 504.

With respect to health conditions, a medical diagnosis alone is not sufficient to automatically entitle a student to receive a FAPE under Section 504. Even if a student has an “impairment” under Section 504, they are not entitled to a FAPE specifically, unless that impairment substantially limits a major life activity. In any case, whether a student qualifies to receive a FAPE, the specific needs of that student, and the special education or related services to be provided to the student, are determined on an individualized basis.

That being said, information about common health conditions and whether they could qualify a student to receive FAPE under Section 504 is included below:

Drug & alcohol use: Any student who is *currently* engaging in the illegal use of drugs is *not* a “qualified individual with a disability” and is not protected under either the ADA or Section 504.²⁹³ However, a student may be eligible under the ADA or Section 504 if he or she attends a rehabilitation program and is no longer engaging in the illegal use of drugs.²⁹⁴ Section 504 allows school districts to take disciplinary action against students with disabilities using drugs to the same extent as students without disabilities.²⁹⁵ In comparison, a student with *alcoholism* could potentially be eligible for protections under Section 504 if the impairment of alcoholism substantially limits a major life activity.²⁹⁶

Otherwise, with respect to both alcohol and drug use, school district staff should be aware that the use itself of drugs or alcohol could be caused by or related to some other underlying disability, for example, mental health issues. Under those circumstances, a district may need to evaluate the student to determine whether his drug or alcohol problem is a symptom of a qualifying disability, and if so, provide him with the appropriate services.²⁹⁷

Eating disorders: An eating disorder could also qualify a student for protections under the ADA and Section 504, provided that the impairment substantially limits a major life activity. Eating disorders include:

- **Anorexia:** A serious physical and emotional illness in which an abnormal fear of being fat leads to very poor eating habits and dangerous weight loss.²⁹⁸ For example, OCR has found that a parent informing a teacher of her daughter’s anorexia put the school district on notice that the student may need to be assessed for Section 504 eligibility.²⁹⁹

- **Bulimia:** A serious physical and emotional illness in which people and especially young women eat large amounts of food and cause themselves to vomit in order to not gain weight.³⁰⁰
- **Binge eating:** Uncontrolled compulsive eating especially as a symptom of bulimia or binge eating disorder. Binge eating disorder is characterized by recurring episodes of binge eating accompanied by a sense of lack of control and often negative feelings about oneself but without intervening periods of compensatory behavior (such as self-induced vomiting, purging by laxatives, fasting or prolonged exercise).³⁰¹

Relevant here, it should also be noted that California Department of Education's (CDE) current Health Education Content Standards address, for grades 7 and 8, the harmful effects of using diet pills without using physician supervision; the signs of various eating disorders; the causes, symptoms and harmful effects of eating disorders; and the need for people with eating disorders to receive professional help. The CDE is also in the process of revising its *Health Education Framework for California Public Schools*, which was last published in 2003 and is no longer current. The *Health Education Framework* revisions are expected to be completed in 2019. In updating the *Health Education Framework*, the legislature has encouraged the CDE to consider adopting a distinct category for mental health instruction to educate pupils on all aspects of mental health, including but not limited to eating disorders.³⁰²

Asthma: A chronic lung disorder that is marked by recurring episodes of airway obstruction manifested by labored breathing accompanied especially by wheezing and coughing and by a sense of constriction in the chest, and that is triggered by hyperactivity to various stimuli (such as allergens or rapid change in air temperature).³⁰³

Diabetes: A serious disease in which the body cannot properly control the amount of sugar in the blood because it does not have enough insulin.³⁰⁴ OCR has indicated that the nature of some impairments is such that "in virtually every case" the student will qualify for Section 504 protections. For example, a school district "should not need or require extensive documentation or analysis to determine that a child with diabetes...has a disability" under Section 504 and the ADA.³⁰⁵

As stated above, school districts must provide a FAPE to qualified handicapped individuals. To do so, a school district must first conduct evaluations of the student and gather information from a variety of sources. A group of persons knowledgeable about the child and the evaluation data must then determine if the child qualifies for a FAPE under Section 504, and if so, the regular education, special education, related

services, and/or aids and accommodations to be provided to the student as result of the impairment.³⁰⁶ This process will typically culminate in a written document known as a "Section 504 Plan."

For students with health concerns, a school nurse should be part of the Section 504 team to advise the school staff as to how the student's health condition could affect him or her at school, potential side effects of any medication, and what accommodations may be needed. Though Section 504 plans are developed on an individual basis, some examples of common special education, related services, or accommodations that could be provided are:

- allowing student to take breaks to snack, test blood glucose levels, or use the restroom throughout the day (i.e., for students with diabetes);
- allow student to take breaks throughout the day if they become tired;
- extra time to complete/full credit for late assignments if student misses school due to their health condition or doctor appointments;
- mental health counseling services (for depression, eating disorders, or other mental health conditions); and/or
- shortened or reduced assignments.

Individuals with Disabilities Education Improvement Act (IDEA) and IEPs

In addition to Section 504 and the ADA, the IDEA is another set of federal laws that protects students with disabilities. The main purpose of the IDEA is to ensure that school districts provide a FAPE to students with disabilities.³⁰⁷ Though both Section 504 and the IDEA require school districts to provide a FAPE, the IDEA sets forth different and generally more stringent standards for students to be eligible for a FAPE than those applicable to Section 504. Therefore, students who qualify for a FAPE under Section 504 do not automatically or even necessarily also qualify for protections under the IDEA.

Specifically, the IDEA requires provision of a FAPE to each "child with a disability." A child with a disability is one who meets the criteria for one or more of the enumerated disability categories, and who, by reason of that disability, requires special education and related services.³⁰⁸

The potential qualifying disability categories include:³⁰⁹

- Autism;

- Deaf-Blindness;
- Deafness;
- Emotional Disturbance;
- Hearing Impairment;
- Intellectual Disability;
- Multiple Disabilities;
- Orthopedic Impairment;
- Specific Learning Disability;
- Speech or Language Disorder;
- Traumatic Brain Injury;
- Visual Impairment; and
- Other Health Impairment

For students with health issues, the most relevant *potential* eligibility category is typically Other Health Impairment (OHI). Under California state regulations, to meet the criteria for OHI, a student must have limited strength, vitality or alertness, including heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

- is due to a chronic or acute health problem (such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome), and
- adversely affects a child's educational performance.³¹⁰

If a student meets the above criteria *and requires special education*, he or she is entitled to a FAPE under the IDEA. A FAPE as defined under the IDEA consists of special education and related services that are provided at public expense, meet state standards, include an appropriate preschool, elementary school or secondary school education, and are provided in conformity with a properly-developed Individualized Education Program (IEP).³¹¹

School districts must develop an IEP for each student with a disability. An IEP must include, in sum:³¹²

- a statement of the child's present levels of academic achievement and functional performance;
- a statement of measurable annual goals to meet the needs resulting from the disability, enable the child to make progress in the general education curriculum, and meet all other educational needs resulting from the disability;
- a description of how progress toward meeting the goals will be measured;
- a statement of the special education and related services and supplementary aids and services to be provided to the child or on behalf of the child;
- an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class;
- any individual appropriate accommodations; and,
- as applicable, post-secondary transition services.

The "related services" mentioned above can take a variety of forms, including for example, speech-language, occupational therapy, adapted physical education, and counseling and guidance services.

Relevant to students with medical needs, related services can also include health and nursing services or specialized physical health care.³¹³ Health and nursing services may include providing services by qualified personnel; managing the individual's health problems on the school site; consulting with parents, students and other staff; counseling with parents or students regarding health problems; and maintaining communication with health agencies providing care to individuals with disabilities.³¹⁴ Specialized physical health services are those prescribed by the child's physician requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the child to attend school.³¹⁵

¹ [Pen. Code, § 11165.](#)

² [Pen. Code, § 11165.7.](#)

³ Most community colleges have operated in accordance with a 2002 legal opinion issued by the California Community Colleges Chancellor’s Office, which asserted that classified, academic, and counseling employees of community colleges were mandated reporters under the CANRA.

⁴ [Pen. Code, § 11165.7, subd. \(b\).](#)

⁵ *Ibid.*

⁶ *Mandated Reporter Training: School Personnel Training Module* (2015) California Department of Social Services and Office of Child Abuse Protection (modified by the Chadwick Center for Children and Families at Rady Hospital—San Diego) <<http://educators.mandatedreporterca.com>> [as of Nov. 14, 2016].

⁷ [Pen. Code, § 11166.5, subd. \(a\).](#)

⁸ *Ibid.*

⁹ [Pen. Code, § 11165.6.](#)

¹⁰ *Ibid.*

¹¹ [Pen. Code, § 11165.15.](#)

¹² [Pen. Code, § 11166.05.](#)

¹³ *Mandated Reporter Training: School Personnel Training Module* (2015) California Department of Social Services and Office of Child Abuse Protection (modified by the Chadwick Center for Children and Families at Rady Hospital—San Diego) <<http://educators.mandatedreporterca.com>> [as of Nov. 14, 2016].

¹⁴ *Ibid.*

¹⁵ [Pen. Code, § 11166, subd. \(a\)\(1\).](#)

¹⁶ *Ibid.*

¹⁷ [Pen. Code, § 11166.3.](#)

¹⁸ *Mandated Reporter Training: School Personnel Training Module* (2015) California Department of Social Services and Office of Child Abuse Protection (modified by the Chadwick Center for Children and Families at Rady Hospital—San Diego) <<http://educators.mandatedreporterca.com>> [as of Nov. 14, 2016].

¹⁹ [Pen. Code, § 11166, subd. \(a\).](#)

²⁰ [Pen. Code, § 11167, subd. \(a\).](#)

²¹ [Pen. Code, § 11166, subd. \(a\).](#)

²² *Suspected Child Abuse Report* (2012) California Department of Justice Office of the Attorney General <http://ag.ca.gov/childabuse/pdf/ss_8572.pdf> [as of Nov. 11, 2016]; *Instructions for Completion of Form SS 8572* (2016) California Department of Justice Office of the Attorney General <https://oag.ca.gov/sites/all/files/agweb/pdfs/childabuse/8572_instruct.pdf> [as of Nov. 11, 2016].

²³ [Pen. Code, § 11166, subd. \(f\), \(g\), \(h\), and \(i\).](#)

²⁴ [Pen. Code, § 11166, subd. \(h\).](#)

²⁵ [Pen. Code, § 11166, subd. \(i\)\(1\)](#)

²⁶ [Pen. Code, § 11166, subd. \(i\)\(3\)](#)

²⁷ [Pen. Code, § 11166, subd. \(c\).](#)

²⁸ [Ed. Code, § 44421.](#)

²⁹ [Pen. Code, § 11167, subd. \(d\).](#)

³⁰ [Pen. Code, § 11172, subd. \(a\).](#)

³¹ [Pen. Code, § 11172, subd. \(b\).](#)

³² [Pen. Code, § 11172, subd. \(b\).](#)

³³ [Pen. Code, §§ 11164, subd.\(b\); 11165.12, subd. \(a\);](#) *Stecks v. Young* (1995) 38 Cal. App. 4th 365 at 371.

³⁴ [Pen. Code, § 11165.12.](#)

³⁵ *Ibid.*

³⁶ [Pen. Code, §§ 11167, subd. \(d\)\(1\); 11167.5, subd. \(a\) and \(b\).](#)

³⁷ [Pen. Code, § 11167.5.](#)

³⁸ *Cuff v. Grossmont Union High School Dist.* (2013) 221 Cal.App.4th 582.

³⁹ [Pen. Code, § 11167, subd. \(d\)\(2\).](#)

⁴⁰ [Pen. Code, § 11165.9.](#)

⁴¹ [Pen. Code, § 11174.3.](#)

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ [See Welf. and Inst. Code, § 300 et seq.](#)

⁴⁵ [Ed. Code, § 48906.](#)

⁴⁶ [Ed. Code, § 44691, Pen. Code, § 11165.7, subd. \(d\).](#)

⁴⁷ [Ed. Code, § 44691.](#)

⁴⁸ *Ibid.*

⁴⁹ [Ed. Code, § 44252.](#)

⁵⁰ [Ed. Code, § 48987.](#)

⁵¹ *In re Christopher W.* (1973) 29 Cal.App.3d 777,780-81.

⁵² *Rodriguez v. Inglewood Unified Sch. Dist.* (1986) 186 Cal.App.3d 707, 714-715; see also [Cal. Const., art. I, § 28, subd.\(c\)](#); [Ed. Code, § 48200.](#)

⁵³ *Acosta v. Los Angeles Unified Sch. Dist.* (1995) 31 Cal.App.4th 471, 477; *Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508, 513; *Dailey v. Los Angeles Unified School Dist.* (1970) 2 Cal.3d 741, 747.

⁵⁴ *Acosta, supra*, at p. 477.

⁵⁵ [5 C.C.R. §§ 5551, 5552.](#)

⁵⁶ [Ed. Code, 44814, 44815; 5 C.C.R. 5552.](#)

⁵⁷ *Virginia G. v. ABC Unified School District* (1993) 15 Cal.App.4th 1848, 1853.

⁵⁸ *Leger v. Stockton Unified School Dist.*, 202 Cal.App.3d 1448, 1452.

⁵⁹ *Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508, 513.

⁶⁰ *Perna v. Conejo Valley Unified School Dist.* (1983) 143 Cal.App.3d 292, 294.

⁶¹ [Ed. Code, § 44808.](#)

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.* at 269.

⁶⁶ See *Hoyem v. Manhattan Beach City School Dist.* (1978) 22 Cal.3d 508, 520-21.

⁶⁷ *Ibid.* at 796-97.

⁶⁸ See *Perna v. Conejo Valley Unified School Dist.* (1983) 143 Cal.App.3d 292, 296 (in which the court found that a district could face liability for a student's injuries when district staff undertook to keep the student after school to grade papers and he was then subsequently injured, due in part to the fact that when the student left school, the crossing guard was no longer on duty to ensure his safety when crossing a busy street.).

⁶⁹ [Ed. Code, § 44808](#); *Farley v. El Tejon Unified School Dist.* (1990) 225 Cal.App.3d 371.

⁷⁰ *Farley v. El Tejon Unified School Dist.* (1990) 225 Cal.App.3d 371.

⁷¹ [Ed. Code, § 44808.](#)

-
- ⁷² *Ramirez v. Long Beach Unified School District* (2002) 105 Cal.App.4th 182, 189-190.
- ⁷³ *Avila v. Citrus Community College District* (2006) 28 Cal. 4th 148.
- ⁷⁴ [Ed. Code, § 35330](#); see also *Casterson v. Superior Court of Santa Cruz* (2002) 101 Cal.App.4th 177, 185-186 (citing *Wolfe v. Dublin Unified School District* (1997) 56 Cal.App.4th 126, 135); *Myricks v. Lynwood Unified School Dist.* (1999) 74 Cal.App.4th 231, 239.
- ⁷⁵ *Castro v. Los Angeles Bd. of Education* (1976) 54 Cal.App.3d 232.
- ⁷⁶ *Wolfe v. Dublin Unified School Dist.* (1997) 56 Cal.App.4th 126.
- ⁷⁷ *Ibid.*
- ⁷⁸ *Farley v. El Tejon Unified School Dist.* (1990) 225 Cal.App.3d 371, 376.
- ⁷⁹ [Ed. Code, § 35350](#).
- ⁸⁰ [49 U.S.C. § 5323, subd. \(f\)](#).
- ⁸¹ [Student v. Horizon Instructional Systems Charter School](#), (2011) OAH Case No. 2011060763.
- ⁸² *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* (2016) U.S. Department of Education and U.S. Department of Health and Human Services <<https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>> [as of May 15, 2018].
- ⁸³ <https://www.uber.com/legal/terms/us/>
- ⁸⁴ California Public Utilities Decision 97-07-063.
- ⁸⁵ *L.R. v. School Dist. of Philadelphia* (3d Cir. 2016) No. 14-4640. See also *Dailey v. Los Angeles Unified Sch. Dist.*, (1970) 2 Cal.3d 741 (holding that California law imposes on school authorities a duty to "supervise at all times the conduct of the children on school grounds and to enforce those rules and regulations necessary to their protection.")
- ⁸⁶ [Gov. Code, § 830, subd. \(c\)](#).
- ⁸⁷ [Gov. Code, § 830, subd. \(a\)](#).
- ⁸⁸ *Ibid.*
- ⁸⁹ [Gov. Code, § 835](#).
- ⁹⁰ *Bartell v. Palos Verdes Peninsula Sch. Dist.* (1978) 83 Cal.App.3d 492, 497-98.
- ⁹¹ *Ibid.* at 497.
- ⁹² *Ibid.* at 497-98.
- ⁹³ *Calandri v. Lone Unified Sch. Dist. of Amador Cty.* (1963) 219 Cal. App. 2d 542, 548.
- ⁹⁴ *Weldy v. Oakland High School Dist.* (1937) 19 Cal.App.2d 429, 431.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.* at 431-32; see also *Woodsmall v. Mt. Diablo Unified School Dist.*, 188 Cal.App.2d 262, 267; *Ford v. Riverside City School Dist.*, 121 Cal.App.2d 554, 562-63.

⁹⁷ [Ed. Code, § 33353, subd. \(a\).](#)

⁹⁸ [Ed. Code, § 33353, subd. \(b\)\(1\)\(E\).](#)

⁹⁹ California School Boards Association Policy Manual, Sample Board Policy No. 6145.2.

¹⁰⁰ *Pursuing Victory with Honor – Possible Action Steps for Superintendents* (2016) California Interscholastic Federation <http://www.cifstate.org/coaches-admin/pvh/action_steps_supes.pdf> [as of Nov. 14, 2016]; *Pursuing Victory with Honor – Possible Action Steps for School Site Principals* (2016) California Interscholastic Federation <http://www.cifstate.org/coaches-admin/pvh/action_steps_principals.pdf> [as of Nov. 14, 2016].

¹⁰¹ *CIF Southern Section Blue Book (2015-2016)* (August 8, 2015) p. 42, California Interscholastic Federation <<http://cifss.org/wp-content/uploads/2015/06/2015-16-CIFSS-Blue-Book-as-of-8-18-15.pdf>> [as of Nov. 14, 2016].

¹⁰² [Ed. Code, § 48900, subd. \(s\).](#)

¹⁰³ [Gov. Code, § 831.7.](#)

¹⁰⁴ *Ibid.*

¹⁰⁵ *Avila v. Citrus Community College District* (2006) 41 Cal.Rptr.3d 299, 307; *Acosta v. Los Angeles Unified School District* (1995) 31 Cal.App.4th 471, 476.

¹⁰⁶ *Avila*, 41 Cal.Rptr.3d at 307.

¹⁰⁷ *Hartzell v. Connell* (1984) 35 Cal.3d 899, 909.

¹⁰⁸ *Avila*, 41 Cal.Rptr.3d at 308.

¹⁰⁹ *Ibid.* at 310.

¹¹⁰ *Ibid.* at 310-11.

¹¹¹ *Ibid.* at 313.

¹¹² *Ibid.*

¹¹³ [Ed. Code, § 32221.](#)

¹¹⁴ [Ed. Code, § 32221.5.](#)

¹¹⁵ [Ed. Code, § 32220.](#)

¹¹⁶ [Ed. Code, § 49474.](#)

¹¹⁷ *Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508, 513.

¹¹⁸ See *Hohe v. San Diego Unified School* (1990) 224 Cal. App. 3d 1559 (written release found enforceable related to voluntary student participation in hypnotism show at school); *Aaris v. Las Virgenes Unified School* (1998) 64 Cal. App. 4th 1112 (written release was appropriate for student voluntarily participating in cheerleading).

¹¹⁹ See *Allabach v. Santa Clara County Fair Assn.* (1996) 46 Cal. App. 4th 1007.

¹²⁰ See [Cal. Civ. Code § 1714](#); *Knight v. Jewett*, 3 Cal. 4th 296, 315 (Cal. 1992).

¹²¹ *Ibid.*

¹²² *Ibid.* at 315-16.

¹²³ <https://www.ocregister.com/2010/06/03/district-settles-with-student-who-lost-thumb-in-wood-shop/>.

¹²⁴ <https://alexanderlaw.com/articles/2017/06/high-school-student-injured-at-robotics-competition-files-lawsuit-against-school-district/>.

¹²⁵ *Ziegler v Santa Cruz City High School Dist.* (1961) 193 Cal App 2d 200

¹²⁶ *Coates v. Newhall Land & Farming, Inc.* (1987) 191 Cal. App. 3d 1, 7.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Bennett v. United States Cycling Federation* (1987) 193 Cal. App. 3d 1485.

¹³⁰ *Leon v. Family Fitness Center (# 107), Inc.* (1998) 61 Cal. App. 4th 1227.

¹³¹ *Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd* (1983) 147 Cal. App. 3d 309.

¹³² *Benedek v. PLC Santa Monica, LLC* (2002) 104 Cal. App. 4th 1351.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Knight v. Jewett* (1992) 3 Cal. 4th 296.

¹³⁶ See, e.g., *Hohe v. San Diego Unified Sch. Dist.* (1990) 224 Cal.App.3d 1559.

¹³⁷ *City of Santa Barbara v. Superior Court of Santa Barbara County* (2007) 41 Cal. 4th 747, 751.

¹³⁸ *Ibid.* at 754.

¹³⁹ [Ed. Code, § 49475, subd. \(a\)\(2\)](#).

¹⁴⁰ [Ed. Code, § 32280](#) *et seq.* requires schools to develop "comprehensive school safety plans" that identify "appropriate strategies and programs that will provide or maintain a high level of school safety"

¹⁴¹ The California Emergency Medical Services Authority recommends that each school designate a trained responsible administrator for administrator for emergency situations and that at least one individual, other than the school nurse, is trained in CPR and first aid in each school. See *Emergency First Aid Guidelines for California Schools* (2013) California Emergency Medical Services Authority <http://www.emsa.ca.gov/Media/Default/PDF/EMSC_Interactive_Final.pdf>, p. 12 [as of October 31, 2016]).

¹⁴² [Ed. Code, § 49408.](#)

¹⁴³ [Gov. Code, §§ 8550 – 8669.7.](#)

¹⁴⁴ [Health & Safety Code, §§ 120130, subd. \(c\); 120275.](#)

¹⁴⁵ [Ed. Code, § 49407.](#)

¹⁴⁶ [Health & Saf. Code, § 1799.102.](#)

¹⁴⁷ *Emergency First Aid Guidelines for California Schools* (2013) California Emergency Medical Services Authority <http://www.emsa.ca.gov/Media/Default/PDF/EMSC_Interactive_Final.pdf> [as of October 31, 2016].

¹⁴⁸ See *Tips for Preventing Heat-Related Illness* (June 19, 2017) Centers for Disease Control and Prevention <<https://www.cdc.gov/disasters/extremeheat/heattips.html>> [as of Nov. 1, 2016].

¹⁴⁹ *Ibid.*

¹⁵⁰ [Ed. Code, § 49413.](#)

¹⁵¹ [Ed. Code, § 49413, subd. \(b\)\(3\).](#)

¹⁵² [Ed. Code, § 49417.](#)

¹⁵³ [Civ. Code, § 1714.21; Ed. Code, § 49417.](#)

¹⁵⁴ *Ibid.*

¹⁵⁵ [Health & Saf. Code, § 1797.196, subd. \(c\)\(1\).](#)

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ [Health & Saf. Code, § 1797.196, subd. \(b\)\(2\)\(A\).](#)

¹⁵⁹ [Ed. Code, § 49423](#); *American Nurses Ass’n v. Torlakson* (2013) 57 Cal.4th 570.

¹⁶⁰ [5 C.C.R. § 601, subd. \(e\).](#)

¹⁶¹ [Ed. Code, § 49423, subd. \(b\)\(1\)](#); see also [5 C.C.R. § 600.](#)

¹⁶² [5 C.C.R. §§ 602, 603.](#)

¹⁶³ [Ed. Code, § 49423.1.](#)

¹⁶⁴ [Ed. Code, § 49414.5.](#)

¹⁶⁵ [Ed. Code, § 49414.](#)

¹⁶⁶ [Ed. Code, § 49414.3.](#)

¹⁶⁷ [Ed. Code, § 49423.1, subd. \(a\).](#)

¹⁶⁸ [Ed. Code, § 49423.1, subd. \(b\)\(1\).](#)

¹⁶⁹ [Ed. Code, § 49423.1, subd. \(b\)\(2\).](#)

¹⁷⁰ See *American Nurses Ass’n v. Torlakson* (2013) 57 Cal.4th 570; [Ed. Code, §§ 49414.5, 49423, 49423.6; 5 C.C.R. §§ 600 et seq.](#)

¹⁷¹ [Ed. Code, § 49414.5, subd. \(d\)\(2\).](#)

¹⁷² [Ed. Code, § 49414.5, subd. \(b\)\(2\).](#)

¹⁷³ [Ed. Code, § 49414.5, subd. \(b\)\(4\).](#)

¹⁷⁴ [Ed. Code, § 49414.5, subd. \(b\)\(5\).](#)

¹⁷⁵ See [Ed. Code, § 49414.7.](#)

¹⁷⁶ [Ed. Code, § 49414.7, subd. \(g\).](#)

¹⁷⁷ See [Ed. Code, § 49423](#); *American Nurses Ass’n v. Torlakson* (2013) 57 Cal.4th 570.

¹⁷⁸ [Ed. Code, § 49414.](#)

¹⁷⁹ [Ed. Code, § 49414, subd. \(d\).](#)

¹⁸⁰ [Ed. Code, § 49414, subd. \(e\)\(2\).](#)

¹⁸¹ [Ed. Code, § 49414, subd. \(g\)\(1\).](#)

¹⁸² [Ed. Code, § 49414, subd. \(h\).](#)

¹⁸³ [Health & Safety Code § 11362.5.](#)

¹⁸⁴ *Ibid.*

¹⁸⁵ [21 U.S.C. §§ 801 et seq.](#)

¹⁸⁶ See [Ed. Code §§ 48900, 48915.](#)

¹⁸⁷ [Health & Safety Code § 11362.79\)](#)

¹⁸⁸ See [Ed. Code, §§ 48900\(c\), 48915, subd. \(a\)\(1\)\(C\), \(b\).](#)

¹⁸⁹ The Act does, however, affect minors’ criminal liability for possession or use of marijuana. See, e.g., [Health & Saf. Code, § 11357.](#)

¹⁹⁰ [Health & Saf. Code, § 11362.1.](#)

¹⁹¹ [Health & Saf. Code, § 11362.45.](#)

¹⁹² [20 U.S.C. § 1232g; 34 C.F.R. § 99.](#)

¹⁹³ [45 C.F.R. § 160 *et seq.*](#)

¹⁹⁴ [34 C.F.R. § 99.3.](#)

¹⁹⁵ [34 C.F.R. § 99.1](#); *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records* (November 2008), p. 1, U.S. Department of Health and Human Services and U.S. Department of Education <<http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>> [as of November 21, 2016].

¹⁹⁶ [34 C.F.R. § 99.7.](#)

¹⁹⁷ [34 C.F.R. § 99.32.](#)

¹⁹⁸ [34 C.F.R. § 99.33.](#)

¹⁹⁹ [20 U.S.C. § 1232g; 34 C.F.R. § 99; Ed. Code, § 49061 *et seq.*; 5 C.C.R. §§ 400, 430-433.](#)

²⁰⁰ The Supremacy Clause of the United States Constitution provides that a federal law preempts any directly conflicting state law. This means that when a state law is in direct conflict with federal law, the federal law prevails. A state law can afford more rights than federal law, but it cannot reduce or restrict the rights conferred by federal law. Because FERPA is a federal law, its provisions are controlling. The Education Code acknowledges the Legislature's intent to avoid conflicts between FERPA and the Education Code; however, additional rights and protections provided under the Education Code that do not conflict with FERPA are enforceable.

²⁰¹ [20 U.S.C. § 1232g\(a\)\(4\)\(A\); 34 C.F.R. § 99.3.](#)

²⁰² [34 C.F.R. § 99.3.](#)

²⁰³ [Ed. Code, § 49061, subd. \(b\).](#)

²⁰⁴ [Ed. Code, § 49062.](#)

²⁰⁵ [Ed. Code, § 49069; 5 C.C.R. § 431.](#)

²⁰⁶ [34 C.F.R. § 99.3.](#)

²⁰⁷ [34 C.F.R. § 99.3.](#)

²⁰⁸ *Ibid.*

²⁰⁹ [Ed. Code, § 49073, subd. \(c\).](#)

²¹⁰ [34 C.F.R. § 99.37\(a\)\(1\)-\(3\).](#)

²¹¹ [20 U.S.C. § 7908, subd. \(a\)\(2\)\(A\).](#)

²¹² [Ed. Code, § 49073.5.](#)

²¹³ [34 C.F.R. § 99.4](#); [Ed. Code, § 49069](#); [Fam. Code, § 3025](#).

²¹⁴ [Ed. Code, § 49075](#).

²¹⁵ [34 C.F.R. 99.3, 99.5](#).

²¹⁶ [Ed. Code, § 49076, subd. \(a\)\(1\)\(E\)-\(F\)](#).

²¹⁷ [Ed. Code, § 49077](#).

²¹⁸ [34 C.F.R. 99.31, subd. \(a\)\(1\)](#).

²¹⁹ *Ibid.*; [Ed. Code, § 49076, subd. \(a\)\(2\)\(G\)](#).

²²⁰ [34 C.F.R. § 99.31, subd. \(a\)\(2\)](#).

²²¹ [34 C.F.R. § 99.31, subd. \(a\)\(3\)](#).

²²² [34 C.F.R. § 99.36, subd. \(a\)](#).

²²³ [34 C.F.R. § 99.36, subd. \(c\)](#).

²²⁴ [34 C.F.R. § 99.31, subd. \(a\)\(6\)](#).

²²⁵ [34 C.F.R. § 99.31, subd. \(a\)](#).

²²⁶ U.S. Department of Health and Human Services and U.S. Department of Education, *supra* at p. 2.

²²⁷ *Ibid.*

²²⁸ [45 C.F.R. § 160.103](#); U.S. Department of Health and Human Services and U.S. Department of Education, *supra* at p. 2.

²²⁹ [45 C.F.R. § 160.103](#); U.S. Department of Health and Human Services and U.S. Department of Education, *supra* at p. 3.

²³⁰ *Ibid.*

²³¹ U.S. Department of Health and Human Services and U.S. Department of Education, *supra* at p. 4.

²³² U.S. Department of Health and Human Services and U.S. Department of Education, *supra*.

²³³ [Civ. Code, § 56.10 et seq.](#)

²³⁴ [Civ. Code, § 56.10, subd. \(a\)](#).

²³⁵ [Civ. Code, § 56.10, subd. \(b\)-\(c\)](#).

²³⁶ [Civ. Code, § 56.10, subd. \(b\)](#).

²³⁷ [Civ. Code, § 56.10, subd. \(c\)](#).

²³⁸ Cal. Const. Art. 1, § 1; *see also American Academy of Pediatrics v. Lungren* (1997) 16 Cal. 4th 307, 3014; [Fam. Code, §§ 6920-6929](#).

²³⁹ 87 Ops. Cal. Atty. Gen. 168, 173 (Nov. 9, 2004).

²⁴⁰ *Ibid.* at 173; *see also* 66 Ops. Cal. Atty. Gen. 244, 251 (July 28, 1983).

²⁴¹ [See Ed. Code, §§ 46010.1, 48205.](#)

²⁴² *Heads Up to School Sports: Concussion in High School Sports* (Online Concussion Training for Coaches) (2016) U.S. Department of Health and Human Services & Centers for Disease Control and Prevention <<https://www.cdc.gov/headsup/highschoolsports/coach.html>> [as of October 1, 2016].

²⁴³ *Injury Prevention and Control: Traumatic Brain Injury & Concussion* (2016) Centers for Disease Control and Prevention <<http://www.cdc.gov/traumaticbraininjury>> [as of October 1, 2016].

²⁴⁴ Comstock, et al., *Concussions Among United States High School and Collegiate Athletes* (2007) 42(4) J. Athl. Train. 495 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2140075>> [as of Nov. 21, 2016].

²⁴⁵ *Ibid.*

²⁴⁶ *Heads Up to School Sports: Concussion in High School Sports* (Online Concussion Training for Coaches), *supra*.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ [Ed. Code, § 35179.1, subd. \(c\)\(6\).](#)

²⁵² [Ed. Code, § 49475.](#)

²⁵³ *Ibid.*

²⁵⁴ *CIF Concussion Information Sheet* (2015) California Interscholastic Federation <http://static.psbins.com/n/2/x2od9nptl7ch57/CIF_Concussion_Info_Sheet.pdf> [as of October 26, 2016].

²⁵⁵ *Ibid.*

²⁵⁶ *CIF Concussion Return to Learn (RTL) Protocol* (2015) California Interscholastic Federation <http://static.psbins.com/b/0/ol4k2n01c7nqor/CIF_Concussion_RTL_Protocol.pdf> [as of October 26, 2016].

²⁵⁷ *Physician Letter to School* (2016) California Interscholastic Federation <http://static.psbins.com/m/j/b8xkqp4ti0g4lj/CIF_Physician_Letter_to_School_after_Concussion_Visit.pdf> [as of October 26, 2016].

²⁵⁸ [Ed. Code, § 49475.](#)

²⁵⁹ *Ibid.*

²⁶⁰ NSBA Council of School Attorneys, *School Law Practice: Concussions—Avoiding Lawsuits Through Policy* (September 2011) volume 5, No. 3.

²⁶¹ *Zemke v. Arreola* (2006) Cal.App. Unpub. LEXIS 4999. Please note that this is an unpublished opinion and as such, cannot be cited as binding or persuasive authority. However, it is illustrative of how courts generally review concussion-related lawsuits in the school district setting.

²⁶² [Ed. Code, § 33479 et seq.](#)

²⁶³ [Ed. Code, § 33479.2, subd. \(a\).](#)

²⁶⁴ [Ed. Code, § 33479.3.](#)

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ [Ed. Code, § 33479.2, subd. \(c\).](#)

²⁶⁸ [Ed. Code, § 33479.4.](#)

²⁶⁹ [Ed. Code, § 33479.5, subd. \(a\).](#)

²⁷⁰ [Ed. Code, § 33479.5, subd. \(b\).](#)

²⁷¹ *Ibid.*

²⁷² [Ed. Code, § 33479.5, subd. \(c\).](#)

²⁷³ [Ed. Code, § 33479.6, subd. \(a\).](#)

²⁷⁴ [Ed. Code, § 33479.6, subd. \(b\).](#)

²⁷⁵ [Ed. Code, § 33479.7.](#)

²⁷⁶ [42 U.S.C. § 12131 et seq.](#)

²⁷⁷ See *ADA Title II Technical Assistance Manual* (1993) U.S. Department of Justice <<https://www.ada.gov/taman2.html>> at II-3.3000 [as of Nov. 21, 2016].

²⁷⁸ [42 U.S.C. § 12132.](#)

²⁷⁹ [28 C.F.R. § 35.104.](#)

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² *Ibid.*

²⁸³ [42 U.S.C. §§ 12131-32](#); see also [28 C.F.R. § 35.130, subd. \(a\).](#)

²⁸⁴ [28 C.F.R. §§ 35.139 & 35.164.](#)

²⁸⁵ [29 U.S.C. §§ 701 et seq.](#)

²⁸⁶ [29 U.S.C. § 794, subd. \(b\)\(2\)\(B\)](#); *DeVargas v. Mason & Hanger-Silas Mason Co., Inc.*, 911 F.2d 1377 (10th Cir.1990); *Glendale (CA) Unified School District*, OCR Case No. 09-98-1355 (Nov. 20, 1998) 4 LRP 9801.

²⁸⁷ See, e.g., *Protecting Students with Disabilities* (2015) U.S. Department of Education <<http://www2.ed.gov/about/offices/list/ocr/504faq.html>> [as of Nov. 21, 2016].

²⁸⁸ [29 U.S.C. § 794, subd. \(a\).](#)

²⁸⁹ [34 C.F.R. § 104.33, subd. \(a\).](#)

²⁹⁰ *Ibid.* § [104.33, subd. \(b\)](#)

²⁹¹ *Ibid.* § [104.33, subd. \(c\).](#)

²⁹² However, the ADA provides additional and different regulations than does Section 504 with respect to program accessibility, existing facilities, and communications. The ADA establishes obligations independent of Section 504 on school districts to address communication needs of students who are deaf or hard-of-hearing. Thus, it is not guaranteed that a school district will meet all ADA requirements for such students simply by complying with Section 504. *K.M. v Tustin Unified School Dist.* (9th Cir. 2013) 725 F.3d 1088.

²⁹³ [29 U.S.C. § 705, subd. \(2\)\(B\)](#); *Letter to Zirkel* (OCR May 15, 1995) 22 IDELR 667.

²⁹⁴ See [29 U.S.C. § 705, subd. \(2\)\(C\)\(ii\).](#)

²⁹⁵ *Protecting Students with Disabilities* (2015) U.S. Department of Education <<http://www2.ed.gov/about/offices/list/ocr/504faq.html>> [as of Nov. 21, 2016].

²⁹⁶ *Pinellas County (FL) Sch. Dist.*, OCR Case No. 04-93-1293 (July 23, 1993) 20 IDELR 561.

²⁹⁷ See *Oakland Unified Sch. Dist.*, OAH Case No. 2014071037 (Nov. 3, 2014) 114 LRP 49754 (“There is a difference between providing drug treatment, and assessing and addressing environmental issues and internal distress of a student with a disability that may be contributing to the use of controlled substances. [The district] was responsible for the latter.”); *Charter Sch. of San Diego*, OAH Case No. 2014030133 (Oct. 17, 2014) 114 LRP 49855.

²⁹⁸ “Anorexia.” Merriam-Webster Online Dictionary (2016) <<http://www.merriam-webster.com/dictionary/anorexia>> [as of Nov. 21, 2016].

²⁹⁹ *Alameda Unified School District*, OCR Case No. 09-15-117 (March 23, 2016) 69 IDELR 24.

³⁰⁰ “Bulimia.” Merriam-Webster Online Dictionary (2016) <<http://www.merriam-webster.com/dictionary/bulimia>> [as of Nov. 21, 2016].

³⁰¹ “Binge eating disorder.” Merriam-Webster Online Dictionary (2016) <<http://www.merriam-webster.com/medical/binge%20eating%20disorder>> [as of Nov. 21, 2016].

³⁰² [Ed. Code. § 51900.5.](#)

³⁰³ "Asthma." Merriam-Webster Online Dictionary (2016) <<http://www.merriam-webster.com/dictionary/asthma>> [as of Nov. 21, 2016].

³⁰⁴ "Diabetes." Merriam-Webster Online Dictionary (2016) <<http://www.merriam-webster.com/dictionary/diabetes>> [as of Nov. 21, 2016].

³⁰⁵ *Dear Colleague Letter* (OCR Jan. 19, 2012) 58 IDLER 79.

³⁰⁶ [34 C.F.R. § 104.33 - 104.36.](#)

³⁰⁷ [20 U.S.C. § 1400, subd. \(d\)\(1\)\(A\)](#); see also *A.M. v. Monrovia Unified School District* (9th Cir. 2010) 627 F.3d 773.

³⁰⁸ *Ibid.* § [1401, subd. \(3\)](#).

³⁰⁹ [5 C.C.R. § 3030, subd. \(b\)](#).

³¹⁰ *Ibid.* § [3030, subd. \(b\)\(9\)](#).

³¹¹ [34 C.F.R. § 300.17.](#)

³¹² *Ibid.* § [300.320.](#)

³¹³ [5 C.C.R. § 3051.12.](#)

³¹⁴ *Ibid.* § [3051.12, subd. \(a\)](#).

³¹⁵ *Ibid.* § [3051.12, subd. \(b\)](#).



Additional Risk Management Concerns



FIELD TRIPS AND OFF-SITE SCHOOL SPONSORED ACTIVITIES

Recall from Module 2 that a school district's liability for a student's conduct and safety **while the student is not on school grounds** is limited to three situations:

- when the school district has provided transportation to a student to and from school premises;
- when the school district has undertaken a school-sponsored activity off of the school premises; or
- when the school district has otherwise specifically assumed responsibility for the conduct and safety of its students or has failed to exercise reasonable care under the circumstances.¹

Also recall that a school district is not liable for a student's safety on field trips and excursions. This section first touches upon specific legal provisions that apply to field trips and excursions under California law and then explores how a school district can limit its liability for **off-site** school sponsored activities that are **not** field trips or excursions.

FIELD TRIPS AND EXCURSIONS

School districts and their employees enjoy statutory immunity from liability arising from student injuries during "field trips" and "excursions."² As discussed in Module 2, not every off-campus student activity constitutes a field trip or excursion. The distinction between a "school sponsored activity" and a "field trip" or "excursion" largely depends upon whether student attendance is voluntary and whether students receive academic credit for the activity.³ An activity is more likely a field trip or excursion if the activity is not for credit and students can opt out of it. Although California law limits a school district's liability for student injuries that occur on field trips or excursions, school districts should be aware of some specific laws that pertain to field trips or excursions.

Field Trip Transportation

California law permits schools to transport students to and from field trip locations within the state, to another state, to the District of Columbia, or to a foreign country by: (1) use of district equipment (e.g., school buses); (2) contracted transportation; or (3) use of non-district equipment (e.g., personal vehicles).⁴ If a school district uses district equipment to transport students on a field trip **to a foreign county**, it must secure liability insurance from a carrier licensed to transact business in that country.⁵

The Education Code also provides additional limitations for foreign travel regarding the type of aircraft that school districts may use.⁶

At least one appellate-level California court has determined that the statute that limits school districts' liability for injuries that occur on field trips extends to injuries that occur in transit to and from field trips.⁷ According to the appellate court, to interpret the statute otherwise "would have the effect of encouraging districts and teachers to do nothing to plan or supervise field trips, and no district wanting immunity would dare utilize the [California code provision permitting school districts to use school resources for field trips]."⁸ As such, although schools are advised to exercise care in transporting students to and from field trip locations, they are not likely to be held liable for student injuries incurred in transit, as discussed further below.

Field Trip Permission Slips

Schools are advised to also obtain written permission from a student's parent or guardian for the student to participate in an off-campus field trip. Field trip permission slips should acknowledge that the field trip is voluntary and that the trip is not a part of the school's curriculum.

Permission slips typically include the following waiver of claims, which references Education Code section 35330, subdivision (d):

All persons making the field trip or excursion shall be deemed to have waived all claims against the district for injury, accident, illness, or death occurring during or by reason of the field trip or excursion.

A sample Field Trip/Excursion Permission Slip is included as Attachment F in Module 5 of this Manual.

Field Trip Medical or Hospital Services

School districts must provide or make available medical or hospital services for students injured while participating in field trips or excursions sponsored or controlled by the district.⁹ The services must be provided or made available through one of the following:

- Nonprofit membership corporations defraying the cost of medical and/or hospital services;
- One or more group, blanket, or individual policies of accident insurance from an authorized insurer; or

- A self-insurance program of the school district.¹⁰

Field Trip First Aid Kits

California law requires school districts to have a district employee carry a first aid kit "in his possession, or immediately available," while conducting a field trip.¹¹ In addition, if the field trip is conducted in an area which is "commonly known to be infested by poisonous snakes," the first aid kit may include a snakebite kit.¹² Regardless of whether the first aid kit includes a snakebite kit, the first aid kit must contain "medically accepted snakebite remedies."¹³ A field trip to a snake-infested area must also be attended by a school district employee who has completed a first aid course approved by the American Red Cross, which emphasizes snakebite treatment.¹⁴ Willful failure to adhere to first aid kit requirements by a school district, its governing board members, or its employees may result in criminal liability.¹⁵

Use of Public Transportation for Field Trips

The use of non-district transportation (e.g., public transportation) is permitted for field trips.¹⁶ The risk of liability when utilizing mass public transit for a field trip - for example, using a city bus to transport students to a local college to observe classes - would likely be low. Even providing district vehicle transportation for part of the excursion, such as using a district bus to drop students at a public transit center or entry point, may not be enough to hold a school district liable for student injuries incurred in transit.¹⁷

OFF-SITE SCHOOL SPONSORED ACTIVITIES

Transportation

As distinct from field trips or excursions, school districts **may** be liable for student injuries that occur during off-site school sponsored activities, including those that occur during transit to and from those activities. Once a school district undertakes to provide transportation for its students, it has a duty to exercise reasonable care under the circumstances.¹⁸

Example: In *Eric M. v. Cajon Valley Union School District*, a six-year-old student's family sued the school district after the student was injured while crossing a busy street. Prior to crossing the street, the student boarded his after-school school bus but then immediately got off the bus after telling the bus driver that he saw his father's car and would drive home with him. The court determined that the school district owed the student a duty of care and could be held liable for the student's injuries. In doing so, it relied in part on language in the school's transportation safety plan that provided that school personnel are responsible for monitoring student boarding and exiting of school buses and for ensuring that students are properly supervised at all times.

A school district will typically be liable for death or injury caused by a negligent or wrongful act or omission of an employee acting in the scope of his or her duties in the operation of a motor vehicle during an off-site school activity.¹⁹ Generally, to the extent that the employee's insurance coverage is insufficient to cover damages that result from a car accident, its employer school district will be responsible for the excess damages.²⁰ As addressed below, a school district can take practical steps to limit its exposure and ensure student safety.

Transportation Logistics

California law provides that **no governing board of a school district shall require any student to be transported for any purpose or for any reason without the written permission of the parent or guardian.**²¹ In order to limit its potential exposure, a school district should encourage parents to drive their own children to and from off-site school sponsored events. If a student wants to drive herself to the event, the school district is still encouraged to obtain permission from the student's parent or guardian.

District Vehicles: School districts that provide transportation to students to and from off-site events should consider utilizing district vehicles and district employees to transport students to and from off-site school sponsored activities whenever possible. This allows the school to exercise the most district control over its students' safety. California law sets out a number of requirements for transportation of students on school buses, including the requirement that a driver of a full-sized school bus possess:

- A valid driver's license of a class appropriate to the vehicle driven and that is endorsed for passenger transportation;

- Either a certificate to drive a school bus as described in Section 40082 of the Education Code, or a certificate to drive a school student activity bus as described in Section 40083 of the Education Code, issued by the Department of Motor Vehicles in accordance with eligibility and training requirements specified by the Department of Motor Vehicles, the State Department of Education, and the Department of the California Highway Patrol.
- A parental authorization form for each student signed by a parent or a legal guardian of the student that gives permission for that student to be transported to or from the school or school-related activity.²²

In addition, if a school bus was manufactured after 2004 and is of the kind described in Vehicle Code section 27316, students must wear their seatbelts and receive instruction in an age-appropriate manner on the use of those seatbelts. This instruction must include:

- Proper fastening and release of the belt buckle;
- Acceptable placement of the seatbelt when in use;
- Acceptable placement of the seatbelt when not in use; and
- Times at which the seatbelt should be fastened and released.²³

District employees and volunteers are subject to their school district's transportation safety plan. Pursuant to California law, the safety plan must address:

- How to determine when students require escort across highways or private roads during student loading and unloading under Vehicle Code section 22112;
- Procedures for students in eighth grade and below to follow as they board and exit a school bus;
- Boarding and exiting a school bus at a school or other trip destination;
- Procedures to ensure that students are not left unattended on a school bus; and
- Procedures for designating an adult chaperone, other than the driver, to accompany students on a school student activity bus.²⁴

Charter Buses: Alternatively, a school district may contract with a private charter bus company unless to do so would violate laws regarding the use of classified employees. A school district that utilizes private buses can limit its exposure by requiring the charter company to name the school district as an additional insured on its policy.

Public Transportation: If the school district has staff present as chaperones with the students before, during, and/or after using public transportation, an argument could be made that this is either a supervised undertaking or a specific assumption of supervisory responsibility. Accordingly, it is suggested that a school district assign a small, manageable number of students to each chaperone, communicate the travel itinerary well in advance of the trip, schedule established times to meet and check in on each group of students, and assign chaperones to seats close to the students assigned to them.

Volunteer Vehicles: Finally, a school district may allow volunteers to drive students to and from off-site school sponsored events with the express written consent of students' parents or guardians.²⁵ In doing so, however, a school district sacrifices control over its students and its ability to manage its liability. As such, we suggest that school districts that permit volunteers to transport students follow the best practices described in the next section.

Best Practices for Using Volunteers to Transport Students

Should a school district choose to allow volunteers to transport students, the following best practices promote student safety and may help to shield school districts from claims of negligence:

- Ensure that drivers are at least 18 years old.
- Ensure that drivers have valid drivers' licenses.
- Although no statute explicitly requires school districts to do so, schools are advised to protect themselves by requiring volunteers to have clean driving records. School districts can do this by: (1) asking volunteers to certify that they have a clean driving record; (2) requesting that volunteers submit to the district a copy of their driving record; or (3) requesting a volunteer's driving records directly from the Department of Motor Vehicles. In order to obtain records directly from the DMV, the school district must either have the volunteer's written consent or satisfy some other statutory "permissible use," as defined by federal law.²⁶

- Require drivers to provide proof of valid insurance with liability limits satisfactory to the school district's risk manager.
- Require drivers to pick up and drop off students at designated curbside locations.

Chaperones

California law requires school districts to designate a certificated employee as a chaperone to supervise any school sponsored student social activities.²⁷ Parent volunteers may also serve as chaperones to assist certificated employees.²⁸

A volunteer chaperone is subject to California laws governing the use of volunteers in schools.²⁹ School districts are required to have volunteers obtain fingerprints and have a certificate evidencing a tuberculosis examination completed within the last four years when working with students at a school sponsored student social activity.³⁰ Additionally, a district may request records of "all convictions or any arrest pending adjudication" for certain offenses from the Department of Justice for individuals applying for a volunteer position where the person "would have supervisory or disciplinary power over a minor or any person under his or her care."³¹ California law generally prohibits individuals who are required to register as sex offenders from serving as volunteers.³²

In contrast, for field trips, there are no such statutory requirements for fingerprinting and criminal background checks for a chaperone or a guest, spouse, or partner accompanying a volunteer or chaperone.³³ Tuberculosis testing is not required for volunteers "whose functions do not necessitate frequent or prolonged contact with pupils," such as chaperones on a field trip.³⁴ School districts may request a records check from local law enforcement to determine whether the volunteer has been convicted of a sex offense.³⁵

Although school districts are not generally required to fingerprint chaperones on a field trip, special requirements apply to volunteers for "pupil activity programs". A "pupil activity program" includes, but is not limited to, "scholastic programs, interscholastic programs, and extracurricular activities sponsored by a school district or school booster club, including, but not limited to, cheer team, drill team, dance team, and marching band." Volunteers in pupil activity programs must either obtain an Activity Supervisor Clearance Certificate from the Commission on Teacher Credentialing or clear a background check with the Department of Justice and Federal Bureau of Investigation.³⁶

Regardless of whether a background check is required for a particular activity, school districts can best protect themselves by implementing a uniform background check policy. School districts may also require volunteers to submit to the tuberculosis risk assessment requirements of all district employees set forth in Education Code section 49406. A school district may also want to specifically require a chaperone or their spouse, partner, or guest on a field trip to meet the same requirements as are requirements of a district volunteer. Alternatively, a school district may also want to consider a policy forbidding chaperones from bringing non-chaperones on field trips. At the very least, a school district should require non-chaperones to abide by the same conditions, rules, and restrictions as their chaperone companion during the trip.

Outdoor Schools

California law specifically allows school districts to conduct classes in outdoor science and conservation education.³⁷ A school district may transport or arrange transportation of students to or from those classes, provided that the transportation is within the state.³⁸ Outdoor school programs are typically “school sponsored activities” subject to a school district’s duty of reasonable care.

School districts may conduct outdoor education in-house or may contract out naturalist services to a third party. If a school district chooses the latter, it must assign a certificated employee to supervise those services.³⁹ In addition, the naturalist must undergo fingerprinting and a tuberculosis risk assessment, and must have no prior criminal convictions for certain sex offenses or drug offenses.⁴⁰

Out-of-State Trips, International Trips and Overnight Trips

Schools are liable for student injuries that occur during out-of-state trips, international trips and overnight school sponsored trips to the same extent they are liable for student injuries that occur during in-state trips. Schools are advised to consult with their insurance carriers in advance to determine whether their insurance policy covers such trips.

If, however, an out-of-state trip constitutes a field trip or excursion, California law provides that all parents or guardians and other adults who attend must sign a statement waiving all claims.⁴¹ This requirement similarly applies to international field trips, which are permissible under California law if the purpose of the trip is to “familiarize students with the language, history, geography, natural science, and other studies relative to the district’s course of study.”⁴²

A Transportation for School-Sponsored Activities Checklist is included as Attachment E of Module 5 of this Manual.

PERSONAL AND SOCIAL ACTIVITIES

Under the legal principle of *respondeat superior*, an employer will not generally be liable for the actions of an employee that are committed outside of the employee's scope of employment. For school districts, this principle underscores the importance of implementing a policy that requires prior school district approval for field trips and school sponsored activities. School districts are also advised to send employees an annual notice cautioning that employees shall be personally liable for unapproved off-site activities and that such activities do not constitute school sponsored activities or field trips.

EDUCATIONAL EQUITY

WHAT IS EDUCATIONAL EQUITY?

Definition

The Education Code's chapter on educational equity (Education Code §§ 200, *et seq.*) implements the California Legislature's intent that public schools "undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of students to equal educational opportunity."⁴³ This statutory framework reflects the policy of the State of California "to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other [protected] characteristic [contained within the Penal Code section defining hate crimes], equal rights and opportunities in the educational institutions of the state."⁴⁴

To effectuate this policy, the educational equity statutes impose on California schools "an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal opportunity."⁴⁵ In other words, educational equity is about a mandatory duty for all schools to proactively remove barriers to equal access to education for any student in a protected class. Efforts to address educational equity can be demonstrated in a wide variety of ways, including pursuing restorative justice discipline practices, creating individualized academic plans, holding events and lessons focused on learning about different cultures and identities, increasing dual-enrollment programs with local colleges and career-focused programs, and establishing student mentorship programs.⁴⁶ More recently, school districts have been exploring opportunities to offer "ethnic studies" at the high school level, focusing on the histories, cultures, and contributions of historically marginalized people that are not often discussed in U.S. History courses.⁴⁷

Educational equity should be distinguished from the term “implicit bias.” “Implicit bias” is often defined as an attitude or stereotypical belief that is acquired passively which then subsequently influences judgments, decisions, and actions made by an individual without intention. ⁴⁸ Implicit bias, arguably, may result in actions, statements, or behaviors that favor individuals who act/look like the actor/speaker and disfavor others rather than necessarily leading to explicitly or overtly discriminatory behavior.⁴⁹ Addressing implicit bias, then, is about an individual’s ability to understand and overcome personal preferences whereas educational equity is about an educational agency’s proactive or reactive response to prevent or stop discrimination.

At the federal level, the term “equity” is arguably still being defined. President Biden recently identified the term “equity” in an Executive Order to address equity in federal programs to mean the “consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment . . .” ⁵⁰ The term “underserved communities” is a broad term and refers to populations sharing any particular characteristic – even if that characteristic is simply geographic and not protected under the law – that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. ⁵¹ President Biden has linked this idea of equity specifically to “systemic racism” and barriers created by government decision-making, programs, and policies.

“Systemic racism,” and the related “critical race theory,” are undefined in the law; academic and colloquial definitions may differ as well.⁵² At the university level, these terms have for decades explained the idea that there are government systems and structures with procedures or processes that disadvantage individuals of a certain race.⁵³ However, in contrast, in September 2020, President Trump’s administration identified “systemic racism,” “critical race theory” and “unconscious bias” to be “divisive, un-American propaganda” that suggest the United States is an inherently racist or evil country, or that any race or ethnicity is inherently racist or evil.⁵⁴ This wide difference about what these terms mean, and their impact on public schools makes responses to public and parent/guardian inquiries difficult to address.⁵⁵ Regardless, while these terms are being debated through political discourse, school districts should seek clarification as to specific concerns from a member of the public if they ask whether systemic racism or critical race theory are taught at K-12 schools. Additionally, school districts must guard against this controversy being used to prevent them from meeting the legal duty to address educational equity.

In sum, at its core, educational equity is a legal mandate for schools to help students overcome extrinsic barriers and act to remove intrinsic barriers to education, whereas

other definitions of equity relate to agency-created barriers or discrimination. School district governing boards should therefore be mindful of the confusing terminology and clarify that taking action to address educational equity is not admitting that the agency has committed discrimination.

Prohibition on Discrimination

Education Code section 220 (Section 220) provides that no person shall be subjected to discrimination in any program or activity conducted by a school district on the basis of:

- disability;
- gender;
- gender identity;
- gender expression;
- nationality;
- race or ethnicity;
- religion;
- sexual orientation; or
- any other characteristic contained within the Penal Code section defining hate crimes.⁵⁶

Government Code section 11135 similarly prohibits discrimination in any program or activity conducted by any state agency on the basis of:

- sex;
- race;
- color;
- religion;
- ancestry;
- national origin;

- ethnic group identification;
- age;
- mental disability;
- physical disability;
- medical condition;
- genetic information;
- marital status;
- or sexual orientation.⁵⁷

Government Code section 11138 requires state agencies, including school districts, to adopt such rules and regulations as are necessary to carry out this prohibition on discrimination.

School districts should also be mindful that determinations of whether conduct constitutes discrimination includes looking at the totality of the circumstances. This review may include whether there is evidence of a discriminatory intent or purpose, evidence that the student was treated differently than other students under similar circumstances, and/or whether the treatment has resulted in the denial or limitation of education services, benefits or opportunities.⁵⁸

Example: In *Mackey v. Bd. of Trustees of the Cal. State University*⁵⁹, five African-American college freshmen basketball players filed a lawsuit arguing that their head coach had limited their game-time minutes and singled them out during practice based on their race. The district court ruled in favor of the coach and the university's board of trustees on summary judgment but the plaintiffs appealed. While the appeals court decided against drawing a line about a certain number of minutes or times the players were yelled at by coaching staff, the appeals court agreed that the burden is on the educational agency to show whether the totality of circumstances could suggest a motive other than a racially discriminatory motive. The appeals court reversed the summary judgment and remanded the case to the district court for further proceedings.

Enforcement

School districts' governing boards are primarily responsible for ensuring that school districts are free from discrimination based on age and the characteristics of Section

220, and for monitoring compliance with rules and regulations promulgated under Government Code section 11138.⁶⁰ Schools do so by implementing and utilizing Uniform Complaint Procedures, as required by Department of Education regulations.⁶¹ Complainants may utilize these procedures if they feel they have been discriminated against, but they do not need to exhaust administrative remedies to seek enforcement of Section 220 in court.⁶²

A school district can expose itself to liability if it fails to adhere to its Uniform Complaint Procedures. School districts must also be diligent in adhering to the requirements set forth in the statutes governing educational equity, which include the requirements that districts:

- Adopt a comprehensive policy prohibiting discrimination, harassment, intimidation, and bullying based on protected characteristics;⁶³
- Adopt a process for receiving and investigating complaints based on the comprehensive policy;⁶⁴
- Fully investigate any complaint alleging failure to comply with state and federal laws and regulations and/or alleging discrimination, harassment, intimidation, or bullying;⁶⁵
- Resolve such complaints in accordance with Department of Education regulations and district policies;⁶⁶
- Provide required annual notices of district complaint procedures to all parties specified in Department of Education regulations;⁶⁷
- Designate a staff member to investigate and resolve complaints and ensure that he or she is knowledgeable about the laws and programs he or she is assigned;⁶⁸
- Conduct **and complete** an investigation within **60 days** from receipt of a complaint;⁶⁹
- Upon the conclusion of the investigation, prepare a written decision that includes notice of the complainant's right to appeal and procedures to be followed to initiate an appeal;⁷⁰ and
- Provide the complainant an opportunity to present evidence or information leading to evidence in support of the complaint.⁷¹

Other Protections

The educational equity provisions of the Education Code provide additional protections which are described briefly below.

Student Suicide Prevention Policies

Education Code section 215 requires school districts that serve students in transitional kindergarten, kindergarten, and grades one through twelve to adopt a policy on suicide prevention. The policy must address, among other things, procedures relating to suicide prevention, intervention, and postvention.⁷²

California Racial Mascots Act

The California Racial Mascots Act reflects the Legislature’s determination that the use of racially derogatory or discriminatory school or athletic team names, mascots, or nicknames in schools is antithetical to the mission of providing an equal education.⁷³ As of January 1, 2017, and subject to certain qualifications, schools are prohibited from using the term “Redskins” for school or athletic team names, mascots, or nicknames.⁷⁴

Sex Equity in Education Act

The Sex Equity in Education Act sets forth requirements for school districts to ensure sex equity in education relating to instruction, extracurricular activities, and school sports.⁷⁵ Included among the Act’s requirements and prohibitions are:

- A requirement that school districts post in a prominent and conspicuous location on their internet website specific information regarding Title IX of the Education Amendments of 1972;⁷⁶
- A prohibition against requiring students of only one sex to enroll in a course;⁷⁷
- A requirement that school districts permit students to participate in sex-segregated school programs and activities;⁷⁸ and
- A requirement that school districts permit a students to use facilities consistent with their gender identity, irrespective of the gender listed on their records.⁷⁹

Hate Violence Prevention Act

The Hate Violence Prevention Act requires a school district to take certain steps to discourage and prevent acts of hate violence.⁸⁰ Among other things, the Act requires school districts to:

- Establish guidelines for use in teacher and administrator training programs to promote an appreciation of diversity and discourage the development of discriminatory attitudes and practices;⁸¹ and
- Establish guidelines for use in teacher and administrator training programs regarding prevention and response to acts of hate violence occurring on campus.⁸²

Safe Place to Learn Act

The Safe Place to Learn Act establishes additional requirements to ensure a statewide reduction in school discrimination, harassment, violence, intimidation, and bullying. The Safe Place to Learn Act is discussed in greater detail later in this Module 3.

STUDENTS WITH DISABILITIES AND EDUCATIONAL EQUITY

Just as the State of California endeavors to provide equal educational opportunity to all students, the federal government has enacted extensive legislation to protect students with disabilities. Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Individuals with Disabilities Education Improvement Act (IDEA) require school districts to provide students with disabilities or handicaps a **free and appropriate public education**. Section 504 and the IDEA are discussed in greater detail in Module 2 of this Manual.

SEXUAL HARASSMENT

WHAT IS SEXUAL HARASSMENT?

Sexual Harassment in Schools Generally

The Education Code defines sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

- Submission to the conduct is explicitly or implicitly made a term or a condition of an individual’s employment, academic status, or progress.
- Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
- The conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

- Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.”⁸³

Employee Sexual Harassment

The California Department of Fair Employment and Housing (DFEH), which enforces the Fair Employment and Housing Act (FEHA), defines sexual harassment as “harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions. This definition of sexual harassment consists of many forms of offensive behavior, including harassment of a person of the same gender as the harasser. According to the DFEH, sexual harassment includes:⁸⁴

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Actual or threatened retaliation
- Leering; making sexual gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters
- Making or using derogatory comments, epithets, slurs, or jokes
- Sexual comments including graphic comments about an individual’s body; sexually degrading words used to describe an individual; or suggestive or obscene letters, notes, or invitations
- Physical touching or assault, as well as impeding or blocking movements

The Fair Employment and Housing Act also touches upon “abusive conduct,” which is defined as “conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests.”⁸⁵ As discussed below, employers must train supervisors about abusive conduct during mandatory sexual harassment training.

Abusive conduct “may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.”⁸⁶

WHAT ARE A SCHOOL'S LEGAL OBLIGATIONS?

Sexual Harassment Policies

California law requires school districts to implement written sexual harassment policies, which must include information on where to obtain the specific rules and procedures for reporting sexual harassment charges and pursuing available remedies.⁸⁷ A copy of the policy must be displayed in a prominent location in the main administrative building or elsewhere on campus.⁸⁸ A copy must also be distributed to 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 upon hiring a new employee.⁸⁹ Finally, a copy must appear in any school district publication that sets forth the school district's rules, regulations, procedures, and standards of conduct.⁹⁰

A school district's sexual harassment policy, **as it pertains to students**, must be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session.⁹¹

In addition to the sexual harassment policy requirement, California law also requires a school district to adopt policies that:

- Prohibit discrimination, harassment, intimidation, and bullying based on actual or perceived protected characteristics;
- Contain a process to receive and investigate complaints of harassment and bullying based on actual or perceived protected characteristics.⁹²

These requirements are more fully addressed later in this Module.

Sexual Harassment Training

California law requires any employer with 5 or more employees to provide at least two hours of interactive classroom training and education (or an effective interactive online equivalent) regarding sexual harassment to all supervisory employees and at least one hour of such training to all nonsupervisory employees within six months of their assumption of a supervisory position or initial employment and to each employee once every two years.⁹³ For seasonal employees, temporary employees, and any employee hired to work for less than six months, the training must occur within 30 calendar days of hire or within 100 hours worked, whichever comes first.⁹⁴

The training must include:

- Information and practical guidance regarding federal and state law regarding sexual harassment prevention, correction, and remedies;
- Practical examples aimed at instructing supervisors in the prevention of harassment (including harassment based on gender identity, gender expression, and sexual orientation⁹⁵), discrimination, and retaliation;⁹⁶ and
- A component regarding prevention of abusive conduct.⁹⁷

A school district cannot be held liable for the sexual harassment of a district employee *solely* on the basis that it failed to provide a supervisor sexual harassment training.⁹⁸ Conversely, providing the training does not shield a school district from liability.⁹⁹

Further, an employer may, but is not required to, provide "bystander intervention training" that includes information and practical guidance to help bystanders recognize potentially problematic behaviors and to motivate them to take action.

Additional Requirements

State and federal law require school districts to post notices and take additional steps to further safeguard against sexual harassment.

Notice Requirements

California law requires employers to post a notice regarding workplace discrimination that explains employees' rights and employers' requirements with respect to workplace discrimination and harassment.¹⁰⁰ Federal law similarly requires schools to issue a notice of nondiscrimination¹⁰¹ and an "EEO is the Law" poster.¹⁰²

Also, schools serving grades 9-12 must create and display posters that notify students of the school's student sexual harassment policy, the procedures and contact information of a school official to report sexual harassment, and the rights of the reporting student, complainant, and accused.¹⁰³ The poster must be displayed in a manner that is age appropriate, culturally relevant, no smaller than 8.5 by 11 inches, in at least 12-point font, in English and in any primary language spoken by 15 percent or more of the students enrolled at the school. The posters must be displayed prominently and conspicuously in each school bathroom and locker room.

Title IX Coordinator

Pursuant to federal law, every school district must designate an employee to coordinate its efforts to comply with and carry out the district's responsibilities under

Title IX.¹⁰⁴ The Title IX Coordinator cannot be the same person as the investigator or the person responsible for determining sexual harassment in a particular situation.

Records Requirements

Pursuant to Title IX Regulations, school districts must maintain, for seven years, all records relating to sexual harassment investigations, any appeal and the results therefrom, any informal resolution and the results therefrom, and all materials used to train Title IX Coordinators, investigators, decision-makers, or any person who facilitates an informal process.

Harassment of Students

School districts may be held civilly liable for sexual harassment directed at students under Title IX of the Education Amendments of 1972 (Title IX)¹⁰⁵ and Education Code section 220 (Section 220).

A school district can face liability under Title IX or Section 220 for **student-to-student harassment** if:

- the school district exercises substantial control over both the harasser and the context in which the known harassment occurs;
- the sexual harassment is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it deprives the victim of equal access to the educational program provided by the school;
- the school district has actual knowledge of the harassment;
- the school district's deliberate indifference subjects its students to harassment.¹⁰⁶

A school district can face liability for **teacher-to-student** harassment under Title IX if:

- the employee conditions the provision of an educational aid, benefit, or service on the student's participation in unwelcome sexual conduct; or
- the school district had actual knowledge of the harassment, and the school district responded to that knowledge with deliberate indifference.¹⁰⁷

Example: In *Gebser v. Lago Vista Independent School District*,¹⁰⁸ a high school teacher initiated a sexual relationship with a freshman student. When parents of other students complained of the teacher's inappropriate classroom comments to

the victim, the principal arranged a meeting with the teacher and the parents of the other students. The teacher told the principal he did not believe that he had made offensive remarks, but apologized to the parents and said that it would not happen again. The principal told the teacher to be careful about his comments in the future, but did not report the complaint to the district superintendent, who was the district's Title IX coordinator. Shortly thereafter, the teacher and victim were discovered engaging in intercourse and the teacher was arrested. The victim's parents filed suit. As of the date the suit was filed, the school had not yet published a policy and grievance procedure for sexual harassment. The case made its way to the U.S. Supreme Court, which determined that a school may only be held liable for teacher-on-student sexual harassment if "an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's behalf has actual knowledge of the discrimination in the recipient's programs and fails to adequately respond." Under the facts of the case, the school district in *Gebser* was not on sufficient notice of a possible sexual relationship, and thus could not be liable for the teacher's actions.

Harassment of Employees

California employers, including schools, have an affirmative duty to take reasonable steps to prevent and promptly correct known discriminatory and harassing conduct between employees.¹⁰⁹ Schools that fail to do so may be subject to liability for discrimination, harassment, and/or retaliation.¹¹⁰ In addition, a school district may be vicariously liable under Government Code section 815.2 for the negligence of administrators or supervisors in hiring, supervising and retaining a school employee who sexually harasses and abuses a student.¹¹¹

A school district may face liability for sexual harassment of its employees under Title VII of the Civil Rights Act of 1964 (Title VII), under FEHA, or based on state law tort claims. The frameworks of Title VII and FEHA are similar; however, FEHA is the broader of the two. Whereas Title VII generally protects against sexual harassment, gender harassment, and harassment based on pregnancy and childbirth, FEHA additionally protects against harassment based on gender identity, gender expression, sexual orientation, and nonbinary or transgender status. Also, an employee does not have to prove his or her productivity declined as a result of harassment; rather, the employee must show the harassment made it more difficult for him or her to do the job.¹¹² FEHA now includes employer liability for sexual harassment committed by non-employees of its applicants, unpaid interns, volunteers, and certain contractors.¹¹³

An employee of a school district may also be civilly liable for harassment of his or her peers under Title VII or under FEHA.¹¹⁴

Sexual harassment of employees generally falls into one of two categories: (1) "*quid pro quo*" harassment of an employee by a supervisor, or (2) sexual harassment among coworkers that creates a "hostile work environment" in the workplace.

Quid pro quo harassment occurs where a term of employment is conditioned upon submission to unwelcome sexual advances.¹¹⁵ This can entail a supervisor threatening to withhold an employee's benefits to induce a subordinate to comply with unwanted sexual requests or actually withholding a subordinate's benefits to retaliate because the subordinate has rejected the supervisor's sexual advances. School districts will generally be held strictly liable for *quid pro quo* harassment that results in a tangible employment action, such that the district will be liable whether or not it had any prior knowledge about the harassing conduct.¹¹⁶

Harassment of employees by other employees or third parties may give rise to a "hostile work environment" claim if the harassment is "sufficiently pervasive so as to alter the conditions of employment and create an abusive work environment."¹¹⁷ A single incident of harassing conduct may be enough to create a hostile work environment.¹¹⁸ The existence of a hostile work environment depends upon the totality of the circumstances, and a discriminatory remark, even if not made by a decision maker or directly in the context of an employment decision, may still be relevant, circumstantial evidence of discrimination.¹¹⁹ Schools will be held liable for such harassment if they knew or should have known of the offending conduct and fail to take corrective action.¹²⁰ The type of workplace does not change the legal standard for a hostile work environment.¹²¹

A school district cannot require an employee to release his or her claims under FEHA or sign a document that limits the employee from disclosing information about unlawful acts in the workplace, including, but not limited to sexual harassment, as a condition for a raise, bonus, employment, or continued employment.¹²²

SEXUAL HARASSMENT AND THE CANRA

Under the Child Abuse and Neglect Reporting Act (CANRA), school personnel may face criminal and civil liability for failing to report known or reasonably suspected child abuse or neglect, including sexual abuse.¹²³ The CANRA is discussed in greater detail in Module 2 of this Manual.

BEST PRACTICES

School districts must adhere to all of the statutory requirements for preventing and addressing sexual harassment, including the requirement to implement a sexual

harassment policy that comports with Education Code section 231.5 (regarding sexual harassment policies) and the requirement to provide supervisor and employee training that comports with the requirements of Government Code section 12950.1. District employees should be aware of their respective rights and duties, and school districts should adhere to the following:

Prevention:

- School districts must educate employees on the types of behaviors that constitute employee harassment and the signs of inappropriate student-teacher relationships (such as “grooming behaviors”);
- School districts must train employees on what to do if they are aware of or suspect sexual harassment; and
- School districts must comply with all applicable sexual harassment notice posting requirements.

Reporting:

- Employees who feel they are being sexually harassed or discriminated against should report the harassment or discrimination to their supervisors, principals, or other district administrators, who must in turn notify the district Title IX Coordinator;
- Employees who witness sexual harassment or discrimination should report the harassing conduct; and
- Employees who suspect child abuse or neglect must immediately report the activity to their human resources department or superintendent and comply with all requirements of the CANRA (see Module 2 for further discussion).

Addressing Reported Sexual Harassment of Employees:

- After a school district has received a complaint of sexual harassment, it must promptly initiate an investigation. Investigations should include witness interviews, compiling documentary evidence, and preparing a report;
- Upon concluding an investigation of employee harassment, and based on the investigative determinations, school districts should take any actions that are reasonably calculated to end the harassment;

- School districts must never retaliate against a complainant and should take care not to take any actions that might constitute an adverse employment action against the complainant; and
- At all times, school districts must honor the due process rights of the accused and the privacy rights of both the accused and the complainant.

Addressing Reported or Suspected Sexual Harassment of Students:

- After a school district has received a complaint of sexual harassment, it must promptly initiate an investigation. Investigations should include witness interviews, compiling documentary evidence, and preparing a report;
- School districts should immediately consult with legal counsel to:
 - Determine whether police intervention is necessary and appropriate, and
 - Determine any steps that should or must be taken to protect the safety of the victim,
 - Determine how to appropriately publicly address the issue, as appropriate;
- School districts must promptly comply with all requirements of the CANRA (see Module 2 for further discussion).
- School districts must never take retaliatory action against a complainant; and
- At all times, school districts must honor the due process rights of the accused and the privacy rights of both the accused and the complainant.

A sample Confidential Report of Investigation is included as Attachment D of Module 5 of this Manual.

Additional Resources

Additional information regarding sexual harassment of students and sexual harassment of employees is available at the following state government websites. Please note that new Title IX regulations went into effect on August 14, 2020, which may affect the applicability of information contained in the below resources.

California Department of Fair Employment and Housing:

[Posters, guides and fact sheets regarding employee rights, including sexual harassment laws.](#)¹²⁴

California Department of Education:

[Webpage regarding gender equity and Title IX](#)¹²⁵

STUDENT DISCIPLINE

CAUSES FOR DISCIPLINE

Each school district must, and each school site may, develop and adopt rules and procedures for the discipline of students. A district or school is free to develop its own unique discipline code, so long as the district or school follows the required procedures, and the discipline code is not inconsistent with state laws and does not infringe on the legal rights of students.¹²⁶ However, the Education Code describes the specific circumstances under which a student may or must be suspended or expelled. Improperly suspending or expelling a student absent statutory authority to do so may result in district liability under state or federal law.

School District's Authority to Discipline

A school may only suspend or expel a student if it has jurisdiction to do so. The Education Code provides that a school may discipline a student for acts related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district.¹²⁷ Examples include acts that occur:

- While on school grounds;
- While going to or coming from school;
- During the lunch period whether on or off campus;
- During, or while going to or coming from, a school-sponsored activity.¹²⁸

Grounds for Discipline

A student may only be expelled or suspended, depending on the circumstances of an incident, if he or she:¹²⁹

- Caused, attempted to cause, or threatened to cause physical injury to another;

- Willfully used force or violence upon the person of another, except in self-defense;
- Possessed, sold, or furnished a firearm, knife, explosive, or other dangerous object, unless the student had written permission from administrators to possess the object;
- Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of drugs or alcohol.
- Unlawfully offered, arranged, or negotiated to sell drugs or alcohol, and either sold, delivered, or furnished another substance represented as drugs or alcohol;
- Committed or attempted to commit robbery or extortion;
- Caused or attempted to cause damage to school property or private property;
- Stole or attempted to steal school property or private property;
- Possessed or used tobacco or tobacco products, unless prescribed;
- Committed an obscene act or engaged in habitual profanity or vulgarity;
- Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia;
- Disrupted school activities or otherwise willfully defied the valid authority of school personnel engaged in the performance of their duties. **However**, the student may not be expelled for such conduct.¹³⁰ Moreover, the student may not be suspended for such conduct if he or she is in kindergarten, or grades first through eighth grade;¹³¹
- Knowingly received stolen school property or private property;
- Possessed an imitation firearm;
- Committed or attempted to commit a sexual assault or battery;
- Harassed, threatened, or intimidated a student who is a complaining witness or a witness in a school disciplinary proceeding to prevent testimony or retaliate;

- Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma;
- Engaged in, or attempted to engage in, hazing;
- Engaged in an act of bullying;
- Committed sexual harassment;¹³²
- Caused, attempted to cause, threatened to cause, or participated in acts of hate violence;¹³³
- Intentionally harassed, threatened, or intimidated other students or district staff;¹³⁴ or
- Made terroristic threats.¹³⁵

Hazing, bullying, and sexual harassment are discussed in greater depth elsewhere in this module.

DISCIPLINARY OUTCOMES

Expulsion

A superintendent or principal **must recommend expulsion** for any of the following acts:¹³⁶

- Possessing, selling, or furnishing a firearm;
- Brandishing a knife at another person;
- Sale of drugs;
- Committing or attempting to commit a sexual assault or committing sexual battery; or
- Possession of an explosive.

A principal or superintendent **must recommend expulsion** for any of the following acts, **unless** inappropriate under the circumstances or where an alternative means of correction would address the conduct:¹³⁷

- Causing serious physical injury (except in self defense);

- Possession of any knife or other dangerous objects of no reasonable use to the student;
- Possession of drugs (except for first offense of possession of not more than one ounce of marijuana or the possession of over-the-counter medication for use by the student for medical purposes or medication prescribed for the student by a physician);
- Robbery or extortion; or
- Assault or battery upon a school employee.

A principal or superintendent **may recommend expulsion** for any of the other acts listed as grounds for discipline in the previous subsection (“Grounds for Discipline”), and the governing board may order expulsion, upon a finding that either (1) other means of correction are not feasible or have repeatedly failed to bring about proper conduct; or (2) due to the nature of the violation, the presence of the student causes a continuing danger to the physical safety of the student or others.¹³⁸ No such finding is required, however, to expel a student for making terroristic threats.¹³⁹

Suspension and Alternatives to Suspension or Expulsion

A school may impose an in-school suspension or off-campus suspension for up to five consecutive days.¹⁴⁰ Beginning January 1, 2020, a teacher is required to provide homework to any student who has been suspended from school for two or more schooldays upon request by the suspended student, their parent/guardian or any other person holding the right to make educational decisions.¹⁴¹ However, subject to exceptions for certain misconduct or if the student’s presence causes danger to others, a school must not suspend a student unless other means of correction fail to bring about proper conduct.¹⁴² Other means of correction may include:

- A conference between school personnel, the student’s parent or guardian, and the student;
- Referrals to school support service personnel for case management and counseling;
- Intervention-related teams that assess the behavior and develop and implement individualized plans to address the behavior in partnership with the student and his or her parents;
- Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program, or a

- plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a));
- Enrollment in a program for teaching prosocial behavior or anger management;
 - Participation in a restorative justice program;
 - A **positive behavior support** approach with tiered interventions that occur during the schoolday on campus;
 - After-school programs that address specific behavioral issues or expose students to positive activities and behaviors; and
 - Community service.¹⁴³

The following section discusses positive behavioral interventions and supports (PBIS) in detail.

Positive Behavioral Interventions and Supports (PBIS)

There has been a significant shift away from punitive disciplinary sanctions for student conduct violations in recent years. A 2014 joint “Dear Colleague” letter issued by the U.S. Department of Justice (DOJ) and U.S. Department of Education (DOE) described a disturbing trend of racial disparities in the administration of school discipline and reported the negative outcomes associated with punitive disciplinary sanctions:

The increasing use of disciplinary sanctions such as in-school and out-of-school suspensions, expulsions, or referrals to law enforcement authorities creates the potential for significant, negative educational and long-term outcomes, and can contribute to what has been termed the “school to prison pipeline.” Studies have suggested a correlation between exclusionary discipline policies and practices and an array of serious educational, economic, and social problems, including school avoidance and diminished educational engagement; decreased academic achievement; increased behavior problems; increased likelihood of dropping out; substance abuse; and involvement with juvenile justice systems.¹⁴⁴

In their letter, the DOJ and DOE recommended that schools’ written policies provide for alternatives to suspensions and expulsions and that schools limit suspensions and expulsions to “the most severe disciplinary infractions that threaten school safety or to those circumstances where mandated by Federal or State law.”¹⁴⁵

The term “Positive Behavioral Intervention and Supports,” which originated in the 1997 reauthorization of the Individual with Disabilities Education Act, refers to a “framework or approach for assisting school personnel in adopting and organizing evidence-based behavioral interventions into an integrated continuum that enhances academic and social behavior outcomes for all students.”¹⁴⁶ School districts increasingly utilize PBIS to address behavioral issues by teaching proper behavior rather than by sanctioning improper behavior.

The U.S. Department of Education’s Office of Special Education Programs (OSEP) maintains an [online Technical Assistance Center](#) for PBIS with a valuable collection of PBIS implementation materials, including PBIS blueprints, presentations, training, and information regarding grant programs.

Additionally, an individual teacher may suspend a student from their class for the day and the day following under Education Code section 48910.¹⁴⁷ Teachers who implement class suspensions must report the suspension to the principal and participate in a parent-teacher conference shortly after the suspension.¹⁴⁸ The suspending teacher may also require the student to complete any assignments and/or tests missed during the removal.¹⁴⁹

Regardless of whether a teacher or administrator wants to pursue corrective action, student discipline must be designed to rehabilitate students, to help students gain critical social and emotional skills, receive support to help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community.¹⁵⁰

Additionally, if the student being disciplined is a student with a disability, and the student has been suspended or removed from school for more than 10 days in the school year, another suspension or disciplinary removal may trigger the need to consider holding a manifestation determination meeting.¹⁵¹ School districts are advised to work closely with legal counsel in these circumstances.

Dress Code

Dress code policies must be both viewpoint neutral and content neutral, and must be implemented in a consistent and equal manner among all students.¹⁵² A prime example of a viewpoint and content neutral policy that lawfully regulates symbolic speech is a school-wide uniform policy.¹⁵³ Schools are strongly encouraged to train their staff to know how to enforce the dress code in a manner that does not create student fear of unnecessary discipline or fear of unwanted attention in front of others when the dress code is enforced. A student cannot be suspended or expelled for a dress code violation. Schools must also consider accommodations for a student

based on their religious or cultural observance, or health condition, including at graduation ceremonies.¹⁵⁴

Recently, Senate Bill 188, known as the CROWN Act, amended the definition of "race" contained in state anti-discrimination laws under both the Fair Employment and Housing Act and the Education Code to include "hair texture and protective hairstyles."¹⁵⁵ The new law does not mean that school districts have to change their dress codes unless specific hair texture and hairstyles are specified in their policy. Rather, the new law clarifies that dress codes may be considered discriminatory if they explicitly or implicitly affect individuals who have their hair textured or styled in a manner historically associated with their race. For example, a school district could not have a policy restricting students from wearing dreadlocks, twists, or braids. Further, a school district could not enforce a policy demanding "professional" or "clean and tidy" hair that effectively limits workers or students from wearing dreadlocks, twists, or braids.

SCHOOL BULLYING

What is Bullying?

Bullying has been defined by the U.S. Department of Education as intentional, repeated, hurtful acts, words, or other behavior not intentionally provoked by the victim(s) resulting in an imbalance in real or perceived power between the bully and victim.¹⁵⁶ Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victim(s) and create conditions that negatively affect learning.¹⁵⁷

Education Code section 48900, subdivision (r) provides that a student may be suspended or recommended for expulsion for engaging in an act of bullying.¹⁵⁸ This subdivision contains a different definition of bullying than what is described above because the Education Code focuses on bullying for purposes of formal discipline. It is recommended that school districts prohibit conduct that meets the broader definition of bullying above in policy in order to make clear they have authority to take corrective action (other than suspension or expulsion) to address student bullying.

According to subdivision (r), bullying is "any severe or pervasive **physical** or **verbal** act or conduct, including communications **made in writing** or by means of an **electronic act**, and including one or more acts committed by a pupil or group of pupils [...], directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:

- A. Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.
- B. Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.
- C. Causing a reasonable pupil to experience substantial interference with his or her academic performance.
- D. Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school."¹⁵⁹

A "reasonable pupil" is one who exercises average care, skill, and judgment in conduct for a person of his or her age.¹⁶⁰ If the pupil has exceptional needs, a "reasonable pupil" is one who exercises average care, skill, and judgment in conduct for a person of his or her age with his or her exceptional needs.¹⁶¹

Bullying activities may include **verbal bullying** (e.g., teasing, name-calling, taunting, threat of harm), **social/relational bullying** (e.g., purposeful exclusion, rumor-spreading, public embarrassment), and **physical bullying** (e.g., hitting, kicking, spitting, tripping, pushing, inappropriate gesturing, taking property).¹⁶²

"Electronic Acts"

The Education Code broadly defines "electronic acts" for purposes of the anti-bullying statute. An **electronic act** is the creation or transmission on or off the schoolsite, by means of an **electronic device**, of a communication.¹⁶³

Electronic devices include:¹⁶⁴

- Landlines;
- Cell phones;
- Computers; and
- Pagers

Electronic acts include:¹⁶⁵

- Text messages;
- Sounds;

- Images;
- Posts on social networks;
- Websites;
- Fake profiles on social networks; and
- Acts of “cyber sexual bullying,” which are defined as the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a student to another student or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the four detrimental effects of bullying described on the previous page of this Module. “**Photographs**” or “**visual recordings**”:
 - **Include** depictions of a nude, semi-nude, or sexually explicit photographs or other visual recordings of a minor where the minor is identifiable.
 - **Do not include** depictions, portrayals, or images that have any serious literary, artistic, educational, political, or scientific value or that involve athletic events or school-sanctioned activities.

Effects of Bullying

Bullying damages everyone involved. According to the U.S. Department of Health and Human Services, **victims of bullying** are more likely to experience:

- Depression and anxiety;
- Increased feelings of sadness and loneliness;
- Changes in sleep and eating patterns;
- Loss of interest in activities they used to enjoy;
- Health complaints; and
- Decreased academic achievement and school participation.¹⁶⁶

Bullies are more likely to:

- Abuse drugs and alcohol;

- Get into fights;
- Vandalize property;
- Drop out of school;
- Engage in early sexual activity;
- Have criminal convictions and traffic citations as adults; and
- Be abusive toward their romantic partners, spouses, or children as adults.¹⁶⁷

Witnesses to bullying are more likely to:

- Have increased use of tobacco, alcohol, or drugs;
- Have increased mental health problems, including depression and anxiety; and
- Miss or skip school.¹⁶⁸

School Liability for Bullying

A school may face liability for student bullying under a number of legal theories, including state law tort claims and Title IX.

Example: In *Donovan v. Poway*,¹⁶⁹ two gay students obtained judgments against the school district for acting with “deliberate indifference” to known ongoing anti-gay harassment from their peers. Although the school principal promised to investigate incidents captured in detail in logs that the students provided after filing a written complaint, neither the principal nor any other administrator followed up with them to seek additional information in furtherance of an investigation.

Responding to Bullying

The Safe Place to Learn Act

The Safe Place to Learn Act¹⁷⁰ (the Act) became operative on July 1, 2012. Pursuant to the Act, school districts must have a complaint process that includes:

- the requirement that school personnel who witness bullying take immediate steps to intervene when safe to do so;

- a timeline to investigate and resolve complaints; and
- an appeal process for the complainant, if the complainant disagrees with the school district's resolution.¹⁷¹

Under the Act, schools must publicize and post bullying policies that describe how to file a complaint.¹⁷² Schools must also ensure that complainants are protected from retaliation and their identities are kept confidential as appropriate.¹⁷³ In addition, schools must provide information regarding LGBTQ support resources to certificated employees who work with seventh, eighth, ninth, tenth, eleventh, and twelfth graders.¹⁷⁴ School districts are also required to post and make readily available in a prominent location on their website information on bullying and harassment prevention, and copies of the agency's student suicide prevention policies.¹⁷⁵

Victim or Witness Referrals

The Education Code provides that school administrators may refer victims of, witnesses to, or students affected by bullying to school support service personnel for case management, counseling, and participation in a restorative justice program, as appropriate.¹⁷⁶ Students may be referred to:¹⁷⁷

- the school counselor;
- the school psychologist;
- a social worker;
- child welfare attendance personnel;
- the school nurse; or
- other school support service personnel.

Students who engage in bullying may also be referred to school support service personnel for case management and counseling, or for participation in a restorative justice program.¹⁷⁸

Best Practices

The U.S. Department of Health and Human Services recommends the following "dos and don'ts" for responding to bullying:

DO NOT:

- Ignore the bullying;
- Immediately try to sort out the facts;
- Force other students to say publicly what they saw;
- Question the students involved in front of other students;
- Talk to the students involved together; or
- Make the students involved apologize on the spot.¹⁷⁹

DO:

- Intervene immediately;
- Separate the students involved;
- Ensure everyone's safety;
- Meet any immediate medical or mental health needs;
- Stay calm;
- Model respectful behavior when you intervene; and
- Call 911 immediately if a weapon is involved, if there are threats of serious physical injury, if there are threats of hate-motivated violence, if there is serious bodily harm, if there is sexual abuse.¹⁸⁰ In addition, under California law a school principal or his or her designee must notify law enforcement of certain acts that fall within the ambit of Education Code section 48902.

If a school district becomes aware of a bullying incident or receives a complaint for bullying, it should:

- Immediately investigate bullying accusations;
- Gather documentation regarding the alleged bullying, as appropriate;
- Collect student witnesses;
- Make all reasonable efforts to resolve the dispute between the students;

- Determine whether discipline is appropriate; and
- Determine whether other non-disciplinary alternatives should be used to address the alleged bullying.

Alternative measures include conflict resolution meetings with the victim and perpetrator, meetings with the perpetrator to discuss the consequences of his or her behavior, meetings with the perpetrator's parents to discuss the consequences of his or her behavior, and facilitating counseling for the victim and/or the perpetrator. A sample Conflict/Bullying Report is included as Attachment C in Module 5 of this Manual.

Additional Resources

Stopbullying.gov, a federal government website managed by the U.S. Department of Health and Human Services, publishes valuable information regarding bullying and maintains a resource bank of materials related to bullying.¹⁸¹

In addition, the California Department of Education (CDE) has compiled on its website a list of publications and resources with tools for recognizing bullying behavior and approaches for determining how to respond.¹⁸² The CDE is required to provide workshops to assist school districts and county offices of education in developing school safety and response plans and training in bullying prevention.¹⁸³ The CDE is also required to develop an online training module to address bullying and cyberbullying.¹⁸⁴ However, these programs have not been implemented as of the date of publication of this Manual.

HAZING

What is Hazing?

Under the Education Code, hazing is defined as "a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, that is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil."¹⁸⁵ Hazing does not include athletic events or school-sanctioned events.

Hazing is similarly defined under the Penal Code, except the hazing activity must be likely to cause serious bodily injury.¹⁸⁶

The Education Code and the Penal Code prohibit hazing. Education Code section 48900, subd. (q) provides that a student may be suspended or recommended for

expulsion for engaging in, or attempting to engage in, hazing.¹⁸⁷ Hazing may also result in criminal prosecution pursuant to Penal Code section 245.6, which sets forth the following penalties:

Without serious bodily injury	With death or serious bodily injury
<ul style="list-style-type: none"> - Misdemeanor - Fine of between \$100 and \$5,000 - County jail for up to one year - Civil liability for any participants in the hazing, or any organization to which the student is seeking membership whose agents, directors, trustees, managers, or officers authorized, requested, commanded, participated in, or ratified the hazing. 	<ul style="list-style-type: none"> - Misdemeanor or felony - County jail for up to three years - Civil liability for any participants in the hazing, or any organization to which the student is seeking membership whose agents, directors, trustees, managers, or officers authorized, requested, commanded, participated in, or ratified the hazing.

Hazing can include forcing or coercing initiates or pre-initiates to:

- Endure paddling or other physical abuses;
- Participate in illegal activity;
- Endure isolation or humiliation;
- Drink alcohol;
- Consume spicy foods or other substances;
- Humiliate, embarrass, or harass others; or
- Engage in strenuous physical activities.

Effects of Hazing

Like bullying, hazing damages everyone involved. In response to an August 2000 Alfred University poll of high school hazing victims,¹⁸⁸ student respondents noted the following consequences of hazing:

Consequence	% of Respondents
Got into a fight	24
Sustained physical injuries	23
Fought with parents	22
Performed poorly in school	21
Hurt someone else	20
Missed school or extracurricular activity	19
Had difficulty eating, sleeping, or consequences	18
Committed a crime	16
Considered suicide	15
Got sick	12
Quit going out with friends	11
Got in trouble with police	10
Was convicted of a crime	4

35% of respondents felt angry about the hazing, 28% felt embarrassed, 25% felt confused, 23% felt guilty, 21% felt regretful, and 20% felt sad.¹⁸⁹

School Liability for Hazing

A school may face liability for student hazing under a number of legal theories, including state law tort claims and Title IX.

Example: In *Roe v. Gustine*,¹⁹⁰ a California court determined that a school district could be liable for “deliberate indifference” of known harassment under Title IX, if an athletic coach failed to reasonably respond to a hazing incident involving sexual abuse at a football camp.

Responding to Hazing

In the same Alfred University poll referenced above, student respondents were asked how they would prevent hazing. Students suggested the following:¹⁹¹

Strategy	% of Respondents
Strong discipline for hazing	61
Police investigation & prosecution of hazing	50
Positive, bonding activities	43
Education about positive initiation and hazing	37
Adults who support positive initiation activities	34
Physically challenging activities	30
Good behavior required to join the group	29
Adults who say hazing is unacceptable	27
A "no hazing" agreement signed by students	23

Best Practices

School districts should consider the following best practices to curb hazing in student activities:

- School district board policies regarding prohibited conduct should define hazing as a prohibited activity and violations should be openly and consistently enforced
- Schools should educate students on the effects and repercussions of hazing during orientations to student sports or activities
- School districts should consider requiring students participating in school sports or activities to sign anti-hazing acknowledgements

Additional Resources

HazingPrevention.org, a national nonprofit organization dedicated to prevention of and response to hazing, provides valuable resources which include a [high school hazing resource and planning guide](#).¹⁹²

STAFF SPEECH IN INTERACTIONS WITH STUDENTS AND PARENTS

SCHOOL EMPLOYEE SPEECH

As differences and polarities of opinion become more prevalent among Americans, headlines about inappropriate classroom conversations and social media use by school employees are becoming increasingly common. Schools face difficult questions about how to prevent teachers from imparting their personal opinions instead of teaching the assigned curriculum and how to deter employee social media-related misconduct and what to do if an employee crosses the line. Overly broad restrictions on speech may offend employees' First Amendment free speech rights. Lax restrictions, on the other hand, can open the door to controversies that impede schools' ability to carry out their educational missions. In order to minimize liability, schools are advised to adopt policies and practices that strike a balance between employees' free speech rights and school interests.

Limitations on Teacher Communications

The First Amendment of the U.S. Constitution provides that "Congress shall make no law...abridging freedom of speech."¹⁹³ The concept of "speech" in the First Amendment context is much broader than our literal everyday understanding of the term. "Speech" protected under the First Amendment extends to many modes of expression, including direct speech (i.e., words) and symbolic speech (i.e., actions). Under this broad framework, the Supreme Court has determined that the First Amendment protects the right not to salute the flag,¹⁹⁴ the right to wear certain articles of clothing in protest,¹⁹⁵ the right to contribute money to political campaigns in certain circumstances,¹⁹⁶ and the right to burn the U.S. flag in protest.¹⁹⁷ In the information age, the First Amendment protects what we "say" or express on social media. Protected forms of expression might include "likes," "re-tweets," "downvotes," and emoticons. The potential applications are limitless and the case law is ever-changing.

School districts have a right to protect their legitimate interests in performing their educational missions.¹⁹⁸ That right must be balanced with employees' right to free speech. Courts thus aim to reconcile "the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."¹⁹⁹ Courts will engage in a five-pronged analysis to determine whether an adverse employment action against an employee violated his or her First Amendment rights:

1. Whether the employee spoke on a matter of public concern;

2. Whether the employee spoke as a private citizen or public employee;
3. Whether the employee's protected speech was a substantial or motivating factor in the adverse employment action.²⁰⁰

When a school employee speaks as a **private citizen** regarding a matter of **public concern**, his or her speech is protected speech.²⁰¹ When he or she speaks in the context of his or her **official duties as a public employee**, his or her speech is not protected. When he or she speaks as a **private citizen** regarding a matter of **private concern**, the speech may warrant some protection.²⁰² The following chart illustrates:

	Public Concern	Private Concern
Official Duties	Not protected	Not protected
Private Citizen	Highest protection	Consider nexus to employment

If the speech is protected, the court will continue its analysis, asking:

4. Whether the school's legitimate administrative interests outweigh the employee's First Amendment rights; and, if not
5. Whether the school would have taken the adverse employment action even absent the protected speech.²⁰³

Speech Regarding a Matter of Public Concern

Whether a statement involves a matter of public concern depends on "the content, form and context of [the] statement."²⁰⁴ Statements that relate to issues of "political, social, or other concern to the community" are protected statements regarding matters of public concern.²⁰⁵ Matters of public concern can include criticism of a school district's operations and political or social advocacy unconnected to the employee's work. On the other hand, employee grievances, workplace gossip, and matters of mere personal interest are not matters of public concern.²⁰⁶

Example: In *City of San Diego v. Roe* a police officer brought suit after the City of San Diego terminated him for homemade sexually explicit videos featuring the

officer in his police uniform in an online marketplace. The U.S. Supreme Court determined that the police officer’s expression – selling the sexually explicit videos for profit – did not constitute a matter of public concern.²⁰⁷ As such, the court determined it unnecessary to balance the government interest with the officer’s First Amendment rights. The employer was justified in firing the officer because his conduct was detrimental to the mission and functions of the employer.

Speech as a Private Citizen

The First Amendment “does not invest [government employees] with a right to perform their jobs however they see fit.”²⁰⁸ If an employee’s speech “owes its existence” to his or her position as a school employee, then his or her speech is not protected private citizen speech.²⁰⁹ If, on the other hand, the employee is speaking as a citizen expressing his or her personal views on disputed matters of public importance, his or her speech is entitled to protection.²¹⁰

Example: In *Garcetti v. Ceballos*²¹¹ a supervising deputy district attorney wrote a memorandum to his supervisors that noted serious misrepresentations in a police affidavit used to obtain a search warrant in a case. The supervising deputy recommended that his supervisors dismiss the case. Instead, they prosecuted it. When the supervising deputy was called to the stand in court, he recounted his observations about the misrepresentations. As a result, he was fired. The supervising deputy then sued his employer, arguing that the contents of his memorandum were protected by the First Amendment and that he was wrongfully terminated. The case made its way to the Supreme Court, which determined that the contents of the memorandum were not protected speech because the supervising deputy wrote the memo *in the context of his job duties*.

The Pickering Test

The fourth prong of the analysis, known as the *Pickering* balancing test, analyzes whether a school district’s actions violate the First Amendment. A school district’s “legitimate administrative interests” may outweigh the employee’s interest in speaking on a matter of public concern if the employee’s speech:

- Impairs discipline by superiors or harmony among co-workers,
- Has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or

- Impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise.²¹²

A school district should not assume that controversial or seemingly inappropriate speech is not protected. Rather, a school district should carefully consider how the speech affects the district's interests before taking action.

Example: In *Rankin v. McPherson*,²¹³ a deputy constable was fired after a co-worker overheard her make a comment to her co-worker's boyfriend about an assassination attempt against the president, stating that "if they go for him again, I hope they get him." The United States Supreme Court determined that the deputy was improperly discharged because her speech related to a matter of public concern – a recent assassination attempt on the president – and the constable's interest in discharging the deputy did not outweigh the deputy's free speech rights. The Court focused on the lack of evidence that the remark interfered with the efficient functioning of the constable's office; that the remark was made in a private conversation between two people; and that the deputy did not serve a confidential, policy-making, or public contact role.

Off-campus Speech Regarding Private Matters

Although case law regarding **off-campus** speech regarding **private matters** is not entirely settled, such speech will be entitled to protection if the speech relates to the employee's employment with the school district.²¹⁴ In that case, courts will analyze the propriety of any action to limit or stifle the speech under the *Pickering* balancing test. If the speech does not relate to the employee's employment with the school district, it may still be entitled to some protection.²¹⁵

Example: In *Dible v. City of Chandler*,²¹⁶ a police department terminated a police officer's employment after learning that the officer was running a website featuring sexually explicit photographs and videos of him and his wife. The court determined that the employer's interest in maintaining the effective and efficient operation of the police department outweighed any First Amendment right the police officer might have, explaining that "whether [the police officer's] activities were related to his employment or not, [the employer] could discipline him for those activities without violating his First Amendment rights."

Free Speech and Social Media

Based on the principles above, a school district may only take actions that limit an employee's speech in social media if the employee's speech is not protected by the First Amendment, or if the school district's interest outweighs the employee's First Amendment rights.

Example: In *Munroe v. Central Bucks School District*,²¹⁷ a teacher posted numerous blog posts that disparaged and mocked students, which caused substantial controversy for the district with students' parents. The school district later terminated her employment, which the teacher argued violated her First Amendment rights. The teacher sued the school district on various grounds. The case made its way up to a federal appellate court, which determined that the teacher's conduct eroded the necessary trust between the teacher and her students and that, due to the nature of the teacher's speech, it did not constitute protected speech.

Although school districts can implement policies to address improper student-teacher communications, they should be mindful of the First Amendment whenever they take action that might limit employees' expression.

Example: In *Spanierman v. Hughes*,²¹⁸ a school district did not renew a teacher's contract after discovering his Myspace.com webpage, which contained doctored pictures of students, inappropriate comments regarding students, and unprofessional reciprocal communications with students. The teacher sued the school district on various grounds. The court determined that the speech that the school district based its decision upon was not protected speech and that the inappropriate nature of the teacher's communications with students rendered them likely to disrupt school activities.

The key point for school districts is that it is important to tread lightly when taking actions that might restrict employee free speech. In the social media context, this means analyzing whether an employee's social media posts sufficiently relate to his or her employment with the school district **before** imposing limitations on the speech or disciplining the employee.

NON-FRATERNIZATION POLICIES

Schools can limit their exposure and prevent inappropriate student-employee relationships using non-fraternization policies. California case law supports the notion that an employer may adopt policies that prohibit supervisor-subordinate relationships.²¹⁹ Such policies may also be used to impose limitations on student-employee relationships.

BEST PRACTICES FOR DISTRICT TECHNOLOGY SOCIAL MEDIA USE

The following best practices may help to prevent your school district from incurring liability arising from the misuse of district technology in social media.

Administrative safeguards:

- Limit access to school-associated social media accounts to designated employees who have been provided clear written guidelines for managing content;
- Use a one-way communication model for school social media pages whenever possible. Under a one-way communication model, users are restricted from posting to or otherwise engaging in dialogue on the school media page;
- When using a two-way communication model, avoid removing posts simply because they are critical;
- Consider prohibiting staff from communicating with students by text message or personal email unless through a group message; and
- Consider requiring staff to use school social media accounts rather than personal accounts when communicating electronically with students in the course and scope of their duties.

Comprehensive policies:

- Develop comprehensive Acceptable Use Policies and obtain signed copies from students and employees;
- Include language in policies instructing that employee social media posts may be subject to the California Public Records Act;
- State clearly in policies that violations may result in discipline;
- Consistently enforce disciplinary policies; and

- Include terms of use for school websites and social media pages in a visible and accessible location.

Dialogue:

- Discuss social media issues with students, parents and employees; and
- Train students and employees in the appropriate use of social media.

PARENT RIGHTS AND STUDENT RIGHTS

PARENT RIGHTS

Parent's Bill of Rights

The California Legislature has determined that parents and guardians of California students have the right to certain information from schools and to participate in the education of their children. The following **non-exhaustive** list describes some of those rights, which are set forth in Education Code section 51101:

- The right to observe the classroom or classrooms in which their child is enrolled or for the purpose of selecting the school in which their child will be enrolled;
- The right to meet with their child's teacher and principal;
- The right to volunteer, including to assist with instruction under the direct supervision of a teacher;
- The right to be notified of their child's unexcused absence;
- The right to receive their child's standardized test scores;
- The right to request a particular school for their child and to receive a response;
- The right to have a safe school environment for their child that is supportive of learning;
- The right to examine their child's curriculum materials;
- The right to be informed of their child's academic progress;
- The right to have access to their child's school records;

- The right to receive information regarding academic performance standards;
- The right to be informed in advance about school rules;
- The right to receive information about psychological testing the school does involving their child and to deny permission to give the test;
- The right to participate in parent advisory committees, schoolsite councils, or site-based management leadership teams;
- The right to question anything in their child's record that the parent feels is inaccurate, misleading, or an invasion of privacy, and to receive a response; and
- The right to be notified early in a school year if their child is identified as being at risk of retention, the right to consult with school personnel responsible for a decision to promote or retain their child, and the right to appeal such a decision.²²⁰

Parent's Rights Policies

Each school district's governing board must develop jointly with student parents or guardians a policy setting forth the manner in which school staff, students, and their parents or guardians may "share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite."²²¹ This policy must include, at a minimum:

- The means by which the school and parents or guardians help students to achieve academic and other standards;
- A description of the school's responsibility to provide a high quality curriculum and instructional program in a supportive and effective learning environment that enables all students to meet academic expectations;
- The manner in which parents and guardians may support the learning environment of their children, including, but not limited to:
 - Monitoring their children's attendance;
 - Ensuring that homework is completed and turned in on a timely basis;
 - Participation of the children in extracurricular activities;
 - Monitoring and regulating the television viewed by their children;

- Working with their children at home in learning activities that extend classroom learning;
- Volunteering in their children’s classrooms or for other school activities;
- Participating in decisions relating to their children’s education or the school program.²²²

Parent’s Right to Access Student Records

California law provides parents an absolute right to access any and all student records that are maintained by a school district.²²³ School districts must adopt procedures for granting parent requests to inspect and review student records and school districts may not edit or withhold those records.²²⁴ Any parent request for access to student records must be granted within five days following the date of the request.²²⁵ Parents may challenge the content of any student record,²²⁶ and school district staff should be trained in the procedures for addressing written requests to correct or remove student record information.

STUDENT FREE SPEECH

Student speech is protected by the Education Code, the U.S. Constitution and the California Constitution. These protections and their limitations are discussed in detail below. In order to reduce exposure to liability under state and federal law, school districts need to take care to avoid infringing student free speech rights when developing and enforcing policies.

Protections of Speech in the Education Code

Education Code Section 48907

Education Code section 48907 governs student exercise of freedom of speech and press. It provides that students shall have the right to exercise freedom of speech, with the following exceptions:

- Obscene speech;
- Libelous speech;
- Slanderous speech; and
- Speech “which so incites students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful

school regulations, or the substantial disruption of the orderly operation of the school.²²⁷

A “prior restraint” is a restriction or prohibition of certain types of speech or expression prior to publication. Schools may not impose prior restraints of materials used in official school publications unless the prior restraint relates to one of the exceptions listed above.²²⁸

School districts must adopt a written publications code, which must include reasonable provisions for the time, place, and manner for conducting such activities within their respective jurisdictions.²²⁹ Although California law permits student editors to assign and edit the content of their publications, an employee journalism advisor must be responsible for ensuring compliance with section 48907.²³⁰

Prohibition on Employee Discipline for Protecting Student Rights

School districts are prohibited from disciplining employees solely for acting to protect a student engaged in protected free speech or refusing to infringe upon student free speech.²³¹ School districts are further prohibited from making or enforcing rules that subject students to sanctions solely for engaging in protected free speech off campus.²³²

Constitutional Free Speech Protections

The United States Supreme Court has examined student constitutional free speech rights in four opinions, which together form the bedrock principles of student free speech. Each case is discussed briefly below.

Tinker v. Des Moines Independent Community School District. In *Tinker*, three students were suspended for wearing black armbands to school in protest of the Vietnam War. The U.S. Supreme Court determined that the students’ expression was protected, holding that when a student is on campus, he or she may express his or her opinions, even on controversial subjects, unless in doing so he or she “**materially and substantially**” interferes with the requirements of appropriate discipline in the operation of the school or invades the rights of others.²³³

Bethel School District v. Fraser. In *Fraser*, the school district suspended a student and removed his name from the list of candidates for graduation speakers after he gave a speech at a school assembly which consisted of “an elaborate, graphic, and explicit sexual metaphor.” The U.S. Supreme Court determined that the speech, which constituted **vulgar, lewd, obscene and plainly offensive** speech, was not protected by

the U.S. Constitution. To allow such speech, the Court reasoned, would “undermine the school’s basic educational mission.”²³⁴

Hazelwood School District v. Kuhlmeier. In *Hazelwood*, the school district deleted two pages of a school newspaper that included an article describing students’ experiences with pregnancy and an article discussing the impact of divorce on students. The U.S. Supreme Court determined that the speech was not protected, holding that “educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in **school-sponsored** expressive activities, so long as their actions are reasonably related to **legitimate pedagogical concerns.**”²³⁵ Central to the Court’s analysis was that the speech in *Hazelwood* was school-sponsored speech, unlike the speech in *Tinker*.

Morse v. Frederick. In *Morse*, the school district suspended a student after he disregarded the principal’s directive to take down a banner at a school-sanctioned event that read “BONG HiTS 4 JESUS.”²³⁶ The U.S. Supreme Court determined that the principal did not violate the student’s free speech rights, holding that a school district “may, consistent with the First Amendment, restrict student speech at a school event, when the speech is reasonably viewed as promoting illegal drug use.”²³⁷

In sum, the Supreme Court has addressed four scenarios in which schools may restrict student speech. As explained by the Ninth Circuit Court of Appeals: “(1) vulgar, lewd, obscene, and plainly offensive speech is governed by *Fraser*; (2) school-sponsored speech is governed by *Hazelwood*; (3) ‘speech promoting illegal drug use’ is governed by *Morse*; and (4) ‘speech that falls into [none] of these categories’ is governed by *Tinker*.”²³⁸

With respect to the *Hazelwood* standard, it is important to note that the California Education Code limits how schools may impose prior restraints on speech in official school publications such as student newspapers. In light of Education Code section 48907, speech in official school publications cannot be regulated as a matter of taste or pedagogy as *Hazelwood* would otherwise permit.

Off-Campus Speech

Although the Supreme Court recently opined that schools can regulate **off-campus** speech if the speech is more than a student expressing vulgar criticism about an extracurricular activity on social media, two binding appellate court opinions have addressed this issue with greater clarity.

Wynar v. Douglas. In *Wynar*, a school district expelled a student for a series of Myspace.com messages, written from his home computer after school hours, in which

he threatened to commit a school shooting.²³⁹ The court declined to adopt a “one-size fits all approach,” for determining whether off-campus speech constitutes protected speech. If the speech occurred on school grounds, it would be analyzed under the *Tinker* framework. However, because the speech occurred off campus, the court asked two “threshold” questions before reaching the *Tinker* analysis: (1) whether the speech had a sufficient nexus to the school; and (2) whether it was reasonably foreseeable that the speech would reach the school community. The court determined that both tests were satisfied, holding that “when faced with an **identifiable threat of school violence**, schools may take disciplinary action in response to off-campus speech that meets the requirements of *Tinker*.”²⁴⁰ Applying the *Tinker* analysis, the court determined that the speech could cause a “substantial disruption” or “material interference” with school activities and, thus, did not constitute protected speech.²⁴¹

C.R. v. Eugene Sch. Dist. 4J. In *Eugene*, the school district suspended a 12-year-old student for sexually harassing two younger disabled students in an off-campus incident at a park that occurred about five minutes after school let out.²⁴² As the court did in *Wynar*, it first applied the “sufficient nexus” and “reasonably foreseeable” threshold tests and then engaged in the *Tinker* analysis. Under the facts of the case, the court concluded that the school did not violate the student’s constitutional rights by suspending him.²⁴³

Wynar and *Eugene* instruct that a court will first ask two threshold questions to determine whether off-campus speech warrants protection: (1) whether the speech had a sufficient nexus to the school; and (2) whether it was reasonably foreseeable that the speech would reach the school community. If the answers to both questions are “yes,” the court will ask if the speech “might reasonably lead school authorities to forecast substantial disruption of or material interference with school activities,” or, alternatively, if the speech “collides with the rights of other students to be secure and to be let alone.” If the answer to either question is “yes,” the speech does not constitute protected speech.

Example: In *Kowalski v. Berkeley County Schools*,²⁴⁴ a student created a Myspace.com group about another district student that disparaged the other student and implied that the other student had a sexually transmitted disease. Two dozen students became members of the group. When the school district learned of the group, it suspended the student who created it in violation of the district’s student code of conduct and its harassment, bullying, and intimidation policy. The student sued the school district on numerous grounds, including for free speech violations. The case made its way to a federal appellate court, which determined

that the suspension did not violate the student's First Amendment free speech rights because her speech created "substantial disorder and disruption" in the school.

STUDENT PRIVACY RIGHTS

The body of law governing student privacy rights has grown significantly in recent years and will continue to grow as societal views on privacy evolve and emerging technologies develop. This section examines some of the privacy laws that affect students and why school districts need to be aware of them. This overview is **non-exhaustive** and school districts are advised to consult legal counsel with specific questions regarding student privacy rights.

Family Educational Rights and Privacy Act (FERPA)

FERPA provides parents and eligible students certain rights to inspect and review a student's education records, to request corrections of the records, and to obtain copies of those records. It also prohibits a school from disclosing educational records to a third party without written consent from the parent or eligible student, subject to certain exceptions. FERPA's effects on school districts are discussed in detail in Module 2.

Protection of Pupil Rights Amendment (PPRA)

The Protection of Pupil Rights Amendment (PPRA)²⁴⁵ prohibits school districts from requiring students to submit to surveys, analyses, or evaluations that pertain to specific sensitive issues, including mental or psychological problems and sexual behavior or attitudes.²⁴⁶ Pursuant to the PPRA, school districts must provide parents access to instructional materials used in connection with surveys, analyses, or evaluations upon request.²⁴⁷ School districts must also develop and adopt local policies concerning student privacy, parental access to information, and administration of certain physical examinations to minors.²⁴⁸

Once a school district has adopted local policies in conformance with PPRA requirements, it must also adhere to the PPRA's ongoing parental notification requirements.²⁴⁹ Failure to comply may result in termination of federal financial assistance.²⁵⁰

Student Online Personal Information Protection Act (SOPIPA)

The Student Online Personal Information Protection Act (SOPIPA)²⁵¹ became operative on January 1, 2016. It applies to operators of websites, online services, online applications, or mobile applications that are used primarily for K-12 school

purposes and designed and marketed for those purposes. Subject to certain exceptions, such operators are prohibited from (1) engaging in targeted advertising when the targeting is based on information acquired from users; (2) using information created or gathered from users to create a profile of a K-12 student except in furtherance of K-12 purposes; (3) selling student information; and (4) disclosing certain student personally identifiable information.²⁵² Operators must also implement security procedures to protect certain student personally identifiable information and delete a student's personally identifiable information upon a school district's request.²⁵³

School districts should be mindful of SOPIPA's student protections and may wish to implement policies for ensuring the periodic deletion of student personally identifiable information from third-party websites, online services, online applications or mobile applications.

Children's Online Privacy Protection Act (COPPA)

The Children's Online Privacy Protection Act (COPPA)²⁵⁴ regulates the online privacy of children under 13 years of age. The Children's Online Privacy Protection Rule requires, among other things, that website operators post a clear privacy policy describing their policies for collecting personal information from children. Website operators must also obtain express parental consent before collecting personal information online from children.

Schools may consent to website operators' collection of student personal information for the use and benefit of the school and for no other commercial purpose.²⁵⁵ However, schools are advised to consider the restrictions and obligations imposed under FERPA, the PPRA, SOPIPA and other state and federal privacy laws before providing such consent.²⁵⁶

Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act (HIPAA) requires covered entities to establish appropriate safeguards to protect health records and other identifiable health information and to set limits and conditions on the disclosure and use of such information without a patient's consent.²⁵⁷ HIPAA also gives patients certain rights, including the right to inspect and obtain copies of their health records and to request corrections to those records. HIPAA's effects on school districts are discussed in detail in Module 2.

Children’s Internet Protection Act (CIPA)

The Children’s Internet Protection Act (CIPA)²⁵⁸ conditions the availability of E-rate funding on a school district’s implementation and enforcement of a policy to protect against access by minors to “visual depictions” that are obscene, child pornography, or harmful to minors.²⁵⁹ Schools are required to certify compliance with CIPA in order to receive E-rate funding.²⁶⁰

When in doubt, school districts seeking the discounts offered by the E-rate program are advised to consult with legal counsel to ensure compliance with CIPA and its certification requirements.

Privacy Rights in the Education Code

Education Code section 49073 and subsequent code sections govern privacy of student records. Noteworthy among them are provisions that:

- Require school districts to adopt a policy regarding the release of student directory information;²⁶¹
- Require school districts to include specific provisions in contracts: (1) for provision of services for the digital storage, management, and retrieval of student records; and (2) for provision of digital educational software that authorize third-party providers of digital educational software to access, store, and use student records;²⁶²
- Establish requirements for gathering or maintaining any information obtained from student social media;²⁶³ and
- Govern the circumstances under which school districts may permit access to student records with or without parental consent.²⁶⁴

The Education Code’s privacy provisions each carry their own penalties for non-compliance. For example, a third-party contract associated with student records that does not include the provisions specified in Education Code section 49073.1 will be rendered void if not subsequently cured.²⁶⁵ When in doubt, school districts are advised to consult with counsel to ensure compliance with the Education Code’s privacy provisions.

Student Device and Social Media Privacy Rights

Despite the prevalence of student cell phone and social media use in schools and its impact on the school environment, effective January 1, 2020, students have a right to possess or use a smartphone at school in certain circumstances:

- During an emergency situation or as a response to a perceived threat of danger;
- When a teacher or administrator gives permission to a student to possess or use a cell phone, subject to reasonable limitations imposed by the person giving permission;
- When necessary for the health or well-being of a student, as determined by a licensed physician and surgeon; and,
- When possession or use of the smartphone is required pursuant to a student's individualized education program (IEP).

While inappropriate use of a smartphone is not a clear, stand-alone suspendable or expellable violation, school districts should be mindful about policies, procedures, and practices that involve confiscation or prohibition of student smartphones for reasons like bullying and how those interplay with the student's right to a smartphone in the above-identified instances.²⁶⁶

Further, schools are restricted from conducting social media monitoring of students unless certain procedural requirements under Education Code section 49073.6 are met. Any social media monitoring must be approved by the District's Governing Board and be relevant to school or student safety and parents. Students must also be notified of the proposed program before and after implementation. A public meeting on the issue and notice to parents and students of the opportunity to comment on the program must be completed before implementation. After implementation, students have a right to access any information about themselves gathered from social media under this program.

That said, monitoring under section 49073.6 is different than a situation where a school employee being directed by a third party to a student's social media post that includes concerning speech or behavior. Also, social media monitoring is different than monitoring of a district-provided technology device or use of a district network where the authorized possessor of the device may have consented to the district search.²⁶⁷

Constitutional Privacy Rights

A student has significant privacy rights that emanate from the California Constitution and the United States Constitution. Chief among those rights are the state and federal right to be free from unreasonable searches and seizures²⁶⁸ and the express right to privacy set forth in the California Constitution.²⁶⁹

The California Constitution and the United States Constitution prohibit government entities, including school districts, from conducting **unreasonable** “searches” and “seizures.” The “reasonableness of particular searches and seizures is determined by a general balancing test ‘weighing the gravity of the governmental interest or public concern served and the degree to which the [challenged government conduct] advances that concern against the intrusiveness of the interference with individual liberty.’”²⁷⁰ Although the term “search” might paint a picture of a teacher rummaging through a student’s backpack, the term also encompasses more abstract “searches” such as drug tests.

Example: In *In re Latasha W.*,²⁷¹ a school district instituted a written policy for daily weapons searches to protect students and staff. Under the policy, searches were to be random and individuals were to be chosen to be searched based on neutral criteria. Searches were conducted using a hand-held metal detector. A student challenged the policy after being arrested based on a metal detector search that revealed a pocket knife. The case went up to a California appellate court, which determined that the school district’s randomized use of the metal detector did not violate the student’s constitutional rights because the school’s need was great, the intrusion on the student was limited, and a more rigorous standard requiring individualized suspicion would be “unworkable.”

More generally, courts have recognized protected interests in **informational privacy** and in **autonomy privacy**. **Informational privacy** rights consist of interests in precluding the dissemination or misuse of sensitive and confidential information. **Autonomy privacy rights** consist of interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference.²⁷²

It is important that school districts are aware of the various contexts in which constitutional privacy rights may be implicated. Depending upon the circumstances, the following situations might raise constitutional privacy concerns:

- Strip searches;
- Drug testing;

- Drug detection devices and drug sniffing dogs;
- Breathalyzers and urinalysis;
- Vehicle searches;
- Searches of backpacks and purses;
- Use of metal detectors;
- Situations in which student gender identity is called into question;
- Searches of student phones, computers, or other personal electronic devices;
- Intrusions upon or investigations of student social media accounts;
- Use of information disclosed by students to school employees in confidence;
and
- Use of cameras or other surveillance equipment on school grounds.

When in doubt, school districts should always consult with legal counsel.

STUDENT GENDER IDENTITY RIGHTS

It should be noted that the Education Code conditions State funding on a school district's compliance with gender anti-discrimination laws and provides for administrative enforcement through a discrimination complaint process.²⁷³

Student gender identity is a protected classification under Education Code sections 220 and 234.1. Moreover, Assembly Bill 1266, effective January 1, 2014, adds Education Code section 221.5, subdivision (f), which provides:

"A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records."

Based on the language of AB 1266 and Education Code section 221.5, subdivision (f), school districts must permit students to access locker room and restroom facilities that correspond with the gender identity asserted by the student.

A student's gender identity is based on that student's innermost concept of self. Accordingly, gender identity is neither observable nor is it necessarily exhibited through a student's outward activities or gender expression. The California

Department of Education (“CDE”), in its guidance on AB 1266, stated that school districts should accept a student’s assertion of his/her gender identity, especially where the student either: (1) expresses that identity at school; or (2) where there is other evidence that this is a sincerely held part of the student’s core identity.²⁷⁴

The CDE guidance further provides that, if a student meets one or both of these requirements, “a school may not question the student’s assertion of his/her gender identity except in the rare circumstance where school personnel have a credible basis for believing that the student is making that assertion for some improper purpose. The fact that a student may express or present his/her gender identity in different ways in different contexts does not, by itself, undermine a student’s assertion of his/her gender identity.”²⁷⁵

A student’s gender identity may include an assertion that they are a “transgender” or “nonbinary” individual. The term “transgender” is an umbrella term used to describe an individual whose gender identity is different from his/her biological sex, and whose gender expression may be different from the stereotypical way in which males or females are expected to act, dress, or present themselves. “Nonbinary” is a term for people with gender identities that fall somewhere outside of the traditional notions of strictly female or male. People with nonbinary identities may or may not be referred to by other terms, including transgender, gender fluid, gender non-conforming, or gender variant.

Individuals who identify as nonbinary may now petition a California court to recognize their gender as nonbinary, which would then allow them to subsequently request a new birth certificate reflecting their gender identity. Therefore, school districts need to establish processes to allow for changes on official documents because existing law requires school districts to maintain and preserve, in perpetuity, certain mandatory pupil records containing the student’s “legal name,” even after a student graduates.²⁷⁶ Assembly Bill 711 recently codified this process, including what government-issued documentation is needed to update the student’s legal name or gender.²⁷⁷ School districts who have not handled these requests before are advised to seek legal counsel for assistance.

Regardless, the CDE guidance states that a transgender or nonbinary student’s chosen name and pronouns must be used on unofficial records and during verbal discussions with the student, unless directed by the student otherwise. According to CDE,

“If a member of the school community intentionally uses a student’s incorrect name and pronoun, or persistently refuses to respect a student’s chosen name

and pronouns, that conduct should be treated as harassment. That type of harassment can create a hostile learning environment, violate the transgender student's privacy rights, and increase that student's risk for harassment by other members of the school community."²⁷⁸

This clear guidance from CDE stands in contrast to the state of the law at the federal level. On May 19, 2020, the Office for Civil Rights issued its Title IX regulations related to sexual harassment investigations, stating, "Title IX and its implementing regulations . . . presuppose sex as a binary classification."²⁷⁹ A month later, on June 15, 2020, the United States Supreme Court issued its opinion in *Bostock v. Clayton County, Georgia* (2020) 140 S. Ct. 1731 ("*Bostock*"). *Bostock* addressed employment discrimination "because of sex" under Title VII of the Civil Rights Act of 1964, which is similar to Title IX's prohibition against discrimination "on the basis of sex." Because the *Bostock* decision held that the protected categories of sexual orientation and transgender status "are inextricably bound up with sex" as the term "sex" is used under Title VII," it is arguable that means the term "sex" under Title IX includes a person's transgender status outside of a binary classification.

Subsequently, President Biden, on his first day in office, signed an Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.²⁸⁰ The Executive Order calls upon agencies to review all existing orders, regulations, guidance documents, policies, programs or other agency actions related to sex discrimination and consider whether to revise, suspend or rescind such actions. As it relates to gender identify and sexual orientation in schools, the Executive Order specifically states within its purpose, "Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports . . . All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation." Notably, the Executive Order cites to the *Bostock* decision and states that, under the case's reasoning, Title IX prohibits discrimination on the basis of gender identity or sexual orientation "so long as the laws do not contain sufficient indications to the contrary."

While it remains to be seen whether Title IX regulations will be revised and how subsequent case law develops interpreting the *Bostock* decision and its applicability to Title IX, potential plaintiffs may file civil lawsuits for violations of gender identity student rights under California law.²⁸¹ As California law contains clear rights for transgender and nonbinary students, school administrators are strongly advised to seek assistance from legal counsel as related issues arise.

¹ [Ed. Code, § 44808.](#)

² [Ed. Code, § 35330, subd. \(d\).](#)

³ *Ramirez v. Long Beach Unified School District* (2002) 105 Cal.App.4th 182, 189-90.

⁴ [Ed. Code, § 35330, subd. \(a\)\(3\).](#)

⁵ *Ibid.*

⁶ [Ed. Code, § 35332.](#)

⁷ *Wolfe v. Dublin Unified School Dist.* (1997) 56 Cal.App.4th 126, 134-36.

⁸ *Ibid.* at 136.

⁹ [Ed. Code, § 35331, subd. \(a\).](#)

¹⁰ [Ed. Code, § 35331, subd. \(b\)\(1\).](#)

¹¹ [Ed. Code, § 32041.](#)

¹² [Ed. Code, § 32043, subd. \(a\).](#)

¹³ [Ed. Code, § 32043, subd. \(c\).](#)

¹⁴ *Ibid.*

¹⁵ [Ed. Code, § 32044.](#)

¹⁶ [Ed. Code, § 35330, subd. \(a\)\(3\).](#)

¹⁷ *Ramirez v. Long Beach Unified School Dist.*, (2002) 105 Cal.App.4th 182, 190.

¹⁸ [Ed. Code, § 44808](#); *Farley v. El Tejon Unified School Dist.* (1990) 225 Cal.App.3d 371.

¹⁹ [See Veh. Code, § 17001](#); [Gov. Code, § 815.2, subd. \(a\).](#)

²⁰ [Gov. Code, § 825](#); *Gov't Emp. Ins. Co. v. Gibraltar Cas. Co.* (1986) 184 Cal.App.3d 163.

²¹ [Ed. Code, § 35350.](#)

²² [Veh. Code, § 12517.45, subd. \(a\)\(1\)](#); see also [Ed. Code, § 39800.5.](#)

²³ [Cal. Code Regs. tit. 5 § 14105.](#)

²⁴ [Ed. Code, § 39831.3.](#)

²⁵ [See Ed. Code, § 35350.](#)

²⁶ [See generally 18 U.S.C., § 2721.](#)

²⁷ [Cal. Code Regs. tit. 5 § 5531.](#)

²⁸ [Ed. Code, §§ 35021, subd. \(a\) and 45349.](#)

²⁹ *Ibid.*

³⁰ [Ed. Code, § 49024](#); see also [Health and Safety Code, § 121545, subd. \(a\).](#)

³¹ [Pen. Code, § 11105.3](#)

³² [Ed. Code, § 35021, subd. \(a\).](#)

³³ [Ed. Code, § 49024.](#)

³⁴ [Health and Safety Code § 121545, subd. \(a\).](#)

³⁵ [Ed. Code, § 35021.1.](#)

³⁶ [Ed. Code, § 49024.](#)

³⁷ [Ed. Code, § 8760, subd. \(a\)\(1\).](#)

³⁸ [Ed. Code, § 8760, subd. \(a\)\(4\).](#)

³⁹ [Ed. Code, § 8760, subd. \(b\).](#)

⁴⁰ *Ibid.*

⁴¹ [Ed. Code, § 35330, subd. \(d\).](#)

⁴² [Ed. Code, § 35330, subd. \(a\).](#)

⁴³ [Ed. Code, § 201, subd. \(f\).](#)

⁴⁴ [Ed. Code, § 200.](#)

⁴⁵ [Ed. Code, § 201, subd. \(b\).](#)

⁴⁶ [https://www.cde.ca.gov/qs/ea/.](https://www.cde.ca.gov/qs/ea/)

⁴⁷ [https://www.cde.ca.gov/ci/cr/cf/esmc.asp.](https://www.cde.ca.gov/ci/cr/cf/esmc.asp)

⁴⁸ [https://www.researchgate.net/publication/285905888_Implicit_Atitudes_and_Beliefs_Adapt_to_Situations_A_Decade_of_Research_on_the_Malleability_of_Implicit_Prejudice_Stereotypes_and_the_Self-Concept.](https://www.researchgate.net/publication/285905888_Implicit_Atitudes_and_Beliefs_Adapt_to_Situations_A_Decade_of_Research_on_the_Malleability_of_Implicit_Prejudice_Stereotypes_and_the_Self-Concept)

⁴⁹ See, e.g., [https://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/.](https://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/)

⁵⁰ Executive Order 13985 (Jan. 20, 2021)

⁵¹ *Ibid.*

⁵² <https://www.edweek.org/leadership/critical-race-theory-puts-educators-at-center-of-a-frustrating-cultural-fight-once-again/2021/05>.

⁵³ <https://www.usatoday.com/story/news/nation/2020/06/15/systemic-racism-what-does-mean/5343549002/>.

⁵⁴ Office of Management and Budget (“OMB”) “Training in the Federal Government.” (Sept. 4, 2020 Mem.) M-20-34; Executive Order 13950 (Sept. 22, 2020.)

⁵⁵ <https://www.nbcnews.com/news/us-news/critical-race-theory-invades-school-boards-help-conservative-groups-n1270794>; <https://www.npr.org/2021/06/02/1001055828/the-brewing-political-battle-over-critical-race-theory>.

⁵⁶ [Ed. Code, § 220](#).

⁵⁷ [Gov. Code, § 11135](#).

⁵⁸ *Washington v. Davis* (1976) 426 U.S. 229; *Guardians Ass’n v. Civil Service Comm’n of New York City* (1983) 463 U.S. 582, 584, fn. 2; *Alexander v. Choate* (1985) 469 U.S. 287, 292-94; *St. Mary’s Honor Center v. Hicks* (1993) 509 U.S. 502, 515-16, 530-531; *University of Pittsburgh*, OCR Case No. 03-89-2035; *Roosevelt Warm Springs Institute for Rehabilitation*, OCR Case No. 04-893003.

⁵⁹ *Mackey v. Bd. of Trustees of the Cal. State University* (2019) 31 Cal.App.5th 640.

⁶⁰ [Ed. Code, § 260](#).

⁶¹ [See Cal. Cod. Regs. tit. 5 § 4600 et seq.](#)

⁶² [Ed. Code, §§ 262.3, subd. \(c\) and 262.4](#).

⁶³ [Ed. Code, § 234.1, subd. \(a\)](#).

⁶⁴ [Ed. Code, § 234.1, subd. \(b\)](#).

⁶⁵ [Cal. Cod. Regs. tit. 5 § 4620](#).

⁶⁶ *Ibid.*

⁶⁷ [Cal. Cod. Regs. tit. 5 § 4622](#).

⁶⁸ [Cal. Cod. Regs. tit. 5 § 4621, subd. \(b\)](#).

⁶⁹ [Cal. Cod. Regs. tit. 5 § 4631, subd. \(a\)](#).

⁷⁰ [Cal. Cod. Regs. tit. 5 § 4631, subd. \(e\)](#).

⁷¹ [Cal. Cod. Regs. tit. 5 § 4631, subd. \(b\)](#).

⁷² [Ed. Code, § 215, subd. \(a\)\(1\)](#).

⁷³ [Ed. Code, § 221.2](#).

⁷⁴ [Ed. Code, § 221.3](#).

⁷⁵ [See Ed. Code, § 221.5 *et seq.*](#)

⁷⁶ [See Ed. Code, § 221.61.](#)

⁷⁷ [Ed. Code, § 221.5, subd. \(c\).](#)

⁷⁸ [Ed. Code, § 221.5, subd. \(f\).](#)

⁷⁹ *Ibid.*

⁸⁰ [Ed. Code, §§ 233 and 233.5.](#)

⁸¹ [Ed. Code, § 233, subd. \(a\)\(3\).](#)

⁸² [Ed. Code, § 233, subd. \(a\)\(4\).](#)

⁸³ [Ed. Code, § 212.5.](#)

⁸⁴ *Sexual Harassment: The Facts About Sexual Harassment* (2014) California Department of Fair Employment and Housing <<http://www.dfeh.ca.gov/files/2016/09/DFEH-185.pdf>> [as of December 28, 2016].

⁸⁵ [Gov. Code, § 12950.1, subd. \(g\)\(2\).](#)

⁸⁶ *Ibid.*

⁸⁷ [Ed. Code, § 231.5, subd. \(a\) and \(b\).](#)

⁸⁸ [Ed. Code, § 231.5, subd. \(d\).](#)

⁸⁹ [Ed. Code, § 231.5, subd. \(f\).](#)

⁹⁰ [Ed. Code, § 231.5, subd. \(g\).](#)

⁹¹ [Ed. Code, § 231.5, subd. \(e\).](#)

⁹² [Ed. Code, § 234.1.](#)

⁹³ [Gov. Code, § 12950.1, subd. \(a\).](#)

⁹⁴ [Gov. Code, § 12950.1, subd. \(h\)\(1\).](#)

⁹⁵ [Gov. Code, § 12950.1, subd. \(c\).](#)

⁹⁶ *Ibid.*

⁹⁷ [Gov. Code, § 12950.1, subd. \(b\).](#)

⁹⁸ [Gov. Code, § 12950.1, subd. \(d\).](#)

⁹⁹ *Ibid.*

¹⁰⁰ [See Gov. Code, § 12950: California Law Prohibits Workplace Discrimination and Harassment](#) (2017) California Department of Fair Employment and Housing <<http://www.dfeh.ca.gov/files/2016/09/DFEH-162-2015.pdf>> [as of February 9, 2017].

¹⁰¹ [See 34 C.F.R., § 106.9.](#)

¹⁰² See “*EEO is the Law*” Poster (2017) U.S. Equal Employment Opportunity Commission <<https://www1.eeoc.gov/employers/poster.cfm>> [as of February 9, 2017].

¹⁰³ [Ed. Code, § 231.6.](#)

¹⁰⁴ [34 C.F.R., § 106.8.](#)

¹⁰⁵ Pub. L. No. 92-318 (June 23, 1972) 86 Stat. 235.

¹⁰⁶ *Reese v. Jefferson Sch. Dist. No. 14J* (9th Cir. 2000) 208 F.3d 736, 740. See also *Donovan v. Poway Unified Sch. Dist.* (2008) 167 Cal.App.4th 567 (determining that the standard for liability under Section 200 is the same as the standard for liability under Title IX).

¹⁰⁷ *Gebser v. Lago Vista Ind. Sch. Dist.* (1998) 524 U.S. 274.

¹⁰⁸ *Ibid.*

¹⁰⁹ [Gov. Code, § 12940, subd. \(k\); Cal. Code Regs. tit. 2 § 11023.](#)

¹¹⁰ [See Cal. Code Regs. tit. 2 § 11023, subd. \(a\)\(2\).](#)

¹¹¹ *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 879.

¹¹² [Gov. Code, § 12923.](#)

¹¹³ [Gov. Code, § 12940, subd. \(j\)\(1\).](#)

¹¹⁴ [Gov. Code, § 12940, subd. \(j\)\(3\).](#)

¹¹⁵ *Kohler v. Inter-Tel Techs.* (9th Cir. 2001) 244 F.3d 1167, 1172.

¹¹⁶ See *Holly D. v. California Inst. of Tech.* (9th Cir. 2003) 339 F.3d 1158.

¹¹⁷ *Ibid.*; [see also Gov. Code, § 12940.](#)

¹¹⁸ [Gov. Code, § 12923, subd. \(b\).](#)

¹¹⁹ [Gov. Code, § 12923, subd. \(c\).](#)

¹²⁰ [Gov. Code, § 12940, subd. \(j\)\(1\).](#)

¹²¹ [Gov. Code, § 12923, subd. \(d\).](#)

¹²² [Gov. Code, § 12964.5.](#)

¹²³ [Pen. Code, §§ 11166.5, 11165.6, 11166, subd. \(c\).](#) *Landeros vs. Flood* (1976) 17 Cal.3d 399.

¹²⁴ *Posters, Guides and Fact Sheets (2020) California Department of Fair Employment and Housing* <<https://www.dfeh.ca.gov/Posters/>> [as of September 8, 2020].

¹²⁵ *Gender Equity/Title IX (2020) California Department of Education* <<http://www.cde.ca.gov/re/di/eo/genequitytitleix.asp>> [as of September 8, 2020].

¹²⁶ [Ed. Code, §§ 35291, 35291.5.](#)

¹²⁷ [Ed. Code, § 48900, subd. \(s\).](#)

¹²⁸ *Ibid.*

¹²⁹ [Ed. Code, § 48900.](#)

¹³⁰ [Ed. Code, § 48900, subd. \(k\)\(1\).](#)

¹³¹ *Ibid.*

¹³² [Ed. Code, § 48900.2.](#)

¹³³ [Ed. Code, § 48900.3.](#)

¹³⁴ [Ed. Code, § 48900.4.](#)

¹³⁵ [Ed. Code, § 48900.7.](#)

¹³⁶ [Ed. Code, § 48915, subd. \(a\)\(3\).](#)

¹³⁷ [Ed. Code, § 48915, subd. \(a\)\(1\).](#)

¹³⁸ [Ed. Code, § 48915, subd. \(b\), \(e\).](#)

¹³⁹ [Ed. Code, § 48900.7.](#)

¹⁴⁰ [Ed. Code, § 48911, subd. \(a\).](#)

¹⁴¹ [Ed. Code, § 48913.5.](#)

¹⁴² [Ed. Code, § 48900.5, subd. \(a\).](#)

¹⁴³ [Ed. Code, § 48900.5, subd. \(b\).](#)

¹⁴⁴ *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline* (2014) U.S. Department of Justice and U.S. Department of Education <<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>> [as of February 8, 2017].

¹⁴⁵ *Ibid.*

¹⁴⁶ *PBIS Frequently Asked Questions* (2017) OSEP Technical Assistance Center, U.S. Department of Education Office of Special Education Programs <<https://www.pbis.org/school/swpbis-for-beginners/pbis-faqs>> [as of February 8, 2017].

¹⁴⁷ [Ed. Code, § 48910, subd. \(a\).](#)

¹⁴⁸ *Ibid.*

¹⁴⁹ [Ed. Code, § 48913.](#)

¹⁵⁰ [Ed. Code, § 48900, subd. \(w\)\(2\).](#)

¹⁵¹ See [Ed. Code § 48915.5](#); [20 U.S.C. § 1415\(k\)\(1\)\(E\)](#).

¹⁵² *Jacobs v. Clark County Sch. Dist.* (9th Cir. 2008) 526 F.3d 419.

¹⁵³ [Ed. Code, § 35183.](#)

¹⁵⁴ [Ed. Code, § 35183.1.](#)

¹⁵⁵ [Ed. Code, § 212.1](#); [Gov. Code, § 12926.](#)

¹⁵⁶ "Preventing Bullying: A Manual for Schools and Communities" (1998) U.S. Dept. of Education.

¹⁵⁷ [Dear Colleague Letter \(OCR 10/26/10\) 55 IDELR 174.](#)

¹⁵⁸ [Ed. Code, § 48900, subd. \(r\).](#)

¹⁵⁹ [Ed. Code, § 48900, subd. \(r\)\(1\).](#)

¹⁶⁰ [Ed. Code, § 48900, subd. \(r\)\(3\).](#)

¹⁶¹ *Ibid.*

¹⁶² *Bullying Definition* (2016) U.S. Department of Health and Human Services <<https://www.stopbullying.gov/what-is-bullying/definition/index.html>> [as of December 16, 2016].

¹⁶³ [Ed. Code, § 48900, subd. \(r\)\(2\).](#)

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ *Effects of Bullying* (2016) U.S. Department of Health and Human Services <<https://www.stopbullying.gov/at-risk/effects/>> [as of December 15, 2016].

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Donovan v. Poway Unif. Sch. Dist.* (2008) 167 Cal.App.4th 567.

¹⁷⁰ [Ed. Code, § 234 et seq.](#)

¹⁷¹ [Ed. Code, § 234.1, subd. \(b\).](#)

¹⁷² [Ed. Code, § 234.1, subd. \(c\).](#)

¹⁷³ [Ed. Code, § 234.1, subd. \(g\).](#)

¹⁷⁴ [Ed. Code, § 234.1, subd. \(d\).](#) "LGBTQ" means lesbian, gay, bisexual, transgender, and questioning.

¹⁷⁵ [Ed. Code, § 234.6](#).

¹⁷⁶ [Ed. Code, § 48900.9, subd. \(a\)](#).

¹⁷⁷ *Ibid.*

¹⁷⁸ [Ed. Code, § 48900.9, subd. \(b\)](#).

¹⁷⁹ *Stop Bullying on the Spot* (2016) U.S. Department of Health and Human Services <<https://www.stopbullying.gov/respond/on-the-spot/index.html>> [as of December 15, 2016].

¹⁸⁰ *Ibid.*

¹⁸¹ *Resources* (2016) U.S. Department of Health and Human Services <<https://www.stopbullying.gov/resources>> [as of December 15, 2016].

¹⁸² *Bully Publications and Resources* (2016) California Department of Education <<http://www.cde.ca.gov/lr/ss/se/bullyres.asp>> [as of December 15, 2016].

¹⁸³ [Ed. Code, § 32283](#).

¹⁸⁴ [Ed. Code, § 32283.5](#).

¹⁸⁵ [Ed. Code, § 48900, subd. \(g\)](#).

¹⁸⁶ [Pen. Code, § 245.6, subd. \(b\)](#).

¹⁸⁷ [Ed. Code, § 48900, subd. \(g\)](#).

¹⁸⁸ Hoover and Pollard, *Initiation Rites in American High Schools: A National Survey* (Alfred University 2000) <https://www.alfred.edu/hs_hazing/docs/hazing_study.pdf> [as of December 16, 2016].

¹⁸⁹ *Ibid.*

¹⁹⁰ *Roe v. Gustine Unified Sch. Dist.* (E.D.Cal. 2009) 678 F.Supp.2d 1008.

¹⁹¹ *Ibid.*

¹⁹² *Resources* (2016) HazingPrevention.org <<http://hazingprevention.org/home/prevention/national-hazing-prevention-week/resource-guide/>> [as of December 16, 2016].

¹⁹³ [U.S. Const., 1st Amend.](#)

¹⁹⁴ *West Virginia Board of Education v. Barnette* (1943) 319 U.S. 624.

¹⁹⁵ *Tinker v. Des Moines* (1969) 393 U.S. 503.

¹⁹⁶ *Buckley v. Valeo* (1976) 424 U.S. 1.

¹⁹⁷ *United States v. Eichman* (1990) 496 U.S. 310.

¹⁹⁸ *City of San Diego v. Roe* (2004) 543 U.S. 77, 82.

¹⁹⁹ *Pickering v. Board of Education* (1968) 391 U.S. 563, 568.

²⁰⁰ *Eng v. Cooley* (9th Cir. 2009) 552 F.3d 1062, 1070.

²⁰¹ *Connick v. Myers* (1982) 461 U.S. 138.

²⁰² See *Dible v. City of Chandler* (9th Cir. 2008) 515 F.3d 918.

²⁰³ *Eng v. Cooley* (9th Cir. 2009) 552 F.3d 1062, 1070.

²⁰⁴ *Connick v. Myers* (1982) 461 U.S. 138, 147-48.

²⁰⁵ *Ibid.* at 146.

²⁰⁶ See, e.g., *Desrochers v. City of San Bernardino* (9th Cir. 2009) 572 F.3d 703, 715.

²⁰⁷ *City of San Diego v. Roe* (2004) 543 U.S. 77.

²⁰⁸ *Garcetti v. Ceballos* (2006) 547 U.S. 410, 417-19.

²⁰⁹ *Ibid.* at 421-22.

²¹⁰ *Ibid.* at 416.

²¹¹ *Garcetti v. Ceballos* (2006) 547 U.S. 410.

²¹² *Rankin v. McPherson* (1987) 483 U.S. 378, 388.

²¹³ *Ibid.*

²¹⁴ *Dible v. City of Chandler* (9th Cir. 2008) 515 F.3d 918, 926-28.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ *Monroe v. Cent. Bucks Sch. Dist.* (3d. Cir. 2015) 805 F.3d 454.

²¹⁸ *Spanierman v. Hughes* (D.Conn. 2008) 576 F.Supp.2d 292.

²¹⁹ *Barbee v. Household Automotive Finance Corp.* (2003) 113 Cal.App.4th 525 (“employers have legitimate interests in avoiding conflicts of interest between work related and family related obligations; reducing favoritism or appearance of favoritism; and preventing family conflicts from affecting the workplace.”).

²²⁰ [Ed. Code, § 51101, subd. \(a\).](#)

²²¹ [Ed. Code, § 51101.](#)

²²² [Ed. Code, § 51101, subd. \(d\).](#)

²²³ [Ed. Code, § 49069.](#)

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ [Ed. Code, § 49070 et seq.](#)

²²⁷ [Ed. Code, § 48907, subd. \(a\).](#)

²²⁸ [Ed. Code, § 48907, subd. \(d\).](#)

²²⁹ [Ed. Code, § 48907, subd. \(b\).](#)

²³⁰ [Ed. Code, § 48907, subd. \(c\).](#)

²³¹ [Ed. Code, §§ 48907, subd. \(g\) and 48950, subd. \(g\).](#)

²³² [Ed. Code, § 48950, subd. \(a\).](#)

²³³ *Tinker v. Des Moines Indep. Community Sch. Dist.* (1969) 393 U.S. 503, 513.

²³⁴ *Bethel Sch. Dist. No. 403 v. Fraser* (1988) 478 U.S. 675, 684-85.

²³⁵ *Hazelwood Unified Sch. Dist. v. Kuhlmeier* (1988) 484 U.S. 260, 273.

²³⁶ *Morse v. Frederick* (2007) 551 U.S. 393.

²³⁷ *Ibid.*

²³⁸ *Wynar v. Douglas Cty. Sch. Dist.* (9th Cir. 2013) 728 F.3d 1062, 1067 (internal citations and quotation marks omitted).

²³⁹ *Ibid.* at 1064.

²⁴⁰ *Ibid.* at 1069.

²⁴¹ *Ibid.* at 1070.

²⁴² *C.R. v. Eugene Sch. Dist. 4J* (9th Cir. 2016) 835 F.3d 1142, 1145-46.

²⁴³ *Ibid.* at 1153.

²⁴⁴ *Kowalski v. Berkeley County Schools* (4th Cir. 2011) 652 F.3d 565.

²⁴⁵ [20 U.S.C., § 1232h.](#)

²⁴⁶ [20 U.S.C., § 1232h, subd. \(b\).](#)

²⁴⁷ [20 U.S.C., § 1232h, subd. \(a\).](#)

²⁴⁸ [20 U.S.C., § 1232h, subd. \(c\).](#)

²⁴⁹ [20 U.S.C., § 1232h, subd. \(c\)\(2\).](#)

²⁵⁰ [20 U.S.C., § 1232h, subd. \(e\).](#)

²⁵¹ [Bus. & Prof. Code, § 22584 et seq.](#)

²⁵² [Bus. & Prof. Code, § 22584, subd. \(b\).](#)

²⁵³ [Bus. & Prof. Code, § 22584, subd. \(d\).](#)

²⁵⁴ [15 U.S.C. §§ 6501. et seq.](#)

²⁵⁵ See *Complying with COPPA: Frequently Asked Questions* (2015) U.S. Federal Trade Commission <<https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions#Schools>> [as of February 14, 2017].

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ Children's Internet Protection Act, Pub. L. 106-554.

²⁵⁹ See *Children's Internet Protection Act* (2016) U.S. Federal Communications Commission <<https://www.fcc.gov/consumers/guides/childrens-internet-protection-act>> [as of February 14, 2017].

²⁶⁰ *Ibid.*

²⁶¹ [Ed. Code, § 49073.](#)

²⁶² [Ed. Code, § 49073.1.](#)

²⁶³ [Ed. Code, § 49073.6.](#)

²⁶⁴ [Ed. Code, §§ 49075, 49076, 49076.5, 49077, 49078, 49079,](#) and [49079.5.](#)

²⁶⁵ [Ed. Code, § 49073.1, subd. \(c\).](#)

²⁶⁶ [Ed. Code, § 48901.7.](#)

²⁶⁷ [Penal Code § 1546 et seq.](#)

²⁶⁸ U.S. Const., 4th Amend.; Cal. Const., art. 1, § 13.

²⁶⁹ Cal. Const., art. 1, § 1.

²⁷⁰ *Hill v. Nat'l Collegiate Athletic Ass'n* (1994) 7 Cal. 4th 1, 29.

²⁷¹ *In re Latasha W.* (1998) 60 Cal.App.4th 1524.

²⁷² *Ibid.* at 34-35.

²⁷³ [Ed. Code, § 250.](#)

²⁷⁴ School Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions, <http://www.cde.ca.gov/re/di/eo/faqs.asp>.

²⁷⁵ *Ibid.*

²⁷⁶ [Cal. Code Regs., tit. 5, § 432.](#)

²⁷⁷ [Ed. Code, §§ 49062.5, 49070.](#)

²⁷⁸ School Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions, <http://www.cde.ca.gov/re/di/eo/faqs.asp>.

²⁷⁹ 85 Fed. Reg. 30, 178.

²⁸⁰ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>.

²⁸¹ [Ed. Code, § 262.4](#).



Employment Issues for School Districts



PRISM

Public Risk Innovation,
Solutions, and Management



Lozano Smith

ATTORNEYS AT LAW

HIRING EMPLOYEES

INTRODUCTION

School district employees have a unique role in guiding the social, emotional, and educational development of today's children. As such, school districts have to apply minimum standards and expectations when hiring new employees.

In California, school employees must possess a teaching or services credential if they serve in "education positions," which are positions requiring certification qualifications under the Education Code.¹ Persons holding such positions are commonly described as "certificated" employees. All other school employees (in positions not requiring certification qualifications) are known as "classified" employees and are designated by statute as members of the "classified service."²

The governing board of a school district has the ultimate authority and responsibility for hiring the district's certificated and classified employees³ but, as a practical matter, the board delegates its hiring authority to the district's superintendent and administration.⁴ The board generally takes action only to ratify the administration's hiring recommendations and is not involved in the day-to-day recruitment and selection procedures.

BEST PRACTICES

Due to the special role that school employees play in the public education system, superintendents and administrators strive to hire employees who are suitable and qualified to provide and/or support a high-quality educational program for students and to ensure the efficiency and effectiveness of the district's operations. These goals can be met through a district's consistent application of hiring procedures that are commonly found in governing board policies and administrative regulations. If hiring procedures are not formalized in policies and regulations, a school district can and should memorialize the procedures in a written form (with the assistance of legal counsel) to promote a fair and consistent hiring process.

These policies and procedures should promote fair, open, and transparent recruitment and selection processes to ensure that individuals are selected on the bases of demonstrated knowledge, skills, and competence, and to reduce the likelihood of hiring decisions made upon bias, personal preference, or unlawful discrimination. Optimally, the recruitment process should include the following key elements:

1. When vacancies occur, job descriptions are reviewed and revised for accurate descriptions of essential functions and duties of position;

2. When recruiting starts, job announcements are published and posted (consistent with collective bargaining agreements) appropriately to ensure the recruitment of a wide range of applicants;
3. When recruiting starts, clear descriptions of each step of the hiring procedure are disseminated;
4. Prior to conducting interviews, consider holding a short training for the interview team to discuss appropriate questioning during the interview process and how to guard against implicit assumptions of candidates;
5. When interviews are conducted, sufficient documentation of the bases for evaluating an applicant is retained, in the event it is questioned later;
6. Prior to extending a job offer, appropriate reference checks are performed to confirm representations made by the applicant regarding prior employment and to acquire adequate knowledge of performance or other concerns held by any prior employers; and
7. When job offer is made, appropriate disclosures and documentation are provided to the applicant related to terms and conditions of the job offer, which may include:
 - Job title and classification upon employment (e.g., temporary, probationary, short-term, substitute, full-time, part-time);
 - Compensation and salary schedule placement;
 - Start date, end date, hours of employment; and
 - Conditional offer pending results of fingerprinting checks and approval by the governing board.

MINIMUM REQUIREMENTS

Credentialed Employees

The California Education Code provides a minimum standards and qualifications for certificated employees are expected to meet. At a minimum, a credentialed employee must:

1. Possess the appropriate certification qualifications and register the certification document in accordance with law and Board policy;⁵

2. Demonstrate proficiency in basic skills as required by law and Board policy;⁶
3. Submit to fingerprinting as required by law;⁷
4. Submit to a physical examination, tuberculosis testing and/or provide a medical certificate as may be required by law and Board policy;⁸
5. Submit to drug and alcohol testing if required by the school district;⁹
6. Furnish a statement of military service and, if any was rendered, a copy of the discharge or release from service or, if no such document is available, other suitable evidence of the termination of service;¹⁰
7. File the oath or affirmation of allegiance;¹¹ and
8. Fulfill any other requirements as specified by law, collective bargaining agreement, Board policy or administrative regulation.

Classified Employees

Likewise, minimum requirements for classified employees in California public schools are largely determined by the Education Code. Classified employees must meet the following:

1. Submit to fingerprinting as required by law;¹²
2. If the individual will be working directly and in an unaccompanied setting with minor children on a more than incidental and occasional basis or will have supervision or disciplinary power over minor children, then the prospective employee shall not be registered as a sex offender;¹³
3. Submit to a physical examination and/or provide a medical certificate as may be required by law and Board policy;¹⁴
4. Submit to drug and alcohol testing if required by the school district;¹⁵ and
5. Fulfill any other requirements as specified by law, collective bargaining agreement, Board policy or administrative regulation.

Special Considerations for Paraprofessionals

In addition to the minimum requirements generally applied to classified employees, California school districts historically applied additional requirements for appointment to the position of paraprofessional to comply with the federal No Child

Left Behind (“NCLB”) Act.¹⁶ The term “paraprofessional” describes a person who assists classroom teachers and other certificated personnel in instructing reading, writing, and mathematics, and includes the traditional job classifications of “instructional aide,” “classroom aide,” and “teacher’s aide.”

The NCLB Act was signed by President George W. Bush in 2001 to amend the Elementary and Secondary Education Act of 1965 (“ESEA”). Under the NCLB Act, newly-hired paraprofessionals assisting with instruction were required to be “highly qualified” by demonstrating at least one of the following qualifications if they assisted in instruction at a school or program supported by Title I funds:

1. Completion of at least two (2) years of post-high school study;
2. Possession of an associate’s degree or higher; or
3. Passage of an appropriate state assessment exam.

The California Legislature incorporated these NCLB requirements into the Education Code,¹⁷ so that this requirement applies to any paraprofessional hired to assist in the instruction of students and supported by Title I funds.

In December 2015, President Barack Obama signed the Every Student Succeeds Act (“ESSA”), which reauthorized the ESEA and which modified several requirements contained in the NCLB Act. Rather than impose many of the NCLB Act’s federal mandates upon all states, the ESSA permits each state to develop and adopt qualification standards for its teachers and paraprofessionals. Therefore, as of the 2016-17 school year, the Department of Education no longer requires school districts to hire only highly qualified paraprofessionals as a condition of receiving Title I federal funds.¹⁸ Notably, Section 45330 of the Education Code has not been revised and the “highly qualified” requirement still applies to paraprofessionals who are supported by Title I funding.

As of this writing, neither the California Legislature nor the California Department of Education have taken a public position regarding whether Section 45330 will be revised to permit local discretion as to the continued application of “highly qualified” requirements to paraprofessionals. Until the Education Code is revised, school districts must continue to apply these requirements to paraprofessionals assigned to schools receiving Title I funds, even if the ESSA no longer contains this mandate. Application of the highly-qualified standard is beneficial to students and the educational program, and school districts should consider maintaining or improving such standards.

Other Considerations

School districts should also consider requiring additional qualifications depending on the position and the type of work the employee will be performing. For example, if a school district offers courses involving dangerous instrumentalities, it may want to add questions regarding an applicant's past training on safety practices and past experiences teaching those subjects to its application and interview.

BACKGROUND CHECKS AND CRIMINAL DISQUALIFICATIONS FOR CERTIFICATED AND CLASSIFIED JOB APPLICANTS

Due to the vulnerable nature of school students of minority age, school districts should be selective in their recruitment and appointment of employees and particular criminal issues may disqualify an applicant from public school employment. As described above, applicants for both certificated and classified positions must be fingerprinted and cleared by the California Department of Justice before they may commence service.¹⁹

PROHIBITED CONVICTIONS

Pursuant to the Education Code, applicants for certificated and classified employment shall be disqualified for any of the following reasons:

1. The applicant has been convicted of a **violent felony** or **serious felony**²⁰ (unless the individual has received a certificate of rehabilitation and pardon²¹);
2. The applicant has been convicted of a **sex offense**,²² has been required to register as a **sex offender**,²³ or has been determined by a court to be a **sexual psychopath**,²⁴ or
3. The applicant has been convicted of any **controlled substance offense**.²⁵

Representative Examples:

- **Violent Felonies (Pen. Code §667.5):** Include many crimes of a violent nature such as murder, attempted murder, voluntary manslaughter, mayhem, rape, sodomy, other non-consensual sexual acts, any felony subject to life imprisonment or the death penalty, any felony involving great bodily injury, felonies involving the use of a firearm, arson, kidnapping, felony assault, and first degree burglary, among others.
- **Serious Felonies (Pen. Code § 1192.7):** Include murder, attempted murder, voluntary manslaughter, mayhem, rape, sodomy, other non-consensual sexual acts, other non-consensual sexual acts, various types of assault on involving great bodily injury, felonies involving the use of a firearm, arson, kidnapping, use of an explosive device causing, or intending to cause, injury, first degree burglary, robbery, and specified sex offenses, among others.
- **Sex Offenses (Ed. Code § 44010):** Include rape, sodomy, statutory rape, spousal rape, lewd and lascivious acts, prostitution, promotion of child prostitution, incest, sodomy, sex acts against minors, possession or distribution of child pornography, and child sexual abuse, among others.
- **Controlled Substance Offenses (Ed. Code § 44011):** Include possession, distribution, sales, and transporting of opiates, cocaine, hallucinogens, marijuana, heroin, PCP, methamphetamine, and narcotics, and the unlawful acquisition of prescription drugs.

PRE-EMPLOYMENT DISCLOSURES OF CRIMINAL ARRESTS AND DETENTIONS

Employers in California and other states have had a practice of including a “check box” in their job applications and required applicants to disclose whether they have ever been arrested or convicted. In recent years, a “Ban the Box” movement has gained steam due to an assertion that the “check box” enables an employer to dismiss from consideration persons who have been subjected to arrests or convicted. Ban the Box advocates have argued that this broad disqualification unfairly prejudices applicants who have been wrongly arrested without a conviction, and who have rehabilitated themselves and do not pose a threat to society.

As a result, several state legislatures – including California – have passed measures to prohibit employers from requesting such information from job applicants. Effective January 1, 2017, an amendment to Labor Code section 432.7²⁶ generally prohibits a California employer from requesting a job applicant to disclose “through

any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or post trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law....”

There are two important caveats to California’s “Ban the Box” law. First, Section 432.7 does not prohibit an employer from asking about an arrest for which an applicant is out on bail or on his or her own recognizance pending a trial.²⁷ Second, Section 432.7 does not supersede the Education Code’s prohibitions against hiring persons with certain convictions.²⁸ Because the Education Code contains specific prohibitions against the hiring of persons with certain convictions, school districts are legally permitted to continue asking job applicants to disclose any disqualifying felony convictions as well as arrests for charges that are pending trial.

A chart describing when a school district may appropriately consider an applicant’s prior arrests and/or convictions is included as Attachment T (applicants for classified positions) and Attachment U (applicants for certificated positions) in Module 5 of this Manual.

FAIR AND EQUAL PAY

SALARY SCHEDULE PLACEMENT FOR NEW HIRES

Certificated staff are governed by uniform salary requirements that effectively prevent discrimination with respect to salary placement.²⁹ Classified salaries may have a collective bargaining agreement that set salaries in accordance with a salary schedule with tiers of pay. But salaries for classified employees, both represented and unrepresented, must consider equal and fair pay measures under the law.

Federal Equal Pay Act

The Equal Pay Act (“EPA”) is a federal law prohibiting discrimination by employers on the basis of sex in the wages paid for substantially equal work performed under similar working conditions.³⁰ The equal work standard does not require that compared jobs be identical, only that they be substantially equal.³¹

For an EPA claim, a plaintiff must show that: (1) she/he receives a lower wage than paid to an employee of the opposite sex in the same establishment; and (2) the employees perform substantially equal work in terms of skill, effort, and responsibility under similar working conditions. If the plaintiff establishes a *prima facie* case of compensation discrimination, the burden then shifts to the employer, which must show, by a preponderance of the evidence, that the compensation difference is based

on a seniority, merit, or incentive system, or on any factor other than sex. EPA claims are viable even if the employer had no intent to discriminate.

In defining “equal work,” the EPA’s implementing regulations set out examples of prohibited compensation discrimination. Where an employee of one sex is hired or assigned to a particular job to replace an employee of another sex but receives a lower rate of pay than the person replaced, a *prima facie* violation of the EPA exists.³² This is an example of a successor employee claim.

The law also allows a predecessor employee to bring an EPA claim. Where a person of one sex succeeds a person of another sex on a job at a higher rate of pay than the predecessor, and there is no reason for the higher rate other than difference in gender, a violation as to the predecessor is established and the predecessor employee is entitled to recover the difference between his or her pay and the higher rate paid the successor employee.³³

The law also allows comparisons of employees in the same job classifications. For example, a *prima facie* case would exist if female employees in the same job were paid less than male employees.

Use of Prior Salary to Justify Pay Disparity

As explained above, there are four exceptions to the general prohibition under the EPA to pay employees of one sex less than their counterparts of another sex. Recently, the Ninth Circuit concluded that prior salary history can never, by itself, amount to a “factor other than sex” to justify a pay disparity.³⁴ This decision makes the Ninth Circuit unique on this issue compared to other circuit courts but the preceding litigation led California to pass related laws that now impact salary schedule placement under state law.

Equal and Fair Pay under California Law

The California Fair Pay Act (“FPA”) applies to jobs and positions that do “substantially similar work.”³⁵ In addition to the protections under the EPA, the FPA prohibits employers from justifying wage differentials between employees of different sexes, races, or ethnicities solely on the basis of the employee’s prior salary. This is true even if an applicant voluntarily discloses their prior wage. The employer must prove that the factor justifying the wage differential is job-related and consistent with a business necessity, such as education, training, or experience.

Further, public agency employers are prohibited from asking job applicants for their salary history information, unless voluntarily shared by the job applicant without

prompting. However, employers, including public agency employers, are permitted to ask applicants about their *salary expectation* rather than their prior salary.³⁶

To avoid ambiguity and clarify why different rates of pay for new hires exist, or to explain why people in similar positions may have different rates of pay based on promotions or other reasons, school districts should explain the job-related factors and business necessity in a formal policy.

TRAINING FOR CERTIFICATED AND CLASSIFIED EMPLOYEES

Depending upon the positions held, school employees have professional development obligations to meet in order to stay current with new laws, regulations, and practices in school district operations and instructional matters. These obligations include mandatory trainings and those designed to enhance and improve the school district operations and services.

Mandatory trainings include:

- **Child Abuse and Neglect Reporting Act ("CANRA")** training.³⁷ Required annually for all school employees, and within first six weeks of employment for new hires.
- **Sexual Harassment Prevention ("AB 1825")** training.³⁸ Required every two years for all supervisors (working for an employer of 50 or more employees), and within first six months of employment for new hires.
- **Cardiopulmonary resuscitation ("CPR")** training.³⁹ Prerequisite for preliminary teaching and services credentials, and CPR card or equivalent is required for athletic coaches under locally-established competency requirements.
- **First Aid** training.⁴⁰ First Aid card or equivalent is required for athletic coaches under locally-established competency requirements. First Aid card or equivalent is required for any employees expected to provide first aid to students, staff, or others.⁴¹
- **Bloodborne Pathogen** training.⁴² Required at the time of initial assignment to tasks where occupational exposure to bloodborne pathogens may take place, and annually thereafter.
- **Epinephrine Auto-Injector ("EpiPen"), Insulin, and Medication Administration** training.⁴³ School nurse or other qualified person designated by an authorized physician may provide annual training if one or more employees (on a

- voluntary basis) regarding the storage and usage of EpiPens and other student medications.
- **School Nutrition Program** training.⁴⁴ Required annually for food service directors (12 hours), managers (10 hours), full-time employees (6 hours), and part-time employees (4 hours).
 - **School Bus Drivers** training.⁴⁵ Required ten hours of training for drivers of school buses and school pupil activity buses to maintain school bus driver certificate.
 - **Integrated Pest Management Program** training.⁴⁶ Required annually for any employee who is intended to apply pesticides at a school site.
 - **Asbestos Handling and Removal** training.⁴⁷ Required two-hour training for all custodial and maintenance employees who may work in a building that contains asbestos, and within 60 days after employment of custodial and maintenance employees. An additional fourteen hours of training is required for any employees who conduct activities that will disturb asbestos materials.
 - **Hazardous Materials** training.⁴⁸ Required training of unspecified length for any employee regarding hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard is introduced into their work area.

Common topics for discretionary professional development trainings include:

- **Student Bullying and Harassment** training. Employees can be trained to identify and address bullying and harassment between students and the school district's procedures for handling such complaints, to improve learning environment and school culture.
- **Positive Behavioral Intervention and Supports ("PBIS")** training. Employees can be trained to enhance understanding and application of PBIS techniques, integration of PBIS into long-term behavioral improvement, and possible disciplinary outcomes.
- **Educational Technology and Instructional Methods** training. Teachers can be trained to better utilize current technology, and to learn new technology, to enhance and improve their instruction and student learning outcomes. Teachers can also receive training on how to maintain a safe work

environment, teach proper safety practices, ensure proper supervision, and conduct prompt recordkeeping (waivers, consent forms, safety contracts, etc.).

- **Maintenance and Operations Best Practices** training. Maintenance and/or operations employees can be trained regarding safety and efficiency practices, including environmentally-friendly and energy efficient practices.
- **Developments in Special Education** training. Counselors, teachers, and instructional aides can be trained regarding new laws, regulations, and practices employed in the delivery of special education services.
- **Beginning Teacher Supports and Assessment (“BTSA”) Induction/New Teacher** training. New teachers can be trained and/or mentored on instructional and other techniques during initial employment in the profession.

Best Practices

The Superintendent or designee should develop a program of professional development and consultation to help classified and certificated employees apply their academic preparation more effectively inside and outside the classroom, and to assist others who need additional development in subject matter knowledge, instructional methods, and/or classroom management. The professional development components should be determined in consultation with staff, teachers, and administrators, as appropriate. The Superintendent should ensure that the district’s professional development program is aligned with district priorities for student achievement, school improvement objectives, the local control and accountability plan, and other district and school plans.

Staff development should assist employees in developing their knowledge and skills, including (as appropriate):

1. Mastery of subject-matter knowledge, including current state and district academic standards;
2. Use of effective, subject-specific teaching methods, strategies, and skills;
3. Use of technologies to enhance instruction;
4. Sensitivity to and ability to meet the needs of diverse student populations, including, but not limited to, students of various racial and ethnic groups, students with disabilities, English learners, economically disadvantaged students, foster youth, gifted and talented students, and at-risk students;

5. Understanding of how academic and career technical instruction can be integrated and implemented to increase student learning;
6. Knowledge of strategies that encourage parents/guardians to participate fully and effectively in their children's education;
7. Effective classroom management skills and strategies for establishing a climate that promotes respect, fairness, tolerance, and discipline, including conflict resolution and hatred prevention;
8. Ability to relate to students, understand their various stages of growth and development, and motivate them to learn;
9. Ability to interpret and use data and assessment results to guide instruction;
10. Knowledge of topics related to student health, safety, and welfare;
11. Knowledge of topics related to employee health, safety, and security.

EVALUATING SCHOOL EMPLOYEES

CERTIFICATED EMPLOYEES – CRITERIA AND STANDARDS

Contained in the Education Code, the Stull Act sets forth the parameters for a school district's evaluation of the performance of probationary and permanent certificated employees.⁴⁹ The Stull Act requires school district governing boards to establish and apply a uniform system of evaluation and assessment for all certificated personnel, including those performing non-instructional services. The system must be uniform throughout the district, except when compelling reasons justify an individually developed evaluation system for territories or schools within the district.

Under the Stull Act, local school boards are required to establish standards of expected pupil achievement at each grade level and subject area, and then to evaluate teacher performance by considering "the progress of the teacher's students toward district and state academic standards as measured by state-adopted standards-based tests."⁵⁰ Until recently, this requirement was commonly overlooked by districts and bargaining units because, in part, the Stull Act also prohibits the evaluation of teachers based upon a publisher's norms established by standardized testing.

The Educational Employment Relations Act ("EERA") specifically includes "evaluation procedures" within the scope of collective bargaining between school employers and their certificated bargaining unit representatives.⁵¹ In practice, most school districts

collectively bargain both evaluation procedures and evaluation standards into the certificated unit's collective bargaining agreement ("CBA"). This is consistent with the Stull Act's authorization for school boards to develop additional evaluation and assessment criteria.

As a result of recent litigation by student advocates, school districts have become increasingly interested in negotiating the consideration of "student progress toward academic standards" as a component of teacher evaluations. While the overwhelming majority of school districts determine teacher pay based on years of service and education level, some districts and bargaining units have tied some forms of teacher compensation (e.g., salary schedule advancement or financial bonuses) to student progress toward district and state standards. Advocates of pay for performance systems assert that traditional systems fail to provide incentives for teachers to focus on improving student achievement. Opponents claim that performance based pay leads to less collaboration among teachers in schools.⁵²

In addition to the consideration of student achievement data, school districts and bargaining units may incorporate professional standards (e.g., California Standards of the Teaching Profession) in the evaluation process for a variety of purposes, including:

- To prompt an employee's reflection about student learning and teaching practice;
- To prompt an employee's formulation of professional goals to improve his/her teaching practice in support of student learning; and
- To guide, monitor, and assess a teacher's progress toward professional goals.

The Stull Act requires a district to include recommendations for improvement and a description and notice of unsatisfactory performance in its certificated employee evaluations. If a certificated employee is participating in a peer assistance review program, the results of the teacher's participation must be made available for both the teacher and his or her evaluators.

CERTIFICATED EMPLOYEES – EVALUATION CYCLES

The Stull Act⁵³ requires the district to record its performance evaluations and assessments into writing, and to provide the evaluation to the evaluated teacher at least 30 days before the final school day of the evaluation year. The evaluated employee has the right to respond in writing, and the response must be permanently attached and included with the evaluation in the employee's personnel file. Before the last scheduled school day in the year, a meeting to discuss the evaluation shall

be held by the evaluator and employee to discuss the evaluation. For 12-month, non-instructional employees, the written evaluation must be given to the employee by June 30th of the evaluation year, and the post-evaluation meeting between the evaluator and employee must take place on or before July 30th after the written evaluation has been produced to the employee.

The Stull Act’s evaluation schedule for regular certificated employees is:

Certificated Employee Type	Frequency per School Year
Substitute/Temporary	At the end of assignment
Probationary	At least once per year
Permanent, when his/her last performance rating was unsatisfactory	At least once per year
Permanent, when most recent performance rating was satisfactory	Once every two years
Permanent, after serving at least 10 years in the district, has met highly-qualified teacher standards during that time, and with revocable mutual consent from the district and employee	Once every five years

CLASSIFIED EMPLOYEES

In contrast to certificated employees, the Education Code does not proscribe the standards or methods that a school district must follow when evaluating classified employees. Instead, the Education Code delegates this authority to local school district governing boards, which are required to formulate and adopt written rules and regulations governing the classified service. Among other things, those classified rules and regulations must establish the duration of a uniform probationary period of up to one year, and establish an evaluation process for classified employees.

Because evaluation procedures are within the scope of bargaining under the EERA, the evaluation process is most commonly found in a school district’s classified unit CBA. In the absence of an applicable CBA provision, a school district’s classified

evaluation procedures would be found in the district’s governing board policy manual. School districts that have adopted the merit system will have evaluation procedures included in their personnel commission rules for the classified service.

The evaluation cycle for classified employees may differ widely from district to district. However, as a rule of thumb, it is advisable for a district to evaluate classified employees at the following frequency:

Classified Employee Type	Frequency per School Year
Substitute/Short-term	At the end of assignment
Probationary	At 3 and 6 months into assignment; and At 60 days before end of probationary period
Permanent	At least once every two years

BEST PRACTICES

Even with standardized evaluation standards and procedures, the practice of individual evaluators within the same school district can vary widely. A school district and its certificated staff will benefit from a standardized process that focuses on the objective assessment of an employee’s job performance as compared to district-wide expectations and standards.

To achieve greater consistency in the evaluation process, a school district should consider implementing some or all for the following practices:

1. Where feasible, utilizing a team of evaluators or input from multiple persons, such as teacher mentors, peers, or other administrators. Research shows that the inclusion of multiple evaluators can create a more objective process.⁵⁴
2. Providing evaluator training on a regular basis to promote consistency and uniformity in evaluation standards and practices across the district. Research shows that districts rarely require evaluators to be trained.⁵⁵
3. Promoting the use of evaluations to contain sufficient and specific detail (who, what, where, when, how, why).

4. Promoting the evaluator's use of the evaluation to reflect reality, inspire excellence, and to promote the buy-in of all parties.
5. Reviewing CBAs and negotiating provisions that emphasize an evaluator's first-hand knowledge of information included in the evaluation, but also allow the evaluator to include reliable and verified information relating to non-observed incidents.
6. Reviewing CBAs to ensure that procedural timelines are guiding milestones, and are not used to invalidate a substantively-accurate evaluation.
7. Reviewing CBAs to address when an improvement plan is required and to set forth the requirements for an employee who has been issued an improvement plan.
8. Reviewing CBAs to ensure that an employee's right to challenge the evaluation is limited to procedural violations of the CBA, and to establish that the employee's substantive challenge is limited to submitting a written response to the evaluation.

DISCIPLINARY ACTION FOR SCHOOL EMPLOYEES

CERTIFICATED EMPLOYEES

In California, the Education Code allows a school district to employ certificated employees under one of the following four classifications: (1) substitute, (2) temporary, (3) probationary, or (4) permanent (tenured).

Substitute and Temporary Certificated Employees

Substitute certificated employees are hired on a day-to-day basis⁵⁶ to fill positions of regularly employed persons who are absent from service. A school district may dismiss a substitute at any time, at the pleasure of the governing board.⁵⁷ Temporary employees may be hired under limited circumstances set forth in the Education Code,⁵⁸ the most common of which is to fill the position of a certificated employee who is on a long-term leave of absence from his or her regular assignment.⁵⁹ This also can occur when a regularly-employed certificated staff member is on a special assignment.

Under the Education Code, a school district may dismiss a temporary certificated employee at the pleasure of the governing board, prior to the employee's service of at least 75% of the days in the district's school year.⁶⁰ If the temporary employee has served 75% of the days in the school year, the district may release the employee,

effective at the end of the school year, by providing notice of his or her non-reelection before the school year is completed.⁶¹

Probationary Certificated Employees

If a certificated employee is not employed in a substitute, temporary, or permanent classification, that employee is – by default – a probationary employee. In a school district with an average daily attendance (“ADA”) of 250 or more pupils, a probationary employee will usually obtain permanent status after serving two complete, consecutive years of certificated service.⁶² A “complete” school year is defined as at least 75% of the days of the school calendar.⁶³ Although interns, permit-holders, and other employees holding less than a full teaching or services credential may serve in a probationary status, they do not receive “tenure-track” credit for such probationary service prior to obtaining a full credential.

If a certificated employee is not employed in a substitute, temporary, or permanent classification, that employee is – by default – a probationary employee. In a “small” school district with an ADA of less than 250 pupils, the district may adopt the two-year tenure track system used in “larger” school districts (with at least 250 ADA), by adopting the procedure used by “larger” school districts to effectuate the mid-year dismissal of probationary certificated employees.⁶⁴ In the absence of this election, probationary employees at a “small” school district may be granted permanent status by the governing board if they are reelected after three complete, consecutive years of probationary service.⁶⁵ If the board does not make the classification, the certificated employee does not attain permanent status, and may continue to serve in a probationary status from year to year, unless the board subsequently grants permanent status to the employee.⁶⁶

A probationary certificated employee may be non-reelected at the end of the school year without cause. To effectuate a non-reelection in a “larger” school district, the governing board must serve the employee with notice of the non-reelection on or before March 15th of the employee’s second complete, consecutive year of probationary certificated service.⁶⁷ In a “larger” school district, the probationary employee has no right to an administrative due process hearing on the non-reelection. To effectuate a non-reelection in a “smaller” school district, the governing board must also serve the employee with notice of the non-reelection on or before March 15th; however, the probationary employee may require the district to produce evidence in support of the non-reelection at an administrative due process hearing.⁶⁸

In a “larger” school district, a probationary certificated employee may be dismissed during the school year for unsatisfactory performance or for cause.⁶⁹ Prior to

dismissing probationary employees for unsatisfactory performance or unprofessional conduct, a district must serve such employees with either a 90-day notice or a 45-day notice, respectively, to allow the employees an opportunity to take remedial measures.

The district must serve the employee with charges for dismissal at least 30 days before it is to become effective, and the employee has 15 days after receipt of the charges within which to request an administrative due process hearing.⁷⁰ If a hearing is requested, the board is charged with determining whether sufficient evidence justifies the probationary employee's dismissal during the school year. In "small" school districts that have not adopted the process for dismissing a probationary employee during the school year, above, the Education Code provides that "probationary employees [shall be dismissed] during the school year for cause only, as in the case of permanent employees."⁷¹

Permanent Certificated Employees

Since 2015, the Education Code has contained two different processes for dismissing or suspending a permanent certificated employee, depending on the disciplinary causes. Charges based solely on egregious misconduct require an expedited hearing process.⁷² Charges that include causes other than solely egregious misconduct require a separate process.⁷³ The Education Code specifies eleven causes for dismissal of a permanent certificated employee, which are:⁷⁴

1. Immoral conduct including, but not limited to, egregious misconduct which is defined exclusively as immoral conduct that can constitute a sex offense, a controlled substance offense, or the neglect or abuse of a minor;
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 him or her to instruct or associate with children;

8. Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed by the State Board of Education or by the governing board of the school district;
9. Conviction of a felony or of any crime involving moral turpitude;
10. Advocacy or teaching of communism with the intent to indoctrinate district students; and
11. Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

Procedure for Adopting Charges and Holding an Appeal Hearing

There are two separate processes set forth in the Education Code for hearing appeals of a dismissal or suspension of a certificated employee. The Code provides an expedited process based on charges solely alleging egregious misconduct, and a standard procedure for charges alleging any cause other than solely egregious misconduct. Both procedures are initiated with the adoption of charges by the governing board and the service of charges upon the employee.⁷⁵ Charges can be served on an employee at any time during the year, except for charges based solely upon unsatisfactory performance, which may only be given during the instructional year where the employee is physically employed.⁷⁶

The employee has 30 days to file a written hearing request and, upon receipt the board may either rescind the charges or schedule a dismissal hearing.⁷⁷ Charges of solely egregious misconduct are heard by an administrative law judge (“ALJ”), while other charges are heard before a three-member Commission on Professional Competence (“CPC”) that is chaired by an ALJ and which also includes an appointee of each party. The two members selected by the parties cannot be related to the employee and cannot be employed by the same school district as the employee. They must hold a valid teaching credential and have at least three years of experience within the past ten years in the discipline of the employee.⁷⁸ The parties may also agree to have the hearing before only the ALJ without the two appointees.

Under this process, the parties must exchange specified information and documents within 45 days of the hearing request. If a party fails to timely disclose evidence and information, that party may be precluded from using the evidence at the hearing.⁷⁹ A limited number of depositions may be taken by each party.

The CPC (or ALJ only) receives testimony and other evidence presented by the parties, but may not receive evidence regarding matters that occurred more than four years prior to the date of the filing of the charges. The four-year time limit is not absolute and may be extended in certain situations.⁸⁰ A decision of the CPC (or ALJ) is binding on the parties.

CLASSIFIED EMPLOYEES

In contrast with the Education Code's prescriptive process for discipline of certificated employees, the Legislature has delegated the establishment of causes and procedures for classified discipline to each school district's governing board.⁸¹ Classified employee discipline is therefore governed by a district's collective bargaining agreement ("CBA") with its classified bargaining unit, and/or board policies and administrative regulations.

As a preliminary matter, a probationary classified employee may be dismissed from employment at any time prior to the expiration of the probationary period. The probationary period for classified employees is whichever is longer: six (6) months or 130 days of paid service.⁸² Dismissal of a probationary employee may occur with or without cause, and the probationary employee is not entitled to a hearing.

On the other hand, a permanent classified employee may be disciplined only for cause. The disciplinary causes listed in a classified bargaining unit's CBA typically mirrors the twenty or so disciplinary causes that are commonly listed in a school district's administrative regulation on the subject. Disciplinary causes listed in collective bargaining agreements and district regulations commonly include:

1. Falsifying any information supplied to the school district, including, but not limited to, information supplied on application forms, employment records, or any other school district records.
2. Incompetency.
3. Inefficiency.
4. Neglect of duty.
5. Insubordination.
6. Dishonesty.
7. Drinking alcoholic beverages while on duty or in such close time proximity thereto as to cause any detrimental effect upon the employee or upon employees associated with him/her.

8. Possessing or being under the influence of a controlled substance at work or away from work, or furnishing a controlled substance to a minor.
9. Conviction of a felony, conviction of any sex offense made relevant by provisions of law, or conviction of a misdemeanor that adversely affects the employee's ability to perform his/her duties and responsibilities
10. Absence without leave.
11. Immoral conduct.
12. Discourteous treatment of the public, students, or other employees.
13. Improper political activity.
14. Willful disobedience.
15. Misuse of district property.
16. Violation of district, Board or departmental rule, policy, or procedure.
17. Failure to possess or keep in effect any required license, certificate, or other similar requirement.
18. Refusal to take and subscribe any oath or affirmation which is required by law in connection with his/her employment.
19. A physical or mental disability which precludes the employee from the proper performance of his/her duties and responsibilities as determined by competent medical authority, except as otherwise provided by a contract or by law regulating the retirement of employees.
20. Unlawful discrimination or harassment against the public or other employees while acting in the capacity of a district employee.
21. Unlawful retaliation against any other district officer or employee or member of the public who, in good faith, engages in whistleblowing activities.
22. Any other failure of good behavior either during or outside of duty hours which is of such nature that it causes discredit to the district or his/her employment.

There are two limitations on permanent classified employee discipline: (1) an employee may only be disciplined for conduct occurring within the prior two years

(unless shortened by CBA or merit system rules); and (2) discipline cannot be based on incidents that occurred during the employee's probationary period.

Whether included in provisions in a CBA or administrative regulation, the procedure for discipline of a classified employee should include the service of the disciplinary recommendation on the employee, which explains the proposed disciplinary charges in ordinary and concise language⁸³ and includes:

1. A statement of the nature of the action (suspension without pay, demotion, reduction of pay step in class, or dismissal).
2. A statement of the cause or causes for the action, as set forth in the CBA or administrative regulation.
3. A statement of the specific acts or omissions upon which the causes are based, and any rule, policy, or regulation that was violated.
4. A statement of the employee's right to appeal the recommendation and the manner and time within which the appeal must be filed.
5. A card or paper, the signing and filing of which shall constitute a demand for hearing and a denial of all charges.

A permanent classified employee facing recommended discipline is entitled to a *Skelly* meeting prior to finalizing charges for discipline. A *Skelly* meeting is a pre-disciplinary due process meeting that is based on a court decision holding that a public employee has a constitutional right to notice and an opportunity to respond to proposed charges before discipline is imposed.⁸⁴ After the *Skelly* meeting, the *Skelly* officer makes a recommendation on the proposed disciplinary charges and the district then serves the final charges on the employee, along with notice of the employee's right to appeal the charges.

Depending on the misconduct involved, an employee may remain in active duty status and be responsible for fulfilling the duties of the employee's position, pending an appeal or waiver of appeal. The employee may also be placed on paid administrative leave. Finally, most discipline procedures allow the district to suspend an employee without pay pending dismissal if the district determines that the employee's continued active duty would pose an unreasonable risk of harm to students, staff, or property while dismissal proceedings are pending.

The procedures for a discipline appeal hearing differ from district to district because of the Legislature's delegation of authority over the process. Commonly, discipline

procedures will have an appeal heard before the governing board, a hearing officer, or an arbitrator. In merit system districts, the appeal will be heard by a personnel commission or a hearing officer. At the hearing, the employee will be entitled to produce evidence, and may be represented by counsel or appear personally on his or her own behalf. The decision will become final upon acceptance or modification by the governing board or personnel commission, or upon issuance by an arbitrator under negotiated procedures.

EMPLOYEE SEPARATION FROM A SCHOOL DISTRICT

LETTERS OF RECOMMENDATION

While it is common for a school district to receive requests for letters of recommendation from former or separating employees, there is no legal obligation for a school district to provide a recommendation or other references for a current or former employee. A school district should carefully guard against the capricious release of recommendations and avoidable legal liability, for the reasons discussed below.

Generally, California employers have legal immunity against claims regarding the employer's provision of information about a current or former employee's job performance or qualifications, when such information is given without malice and in response to a prospective employer's request.⁸⁵ However, it is a misdemeanor for any employer to make misrepresentations that prevent or attempt to prevent a former employee from obtaining employment.⁸⁶ It is also a misdemeanor to cause or permit an employee to make such misrepresentations.⁸⁷ Accordingly, an employer and its employees should take care to avoid making any misrepresentations to a person's potential employer that could inhibit that person's ability to gain employment, and any reference given should include facts based upon "credible evidence" stated by the employer without malice.⁸⁸

The Rules of Conduct for Professional Educators ("Rules of Conduct") also govern the issue of recommendation letters that are issued by a credential-holder. Set forth in the California Code of Regulations, these rules are binding upon every person holding a credential or any license to perform educational services under the jurisdiction of the Commission on Teacher Credentialing ("CTC").⁸⁹ Under the Rules of Conduct, a credential-holder shall not write a letter of recommendation that intentionally omits significant facts, or that alleges facts regarding an individual's professional qualifications or personal fitness to perform certificated services when the author has no personal knowledge of those facts.

Additionally, the Rules of Conduct prohibit a credential-holder from agreeing to write a positive letter of recommendation containing false statements, as a condition of resignation or withdrawing an action against the school district. While the Rules of Conduct prohibit the false representation of facts, the Rules do not prevent a writer from making statements identified as his or her mere personal opinions.⁹⁰

In addition to the potential criminal law implications and credentialing issues above, school districts should be careful to avoid civil liability by preventing the issuance of false or misleading recommendations or employment references. California courts have held school districts responsible for their failure to disclose potential dangers to students posed by a former employee when, in the district's perspective, it was honestly describing the positive aspects of a former employee's job performance. Under California law, a school district must disclose the negative with the positive aspects of a former employee's performance – if any recommendation is to be made at all.

CASE STUDY: *Randi W. v. Muroc Joint Unified School District*

In the *Randi W.* case,⁹¹ a 13-year-old-girl who had been sexually molested by a school vice principal brought an action against the vice principal's former employers, alleging that they wrote letters recommending the vice principal without divulging his history of sexual molestations at their districts. On appeal to the California Supreme Court, a judgment against the former employers was affirmed as to the causes of action for negligent misrepresentation and fraud.

The Court held that: (1) the former employers owed plaintiff a duty not to misrepresent the character of the vice principal, since it was reasonably foreseeable that an employer would read the unequivocally favorable letters and hire the vice principal and that he would molest a student such as plaintiff; (2) the former employers' letters constituted "misleading half-truths" rather than mere non-disclosures; (3) as to reliance, although defendants made no representations to plaintiff, she was entitled to protection, since she suffered physical injury when her school district relied upon the statements of the former employers; and (4) plaintiff adequately pleaded causation between the former employers' misconduct and her injuries.

In sum, withholding only negative information about a former employee can expose a school district to liability. School districts should consider the following:

1. Do not initiate contact with the prospective employer of a current or former employee and, instead, limit communications to a response to employment verification inquiries.

2. Direct all employment references, including inquiries regarding the employees' performance, to the superintendent or a designated administrator who is trained to respond to inquiries regarding employment references.
3. Ensure that all information provided about a current or former employee is both factual and accurate. Do not misrepresent facts regarding a current or former employee's job performance or qualifications to a prospective employer.
4. Remember that a school district is not required to provide a favorable recommendation even if a basis for one exists.⁹²

As a best practice, the Superintendent or a designee should be the person who processes all requests for references, letters of recommendation, employment verification, or information about the reasons for separation. All letters of recommendation to be issued on behalf of the district, or by a district employee in his or her official capacity, should be approved by the individual designated to coordinate this process.

The Superintendent or designee has the discretion to provide or refuse to give a recommendation. Any recommendation the Superintendent provides should be a careful, truthful and complete account of the employee's job performance and qualifications. If any questions arise as to the propriety of a recommendation, school districts should seek legal counsel when determining whether or not to reveal negative information concerning a former or current employee.

UNEMPLOYMENT INSURANCE INQUIRIES

A school district should provide clear communications to staff as it is essential to establishing a professional, positive work environment and enhancing their job performance. The Superintendent or designee should endeavor to provide district employees all notifications required by law and any other notifications that will promote staff knowledge of the district's policies, programs, activities, and operations.

The Employment Development Department ("EDD") is charged with administering unemployment benefits in accordance with state and federal law. Once a school district registers with the EDD, the school will receive a notice to post, which informs their employees of their rights under the Unemployment Insurance, Disability Insurance, and Paid Family Leave programs. This notice must be posted in a prominent location that is easily seen by the employees. In addition to the posted notice, employers must provide a copy of unemployment information pamphlets to each employee when appropriate.⁹³

PRACTICE TIP:

The specific notice to be posted regarding unemployment insurance can be found on the EDD website.⁹⁴ The notice will include the following language:

“Unemployment Insurance benefits based on wages earned while employed by a public or nonprofit educational institution may not be paid during a school recess period if the employee has reasonable assurance of returning to work at the end of the recess period.⁹⁵ Benefits based on other covered employment may be payable during recess periods if the unemployed individual is in all other respects eligible, and the wages earned in other covered employment are sufficient to establish an unemployment insurance claim after excluding wages earned from a public or nonprofit educational institution(s).”

California employers cannot require an employee to sign a release of claims or rights to wages that are undisputedly due, such as minimum wage and overtime pay.⁹⁶ To be valid and enforceable, a release must offer an employee something that she was not already entitled. A release must not allocate any portion of monetary consideration to wages that are due, or are being paid, at the time of discharge. This includes payment to the employee for any accrued and unused vacation time that an employee is legally entitled to on termination and cannot be forfeited.⁹⁷

An employer also may not require an employee, as a condition of payment, to execute a statement of hours worked during a pay period that the employer knows to be false.⁹⁸ An employee may only release a claim for wages that were subject to a bona fide dispute between the parties over whether the wages were owed. A release required or executed in violation of Section 206.5 of the California Labor Code is unenforceable.

SEPARATION/SETTLEMENT AGREEMENTS AND RELEASES

A separation agreement (sometimes known as a severance agreement, release of claims or termination agreement) is a contract that governs the terms under which employment will end. Most separation agreements promise the employee a sum of money (“severance pay”) in exchange for surrendering the opportunity to make any kind of legal claim against the employer. It acts as a “written handshake” between the two parties, and can prevent misunderstandings and/or litigation down the line.

When is an employment separation agreement desirable?

The following situations are typical of those in which a separation agreement is desirable:

1. **Pre-Litigation:** A school district may wish to resolve all differences with an employee before a dispute is filed in court; or
2. **Litigation:** When an employee has filed a formal action in state or federal court against the school district and both sides decide to resolve the matter before trial concludes; or
3. **Disciplinary Process:** When a school district initiates a formal disciplinary action against the employee and both parties agree to end the employment relationship prior to completion of the termination hearing.

EXAMPLE OF PRE-LITIGATION SETTLEMENT:

When an employee files an administrative discrimination complaint, it sets in motion a series of legally required steps that the California Department of Fair Employment and Housing ("DFEH") must follow.⁹⁹ The DFEH will evaluate the facts and decide whether to accept the case for investigation. If it does, DFEH will prepare a complaint and deliver it to the school district. Once the school district receives the complaint and responds accordingly, a voluntary resolution can be negotiated at any time during the complaint process, including a separation agreement. When parties can't resolve a complaint, the DFEH will continue its investigation.

If the DFEH finds there were probable violations of the law, the case moves into DFEH's Legal Division. At that time, the parties are required to go to mediation. At mediation, the parties have the opportunity to reach an agreement to resolve the dispute and close the case. To avoid the possibility of DFEH filing a lawsuit, a separation agreement is encouraged during mediation to resolve the matter. The Equal Employment Opportunity Commission has similar processes when receiving such complaints, and oftentimes one entity will defer to the other in handling an investigation so they don't duplicate efforts.

IMPORTANT PROVISIONS IN A SEPARATION AGREEMENT

General Releases

A school district should seek to have the employee release all non-waivable state and federal claims the employee has, or may have, whether known or unknown, against the school district (including, but not limited to, claims of discrimination, harassment,

wrongful termination, breach of contract, privacy violations, defamation, and intentional infliction of emotional distress). Notably, the separation agreement cannot preclude the filing of an administrative charge with the federal Equal Employment Opportunity Commission (“EEOC”) or DFEH. Other claims that cannot be legally waived include claims under workers’ compensation laws and unemployment insurance laws.

In California, a general release does *not* include unknown claims if the person releasing the claims can show they would not have entered into the release if they had known about such claims.¹⁰⁰ Therefore, the school district must ensure the employee “waives” his or her rights under statute in order to obtain a full, final, and comprehensive release. Otherwise, the employee may be able to sue the school district based on “unknown” claims despite the fact that he or she signed a general release.

EXAMPLE OF A GENERAL RELEASE:

“By execution of this Agreement, the Parties, for themselves, their respective legal and other representatives, claimants, heirs and beneficiaries, forever waive and releases each other, their respective agents, officers, and employees, past and present, from any and all actions, causes of action, obligations, costs, damages, losses, claims, liabilities, rights of action, and demands, whether based on tort, contract, or other legal or equitable theory of recovery, whether known or unknown, accrued or to accrue, suspected or unsuspected, fixed or contingent, including but not limited to those relating to the Employment Agreement, [employee’s name] employment with the District or the separation of that employment, whether or not specifically or particularly described herein.

The Parties further understand that the releases provided for in this Agreement extend to all claims, whether known or not known, claimed or suspected, up to and including the date of execution thereof, and constitute a waiver of each and all of the provisions of California Civil Code section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties, being aware of this section, hereby expressly waive and relinquish any rights they may have thereunder, as well as under any statutes or common law principles of similar effect.”

Release of Age Discrimination Claims

For an employee who is 40 years old or older, the Older Workers Benefit Protection Act ("OWBPA") applies. The OWBPA, which is part of the Age Discrimination in Employment Act ("ADEA"), requires employers to follow strict rules to get a valid release of any age discrimination claims. Under the OWBPA, among other things, for a release of age discrimination claims to be valid, the release must be knowing and voluntary, specifically refer to the ADEA, advise the employee to consult with an attorney, provide at least 21 days within which the employee may consider the agreement, and provide seven-day revocation period.¹⁰¹

EXAMPLE OF A RELEASE OF AGE DISCRIMINATION CLAIMS:

"[Employee Name] agrees to waive and release any claims under the Age Discrimination in Employment Act ("ADEA") and any claims under California state law for age discrimination. [Employee Name] is hereby advised to consult an attorney before executing this Agreement. (29 C.F.R. § 1625.22(b)(7).) [Employee Name] has twenty-one (21) days to consider his waiver of this potential claim from the date this Agreement was presented to him/her. However, he/she may choose to execute this Agreement before the expiration of the twenty-one (21) days. Further, [Employee Name] may revoke this portion of the Agreement only, in writing, within seven (7) days of its execution by him. [Employee Name] acknowledges if he/she revokes this portion of the Agreement, his/her resignation will still be effective."

Additional Standard Provisions to Consider

1. **Non-Disparagement Clause.** The school district may request, and have included, a clause requiring the departing employee not to disparage the school district. Oftentimes, the employee will seek to make this provision mutually prohibitive.
 - **Example:** The parties agree that they will not now or ever make any disparaging statements relating to this Agreement, the Notice, or relating to the other or to this Agreement or their respective Board members, officers, employees or agents. Should a party make such a disparaging statement, the other party shall be entitled to pursue legal action for damages against that party and the prevailing party in that action shall be entitled to reasonable attorneys' fees from the losing party.

2. **Confidentiality Clause.** Most agreements contain a confidentiality clause, whereby the employee agrees to preserve the confidentiality of the agreement. Please note that such a clause has limited effect since most agreements can be obtained via a Public Records Act request, but it serves to act as a deterrent for the settling employee to talk about the settlement with other employees.
 - **Example:** This Agreement and its terms are, shall be and shall remain confidential to the extent permitted by law and shall not be disclosed by any Party to any third parties except as may be required by court order, lawful subpoena, or law (i.e., California Public Records Act or Freedom of Information Act), or as may be necessary to secure court orders for the enforcement or interpretation of this Agreement. If disclosure of this Agreement is required, to the extent permissible by law, the names of the parties shall be redacted to prevent disclosure of the identity of the Parties.
3. **Reference Clause.** The school district may request, and have included, a clause regarding references. Under these circumstances, generally the District does not want to provide a letter of recommendation, only a neutral reference letter.
 - **Example:** In the event the District or any of its officers, employees or agents, are contacted by any third parties regarding Employee's employment with the District, such inquiries shall be directed to the [Superintendent] or his designee, who will inform such third parties only of Employee's (1) last held position of District employment; (2) dates of District employment; and (3) last salary earned during District employment. Unless otherwise required by law, the District's officers and management employees will not discuss the charges alleged against Employee or this Agreement reached with Employee, except to refer to Employee's employment as "ended" when there is an operational need to discuss transition issues related to Employee's severance from District employment.
4. **Tax & Retirement Consequences Clause.** The agreement should set forth a clause regarding tax and retirement issues to ensure that the employee assumes the risk of any tax implications.
 - **Example:** Employer makes no representations or warranties with respect to the tax or retirement consequences of this Agreement. Employee shall be solely responsible for all applicable state and federal income taxes assessed as a result of this Agreement. Notwithstanding any other provision of this Agreement, Employer shall not be liable for any state or

federal tax consequences or any retirement consequences of any nature occurring as a result of this Agreement, including but not limited to, whether specific forms of compensation are creditable for retirement purposes. Employee further declares that, prior to signing this Agreement, he/she had the opportunity to apprise herself/himself of relevant data and had the ability to receive independent advice and counsel regarding the tax and retirement consequences of this Agreement. Employee agrees to hold Employer harmless from all such tax and retirement consequences.

5. **No Precedent Clause.** The District should include this language to prevent other employees from using the agreement as precedence for their particular case.
 - **Example:** This Agreement shall not establish or set a precedent for settlements with the school district in the future. This settlement is unique to the circumstances and facts in this instance.
6. **No Rehire Clause.** This should be inserted to prevent the employee from ever re-applying for a position.
 - **Example:** Employee confirms and agrees that he/she will not apply for, seek, or accept employment with Employer. If he/she does apply, Employer may deny her such employment because of this Agreement, and such denial shall not constitute any violation of any laws, rules, or orders of any state, municipality, or of the United States. The parties agree and acknowledge that by this Agreement, they seek an unequivocal, complete, and final dissolution of the employment relationship between Employee and Employer.

REHIRING FORMER EMPLOYEES

Certificated Employees

At times, a school district may have a need to fill a vacancy with an individual who has recently separated from district service. School districts should review the retirement status of any such person to avoid violating any post-retirement earnings and/or service limitations that would apply. Absent such prohibitions and contingent upon the standard criminal clearance and other background checks, the district may rehire a certificated employee.

Districts should note that, whenever any permanent certificated employee of any school district, is reemployed within 39 months after his or her last day of paid service, the school district must restore the employee to permanent status, but must establish a new seniority date based upon the first date of paid service in the rehired status.¹⁰²

However, time spent in active military service, shall not count as part of the aforesaid 39-month period.

Classified Employees

As with certificated rehires, a school district should review the retirement status of a former classified employee who seeks reemployment to avoid violating any post-retirement earnings and/or service limitations that apply. Absent such prohibitions and contingent upon the standard criminal clearance and other background checks, the district may rehire a classified employee.

In merit system districts, a reemployed permanent classified employee has similar reinstatement rights as that afforded to a rehired certificated employee. If a permanent classified employee has voluntarily resigned and is reinstated or reemployed by the school district within 39 months after his last day of paid service, the former employee may be exempted from further competitive examinations. The school district must disregard the break in service and classify the employee as, and restore to him all of the rights, benefits and burdens of, a permanent classified employee.¹⁰³ Notably, this classified reemployment right does not apply to employees of school districts that have not adopted the merit system.

APPOINTMENT OF SCHOOL VOLUNTEERS

Recall from Module 1, volunteers are considered transitory affiliates of a school employer. Therefore, volunteers are not afforded the same general rights to a defense and indemnity that employees receive under the Education Code. However, upon the adoption of a resolution by the Board, volunteers shall be entitled to workers' compensation benefits for any injury sustained while engaged in the performance of service for the district.

Nevertheless, it may be in a school district's interest to fund a volunteer's defense and indemnity against claims relating to a school-sponsored activity and/or volunteer conduct that may have been taken at the direction of a school employee. School volunteers may ask a school district to provide a defense and indemnity if they are sued for acts or omissions taken in the course of their volunteer activities.

School volunteers can be held personally liable for their own negligent and/or intentional acts. Negligence claims against a school volunteer will be judged upon the same elements described above and, if a volunteer has acted within the acceptable standard of care, no liability should attach.

VOLUNTEERING IN SCHOOLS

Volunteer assistance in schools can enrich the educational program, increase supervision of students, and contribute to school safety while strengthening the schools' relationship with the community. A school district should encourage parents or guardians and other members of the community to share their time, knowledge, and abilities with students.

Recommended Appointment Protocol

A volunteer is a parent, community member or other adult who assists at a school site or program. The Superintendent or designee develops and implements a plan for recruiting, screening, and placing volunteers, including strategies for reaching underrepresented groups of parents or guardians and community members. In order to provide students with a safe environment, a volunteer is required to submit to a background check and fingerprinting under certain circumstances as discussed below. Additionally, a school district may request a local law enforcement agency to conduct an automated records check of a prospective volunteer in order to determine if the volunteer has been convicted of any sex offense.¹⁰⁴ Results from the records check are typically returned within 72 hours of the written request.¹⁰⁵ The school district may also request that the Department of Justice (“DOJ”) provide subsequent arrest notifications to the school.¹⁰⁶

Criminal Background Check and Fingerprinting

Under California law, a volunteer working with students in a “pupil activity program,” including parents, are required to submit to a criminal background check and a fingerprinting requirement. There is an exception to this requirement, for the following persons, if the person is **under the immediate supervision and direction of a school district certificated personnel**:

- Volunteer serves as a supervisor for breakfast, lunch, or nutritional periods; **or**
- Volunteer serves as a non-teaching volunteer aide, such as a parent volunteering in a classroom or on a field trip, or a community member providing non-instructional services.¹⁰⁷

A “pupil activity program” includes, scholastic programs, interscholastic programs, and extracurricular activities sponsored by a school district or school booster club, including, but not limited to, cheer team, drill team, dance team, and marching band. A volunteer working with students in a “pupil activity program” must first:

- Clear a DOJ and Federal Bureau of Investigation (“FBI”) criminal background check;¹⁰⁸ or
- Obtain an Activity Supervisor Clearance Certificate (“ASCC”) from the Commission on Teacher Credentialing (CTC).¹⁰⁹

A school district may select whether to require a volunteer to submit to a DOJ and FBI criminal background check or obtain an ASCC certificate. Best practice is for a school district to first review the volunteer position to determine if the volunteer will work with pupils in a pupil activity program. If the individual will in fact work with pupils in a pupil activity program, then the school district should next determine if one of the exceptions apply. If none of the exceptions apply, then the requirements set forth above should be followed.

Policy Considerations

When the requirements of section 49024 of the Education Code do not apply, a school district has discretion to determine, as a matter of policy, whether to require a criminal background check. Some educational agencies choose to require all volunteers who may have contact with pupils to submit to a criminal background check. Other educational agencies assess whether the individual will be under close supervision in determining whether to require a criminal background check. For example:

- A parent who volunteers in a classroom who is under the close supervision of a teacher is not required to be fingerprinted, but is required to fill out a form attesting to whether or not they are required to register as a sex offender.
- A community member who volunteers in the same role, but has no connection to the classroom is required to be fingerprinted.
- A parent or community member who volunteers during recess, or other event on campus, but outside the classroom, where there is still supervision by certificated staff, but a higher risk that the person might find themselves alone with a student, is required to be fingerprinted.

The examples above are rules a school district may apply. However, each school district should make a policy determination of what approach provides a safe environment for students under the school districts supervision.

Review of Criminal Background Results

A school district will need to establish a policy for reviewing the prospective volunteers' criminal history and determine whether the person will be allowed to volunteer.

Registered Sex Offenders

Sex offenders are prohibited from serving as volunteers for school districts.¹¹⁰ A parent who is registered as a sex offender may be prohibited from volunteering in schools, even in their child's classroom, and should be subject to increased vigilance and supervision when on school grounds, including ensuring that the parent's access to students is restricted or the person is supervised at all times while in the presence of students. If this situation arises, it is best to contact law enforcement agencies for assistance in determining the risks posed by a particular parent who is a registered sex offender and to determine the extent to which information about the registered sex offender should be disseminated to students, staff and parents in order to protect the safety of the students.¹¹¹

Serious or Violent Felons

Under California law, a school district is prohibited from employing or retaining in employment anyone convicted of a "serious or violent" felony.¹¹² Although the statute does not expressly apply to "volunteers," using this same approach helps provide a reasonable basis for prohibiting a person convicted of a "serious or violent" felony from volunteering.

There may be situations where the prospective volunteer has not been convicted of a serious or violent felony, but has been convicted of crimes that may still present concern. In these cases, allowing the person to volunteer is discretionary.¹¹³ A school district should review each individual on a case by case basis and evaluate whether the conviction impacts the individual's ability to perform the functions of the position. In making this determination, a school district should consider the following:

- The nature of the offense and whether it will negatively impact the individual's ability to perform the job duties of the position;
- The seriousness of the offense;
- The length of time elapsed since the conviction;
- The presence of rehabilitation or absence of efforts at rehabilitation; and

- The effect it will likely have upon the school district's operations and programs.

EXAMPLE WHERE VOLUNTEER CONVICTIONS SHOULD BE CONSIDERED:

In 2017, a parent asked to volunteer at the ticket booth of a school-sponsored event. Upon fingerprinting the parent, the district learned that the volunteer was convicted of embezzlement in 2016.

Because one of the ticket booth functions was to account for money and because conviction involved misappropriating funds, the district found that the parent's conviction made him unsuitable for that volunteer position. Additionally, the conviction occurred very recently whereas it might not be a current indication of the parent's character if it had occurred in 1995.

When these situations arise, the human resources manager should provide the individual with an opportunity to explain the circumstances of the conviction and any rehabilitative efforts undertaken since the conviction. After consulting legal counsel and considering the circumstances, the human resources manager can then make an informed decision.

Additional Requirements

Tuberculosis Assessment/Examination

Under California law, a volunteer in a school shall also be required to have on file with the school a certificate showing that, upon initial volunteer assignment, the person submitted to a tuberculosis risk assessment and, if tuberculosis risk factors were identified, was examined and found to be free of infectious tuberculosis. If no risk factors are identified, an examination is not required. At the discretion of the governing board of a school district, **this section shall not apply to a volunteer whose functions do not require frequent or prolonged contact with pupils.**¹¹⁴

Immunizations

Any person employed at a district child care center¹¹⁵ and any volunteer who provides care and supervision to children at such a center shall be immunized against influenza, pertussis, and measles. If a person meets all other requirements for employment or volunteering, as applicable, but needs additional time to obtain and provide immunization records, the person may be employed or volunteer conditionally for a maximum of 30 days upon signing and submitting a written statement attesting that he/she has been immunized as required. In addition, each

employee and volunteer shall receive an influenza vaccination between August 1 and December 1 of each year.¹¹⁶

Recommended Training and Orientations

As appropriate, the Superintendent or designee should provide volunteers with information about school goals, programs, practices and an orientation or other training related to their specific responsibilities. Employees who supervise volunteers shall ensure that volunteers are assigned meaningful responsibilities that utilize their skills and expertise and maximize their contribution to the educational program.

The volunteer work should be limited to those projects that do not replace the normal duties of classified staff. Nevertheless, volunteers should be encouraged to work on short-term projects to the extent that they enhance the classroom, school or program and comply with employee negotiated agreements. All volunteers should be required to go through a volunteer training process determined by each school district.

School districts may also want to consider setting specific qualifications for volunteers serving in certain settings, such as for chemistry or woodshop class. These qualifications could include required past experience using certain tools or items as long as they are neutral in nature and not designed to create assignment of volunteers based on a protected characteristic.

Volunteer Code of Conduct

In addition to a formal orientation or training process, a volunteer should adhere to norms of acceptable school conduct.

- Follow the school administrator's directives and the district's policies, rules, and regulations at all times while serving as a volunteer;
- Be conscientious and concerned for the health and safety of students;
- Maintain confidentiality regarding each student and family;
- Be alcohol and drug-free when volunteering on or off school grounds;
- Promptly inform the appropriate Superintendent employee when unable to attend or when discontinuing service;
- Have no contact, or go to an event, with a student outside of volunteer hours, when the volunteer has come to know the student through his or her

- volunteer duties, unless authorized by administration and the student's parent(s) / guardian(s);
- Dress and act professionally;
 - Never work alone with students;
 - Never give a student a gift, unless authorized by the program or school administrator and the student's parent(s) / guardian(s);
 - Never transport a student unless authorized by the program or school administrator and the student's parent(s) / guardian(s); and
 - Never take video or audio recordings, photographs, or otherwise capture digital images of a student, unless authorized by the program or school administrator and the student's parent(s) / guardian(s).

Duties of Volunteers

The superintendent or designee may assign volunteers to perform tasks such as:

- Assisting certificated personnel in the performance of their duties, including in the supervision of students and in the performance of instructional tasks which, in the judgment of the certificated personnel to which the volunteer is assigned, may be performed by a person not licensed as a classroom teacher.¹¹⁷
- Serving as non-teaching aides under the immediate supervision and direction of certificated personnel to perform non-instructional work which assists certificated personnel in the performance of teaching and administrative responsibilities.¹¹⁸
- Supervising students during lunch, breakfast, or other nutritional periods.¹¹⁹
- Working on short-term facilities projects pursuant to the section below entitled "Volunteer Facilities Projects."
- Performing other duties in support of the school operations as approved by the superintendent or designee.

Volunteers are not to be authorized to assign grades to students, and shall not be used to assist certificated staff in performing teaching or administrative

responsibilities in place of regularly authorized classified employees who have been laid off.¹²⁰

Volunteer Facilities Projects

It is uncommon for volunteers to engage in significant labor related to facilities projects. However, if this occurs, the volunteer service should have approximate start and completion dates and must be approved by the superintendent in advance. The Superintendent should review the scope of volunteer work proposed and ensure that it does not create any concerns regarding the use of volunteers to perform bargaining unit work. The Superintendent should ensure that volunteers possess the appropriate license and/or have sufficient expertise required for the project.

INFORMATION REGARDING THE EMPLOYMENT OF PERSONS FOR CREDENTIALLED POSITIONS

In California public schools, employees performing services requiring certification qualifications under the Education Code hold “educational positions” or “positions requiring certification qualifications.”¹²¹ These persons are commonly known as “certificated employees,” and other school employees hold positions in the “classified service.”¹²²

The Education Code defines a “credential” to include “a credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver issued by the [C]ommission [on Teacher Credentialing (“CTC”).”¹²³ There are two basic types of credentials: (a) teaching credentials, and (b) services credentials.¹²⁴ For teaching credentials, there are four basic kinds of credentials issued by the CTC:

1. Single subject teaching credential,
2. Multiple subject teaching credential,
3. Specialist instruction credential, and
4. Designated subjects credential.¹²⁵

For services credentials, there are several kinds of services for which credentials are issued, including:

1. Pupil personnel services;
2. Administrative services;
3. Health services;

4. Library services; and
5. Clinical and rehabilitative services.

Subject to limited exceptions, the Education Code¹²⁶ further requires a credential to be held by any school employee assigned to a position in which at least 50 percent of their annual duties consist of directing, coordinating, supervising, or administering any portion of the following functions:

1. The work of instructors and the instructional program for pupils.
2. Educational or vocational counseling, guidance and placement services.
3. School extracurricular activities related to, and an outgrowth of, the instructional and guidance program of the school.
4. Planning courses of study to be used in the public schools of the state.
5. The selection, collection, preparation, classification or demonstration of instructional materials of any course of study for use in the development of the instructional program in the schools of the state.
6. Research connected with the evaluation and efficiency of the instructional program.
7. The school health program.
8. Activities connected with the enforcement of the laws relating to compulsory education, coordination of child welfare activities involving the school and the home, and the school adjustment of pupils.
9. The school library services.
10. The preparation and distribution of instructional materials.
11. The in-service training of teachers, principals, or other certificated personnel.
12. The interpretation and evaluation of the school instructional program.
13. The examination, selection, or assignment of teachers, principals, or other certificated personnel involved in the instructional program.

In addition to the disciplinary actions that may be taken by a school employer against a certificated employee, a certificated employee's credential is subject to disciplinary action by the California Teacher Credentialing ("CTC") Commission.¹²⁷ Such action may include a private admonishment, public reproof, and suspending or revoking a credential.¹²⁸

School employers have an added obligation with respect to the separation from employment for certificated employees. Under Title 5 of the California Code of

Regulations, a school district must file a reporting form with the CTC whenever a certificated employee is released, dismissed, or suspended for more than 10 days as a result of an allegation of misconduct, or resigns or retires, while an allegation of misconduct is pending against the employee.¹²⁹ The Regulation requires the school district's superintendent (or designee) to file such a report within 30 days after final employment action occurs, and states that it is an act of unprofessional conduct by superintendent if he or she fails to comply with this requirement.¹³⁰

Certificated employees serve a unique and important function in the school system and they have specialized duties and responsibilities that are governed by the Education Code, Title 5 of the California Code of Regulations, and several other sources of state and local district guidance. Individuals with specific questions about certificated employment should contact the human resources department of their school district for further information.

¹ [Ed. Code § 44001](#) (citing [Ed. Code §§ 44000-44012](#), [44065](#), and [44200](#), et seq.).

² [Ed. Code § 45103](#).

³ [Ed. Code §§ 35035](#), [35160](#), [35161](#).

⁴ [Ed. Code §§ 35035](#) and [45113](#).

⁵ [Ed. Code §§ 44250-44277](#), and [44330](#).

⁶ [Ed. Code §§ 44252.5](#) and [44830](#).

⁷ [Ed. Code § 44830.1](#).

⁸ [Ed. Code §§ 49406](#) and [44839](#).

⁹ A school district may require all applicants to drug and alcohol testing based upon the employer’s reasonable suspicion that an employee is under the influence at work. However, school districts should consult legal counsel as to potential implications related to the constitutional privacy interests of employees (*Cal. Const.* Section 1, Art. 1) and collective bargaining obligations (*Fairfield-Suisun Unified School District* (2012) PERB Dec. No. 2262E).

¹⁰ [Ed. Code § 44838](#).

¹¹ [Gov. Code §§ 3100-3109](#).

¹² [Ed. Code § 45122.1](#).

¹³ [Pen. Code §§ 290](#) and [290.95](#); [Ed. Code § 44836.a](#)

¹⁴ [Ed. Code § 45122](#).

¹⁵ A school district may require all applicants to drug and alcohol testing based upon the employer’s reasonable suspicion that an employee is under the influence at work. However, school districts should consult legal counsel as to potential implications related to the constitutional privacy interests of employees ([Cal. Const. Art. I, § 1](#)) and collective bargaining obligations (*Fairfield-Suisun Unified School District* (2012) PERB Dec. No. 2262E).

¹⁶ Pub.L. 107–110, 115 Stat. 1425, enacted January 8, 2002.

¹⁷ [Ed. Code § 45330](#).

¹⁸ See U.S. Dept. of Education, “Transitioning to the Every Student Succeeds Act (ESSA) Frequently Asked Questions,” Feb. 26, 2016 (<https://www2.ed.gov/policy/elsec/leg/essa/faq/essa-faqs.pdf>).

¹⁹ [Ed. Code §§ 45125](#) and [44830.1](#).

²⁰ [Ed. Code § 45122.1](#); [Pen. Code §§ 667.5](#), [1192.7](#).

²¹ [Ed. Code § 44830.1](#).

²² [Ed. Code § 44836](#).

²³ [Pen. Code §§ 290](#) and [290.95](#).

²⁴ [Ed. Code § 44837](#)

²⁵ [Ed. Code §§ 44836](#) and [45123](#).

²⁶ [Lab. Code § 432.7\(a\)\(1\)](#).

²⁷ *Id.*

²⁸ [Lab. Code § 432.7\(m\)\(1\)](#).

²⁹ [Ed. Code § 45028](#).

³⁰ [29 U.S.C. § 206\(d\)](#).

³¹ EEOC Compliance Manual, Compensation Discrimination, pp.18-19.

³² [29 CFR § 1620.13 subd., \(b\)\(2\)](#).

³³ [29 CFR § 1620.13 subd., \(b\)\(4\)](#).

³⁴ *Rizo v. Yovino* (9th Cir. 2020) 950 F.3 1217.

³⁵ [Lab. Code § 1197.5](#).

³⁶ [Lab. Code § 432.3](#).

³⁷ [Ed. Code § 44691\(b\)](#); [Pen. Code § 11165.7\(d\)](#).

³⁸ [Gov. Code § 12950.1\(a\)](#).

³⁹ [Ed. Code § 44259\(c\)\(4\)\(A\)](#); [5 Cal.Code.Reg. §§ 5590, 5593](#).

⁴⁰ [Ed. Code § 44259\(c\)\(4\)\(A\)](#); [5 Cal.Code.Reg. §§ 5590, 5593](#).

⁴¹ [29 C.F.R. § 1910.151\(a\)](#) (setting forth federal OSHA standard that, “[i]n the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid.”)

⁴² [Lab. Code § 144.7\(c\)](#); [8 Cal.Code.Reg. §5193\(g\)\(2\)](#).

⁴³ [Ed. Code § 49414\(d\)](#).

⁴⁴ Cal. Dept. of Ed. Nutrition Services Division, Management Bulletin No. SNP-17-2016; Healthy, Hunger-Free Kids Act of 2010, Public Law 111-296, Section 306.

⁴⁵ [Ed. Code § 40085](#).

⁴⁶ [Food & Ag. Code § 13186.5\(a\)](#).

⁴⁷ [40 C.F.R. § 763.92](#).

⁴⁸ [8 Cal.Code.Reg. § 5194\(h\)](#).

⁴⁹ [Ed. Code § 44660-44665.](#)

⁵⁰ [Ed. Code § 44660-44665.](#)

⁵¹ [Gov. Code § 3543.2\(a\)\(1\).](#)

⁵² RAND Education, "Evaluating the Effectiveness of Teacher Pay-for-Performance."

⁵³ [Ed. Code 44663.](#)

⁵⁴ "Effective Evaluation," National Association of Secondary School Principals, p. 18 (March 2009).

⁵⁵ Id.

⁵⁶ [Ed. Code § 44917.](#)

⁵⁷ [Ed. Code § 44953.](#)

⁵⁸ [See Ed. Code § 44909-44919.](#)

⁵⁹ [Ed. Code 44919.](#)

⁶⁰ [Ed. Code §44954\(a\).](#)

⁶¹ Id.

⁶² [Ed. Code § 44929.21.](#)

⁶³ [Ed. Code § 44908.](#)

⁶⁴ [Ed. Code § 44929.23\(b\).](#)

⁶⁵ [Ed. Code § 44929.23\(a\).](#)

⁶⁶ Id.

⁶⁷ [Ed. Code § 44929.21\(b\).](#)

⁶⁸ [Ed. Code § 44948.5.](#)

⁶⁹ [Ed. Code § 44948.3.](#)

⁷⁰ [Ed. Code § 44948.3.](#)

⁷¹ [Ed. Code § 44948\(a\).](#)

⁷² [Ed. Code § 44934.1.](#)

⁷³ [Ed. Code § 44934.](#)

⁷⁴ [Ed. Code § 44932.](#)

⁷⁵ [Ed. Code §§ 44934, 44936.](#)

⁷⁶ [Ed. Code § 44936.](#)

⁷⁷ [Ed. Code § 44943.](#)

⁷⁸ [Ed. Code § 44944.](#)

⁷⁹ [Ed. Code § 44944.05.](#)

⁸⁰ See *Atwater Elem. Sch. Dist. v. Dept. of Gen. Services* (2007) 41 Cal.4th 227 (where past conduct is newly discovered); [Ed. Code § 44944\(b\)\(2\)](#) (where evidence relates to allegations of specified sex offenses and child abuse or neglect).

⁸¹ [Ed. Code § 45113.](#)

⁸² [Ed. Code §§ 45301; 45113.](#)

⁸³ [Ed. Code, § 45116.](#)

⁸⁴ *Skelly v. State Personnel Board* (1975) 15. Cal.3d 194.

⁸⁵ [Civ. Code § 47.](#) Note that this immunity does not attach to employer commentary regarding a current or former employee's speech or constitutionally protected activities (e.g., labor activities).

⁸⁶ [Lab. Code § 1050.](#)

⁸⁷ [Lab. Code § 1052.](#)

⁸⁸ [Civ. Code § 47](#); *Noel v. River Hills Wilsons, Inc.* (2003) 113 Cal.App.4th 1363.

⁸⁹ [5 Cal.Code.Reg. § 80331.](#)

⁹⁰ [5 Cal.Code.Reg. § 80332.](#)

⁹¹ *Randi W. v. Muroc Joint Unified School Dist.* (1997) 14 Cal.4th 1066.

⁹² *Pond v. General Electric Co.* (9th Cir. 1958) 256 F.2d 824.

⁹³ http://www.edd.ca.gov/Payroll_Taxes/Required_Notices_and_Pamphlets.htm

⁹⁴ *Id.*

⁹⁵ [Unemp. Ins. Code § 1253.3.](#)

⁹⁶ [Lab. Code § 206.5.](#)

⁹⁷ [Lab. Code § 227.3.](#)

⁹⁸ [Lab. Code § 206.5\(b\).](#)

⁹⁹ <https://www.dfeh.ca.gov/complaint-process/>

¹⁰⁰ [Civ. Code § 1542.](#)

¹⁰¹ [29 U.S. Code § 626](#); 29 C.F.R. 1625.22(b)(7).

¹⁰² [Ed. Code § 44931.](#)

¹⁰³ [Ed. Code § 45309.](#)

¹⁰⁴ The Superintendent or designee may require all volunteers to disclose whether they are a registered sex offender and/or to provide the County Office of Education with sufficient information in order to allow verification of this status on the Department of Justice's Megan's Law web site.

¹⁰⁵ [Ed. Code § 35021.1.](#)

¹⁰⁶ [Ed. Code § 35021.2.](#)

¹⁰⁷ [Ed. Code § 49024.](#)

¹⁰⁸ [Ed. Code § 45125.01](#) authorizes multiple districts within a county or within contiguous counties to enter into an agreement to share criminal record information of non-certificated employees and volunteers working in a student activity program.

¹⁰⁹ An ASCC, is requested from, and issued by the CTC, if the applicant's qualifications and history are deemed to be satisfactory. ([Ed. Code §44258.7\(f\)](#)). The application process is also described on the CTC website. (<http://www.ctc.ca.gov/credentials/CREDS/ASCC.html>) An approved ASCC will remain valid for five years and is renewable thereafter. Temporary certificate may be issued in accordance with [Ed. Code § 44332](#) and [§ 44332.5](#).

¹¹⁰ [Ed. Code § 35021; Pen. Code § 290.95.](#)

¹¹¹ [Pen. Code § 626.81](#), requires principals to notify parents or guardians of students at the school whenever a registered sex offender is granted permission to volunteer at the school.

¹¹² [Ed. Code §45122.1.](#)

¹¹³ Parents have additional rights to participate in their students education and cannot be barred from schools, contact with the staff, observing in the classroom, and serving on school councils and committees, to the extent they are functioning as a parent or guardian of a student. ([Ed. Code § 51101](#).)

¹¹⁴ [Ed. Code § 49406.](#)

¹¹⁵ [Health & Saf. Code § 1596.76](#) (defining "day care center" to include preschools, and school-age child care centers).

¹¹⁶ [Health & Saf. Code § 1596.7995.](#)

¹¹⁷ [Ed. Code §§ 35021, 45343, 45344, 45349.](#)

¹¹⁸ [Ed. Code § 35021.](#)

¹¹⁹ [Ed. Code §§ 35021, 44814, 44815.](#)

¹²⁰ [Ed. Code §§ 35021, 45344.](#)

¹²¹ [Ed. Code § 44001.](#)

¹²² [Ed. Code § 45103\(a\).](#)

¹²³ [Ed. Code § 44002.](#)

¹²⁴ [Ed. Code § 44250.](#)

¹²⁵ [Ed. Code § 44256.](#)

¹²⁶ [Ed. Code § 44065.](#)

¹²⁷ [Ed. Code §§ 44420-44440.](#)

¹²⁸ Id.

¹²⁹ [5 Cal.Code.Reg. § 80303.](#)

¹³⁰ Id.



Forms and Templates



PRISM

Public Risk Innovation,
Solutions, and Management



Lozano Smith

ATTORNEYS AT LAW

Forms and Templates A

Sample Emergency Information Form

SAMPLE UNIFIED SCHOOL DISTRICT STUDENT EMERGENCY INFORMATION FORM

For Office Use:
 Received: _____
 Student ID: _____

STUDENT'S NAME: _____ Home Room: _____ Grade: _____
Last First Middle

ADDRESS: _____ Zip Code _____

BIRTH DATE: _____ HOME PHONE: _____ Sex: M F Student Lives With: Father Mother Guardian

PARENT/ CAREGIVER: _____ Home Phone: _____ Address: _____ Zip Code: _____ Where Employed: _____ Work Phone: _____ Cell Phone: _____	PARENT/ CAREGIVER: _____ Home Phone: _____ Address: _____ Zip Code: _____ Where Employed: _____ Work Phone: _____ Cell Phone: _____
---	---

GUARDIAN(S): _____ Check One: Foster Parent Group Home Other: _____

Home Phone: _____ Work Phone: _____ Cell Phone: _____

Address: _____ Zip Code: _____ Where Employed: _____

OTHER FAMILY MEMBERS OR RELATIONS ATTENDING THIS SCHOOL:

Name: _____ B.D. _____ Grade: _____ Relation: _____ Home Room: _____

Name: _____ B.D. _____ Grade: _____ Relation: _____ Home Room: _____

Name: _____ B.D. _____ Grade: _____ Relation: _____ Home Room: _____

Name: _____ B.D. _____ Grade: _____ Relation: _____ Home Room: _____

In case of emergency, illness, accident or suspension and the school is unable to reach parents/guardians, the school is authorized to proceed as indicated below:

CALL FIRST: PARENTS/GUARDIANS

CALL SECOND: _____

Name	Relationship	Daytime or Work Address	Daytime or Work Phone
------	--------------	-------------------------	-----------------------

CALL THIRD: _____

Name	Relationship	Daytime or Work Address	Daytime or Work Phone
------	--------------	-------------------------	-----------------------

CALL FOURTH: _____

Name	Relationship	Daytime or Work Address	Daytime or Work Phone
------	--------------	-------------------------	-----------------------

CALL PHYSICIAN: _____

Name	Address	Telephone Number
------	---------	------------------

If it is not possible to contact any of the above listed persons, I hereby authorize transportation to the nearest medical facility for such emergency medical treatment as deemed necessary for the safety and protection of my child, but not at the expense of the school.

AUTHORIZATION FOR EMERGENCY MEDICAL TREATMENT

The undersigned, as parent/legal guardian of, _____ a minor, hereby _____ authorizes _____ does not authorize the principal or designees, into whose care the student has been entrusted, to consent to any X-ray examinations, anesthetic, medical or surgical diagnosis, treatment, and/or hospital care to be rendered to the student upon the advice of any licensed physician and/or dentist. It is understood that this authorization is given in advance of any required diagnosis, treatment, or hospital care and provides authority and power to the _____ ("District") to give specific consent to any and all such diagnosis, treatment, or hospital care which a licensed physician or dentist may deem necessary. This authorization is given in accordance with Section 49407 of the California Education Code, and shall remain effective until revoked in writing and delivered to the District. I understand that the District, its officers and its employees assume no liability of any nature in relation to the transportation of the student. I further understand that all costs of paramedic transportation, hospitalization, and any examination, X-ray, or treatment provided in relation to this authorization shall be my sole responsibility as the student's parent/guardian.

THIS INFORMATION MUST BE COMPLETED YEARLY SO THAT THE SCHOOL CAN ACT ON YOUR BEHALF IN THE EVENT IF A MEDICAL EMERGENCY

PLEASE CHECK STUDENT'S PAST OR PRESENT ILLNESS:

- Heart Condition Diabetes Insulin Required? Yes No
 Asthma Epilepsy or Convulsions Requires Epinephrine? Yes No
 Serious Allergies

Any other serious illness, operation, or physical disability? _____

Describe Problem: _____

Any limitations in school activities due to illness? Yes No

(Describe - Bee sting, Penicillin reaction, etc.)

Does your child require continuing medication for health problems? Yes No

Describe: _____

Has your child received any additional immunizations during the past year:

Yes No

Medication _____ Time Taken _____

What Kind? _____ Date: _____

Medication _____ Time Taken _____

If medication is necessary during the school day, a written statement from a physician and the parent is required.

I understand that the school district does not provide medical insurance for subject injuries but does make voluntary student insurance available. I have received the information on this program.

I will enroll my child in the STUDENT INSURANCE PROGRAM: Yes No

Student Has No Health Insurance or Medi-Cal

Health Insurance/Medi-Cal _____ Policy # _____ ID # _____

I authorize the release of medical information by the school district to its billing agency and to my insurance company to process a claim or request reimbursement for medical services rendered to my child. Any shared information will be limited to service documentation only.

Release from School: Your child will be released from school (except for illness/suspension) only by written permission from parent/guardian.

To the best of my knowledge all information that I have provided on this Emergency Form is true and accurate. I agree to the statements of consent above, unless my consent has been specifically withheld as indicated by a checked box.

Signature of Parent/Guardian _____ Date _____

Forms and Templates B

Sample Accident Incident Form

SAMPLE UNIFIED SCHOOL DISTRICT ACCIDENT/INCIDENT FORM

CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION - ATTORNEY WORK PRODUCT DOCTRINE					<i>IN CASE OF SERIOUS INJURIES, IMMEDIATELY REPORT THE INCIDENT BY TELEPHONE</i>	
This confidential internal report is to be completed by District employees. Its contents are not to be shared or copied for any persons who are not employees of the District or legal counsel.						
Injured Student Name (Last)		Student Name (First)		School/Location		Reporting Date/Time
Parent/Guardian Name (Last)		Parent Name (First)		In injured a minor?	Age/Grade	Homeroom/Teacher
Student Address		Parent Phone:		Name of person in charge at the time:	Title of person:	Was he/she present at the time?
Where did the incident specifically occur?						Was injured student violating school rules at the time?
Describe how incident occurred (provide facts only without opinions or assumptions):						
(Use additional separate pages if needed.)						
Witness Name (including Reporter)		Address		Phone	Status (student/parent/volunteer/employee)	
Witness Name		Address		Phone	Status (student/volunteer/employee)	
Witness Name		Address		Phone	Status (student/volunteer/employee)	
Witness Name		Address		Phone	Status (student/volunteer/employee)	
Nature of injury:				Parts of body involved:		
<input type="checkbox"/> Abrasion <input type="checkbox"/> Fracture <input type="checkbox"/> Insect bite <input type="checkbox"/> Chipped tooth <input type="checkbox"/> Contusion <input type="checkbox"/> Cut <input type="checkbox"/> Sprain <input type="checkbox"/> Human bite <input type="checkbox"/> Bruise <input type="checkbox"/> Concussion <input type="checkbox"/> Dislocation <input type="checkbox"/> Internal (area): _____ <input type="checkbox"/> Other (explain): _____				<input type="checkbox"/> Head <input type="checkbox"/> Finger <input type="checkbox"/> Arm <input type="checkbox"/> Abdomen <input type="checkbox"/> Neck <input type="checkbox"/> Eye <input type="checkbox"/> Leg <input type="checkbox"/> Hand <input type="checkbox"/> Back <input type="checkbox"/> Chest <input type="checkbox"/> Face <input type="checkbox"/> Foot <input type="checkbox"/> Other (explain): _____		
First Aid procedures used:					Name of person providing First Aid:	
Disposition of injured student after incident:				Name of parent/guardian notified:		Relation to injured:
<input type="checkbox"/> Returned to Class <input type="checkbox"/> Sent Home <input type="checkbox"/> Hospital <input type="checkbox"/> Other: _____						
If injured student was released from site, name of person to whom released:				Name(s) and attitude/affect of anyone contacting District about injury:		
Other comments by reporter:						
(Use additional separate pages if needed.)						
Did this incident occur on a field trip? (If yes, attach parent permission slip)				Was an employee injured in the incident? (If yes, report the injury to District's Risk Manager)		
<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		
Did this incident occur during an organized sports or recreation activity? (If yes, please identify activity)						
Name of Reporter		Title of Reporter			Phone # of Reporter:	
Address of Reporter						
Signature of Principal/Supervisor Accepting Report:					Date signed:	

In cases of serious injuries, call 911 and obtain emergency assistance immediately. Submit this form to the school site administrator ASAP after addressing student's needs. Use a separate form for each injured person.

Forms and Templates C

Sample Conflict/Bullying Form



PRISM

Public Risk Innovation,
Solutions, and Management



Lozano Smith

ATTORNEYS AT LAW

SAMPLE UNIFIED SCHOOL DISTRICT
CONFLICT/BULLYING REPORT

CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION - ATTORNEY WORK PRODUCT DOCTRINE. This confidential internal report is to be completed by District employees. Its contents are not to be shared or copied for any persons who are not employees of the District or legal counsel.	Directions: Complete this form for incidents involving students and/or staff and send to the principal immediately .
---	--

WHEN DID THE INCIDENT HAPPEN?			
Date: _____	<input type="checkbox"/> During class time	<input type="checkbox"/> Recess	
Time: _____ a.m./p.m.	<input type="checkbox"/> Passing period	<input type="checkbox"/> Lunchtime	
	<input type="checkbox"/> Before/after school	<input type="checkbox"/> Other: _____	

WHERE DID THE INCIDENT HAPPEN? (chose all that apply)		
School Site:		
<input type="checkbox"/> Classroom	<input type="checkbox"/> Restroom	<input type="checkbox"/> Off school property
<input type="checkbox"/> Hallway	<input type="checkbox"/> Playground/field	<input type="checkbox"/> Email/text/computer
<input type="checkbox"/> Lunch room	<input type="checkbox"/> Field trip/activity/event	<input type="checkbox"/> Other: _____

TYPE OF INCIDENT (check from the following list):

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Alcohol/drug possession/use | <input type="checkbox"/> Burglary | <input type="checkbox"/> Robbery/Extortion | <input type="checkbox"/> Threats/Intimidation |
| <input type="checkbox"/> Arson | <input type="checkbox"/> Defiance/Disruption | <input type="checkbox"/> Sexual Harassment | <input type="checkbox"/> Weapon possession/use |
| <input type="checkbox"/> Assault/battery | <input type="checkbox"/> Hate Violence | <input type="checkbox"/> Sex offense | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Bullying
(complete section below) | <input type="checkbox"/> Property Damage
(e.g. graffiti) | <input type="checkbox"/> Theft | _____ |

For incidents of bullying only – WHAT HAPPENED? (chose all that apply)	
<input type="checkbox"/> Direct physical aggression/fighting	<input type="checkbox"/> Excluding or rejecting the student
<input type="checkbox"/> Getting another person to hit or harm student	<input type="checkbox"/> Sexual name calling
<input type="checkbox"/> Teasing, name-calling, threatening	<input type="checkbox"/> Intimidating, exploiting or extorting
<input type="checkbox"/> Making rude or threatening gestures	<input type="checkbox"/> Spreading harmful rumors or gossip
<input type="checkbox"/> Using racial or religious slurs	<input type="checkbox"/> Other: _____

NAMES OF PERSONS INVOLVED:

	NAME	CHECK ONE:		
		EMPLOYEE	STUDENT	OTHER
VICTIM(S)	V1		GRADE: _____	
	V2		GRADE: _____	
	V3		GRADE: _____	
ASSAILANT(S)	A1		GRADE: _____	
	A2		GRADE: _____	
	A3		GRADE: _____	
WITNESS(ES)	W1		GRADE: _____	
	W2		GRADE: _____	
	W3		GRADE: _____	

CONFIDENTIAL

	W4		GRADE:
--	----	--	--------

DESCRIPTION OF INCIDENT (attach additional sheet if more space is needed):

ADMINISTRATOR NOTIFIED?	Name: _____ Title: _____ Date/Time: _____
PARENT/GUARDIAN NOTIFIED? If the parent/guardian was NOT contacted, explain why:	Name: _____ Telephone: _____ Date/Time: _____ Name/Title of person making contact: _____ Summary of conversation: _____
POLICE NOTIFIED?	Officer's Name: _____ Officer ID: _____ Date/Time: _____ Police Report #: _____ Name/Title of person making contact: _____ Was parent/guardian notified prior to contacting police? _____ Names of persons present during police any interview of student(s): _____

Person Reporting Alleged Incident (if different than the person completing this form)			
Name:	Title:	Phone:	Email:
Person Completing Form			
Name:	Title:	Phone:	Email:
Signature:		Date Completed:	

Forms and Templates D

Sample Investigation Report



PRISM

Public Risk Innovation,
Solutions, and Management



Lozano Smith

ATTORNEYS AT LAW

[SAMPLE UNIFIED SCHOOL DISTRICT LETTERHEAD]

CONFIDENTIAL REPORT OF INVESTIGATION

[DATE]

TO: [NAME]
Superintendent
Sample Unified School District

FROM: [NAME]
Investigator

RE: Report of Investigation regarding Employee Complaint re Transportation Staff

I. INTRODUCTION

Sample Unified School District (“District”) bus driver Louise informed Assistant Superintendent Archibald that a fellow bus driver, George, engaged in harassing and objectionable conduct toward her. The District requested an investigation of the matter, and the Investigator interviewed witnesses and examined documentation and records presented by the witnesses. The following is a report of the investigation.

II. SCOPE OF INVESTIGATION

The scope of this investigation was to determine whether inappropriate employee conduct has occurred with regard to the personality conflicts between Louise and George, and to determine what, if any, recommended administrative action might be taken to respond to the ongoing dispute. The investigator obtained interview statements from witnesses, documentation from witnesses, and other diagrams and photographs which assisted in ascertaining the nature of events alleged.

The investigation was conducted under District Administrative Regulation _____.

III. PERSONS INTERVIEWED

In conducting this investigation, I interviewed the following individuals:

- A. Louise [DATE]
- B. George [DATE]
- C. Gloria [DATE]

IV. SUMMARY OF INTERVIEW STATEMENTS

A. INTERVIEW OF LOUISE (DATE, TIME)

The investigator interviewed District employee Louise in the Conference Room of the District Office, with Union Representative Michael present. Louise was given admonitions regarding the need for honesty and confidentiality, and she agreed to abide thereby.

Louise is a Bus Driver for the District and has held that position for approximately ten years. The drivers meet all together approximately once per month. Louise believes that she is being harassed by fellow bus driver George, whom she did not know before she worked at the District.

Louise said that, when she was friendly with George, he talked with Edith and Louise about his wife, and he used to refer to his wife as a "bitch" and a "whore." Louise said that, when George stopped Louise in the parking lot after work and called her names such as "bitch" and "whore," Louise responded by saying, "No, I'm not your wife. You should take care of your family first. Why are you worrying about me?"

Louise said that during January and February, George would regularly follow Louise on her drive home from work. She said that it was four to seven times a week and that George would drive by and "watch" Louise's house. Louise said that it bothered her, her husband, and her two teenage daughters. Louise said that she told George "not to follow her home" several times. George's response was to laugh and ignore Louise's request. Louise said that she took video recordings of George harassing her on her way home. She said that, when she would ride her bicycle home from work, George would follow her in his truck and would yell at her through his open window.

Louise said that George would shout mean-spirited things to her, such as "You lesbian, you bitch. This is not a place for lesbians. What about the kids? You should go to church because the devil is getting you." Louise said that George has harassed her on a daily basis. When the buses were lined up in the yard, George would pull his bus up a few feet, open his door, and say things to Louise.

Louise said that someone (whom she believed was George) repeatedly called her home telephone and hung up each time. Louise said that it caused her to take her answering machine off line. Louise reported that George harassed her by writing "Weezy is crazy" on the window of his SUV.

Louise states that she has not harassed George, but admits that she once called him and said, "You a**le. Stop harassing me, stop following me." Louise admitted that she has occasionally called George's wife names, or spoken harshly to her, when she was picking George up from work or when George and his wife were following Louise on the road.

Louise said that she "never made angry gestures" to George. Louise said that she has just reported George to her supervisors. Louise said that, during January and February, she had asked her supervisors "why am I assigned to the same route as George?" Louise said that, in response, the District reassigned George to another route.

Louise said that, when they passed each other at the same site, George would open his bus door while passing her and he called her names.

Louise believes that George wants to drive her and others out of the District to improve his seniority status in the Transportation Department. Louise said that she has reported the harassment to management, but that her supervisors are not effective in dealing with the issue. She said that, whenever there is an issue, her supervisor calls George and Louise together and they just "yell at each other."

B. INTERVIEW OF GEORGE (DATE, TIME)

The investigator interviewed District employee George in the Conference Room with the Union Representative Michael present. George was given admonitions regarding the need for honesty and confidentiality, and he agreed to abide thereby.

George is a Bus Driver for the District and has held that position for seven to eight years. George said that he is friendly with everyone in the transportation department except for Louise and Gloria.

George said that he used to be really good friends with Louise. However, on several occasions, Louise said offensive things to him. For example:

- One day, George was walking from the yard to his car. Louise quickly approached him from the yard and “started ripping into” him, saying “Your wife is nothing but a f**ing wh*** and a f**ing slut.”
- Louise often walks by and mutters, “You coward. You coward.” She often “flips me off” by scratches her face with her middle finger.

George said that Louise “seems paranoid” and that Louise constantly complains about George. For example:

- Louise reported George to the supervisor about three times because George had parked near or next to Louise’s car. George admitted that he had parked near or next to Louise on those occasions, but stated that there were no other parking stalls available.
- George said that Louise has harassed him through his children. She said that one of his sons was participating in sports and had to ride on Louise’s bus for athletic meets. During those bus rides, Louise allegedly told George’s son, “You need to tell your dad to shut up.”

George said that he tries to avoid Louise because of the potential for conflicts. He said that he sits and waits on his bus in the yard when he sees her in the yard. He also “walks the other way” when he sees her around. He said that Louise still complains about him, such as in late April when she claimed that he was verbally harassing her before their morning routes. George said that it was “physically impossible” for him to have yelled or verbally accosted Louise on the day she alleged. George explained that his bus was inspected near the office and Louise’s short bus was broken and far across the yard. He also said that, if Louise is ever in the scheduling area of the transportation office, he waits until she has left before he enters it.

George said that he has never waited in the parking lot to talk to Louise after work, and that they don’t leave at the same time. George said that Louise shouted at him, “You f**ing stalker! You a**le!” when she was riding her bicycle home and started to follow George in his car. George said that he has probably seen Louise commuting home from work only four or five times during the past two years. George said that he has never intentionally followed Louise home from work.

George said that he might have called Louise a lesbian, but that it wouldn’t have occurred on District property. George said that, in early 2013, he drove his son’s suburban to work and the truck had writing on the window. George said that his son’s girlfriend had written on the truck windows with temporary paint for his son’s birthday. On the rear right window, the writing said “Weezy is crazy” and George said that it referred to the fact that his son has asthma, and that his son has a reputation for being a partier.

George said that he complained about Louise once, because Louise took a photo while she was driving a bus. One time, Louise complained that George was waiving at her, but he was really waiving at the kids on her bus. George said that he lost his preferred route because of it.

George believes that he is being harassed by Louise with vexatious claims. George said that his supervisor directed him not to park in the shade next to a particular site while waiting for his route to start. This directive came a day after he saw Louise passing his bus on the street.

C. INTERVIEW OF GLORIA (DATE, TIME)

The investigator interviewed District employee Gloria in the Conference Room with the Union Representative Michael present. Gloria was given admonitions regarding the need for honesty and confidentiality, and she agreed to abide thereby.

Gloria is a Bus Driver for the District and has held that position for twenty-one years. Gloria said that she believes that George harassed Louise, “even though she doesn’t know it.” Gloria said that she gave a complaint to her supervisor regarding an incident from December. According to Gloria, the underlying incident occurred as follows:

- In the afternoon, Gloria was parked in the East parking lot and Louise was parked in the North parking lot. Gloria saw George parked in the third or fourth parking spot in the North parking lot on the “yard side,” and Gloria could clearly see the North parking lot from her parking spot under the shade tree in the East parking lot.
- Gloria saw Louise backing up toward the East parking lot instead of exiting the parking lot by driving west. Gloria thought that she should follow Louise home because she saw George, and thought that he might bother her.
- Gloria said that George sped his car through the yard and into the East parking lot so quickly, he had to weave around Louise’s car to avoid hitting her. Gloria also had to stop her car quickly so that George would not hit her car. Louise exited her car and came to get into Gloria’s car. Gloria opened her door and Louise got into the car.
- Louise was ignoring George while he just kept yelling at Louise. Gloria then told Louise, “Just ignore him; what happened?” and Louise told her, “When I was leaving, George backed out and got in my way, so I backed up.” Gloria said that Louise was shaking and nervous when she said this.
- Gloria said that, in the end, George waited at the parking lot driveway for a while but left after another car came behind him to exit the parking lot.

Gloria said that she has never personally observed George say anything derogatory toward Louise. Gloria said that Louise has told her that George makes sexual gestures to her such as flipping her off. Gloria said that she personally saw the writing on George’s blue SUV window. She said that it said “Weezy is crazy” on the driver’s side, and that she thought it was the result of some weekend party. Gloria said that George told other drivers that he meant it to represent Louise. Gloria said that George “would always park right next to Louise to bug her.”

V. CREDIBILITY ISSUES

This investigation was greatly driven by personal recollections regarding matters stretching over several years as told by witnesses with, in some cases, strong personal interests in the matter. The claims investigated were asserted by Louise and the investigation findings are framed as such. However, George claimed that Louise engaged in harassing behavior toward them, and those claims – as well as credibility determinations based thereon – were integral aspects of the investigation.

Louise

The investigator finds that Louise’s claims, recollections, and denials are not credible regarding several material issues. Specifically, Louise’s statements regarding the following issues have caused the investigator to doubt the veracity of her allegations without corroborative evidence:

- Louise said that during January and February, George would regularly follow her home from work and would drive by and “watch” her home between “four to seven times” each week. While there are other witnesses who recalled seeing George behaving in a way that showed, on several occasions, that he intended to harass or follow Louise after work, it is not credible to believe Louise’s claim of such constant and repeated harassment. Furthermore, Louise took specific actions to document George’s actions (through photographs and videos taken

with a camera, smart phone, and video camera). There was no corroborating evidence of this extreme level of harassment and the investigator finds that the claims have been exaggerated.

- Louise denied ever using offensive language toward George, but in at least two heated incidents, it is unlikely and unreasonable to believe that she did not use foul language as alleged by others. First, Louise claims that she yelled “Stalker!” toward George when she was riding her bicycle home and passed by his car in the Central Park parking lot. George claims that she yelled “F**ing Stalker!” and “A**le!” Because other witnesses have observed Louise engage in taunting, angry, or annoying conduct and the use of foul language, it is likely that Louise used foul language when “parrying” with George in his taunting and offensive repartee. Louise’s strong denial of this undermines her credibility.

George

The investigator finds that George’s claims, recollections, and denials are not credible regarding several material issues. Specifically, George’s statements regarding the following issues have caused the investigator to doubt the veracity of his allegations without corroborative evidence:

- George strongly denied that he has ever followed Louise home from work. However, Louise and Gloria, recalled instances in which George engaged in abnormal driving patterns which indicated, on several occasions, that George intended to follow Louise when she was exiting the District office parking lot. George’s denial of such conduct is contradicted by the evidence and it undermines his credibility.
- George flatly denied that he parked near Louise to annoy her, and said that it occurred only a few times due to overcrowding of the parking lot. Gloria and others explained that there is no overcrowding issue in the mornings, and that George still parked immediately next to Louise or very close to her car in a way that could have only been intended to annoy Louise. George further justified his conduct by stating that “the Superintendent said that I could park wherever I wanted to,” which indicates that George believed that he could park next to Louise’s car with impunity. George’s implicit claim of innocence with regard to this issue is contradicted by the evidence and it undermines his credibility.
- George stated that the words “Weezy is crazy” on his son’s blue SUV were written by his son’s girlfriend, and that she told him that it meant that his son was a partier. For the reasons explained in below, the investigator finds that George’s explanation and recollection of the incident is not credible and intentionally misleading.
- George strongly denied ever having engaged in conduct that is harassing to Louise. When asked about the incident at Central Elementary School, George said that he was simply waving to kids on Louise’s bus whom he knew from prior years. Louise provided a video recording of the incident and captured images of George waving to Louise’s “bus.” The investigator finds that George’s stilted, rehearsed, and non-spontaneous waving toward the bus was directed toward Louise and her bus in a manner that is abnormal and intended to annoy Louise.

Accordingly, the investigator generally finds that the singular recollections or statements of Louise, as well as George, are insufficient to establish factual allegations without other corroborating documentation or witness statements.

VI. SUMMARY OF FINDINGS OF INVESTIGATION

In this investigation, witness statements were solicited to determine if the evidence supports Louise's claim that George has engaged in harassing conduct toward her. After having conducted these interviews and providing a full and fair opportunity for Louise, George, and others to provide relevant input, I have reached the following findings with regard to the claim that George engaged in harassing behavior toward Louise:

1. **The allegation that George repeatedly called Louise's home telephone number and hung up each time is not supported by a preponderance of evidence.** Louise stated that this occurred, but admitted that she did not have any evidence that the calls were made by George rather than another caller. George denied placing "prank" calls to Louise's residence. Because there was no corroborating evidence of this allegation and the credibility of both Louise and George is suspect, the investigator finds that this allegation is not supported by a preponderance of credible evidence.
2. **The allegation that George harassed Louise after work (often while on the road) is supported by a preponderance of evidence.** Louise stated that this occurred, but claimed that this occurred frequently in January and February and during other months. George denies ever following Louise home from work but admits that he has coincidentally seen her going home once or twice. The credibility of both employees is suspect, and finds that corroborating evidence exists to find that George did follow Louise home on occasion in a harassing manner. Specifically, Gloria stated that, after work, she witnessed George in his car in the parking lot across the street from the District office, and immediately exiting the parking lot to follow Louise when she drove past him. Gloria also observed Louise backing up in the District parking lot to avoid George, who then drove quickly through the west gate of the bus yard and very quickly drove between Louise's car and Gloria's car, where he then yelled for several minutes at Louise. Gloria further recalled, in great detail, the incident when George attempted to follow and/or block Louise in the east parking lot.
3. **The allegation that George said mean-spirited and harassing remarks to Louise is supported by a preponderance of evidence; however, the evidence also indicates that Louise engaged in similar behavior toward others, including George.** Louise stated that George said many mean-spirited, offensive, and harassing remarks to her. George stated that he has never said anything offensive to Louise, and this defense was supported by statements made by others. Louise's claim regarding George's conduct is corroborated by Gloria statement that she witnessed George saying offensive and angry remarks toward Louise when he abruptly pulled his car next to Gloria and Louise in the parking lot. Other witnesses stated that Louise made contemporaneous reports of such harassment, and sufficient corroborating evidence exists to find that George said mean-spirited, offensive, and harassing remarks toward Louise. However, the investigator notes that the evidence shows that Louise also engaged in behavior that was taunting, annoying, or harassing to co-workers, and that it is likely that she engaged in such behavior toward George.
4. **The allegation that George drove and parked a blue SUV with graffiti on its windows that was harassing toward Louise is supported by a preponderance of evidence.** Louise claimed that this occurred and provided photographic evidence to support her claim. George stated that the words "Weezy is crazy" on his son's blue SUV were written by his son's girlfriend, and that she told him that it meant that his son was a partier. He also stated that the girlfriend also wrote "Happy Birthday" and drew a "picture frame" with the words "Birthday Boy" on the windows of the driver and front passenger, and that all the writing was

done at the same time to celebrate his son's birthday. All other witnesses, including those who are supportive of George, deny seeing any "birthday-related" writing on the blue SUV along with "Weezy is crazy" and various witnesses recalled that George gave differing justifications for the writing. Finally, diary entries from Louise show that the incident occurred on Tuesday, January 18th, which is nearly one week after the son's birthday, which was on Wednesday, January 12th. Witnesses specifically recalled that there were two incidents of writing on George's car; once when the car said "Happy Birthday," and once when it said "Weezy" which was believed by some to refer to Louise. George's statement regarding this event is not believable, not susceptible to a reasonable mistake of fact, and simply false. The evidence clearly supports a finding that George drove the blue SUV to work, and parked it in the morning and afternoon, in a way and with the intent to annoy and harass Louise.

5. **The allegation that George, when passing Louise's bus on the left side, would open his bus door and call Louise derogatory names is not supported by a preponderance of evidence.** Louise claims that this occurred and George denies it. There is no corroborating evidence to support Louise's claim and, while it is possible that George engaged in such conduct to annoy Louise, it cannot be found to have occurred because of a lack of corroborating evidence.
6. **The allegation that George, engaged in conduct to annoy Louise while her bus passed him at Central Elementary School is supported by a preponderance of evidence.** Louise claims that this occurred and George strongly denied ever having engaged in conduct that is harassing to Louise. When asked about the incident at Central Elementary School, George admitted that an interaction did occur, but said that he was simply waving to kids on Louise's bus whom he knew from prior years. Louise videotaped the incident and captured images of George waving to Louise's "bus." The investigator viewed the video recording and finds that George's stilted, rehearsed, and non-spontaneous waving toward the bus was directed toward Louise and her bus in a manner that is abnormal and intended to annoy Louise.

VII. RECOMMENDATIONS FOR REMEDIAL ACTION

On balance, the investigation reveals that there is an intense animosity between several bus drivers in the District's Transportation Department. Specifically, Louise and Gloria, on the one hand, and George on the other hand, have strong feelings against each other that have developed in the context of personal current or former friendships. Notwithstanding such strong feelings, it is inappropriate and unjustified for any of these employees to engage in conduct that is intended to annoy, harass, or taunt another employee.

With regard to Louise's claims against George, the investigator has found that some of the allegations are found to be true and others are not supported by evidence but, clearly, George has instigated several of the conflicts alleged by Louise. Notably, there is no evidence that any of the incidents were motivated by an animus toward Louise based upon her race, ethnicity, gender, sex, sexual orientation, or religious beliefs. Instead, the evidence shows that George has a very strong personal dislike of Louise (which is mutually felt), and has acted in ways that have been intended to annoy her and "get under her skin." The investigator also finds that Louise has made these claims with "unclean hands," meaning that she has also capriciously engaged in inappropriate conduct toward George and others in the past. The allegations of improprieties stretch back in time to at least four years ago, and it may be unreasonable for the District to consider disciplinary action against either George or Louise for the alleged misconduct beyond what has already been meted out in the past year.

The following actions may be considered by the District to reduce the likelihood that these bus drivers will engage in conduct to annoy, harass, or taunt each other.

- First, the District should consider enforcing a strict low-tolerance or no-tolerance disciplinary policy with regard to such behavior by any bus driver, with the cooperation of the Union under whose collective bargaining agreement any discipline would be processed.
- Second, the District should consider notifying the bus drivers to be aware that some actions may not be intended as offensive, and that any allegation of misconduct will be viewed through the eyes of a “reasonable” person.
- Third, the District should advise the implicated bus drivers (e.g., Louise and George) that they are not to interact or communicate with each other except when required as a business necessity; that they should avoid parking near each other’s cars in the parking lot; that they should avoid each other when driving to or from work; and that they should avoid any conduct, whether on-duty and off-duty, that could be viewed by the other person as offensive. They should be further advised that any proven harassment that occurs off-duty, but which bleeds into the workplace, can justify the discipline or dismissal of an employee, and that an employee may also be held responsible for the harassing actions of his/her spouse when it is directed at another District employee.
- Finally, the District management should meet, individually, with George and Louise with a copy of the District’s Non-Discrimination Policy. The Policy should be discussed with them, and they should be reminded that all employees are required to comply with it.

These remedial actions can evidence the District’s good faith effort to address the problems identified through this investigation. Further and other remedial action and proactive training may be appropriate, and the District should not feel limited by the recommendations provided above.

Forms and Templates E

School-Sponsored Activity Transportation Checklist

Transportation Checklist for School-Sponsored Activities

- The school district has obtained written permission from each student's parent or guardian to transport the student to and from the school-sponsored activity.
- If students are being transported on a bus, the bus driver possesses:
 - A valid driver's license of a class appropriate to the vehicle driven and that is endorsed for passenger transportation.
 - A certificate to drive a schoolbus or a school pupil activity bus
 - A parental authorization form for each student signed by a parent or a legal guardian of the student that gives permission for that student to be transported to or from the school or school-related activity.
- If students are being transported on a bus manufactured after 2004, all students have been instructed to wear their seatbelts and have received instruction in an age-appropriate manner on the use of their seatbelts.
- If students are being transported by volunteers, the school district has:
 - Ensured that each driver is at least 18 years old.
 - Ensured that each driver has a valid driver's license.
 - Ensured that each driver has valid insurance.
 - Ensured that each driver knows the designated curbside locations for picking up and dropping off students.
 - Ensured that each driver has a clean driving record.
 - (Optional) Requested a criminal records check from local law enforcement to determine if the driver has been convicted of a sex offense.

Forms and Templates F

Sample Field Trip/Excursion Form

SAMPLE UNIFIED SCHOOL DISTRICT
Field Trip/Excursion Form

1. Required Information from Parent/Guardian			
Student Name:		Teacher:	
School:		Grade:	
Parent/Guardian Name:		Parent/Guardian Name:	
Phone No.:		Phone No.:	

Initial One Line:

___ My child has no special health needs which staff should be aware of and medication is NOT required during the trip/excursion.
 ___ The school is aware of my child's health needs, if any, and the completed and signed forms are on file in the school office.

2. Trip Information

Date:		Time Departing School:		Time Returning to School:	
Destination and Address:	[Insert Destination Name Here] [Insert Address Here]				
Transportation:	<input type="checkbox"/> District Transportation	<input type="checkbox"/> Walking			
	<input type="checkbox"/> Private Vehicle(s)	<input type="checkbox"/> Flight			
	<input type="checkbox"/> Bus(es)	<input type="checkbox"/> Other:			
Recommended Cost per student:					

General Notes:	1. No student will be excluded from attending because of a lack of sufficient funds. 2. Students will not be allowed to use transportation other than that which is identified above, without advance written permission of their parent/guardian and authorization from the school. 3. Drivers transporting students by private vehicle must register with and be approved by District. 4. Other: _____
----------------	---

3. Parent/Guardian Consent and Waiver

By initialing the three (3) statements and signing below, parent/guardian acknowledges and agrees:
 ___ My child has permission to attend the field trip or excursion and to be transported according to the information provided in this form.
 ___ California law (Education Code Section 35330) provides that all persons making the field trip or excursion, including out-of-state field trips or excursions, shall be deemed to have waived all claims including, but not limited to, claims on behalf of the parent/guardian and student, against District, its employees, governing board, and the State of California for injury, accident, illness, or death which occurs during or by reason of the field trip or excursion.
 ___ In the event of an accident or illness, District has permission to render and/or consent to whatever emergency medical treatment may be deemed necessary for the above-named student.

Printed Name: _____ Signature _____ Date _____

4. Student Acknowledgement

I agree to abide by the behavioral expectations outlined in the Student Handbook, which I received and reviewed during registration.

Printed Name: _____ Signature _____ Date _____

Cut Off and Keep as Reminder

Date:	Destination:	Leave/Return Time: _____ / _____
Special Notes: (Examples: Please pack lunch, wear warm clothes, bring notebook, etc.)		

Forms and Templates G

When to Call 9-1-1 for Injuries or Illnesses

WHEN TO CALL 9-1-1 FOR INJURIES OR ILLNESSES

Call 9-1-1 in the event of a **medical emergency**. The American College of Emergency Physicians defines a “medical emergency” as an “event that you reasonably believe threatens your or someone else’s life or limb in such a manner that immediate medical care is needed to prevent death or serious impairment of health.”

Medical emergencies include:

- Fainting, dizziness, seizure, or sudden change in mental status
- Signals of stroke
- Severe bleeding from an orifice or uncontrollable external bleeding
- Visible broken bones
- Choking, drowning, or severe difficulty breathing
- No breathing or unconsciousness
- Severe burns
- Allergic reaction or severe asthma
- Poisoning or drug overdose
- An extremely elevated resting heart rate or severe chest pains
- Head, neck, or spinal injuries
- Severe headaches or severe or persistent vomiting
- Sudden, severe pains anywhere in the body

Although 9-1-1 is appropriately used for medical emergencies, officials recommend calling 9-1-1 if you are unsure if a situation is an emergency and letting the dispatcher determine whether you require emergency assistance.

REFERENCES

Adult First Aid/CPR/AED Ready Reference (2011) American Red Cross
<https://www.redcross.org/images/MEDIA_CustomProductCatalog/m4240170_Adult_ready_reference.pdf> [as of August 7, 2017]

Recognizing Medical Emergencies, MedlinePlus (January 1, 2017) U.S. National Library of Medicine <<https://medlineplus.gov/ency/article/001927.htm>> [as of August 7, 2017]

When to Call 911 (2017) American College of Emergency Physicians
<<http://www.emergencycareforyou.org/Emergency-101/When-To-Call-911/>> [as of August 7, 2017]

When to Call 911 (2017) National 911 Program, National Highway Traffic Safety Administration Office of Emergency Medical Services <<https://www.911.gov/whentocall911.html>> [as of August 7, 2017]

Forms and Templates H

Child Abuse Reporting Form and Guidelines



SUSPECTED CHILD ABUSE REPORT (Pursuant to Penal Code section 11166)

To Be Completed by Mandated Child Abuse Reporters

CASE NAME: _____

PLEASE PRINT OR TYPE

CASE NUMBER: _____

A. REPORTING PARTY	NAME OF MANDATED REPORTER		TITLE		MANDATED REPORTER CATEGORY				
	REPORTER'S BUSINESS/AGENCY NAME AND ADDRESS Street City Zip			DID MANDATED REPORTER WITNESS THE INCIDENT? <input type="checkbox"/> YES <input type="checkbox"/> NO					
	REPORTER'S TELEPHONE (DAYTIME)		SIGNATURE		TODAY'S DATE				
B. REPORT NOTIFICATION	<input type="checkbox"/> LAW ENFORCEMENT <input type="checkbox"/> COUNTY PROBATION		AGENCY						
	<input type="checkbox"/> COUNTY WELFARE / CPS (Child Protective Services)		ADDRESS Street City Zip		DATE/TIME OF PHONE CALL				
	OFFICIAL CONTACTED - NAME AND TITLE				TELEPHONE				
C. VICTIM One report per victim	NAME (LAST, FIRST, MIDDLE)			BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY			
	ADDRESS Street City Zip			TELEPHONE					
	PRESENT LOCATION OF VICTIM		SCHOOL	CLASS	GRADE				
	PHYSICALLY DISABLED? <input type="checkbox"/> YES <input type="checkbox"/> NO	DEVELOPMENTALLY DISABLED? <input type="checkbox"/> YES <input type="checkbox"/> NO	OTHER DISABILITY (SPECIFY)		PRIMARY LANGUAGE SPOKEN IN HOME				
	IN FOSTER CARE? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF VICTIM WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE: <input type="checkbox"/> DAY CARE <input type="checkbox"/> CHILD CARE CENTER <input type="checkbox"/> FOSTER FAMILY HOME <input type="checkbox"/> FAMILY FRIEND <input type="checkbox"/> GROUP HOME OR INSTITUTION <input type="checkbox"/> RELATIVE'S HOME			TYPE OF ABUSE (CHECK ONE OR MORE): <input type="checkbox"/> PHYSICAL <input type="checkbox"/> MENTAL <input type="checkbox"/> SEXUAL <input type="checkbox"/> NEGLECT <input type="checkbox"/> OTHER (SPECIFY) _____				
	RELATIONSHIP TO SUSPECT		PHOTOS TAKEN? <input type="checkbox"/> YES <input type="checkbox"/> NO		DID THE INCIDENT RESULT IN THIS VICTIM'S DEATH? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK				
VICTIM'S SIBLINGS	NAME		BIRTHDATE	SEX	ETHNICITY	NAME	BIRTHDATE	SEX	ETHNICITY
	1. _____		3. _____		2. _____		4. _____		
D. INVOLVED PARTIES PARENTS/GUARDIANS	NAME (LAST, FIRST, MIDDLE)			BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY			
	ADDRESS Street City Zip		HOME PHONE		BUSINESS PHONE				
	NAME (LAST, FIRST, MIDDLE)			BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY			
	ADDRESS Street City Zip		HOME PHONE		BUSINESS PHONE				
SUSPECT	SUSPECT'S NAME (LAST, FIRST, MIDDLE)			BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY			
	ADDRESS Street City Zip			TELEPHONE					
	OTHER RELEVANT INFORMATION								
E. INCIDENT INFORMATION	IF NECESSARY, ATTACH EXTRA SHEET(S) OR OTHER FORM(S) AND CHECK THIS BOX <input type="checkbox"/> IF MULTIPLE VICTIMS, INDICATE NUMBER: _____								
	DATE/TIME OF INCIDENT		PLACE OF INCIDENT						
	NARRATIVE DESCRIPTION (What victim(s) said/what the mandated reporter observed/what person accompanying the victim(s) said/similar or past incident's involving the victim(s) or suspect)								

DO NOT submit a copy of this form to the Department of Justice (DOJ). The investigating agency is required under Penal Code section 11169 to submit to DOJ a Child Abuse or Severe Neglect Indexing Form BCIA 8583 if (1) an active investigation was conducted and (2) the incident was determined to be substantiated.



SUSPECTED CHILD ABUSE REPORT (Pursuant to Penal Code section 11166)

DEFINITIONS AND GENERAL INSTRUCTIONS FOR COMPLETION OF FORM BCIA 8572

All Penal Code (PC) references are located in Article 2.5 of the California PC. This article is known as the Child Abuse and Neglect Reporting Act (CANRA). The provisions of CANRA may be viewed at: <http://leginfo.legislature.ca.gov/faces/codes.xhtml> (specify "Penal Code" and search for sections 11164-11174.3). A mandated reporter must complete and submit form BCIA 8572 even if some of the requested information is not known. (PC section 11167(a).)

I. MANDATED CHILD ABUSE REPORTERS

Mandated child abuse reporters include all those individuals and entities listed in PC section 11165.7.

II. TO WHOM REPORTS ARE TO BE MADE ("DESIGNATED AGENCIES")

Reports of suspected child abuse or neglect shall be made by mandated reporters to any police department or sheriff's department (not including a school district police or security department), the county probation department (if designated by the county to receive mandated reports), or the county welfare department. (PC section 11165.9.)

III. REPORTING RESPONSIBILITIES

Any mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse or neglect shall report such suspected incident of abuse or neglect to a designated agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof **within 36 hours** of receiving the information concerning the incident. (PC section 11166(a).)

No mandated reporter who reports a suspected incident of child abuse or neglect shall be held civilly or criminally liable for any report required or authorized by CANRA. Any other person reporting a known or suspected incident of child abuse or neglect shall not incur civil or criminal liability as a result of any report authorized by CANRA unless it can be proven the report was false and the person knew it was false or made the report with reckless disregard of its truth or falsity. (PC section 11172(a).)

IV. INSTRUCTIONS

SECTION A – REPORTING PARTY: Enter the mandated reporter's name, title, category (from PC section 11165.7), business/agency name and address, daytime telephone number, and today's date. Check yes/no whether the mandated reporter witnessed the incident. The signature area is for either the mandated reporter or, if the report is telephoned in by the mandated reporter, the person taking the telephoned report.

IV. INSTRUCTIONS (continued)

SECTION B – REPORT NOTIFICATION: Complete the name and address of the designated agency notified, the date/time of the phone call, and the name, title, and telephone number of the official contacted.

SECTION C – VICTIM (One Report per Victim): Enter the victim's name, birthdate or approximate age, sex, ethnicity, address, telephone number, present location, and, where applicable, enter the school, class (indicate the teacher's name or room number), and grade. List the primary language spoken in the victim's home. Check the appropriate yes/no box to indicate whether the victim may have a developmental disability or physical disability and specify any other apparent disability. Check the appropriate yes/no box to indicate whether the victim is in foster care, and check the appropriate box to indicate the type of care if the victim was in out-of-home care. Check the appropriate box to indicate the type of abuse. List the victim's relationship to the suspect. Check the appropriate yes/no box to indicate whether photos of the injuries were taken. Check the appropriate box to indicate whether the incident resulted in the victim's death.

SECTION D – INVOLVED PARTIES: Enter the requested information for Victim's Siblings, Victim's Parents/Guardians, and Suspect. Attach extra sheet(s) if needed (provide the requested information for each individual on the attached sheet(s)).

SECTION E – INCIDENT INFORMATION: If multiple victims, indicate the number and submit a form for each victim. Enter date/time and place of the incident. Provide a narrative of the incident. Attach extra sheet(s) if needed.

V. DISTRIBUTION

Reporting Party: After completing form BCIA 8572, retain a copy for your records and submit copies to the designated agency.

Designated Agency: *Within 36 hours* of receipt of form BCIA 8572, the initial designated agency will send a copy of the completed form to the district attorney and any additional designated agencies in compliance with PC sections 11166(j) and 11166(k).

ETHNICITY CODES

1 Alaskan Native	6 Caribbean	11 Guamanian	16 Korean	22 Polynesian	27 White-Armenian
2 American Indian	7 Central American	12 Hawaiian	17 Laotian	23 Samoan	28 White-Central American
3 Asian Indian	8 Chinese	13 Hispanic	18 Mexican	24 South American	29 White-European
4 Black	9 Ethiopian	14 Hmong	19 Other Asian	25 Vietnamese	30 White-Middle Eastern
5 Cambodian	10 Filipino	15 Japanese	21 Other Pacific Islander	26 White	31 White-Romanian

Forms and Templates I

CANRA Reporting Checklist



CANRA REPORTING CHECKLIST

The **Child Abuse and Neglect Reporting Act** (“**CANRA**”) requires certain individuals known as “mandated reporters” to report known or suspected child abuse or neglect. **Failure to report is a crime!** This checklist is intended as a quick reference guide for CANRA’s reporting requirements. Always consult your employer’s human resources department if you believe you may have an obligation to report.

1. STEPS TO TAKE BEFORE YOU KNOW OF OR SUSPECT CHILD ABUSE OR NEGLECT

- Ask** your HR department if you are a “mandated reporter” who must report known or suspected child abuse or neglect. Your employer should have a signed statement on file describing your reporting obligations and confidentiality rights under CANRA.

- Know** your reporting obligations.

A mandated reporter must make a report if he or she has knowledge of or observes a child whom the reporter knows or reasonably suspects has been the victim of child abuse or neglect.

A mandated reporter may make a report if the reporter knows or reasonably suspects a child is suffering from serious emotional damage or is at risk from suffering serious emotional damage.

2. STEPS TO TAKE AFTER YOU KNOW OF OR SUSPECT CHILD ABUSE OR NEGLECT

- Write** down relevant information such as: the facts of the suspected abuse or neglect; parent contact information; suspected perpetrator’s information; and the child’s name and address, school, grade, class, and present location. Do not investigate the suspected abuse or neglect yourself.
- Contact** your employer’s HR department for guidance on reporting.
- Call** the appropriate authorities immediately or as soon as practicably possible.
- Complete** the required mandated reporter form and submit it electronically or by fax within 36 hours of receiving the information concerning the incident. Keep a copy of your written report in a confidential and secure location.

3. STEPS TO TAKE AFTER MAKING A REPORT

- Keep** the details of the incident(s) confidential. Do not tell the child’s parent about the report, even if you do not suspect that the parent is responsible.
- Cooperate** with law enforcement agency investigators.

Forms and Templates J

Parent/Guardian Permission Slip



PRISM

Public Risk Innovation,
Solutions, and Management



Lozano Smith

ATTORNEYS AT LAW

PARENT/GUARDIAN PERMISSION SLIP FOR STUDENT
PARTICIPATION IN OFF-CAMPUS EVENT/ACTIVITY

Date: _____ Student's Name: _____

Description of Off-Campus Event/Activity: _____

Location(s) of Off-Campus Event/Activity: _____

Date(s) of Off-Campus Event/Activity: _____

Person in Charge: _____

Method of Transportation:

Parent's/Volunteer's Vehicle. Driver's Name: _____

District Bus/Vehicle

Walking

Other: _____

I hereby grant permission for my child to attend the above-described Off-Campus Event/Activity.

I fully understand that my child is expected to abide by all rules governing conduct during the Off-Campus Event/Activity. I understand that all students going on this trip will be expected to follow all directions of District staff, volunteers, and the bus driver (if applicable).

ASSUMPTION OF RISK

I hereby acknowledge that I understand that as with all off-campus events and activities, there are certain unavoidable, unpredictable, and inherent risks and dangers in my child's attendance of the Off-Campus Event/Activity that no amount of care, caution, or instruction can eliminate. On behalf of my child, I assume any and all risk of any injury, accident, illness, death, or any loss or damage to personal property occurring during or by reason of this Off-Campus Event/Activity.

WAIVER AND RELEASE; COVENANT NOT TO SUE

In granting permission for my child's attendance, I hereby release, waive, and discharge all claims against and hold harmless the [NAME OF SCHOOL DISTRICT] and any of its officers, governing board members, employees, volunteers and agents for any injury, accident, illness, death, or any loss or damage to personal property occurring during or by reason of this Off-Campus Event/Activity. I covenant not to sue or present any claim against the above-listed parties for personal injury, property damage, or wrongful death in connection with my child attending the Off-Campus Event/Activity.

Date: _____

Parent/Guardian Signature

Parent/Guardian Printed Name

Forms and Templates K

Sample Orientation Guidelines for Sports or Activities

SAMPLE ORIENTATION GUIDELINES FOR SCHOOL SPONSORED ACTIVITIES

When offering school sponsored activities it is imperative that you inform the students' parents/guardians of the risk of injury, the potential dangers of participation, and participation expectations for that activity. Below is a sample list of information that could be disclosed in a school sponsored activity orientation meeting. The information listed is merely a guideline and is not all-inclusive of what should or could be provided to participants and their parents/guardians.

- Inform parents/guardians of general risks and dangers specific to the school sponsored activity
- Discuss informed consent
- Inform parents/guardians of participant and/or parent/guardian expectations
 - Required equipment
 - Optional equipment
 - Equipment maintenance policy
 - Student and parent/guardian conduct
- Inform parents/guardians of medical exam requirements, if applicable
- Disclose injury prevention measures
 - Injury medical response
- Inform parents/guardians of the district's harassment and discrimination policies, to include information that discusses:
 - Bullying
 - Sexual Harassment
 - Hazing
 - Gender discrimination
- Return to play/participation policies, if applicable
- Inform parents/guardians of the district's drug and alcohol use policy

Forms and Templates L

Sample Guidelines for Heat-Related Illnesses

HANDLING HEAT-RELATED ILLNESSES

Anytime students or athletes are outdoors in the heat, they can be exposed to heat-related illnesses. Physical activity can produce heat within the body and can increase a participant's body temperature which can lead to a heat-related illness. Heat-related deaths and illness are preventable, yet annually, many people succumb to extreme heat.¹ In order to prevent and treat heat illnesses you need to understand the signs and symptoms that are associated with them.

The Centers for Disease Control and Prevention (CDC) states that people who exercise in extreme heat are more likely to become dehydrated and get heat-related illnesses.² The best management of heat-related illness is prevention. When conducting practices or performances in the heat as a best practice you should do the following:

- Limit outdoor activity, especially midday when the sun is hottest. Schedule workouts, practices and rehearsals earlier or later in the day when the temperatures are cooler.
- Allow students/athletes to wear lightweight, light colored clothing.
- Encourage the students/athletes to protect themselves from sun exposure, practice or perform near shade if possible (use sun screen often).
- Pace activity. Start activities slow and pick up the pace gradually.
- Coaches, teachers, staff and volunteers should be familiar with the school district's policy/regulations and protocols for emergency response.
- Encourage students/athletes to hydrate prior to, during, and after the activity. Also encourage students/athletes to drink more water than usual and recommend that they do not wait until they are thirsty. Muscle cramping may be an early sign of heat-related illness. See below for additional information on all heat-related illness

HEAT-RELATED ILLNESSES: SIGNS AND SYMPTOMS

Heat cramps usually affect individuals who sweat a lot during strenuous activity. This sweating depletes the body's salt and moisture levels. Low salt levels in muscles causes painful cramps. Heat cramps may also be a symptom of heat exhaustion.³

Symptoms	First Aid
Fainting Dizziness Light-headedness	Drink water Have a snack and/or carbohydrate/electrolyte replacement liquid (e.g. sports drink) every 15 to 20 minutes Avoid salt tablets Seek medical attention if cramping does not subside within one hour Lie down in a cool place

Source: Derived from guidance from the National Institute for Occupational Safety and Health⁴

Heat exhaustion is the body's response to an excessive loss of the water and salt, usually through excessive sweating.⁵

Symptoms	First Aid
Headache	Seek emergency room treatment or Call 911
Nausea	Stay with the student until help arrives
Dizziness	Remove the student from the hot area
Weakness	Give the student liquids to drink
Irritability	Remove unnecessary clothing
Thirst	Cool the student with cold compresses
Heavy sweating	Apply cold water to the student's head, face, and neck
Elevated body temperature	Encourage frequent sips of cool water
Decreased urine output	

Source: Derived from guidance from the National Institute for Occupational Safety and Health⁶

Heat syncope is a fainting (syncope) episode or dizziness that usually occurs with prolonged standing or sudden rising from a sitting or lying position. Factors that may contribute to heat syncope include dehydration and lack of acclimatization.⁷

Symptoms	First Aid
Fainting Dizziness Light-headedness	Drink water Have a snack and/or carbohydrate/electrolyte replacement liquid (e.g. sports drink) every 15 to 20 minutes Avoid salt tablets Seek medical attention if cramping does not subside within one hour Lie down in a cool place

Source: Derived from guidance from the National Institute for Occupational Safety and Health⁸

Heat stroke is the most serious heat-related illness. It occurs when the body becomes unable to control its temperature: the body's temperature rises rapidly, the sweating mechanism fails, and the body is unable to cool down. When heat stroke occurs, the body temperature can rise to 106°F or higher within 10 to 15 minutes. Heat stroke can cause death or permanent disability if emergency treatment is not given.⁹

Symptoms	First Aid
Confusion Altered mental status Slurred speech Loss of consciousness (coma) Hot, dry skin or profuse sweating Seizures Very high body temperature Death	Call 911 Stay with the student until help arrives Remove the student from the hot area Cool the student quickly with a cold water or ice bath if possible Circulate the air around the student to speed cooling Place cold wet cloths or ice on the student's head, neck, armpits, and groin; or soak the student's clothing with cool water

Source: Derived from guidance from the National Institute for Occupational Safety and Health¹⁰

DURING AN EMERGENCY

Take the following steps when you have identified a heat-related emergency:

- Ensure that the environment is safe for you and for the participant.
- If the student is unresponsive, assess the student's airway, breathing and circulation.
- Administer CPR as necessary if you are trained and able.
- Call 9-1-1 immediately if the student is unconscious or if you have otherwise determined that the situation is a medical emergency.
- Call the responsible school authority.
- Once the first medical responder arrives on scene, provide a copy of the student's emergency information card to him or her.
- Contact the student's physician or hospital listed on the student's emergency information card and notify them to expect the student's arrival.
- Document the illness or injury as required by school policies.

Enlisting the assistance of the responsible school authority and 9-1-1 are crucial steps in heat-related emergencies. Take care to ensure that you are able contact responsible school authorities by phone or otherwise in situations where students will be exposed to heat for long periods of time.

REFERENCES

¹Extreme Heat and Your Health (July 11, 2016) Centers for Disease Control and Prevention
<http://www.cdc.gov/extremeheat/index.html> [as of Nov. 1, 2016]

²Heat and Athletes (June 20, 2011) Centers for Disease Control and Prevention
<<http://www.cdc.gov/extremeheat/athletes.html>> [as of Nov. 1, 2016]

³Heat Stress – Heat Related Illness (May 16, 2016) Centers for Disease Control and Prevention’s National Institute for Occupational Safety and Health
<<http://www.cdc.gov/niosh/topics/heatstress/heatrelillness.html>> [as of Nov. 1, 2016]

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

Forms and Templates M

Sample Guidelines on Bloodborne Pathogens and Diseases

PROTECTING EDUCATORS/INSTRUCTORS FROM BLOODBORNE PATHOGENS AND COMMUNICABLE DISEASES

In the school setting every coach, teacher, staff member and volunteer can be met with potential health risk when rendering CPR and/or first aid, if blood or bodily fluids are present.

The Occupational Safety and Health Administration's Bloodborne Pathogens Standard prescribes safeguards to protect workers against the health hazards caused by bloodborne pathogens. The Bloodborne Pathogens Standard could potentially apply to any coach, teacher, staff and volunteer that comes in contact with bloodborne pathogens and communicable diseases such as HIV/AIDs, Hepatitis B and Hepatitis C. Contact with bloodborne pathogens and communicable diseases may occur while providing CPR and/or first aid or be the result of bites, cuts or openings in the skin, needlesticks, or splashes into the eyes, nose and/or mouth.

WHAT ARE BLOODBORNE PATHOGENS AND HOW DO THEY SPREAD?

Bloodborne pathogens are infectious microorganisms in human blood that can cause disease in humans. These pathogens include, but are not limited to, hepatitis B (HBV), hepatitis C (HCV) and human immunodeficiency virus (HIV). You risk exposure to bloodborne pathogens whenever you come into direct or indirect contact with infectious bodily fluids, including situations where your skin gets punctured by a contaminated needle or other sharp object.

HOW CAN YOU PROTECT YOURSELF?

Your school district's Exposure Control Plan should set forth safeguards against potential exposure. Methods of compliance include:

- **Universal Precautions.** Universal Precautions is an approach to infection control. Universal Precautions represent the concept that all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens.
- **Engineering and work practice controls.** Engineering and work practice controls reduce the likelihood of employee exposure to bloodborne pathogens. Appropriate controls include utilizing safer medical devices, maintaining sharps disposal containers, and implementing hand hygiene practices.
- **Personal protective equipment.** Employers must provide employees with personal protective equipment. Appropriate personal protective equipment includes single-use disposable gloves, face shields or masks, eye protection, resuscitation backs, pocket masks, or other ventilation devices.

- **Housekeeping.** Employers must ensure that their worksites are maintained in a clean and sanitary condition. This “housekeeping” requirement includes implementing decontamination procedures and removing of regulated waste. Employers should utilize an appropriate disinfecting solution, such as a mix of one part bleach to ten parts water or other disinfectants approved by the EPA.

GUIDELINES TO PREVENT INFECTION

If you are required to perform CPR, give mouth-to-mouth resuscitation, administer first aid, or clean up after an accident, you should take protective measures to prevent an exposure to infectious materials. Protect yourself and others by following these steps:

1. Familiarize yourself with your school district’s Exposure Control Plan. School district should make their Exposure Control Plans available to all employees within the school district and should update it annually.
2. Observe Universal Precautions.
3. Do not eat or drink and avoid other hand-to-mouth contact while you are providing treatment.
4. Wear appropriate personal protective equipment, including disposable single-use latex gloves, glasses/goggles, and barrier masks.
5. Use mechanical means such as a broom, dustpan, tongs, or forceps to clean up broken glass, needles, and other sharps in the area.
6. Before you remove your personal protective equipment, clean up any potentially infectious bodily fluids in the area with a disinfectant.
7. Once you have cleaned the area, handle trash, contaminated clothing, and other potentially infectious materials in accordance with your school district’s Exposure Control Plan.
8. Wash your hands for 15-20 seconds with warm water and soap after providing treatment and disposing of any contaminants and potentially infectious materials.

STEPS TO TAKE IF YOU ARE EXPOSED

1. **Clean exposed areas on your body.** Wash any exposed or penetrated skin with warm water and soap. Flush any contaminants from your mouth, nose, or eyes with clean water.
2. **Record and report the incident.** Review your school district’s Exposure Control Plan and contact the designated responsible individual. Record all relevant details surrounding the exposure, including the place, date, time, and details of the incident. Your school district’s responsible individual will likely ask you to provide this information in a written occupational exposure incident report.
3. **Seek a medical evaluation and additional care as appropriate.** Consult your school district’s designated responsible individual and Exposure Control Plan regarding

additional follow-up procedures, including the need for a medical evaluation and additional care.

REFERENCES

Bloodborne Pathogens and Needlestick Prevention United States Department of Labor, Occupational Safety and Health Administration
<<https://www.osha.gov/SLTC/bloodbornepathogens/index.html>> [as of Nov. 1, 2016]

Quick Reference Guide to the Bloodborne Pathogens Standard United States Department of Labor, Occupational Safety and Health Administration
<https://www.osha.gov/SLTC/bloodbornepathogens/bloodborne_quickref.html> [as of July 27, 2017]

American Heart Association Safety Tips: Bloodborne Pathogens (May 2010) American Heart Association <https://ahainstructornetwork.americanheart.org/idc/groups/heart-public/@private/@wcm/@ecc/documents/downloadable/ucm_311716.pdf> [as of Nov. 1, 2016]

Selected EPA-registered Disinfectants (March 14, 2016) U.S. Environmental Protection Agency <<https://www.epa.gov/pesticide-registration/selected-epa-registered-disinfectants>> [as of Nov. 1, 2016]

Preventing the Spread of Bloodborne Pathogens (2011) The American National Red Cross <http://www.redcross.org/images/MEDIA_CustomProductCatalog/m28240107_Preventing_the_Spread_of_Bloodborne_Pathogens_Fact_and_Skill_Sheets.pdf> [as of July 27, 2017]

Forms and Templates N

Medicine Administration Chart

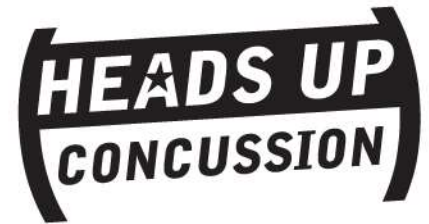
Medicine Administration Chart

Condition	Symptoms	Treatment	Who may administer?	Parent Consent Required?
Anaphylaxis (caused by severe allergic reaction)	Shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, asthma	Epinephrine (auto-injector)	A school nurse or, if a school nurse is unavailable, a trained employee volunteer	No, if the parent cannot be reached and has not filed a written objection
Opioid overdose	Reduced level of consciousness, pinpoint pupils, depressed respiratory rate, vomiting, coma	Naloxone hydrochloride or other opioid antagonists (nasal spray or auto-injector)	A school nurse or, if a school nurse is unavailable, a trained employee volunteer. Volunteers may choose the administration method.	No, if the parent cannot be reached and has not filed a written objection
Hypoglycemia (caused by diabetes)	Shakiness, sweatiness, hunger, headaches, blurred vision, sleepiness, dizziness, confusion, paleness, irritability, nervousness, combativeness, altered behavior, trouble concentrating, weakness, irregular heartbeat, inability to eat, seizures, unconsciousness	Glucagon (injected)	A school nurse or, if a school nurse is unavailable, a trained employee volunteer	Yes
Asthma	Wheezing, chest tightness, shortness of breath, and coughing	Asthma medication (inhaled)	A school nurse, other designated personnel, or the student (with parental consent and doctor's note)	Yes

Forms and Templates O

Concussion Fact Sheets for Coaches

A Fact Sheet for YOUTH SPORTS COACHES



One of the main jobs of a youth sports coach is keeping athletes safe. This sheet has information to help you protect athletes from concussion or other serious brain injury, learn how to spot a concussion, and know what to do if a concussion occurs.

What Is a Concussion?

A concussion is a type of traumatic brain injury—or TBI—caused by a bump, blow, or jolt to the head or by a hit to the body that causes the head and brain to move quickly back and forth. This fast movement can cause the brain to bounce around or twist in the skull, creating chemical changes in the brain and sometimes stretching and damaging the brain cells.

How Can I Help Keep Athletes Safe?

Sports are a great way for children and teens to stay healthy and can help them do well in school. As a youth sports coach, your actions create the culture for safety and can help lower an athlete's chance of getting a concussion or other serious injury. Aggressive and/or unsportsmanlike behavior among athletes can increase their chances of getting a concussion or other serious injury. Here are some ways you can help keep your athletes safe:

Talk with athletes about the importance of reporting a concussion:

- Talk with athletes about any concerns they might have about reporting their concussion symptoms. Make sure to tell them that safety comes first and you expect them to tell you and their parent(s) if they think they have a concussion.

Create a culture of safety at games and practices:

- Teach athletes ways to lower the chances of getting a concussion.
- Enforce the rules of the sport for fair play, safety, and sportsmanship.
- Ensure athletes avoid unsafe actions such as:
 - › Striking another athlete in the head;
 - › Using their head or helmet to contact another athlete;

To learn more, go to www.cdc.gov/HEADSUP



Plan ahead. How can you help encourage concussion reporting among your athletes?

› Athletes May Try to Hide Concussion Symptoms

Among a group of almost 800 high school athletes:

69% reported playing with concussion symptoms.

40% of these athletes said that their coach was not aware that they had a possible concussion.¹

Athletes may be less likely to tell their coach or athletic trainer about a possible concussion during a championship game or other important event.²

- › Making illegal contacts or checking, tackling, or colliding with an unprotected opponent; and/or
- › Trying to injure or put another athlete at risk for injury.
- Tell athletes that you expect good sportsmanship at all times, both on and off the playing field.

Keep up-to-date on concussion information:

- Review your state, league, and/or organization's concussion guidelines and protocols.
- Take a training course on concussion. CDC offers concussion training at no cost at www.cdc.gov/HEADSUP.
- Download CDC's *HEADS UP* app or a list of concussion signs and symptoms that you can keep on hand.



Centers for Disease
Control and Prevention
National Center for Injury
Prevention and Control

The Way You Talk and Think About Concussion Affects Athletes.



Make sure to tell athletes that safety comes first and you expect them to tell you and their parent(s) if they think they have a concussion.

Check out the equipment and sports facilities:

- Make sure all athletes wear a helmet that fits well and is in good condition when appropriate for the sport or activity. There is no “concussion-proof” helmet, so it is important to enforce safety rules that protect athletes from hits to the head and when a helmet falls off during a play.
- Work with the game or event administrator to remove tripping hazards and ensure that equipment, such as goalposts, have padding that is in good condition.

Keep emergency contact information handy:

- Bring emergency contact information for parents and health care providers to each game and practice in case an athlete needs to be taken to an emergency department right away for a concussion or other serious injury.
- If first responders are called to care for an injured athlete, provide them with details about how the injury happened and how the athlete was acting after the injury.

How Can I Spot a Possible Concussion?

Athletes who show or report one or more of the signs and symptoms listed below—or simply say they just “don’t feel right” after a bump, blow, or jolt to the head or body—may have a concussion or other serious brain injury.

Signs Observed by Coaches or Parents

- Appears dazed or stunned.
- Forgets an instruction, is confused about an assignment or position, or is unsure of the game, score, or opponent.
- Moves clumsily.
- Answers questions slowly.
- Loses consciousness (even briefly).
- Shows mood, behavior, or personality changes.
- Can’t recall events prior to or after a hit or fall.



Plan ahead. How can you help athletes lower their chance of getting a concussion?

➤ **Some athletes may not report a concussion because they don’t think a concussion is serious.**

They may also worry about:

- ▶ **Losing their position on the team or during the game.**
- ▶ **Jeopardizing their future sports career.**
- ▶ **Looking weak.**
- ▶ **Letting their teammates or the team down.**
- ▶ **What their coach or teammates might think of them.^{3,4,5}**

Symptoms Reported by Athletes

- Headache or “pressure” in head.
- Nausea or vomiting.
- Balance problems or dizziness, or double or blurry vision.
- Bothered by light or noise.
- Feeling sluggish, hazy, foggy, or groggy.
- Confusion, or concentration or memory problems.
- Just not “feeling right,” or “feeling down”.

NOTE: Concussion signs and symptoms often show up soon after the injury, but it can be hard to tell how serious the concussion is at first. Some symptoms may not be noticed or may not show up for hours or days.

Enforce Safe Play. You Set the Tone for Safety.

As many as 25 percent of the concussions reported among high school athletes result from aggressive or illegal play.⁶



What Are Some More Serious Danger Signs to Look Out For?

In rare cases, a dangerous collection of blood (hematoma) may form on the brain after a bump, blow, or jolt to the head or body and can squeeze the brain against the skull. Call 9-1-1 or ensure an athlete is taken to the emergency department right away if, after a bump, blow, or jolt to the head or body, he or she has one or more of these danger signs:

- One pupil larger than the other.
- Drowsiness or inability to wake up.
- A headache that gets worse and does not go away.
- Slurred speech, weakness, numbness, or decreased coordination.
- Repeated vomiting or nausea, convulsions or seizures (shaking or twitching).
- Unusual behavior, increased confusion, restlessness, or agitation.
- Loss of consciousness (passed out/knocked out). Even a brief loss of consciousness should be taken seriously.

What Should I Do If I Think an Athlete Has a Possible Concussion?

As a coach, if you think an athlete may have a concussion, you should:

Remove the athlete from play.

When in doubt, sit them out!

Keep an athlete with a possible concussion out of play on the same day of the injury and until cleared by a health care provider.

Do not try to judge the severity of the injury yourself. Only a health care provider should assess an athlete for a possible concussion. After you remove an athlete with a possible concussion from practice or play, the decision about return to practice or play is a medical decision that should be made by a health care provider. As a coach, recording the following



Plan ahead. What should you do if you think an athlete has a concussion?

Concussions Affect Each Athlete Differently.

While most athletes with a concussion feel better within a couple of weeks, some will have symptoms for months or longer. Talk with an athlete's parents if you notice their concussion symptoms come back after they return to play.

information can help a health care provider in assessing the athlete after the injury:

- Cause of the injury and force of the hit or blow to the head or body.
- Any loss of consciousness (passed out/knocked out) and if so, for how long.
- Any memory loss right after the injury.
- Any seizures right after the injury.
- Number of previous concussions (if any).

Inform the athlete's parent(s) about the possible concussion.

Let them know about the possible concussion and give them the [HEADS UP](#) fact sheet for parents. This fact sheet can help parents watch the athlete for concussion signs or symptoms that may show up or get worse once the athlete is at home or returns to school.

Ask for written instructions from the athlete's health care provider on return to play.

These instructions should include information about when they can return to play and what steps you should take to help them safely return to play.

Work with the athlete's health care provider and follow the five gradual steps for return to play. An athlete's return to school and sports should be a gradual process that is carefully managed and monitored by a health care provider.



Plan ahead. How can you help an athlete safely return to play after a concussion?

Why Should I Remove an Athlete With a Possible Concussion from Play?

The brain needs time to heal after a concussion. An athlete who continues to play with concussion has a greater chance of getting another concussion. A repeat concussion that occurs while the brain is still healing from the first injury can be very serious and can affect an athlete for a lifetime. It can even be fatal.

What Steps Can I Take to Help an Athlete Return to Play?

An athlete's return to school and sports should be a gradual process that is approved and carefully managed and monitored by a health care provider. When available, be sure to also work closely with your team's certified athletic trainer.

Below are five gradual steps that you, along with a health care provider, should follow to help safely return an athlete to play. Remember, this is a gradual process. These steps should not be completed in one day, but instead over days, weeks, or months.



To learn more, go to www.cdc.gov/HEADSUP

You can also download the CDC *HEADS UP* app to get concussion information at your fingertips. Just scan the QR code pictured at left with your smartphone.

BASELINE: Athlete is back to their regular school activities, is no longer experiencing symptoms from the injury when doing normal activities, and has a green light from their health care provider to begin the return to play process.

An athlete should only move to the next step if they do not have any new symptoms at the current step.

STEP 1: Begin with light aerobic exercise only to increase an athlete's heart rate. This means about 5 to 10 minutes on an exercise bike, walking, or light jogging. No weightlifting at this point.

STEP 2: Continue with activities to increase an athlete's heart rate with body or head movement. This includes moderate jogging, brief running, moderate-intensity stationary biking, moderate-intensity weightlifting (less time and/or less weight than a typical routine).

STEP 3: Add heavy non-contact physical activity, such as sprinting/running, high-intensity stationary biking, regular weightlifting routine, non-contact sport-specific drills (in 3 planes of movement).

STEP 4: An athlete may return to practice and full contact (if appropriate for the sport) in controlled practice.

STEP 5: An athlete may return to competition.

REMEMBER: It is important for you and the athlete's parent(s) to watch for concussion symptoms after each day's return to play progression activity. If an athlete's concussion symptoms come back, or he or she gets new symptoms when becoming more active at any step, this is a sign that the athlete is pushing him- or herself too hard. The athlete should stop these activities, and the athlete's health care provider should be contacted. After the okay from the athlete's health care provider, the athlete can begin at the previous step.

¹ Rivara FP, Schiff MA, Chrisman SP, Chung SK, Ellenbogen RG, Herring SA. (2014). The effect of coach education on reporting of concussions among high school athletes after passage of a concussion law. *Amer J Sports Med*, May, 2014, 42(5):1197-1203.

² Bramley H, Patrick K, Lehman E, Silvis M. (2012). High school soccer players with concussion education are more likely to notify their coach of a suspected concussion. (2012). *Clin Pediatr (Phila)*, 2012 April, 51(4):332-336.

³ Kerr ZY, Register-Mihalik JK, Marshall SW, Evenson KR, Mihalik JP, Guskiewicz KM (2014). Disclosure and non-disclosure of concussion and concussion symptoms in athletes: Review and application of the socio-ecological framework. *Brain Inj*. 2014;28(8):1009-21.

⁴ Register-Mihalik JK, Guskiewicz KM, McLeod TC, Linnan LA, Mueller FO, Marshall SW. (2013a). Knowledge, attitude, and concussion-reporting behaviors among high school athletes: A preliminary study. *J Athl Train*, July 12, 2013.

⁵ Chrisman, S. P., Quitiquit, C., Rivara, F. P. (2013). Qualitative Study of Barriers to Concussive Symptom Reporting in High School Athletics. *J Adolesc Health*. March, 2013, 52(3): 330-335.

⁶ Collins CL, Fields SK, Comstock RD. (2008). When the rules of the game are broken: What proportion of high school sports-related injuries are related to illegal activity? *Inj Prev*, 14(1):34-38.

The information provided in this fact sheet or through linkages to other sites is not a substitute for medical or professional care. Questions about diagnosis and treatment for concussion should be directed to your physician or other healthcare provider.

Forms and Templates P

CIF Return to Learn
Protocol and Physician
Letter to School

CIF Concussion Return to Learn (RTL) Protocol

Instructions:

- Keep brain activity below the level that causes worsening of symptoms (e.g., headache, tiredness, irritability).
- If symptoms worsen at any stage, stop activity and rest.
- Seek further medical attention if your child continues with symptoms beyond 7 days.
- If appropriate time is allowed to ensure complete brain recovery before returning to mental activity, your child may have a better outcome than if he or she tries to rush through these guidelines.
- Please give this form to teachers/school administrators to help them understand your child's recovery.

Stage	Home Activity	School Activity	Physical Activity
Brain Rest	<ul style="list-style-type: none"> • Rest quietly, nap and sleep as much as needed. • Avoid bright light if bothersome. • Drink plenty of fluids and eat healthy foods every 3-4 hours. • Avoid "screen time" (text, computer, cell phone, TV, video games). 	<ul style="list-style-type: none"> • No school. • No homework or take-home tests. • Avoid reading and studying. 	<ul style="list-style-type: none"> • Walking short distances to get around is okay. • No exercise of any kind. • No driving.
	<p><i>This step usually ends 3-5 days after injury.</i></p> <p><i>Progress to the next stage when your child starts to improve, but s/he may still have some symptoms.</i></p>		
Restful Home Activity	<ul style="list-style-type: none"> • Set a regular bedtime/wake up schedule. • Allow at least 8-10 hours of sleep and naps if needed. • Drink lots of fluids and eat healthy foods every 3-4 hours. • Limit "screen time" to less than 30 minutes a day. 	<ul style="list-style-type: none"> • No school. • May begin easy tasks at home (drawing, baking, cooking). • Soft music and 'books on tape' ok. • Once your child can complete 60-90 minutes of light mental activity without a worsening of symptoms he/she may go to the next step. 	<ul style="list-style-type: none"> • Light physical activity, like walking. • No strenuous physical activity or contact sports. • No driving.
	<p><i>Progress to the next stage when your child starts to improve and s/he has fewer symptoms.</i></p>		
Return to School - PARTIAL DAY	<ul style="list-style-type: none"> • Allow 8-10 hours of sleep per night. • Avoid napping. • Drink lots of fluids and eat healthy foods every 3-4 hours. • "Screen time" less than 1 hour a day. • Spend limited social time with friends outside of school. 	<ul style="list-style-type: none"> • Gradually return to school. • Start with a few hours/half-day. • Take breaks in the nurse's office or a quiet room every 2 hours or as needed. • Avoid loud areas (music, band, choir, shop class, locker room, cafeteria, loud hallway and gym). • Use sunglasses/ earplugs as needed. Sit in front of class. • Use preprinted large font (18) class notes. • Complete necessary assignments only. • No tests or quizzes. • Limit homework time. • Multiple choice or verbal assignments better than lots of long writing. • Tutoring or help as needed. • Stop work if symptoms increase. 	<ul style="list-style-type: none"> • Light physical activity, like walking, and as instructed by physician. • No strenuous physical activity or contact sports. • No driving.
	<p><i>Progress to the next stage when your child can complete the above activities without symptoms.</i></p>		
Return to School - FULL DAY	<ul style="list-style-type: none"> • Allow 8-10 hours of sleep per night. • Avoid napping. • Drink lots of fluids and eat healthy foods every 3-4 hours. • "Screen time" less than 1 hour a day. • Spend limited social time with friends outside of school. 	<ul style="list-style-type: none"> • Progress to attending core classes for full days of school. • Add in electives when tolerated. • No more than 1 test or quiz per day. • Give extra time or untimed homework/tests. • Tutoring or help as needed. • Stop work if symptoms increase. 	<ul style="list-style-type: none"> • Light physical activity, like walking, and as instructed by physician. • No strenuous physical activity or contact sports. • No driving.
	<p><i>Progress to the next stage when your child has returned to full school and is able to complete all assignments/tests without symptoms.</i></p>		
Full Recovery	<ul style="list-style-type: none"> • Return to normal home and social activities. 	<ul style="list-style-type: none"> • Return to normal school schedule and course load. 	<ul style="list-style-type: none"> • Must complete Graduated Return to Play (RTP) Protocol before returning to strenuous physical activity or contact sports. • See CIF RTP Protocol.

Physician Letter to School

To Whom It May Concern:

Patient Name: _____ DOB: _____

INJURY STATUS	Date of Concussion Diagnosis by MD/DO: _____
<input type="checkbox"/> Has been diagnosed by a MD/DO with a concussion and is currently under our care.	
<input type="checkbox"/> Medical follow-up evaluation is scheduled for (date): _____	
<input type="checkbox"/> Was evaluated and did not have a concussion injury. There are no limitations on school and physical activity.	

ACADEMIC ACTIVITY STATUS (Please mark all that apply)
<input type="checkbox"/> This student is not to return to school.
<input type="checkbox"/> This student may begin a return to school based on successful progression through the CIF Concussion Return to Learn Protocol . This student requires the necessary school accommodations set forth on the Physician (MD/DO) Recommended School Accommodations Following Concussion form.
<input type="checkbox"/> This student is no longer experiencing any signs or symptoms of concussion and may be released to full academic participation.
Comments: _____
PHYSICAL ACTIVITY STATUS (Please mark all that apply)
<input type="checkbox"/> This student is not to participate in physical activity of any kind.
<input type="checkbox"/> This student is not to participate in recess or other physical activities except for untimed, voluntary walking.
<input type="checkbox"/> This student may begin a graduated return to play progression (see CIF Concussion RTP Protocol form).
<input type="checkbox"/> This student has medical clearance for unrestricted athletic participation (Has completed the CIF Concussion RTP Protocol).
Comments: _____

Physician (MD/DO) Signature: _____

Exam Date: _____

Physician Stamp and Contact Info:

Parent/Guardian Acknowledgement Signature: _____

Date: _____

Forms and Templates Q

CIF Return to Play Protocol

CIF Concussion Return to Play (RTP) Protocol

CA STATE LAW AB 2127 STATES THAT RETURN TO PLAY (I.E., COMPETITION) CANNOT BE SOONER THAN 7 DAYS AFTER EVALUATION BY A PHYSICIAN (MD/DO) WHO HAS MADE THE DIAGNOSIS OF CONCUSSION, AND ONLY AFTER COMPLETING A GRADUATED RETURN TO PLAY PROTOCOL.

Instructions:

- This is an example of a *graduated return to play protocol* that **MUST** be completed before you can return to FULL COMPETITION.
 - A certified athletic trainer (AT), physician, or identified concussion monitor (e.g., athletic director, coach), must initial each stage after you successfully pass it.
 - You should be back to normal academic activities before beginning Stage II, unless otherwise instructed by your physician.
- After Stage I, you cannot progress more than one stage per day (or longer if instructed by your physician).
- If symptoms return at any stage in the progression, IMMEDIATELY STOP any physical activity and follow up with your school's AT, other identified concussion monitor, or your physician. In general, if you are symptom-free the next day, return to the previous stage where symptoms had not occurred.
- Seek further medical attention if you cannot pass a stage after 3 attempts due to concussion symptoms, or if you feel uncomfortable at anytime during the progression.

You must have written physician (MD/DO) clearance to begin and progress through the following Stages as outlined below, or as otherwise directed by your physician. <u>Minimum</u> of 6 days to pass Stages I and II.				
Date & Initials	Stage	Activity	Exercise Example	Objective of the Stage
	I	No physical activity for at least 2 full symptom-free days	<ul style="list-style-type: none"> • No activities requiring exertion (weight lifting, jogging, P.E. classes) 	<ul style="list-style-type: none"> • Recovery and elimination of symptoms
	II-A	Light aerobic activity	<ul style="list-style-type: none"> • 10-15 minutes (<i>min</i>) of walking or stationary biking. • Must be performed under direct supervision by designated individual 	<ul style="list-style-type: none"> • Increase heart rate to no more than 50% of perceived maximum (<i>max</i>) exertion (e.g., < 100 beats per min) • Monitor for symptom return
	II-B	Moderate aerobic activity <i>(Light resistance training)</i>	<ul style="list-style-type: none"> • 20-30 min jogging or stationary biking • Body weight exercises (squats, planks, push-ups), max 1 set of 10, no more than 10 min total 	<ul style="list-style-type: none"> • Increase heart rate to 50-75% max exertion (e.g., 100-150 bpm) • Monitor for symptom return
	II-C	Strenuous aerobic activity <i>(Moderate resistance training)</i>	<ul style="list-style-type: none"> • 30-45 min running or stationary biking • Weight lifting ≤ 50% of max weight 	<ul style="list-style-type: none"> • Increase heart rate to > 75% max exertion • Monitor for symptom return
	II-D	Non-contact training with sport-specific drills <i>(No restrictions for weightlifting)</i>	<ul style="list-style-type: none"> • Non-contact drills, sport-specific activities (cutting, jumping, sprinting) • No contact with people, padding or the floor/mat 	<ul style="list-style-type: none"> • Add total body movement • Monitor for symptom return
Prior to beginning Stage III, please make sure that written physician (MD/DO) clearance for return to play, after successful completion of Stages I and II, has been given to your school's concussion monitor.				
	III	Limited contact practice	<ul style="list-style-type: none"> • Controlled contact drills allowed (no scrimmaging) 	<ul style="list-style-type: none"> • Increase acceleration, deceleration and rotational forces • Restore confidence, assess readiness for return to play • Monitor for symptom return
		Full contact practice Full unrestricted practice	<ul style="list-style-type: none"> • Return to normal training, with contact • Return to normal unrestricted training 	
<u>MANDATORY:</u> You must complete at least ONE contact practice before return to competition, or if non-contact sport, ONE unrestricted practice (If contact sport, highly recommend that Stage III be divided into 2 contact practice days as outlined above)				
	IV	Return to play (competition)	<ul style="list-style-type: none"> • Normal game play (competitive event) 	<ul style="list-style-type: none"> • Return to full sports activity without restrictions

Athlete's Name: _____

Date of Concussion Diagnosis: _____

Forms and Templates R

CIF Concussion Information Sheet



PRISM

Public Risk Innovation,
Solutions, and Management



Lozano Smith

ATTORNEYS AT LAW



CIF Concussion Information Sheet

Why am I getting this information sheet?

You are receiving this information sheet about concussions because of California state law AB 25 (effective January 1, 2012), now Education Code § 49475:

1. *The law requires a student athlete who may have a concussion during a practice or game to be removed from the activity for the remainder of the day.*
2. *Any athlete removed for this reason must receive a written note from a medical doctor trained in the management of concussion before returning to practice.*
3. *Before an athlete can start the season and begin practice in a sport, a concussion information sheet must be signed and returned to the school by the athlete and the parent or guardian.*

Every 2 years all coaches are required to receive training about concussions (AB 1451), as well as certification in First Aid training, CPR, and AEDs (life-saving electrical devices that can be used during CPR).

What is a concussion and how would I recognize one?

A concussion is a kind of brain injury. It can be caused by a bump or hit to the head, or by a blow to another part of the body with the force that shakes the head. Concussions can appear in any sport, and can look differently in each person.

Most concussions get better with rest and over 90% of athletes fully recover. However, all concussions should be considered serious. If not recognized and managed the right way, they may result in problems including brain damage and even death.

Most concussions occur without being knocked out. Signs and symptoms of concussion (see back of this page) may show up right after the injury or can take hours to appear. If your child reports any symptoms of concussion or if you notice some symptoms and signs, seek medical evaluation from your team's athletic trainer and a medical doctor trained in the evaluation and management of concussion. If your child is vomiting, has a severe headache, or is having difficulty staying awake or answering simple questions, call 911 to take him or her immediately to the emergency department of your local hospital.

On the CIF website is a **Graded Concussion Symptom Checklist**. If your child fills this out after having had a concussion, it helps the doctor, athletic trainer or coach understand how he or she is feeling and hopefully shows improvement. We ask that you have your child fill out the checklist at the start of the season even before a concussion has occurred so that we can understand if some symptoms such as headache might be a part of his or her everyday life. We call this a "baseline" so that we know what symptoms are normal and common for your child. Keep a copy for your records, and turn in the original. If a concussion occurs, he or she should fill out this checklist daily. This Graded Symptom Checklist provides a list of symptoms to compare over time to make sure the athlete is recovering from the concussion.

What can happen if my child keeps playing with concussion symptoms or returns too soon after getting a concussion?

Athletes with the signs and symptoms of concussion should be removed from play immediately. There is NO same day return to play for a youth with a suspected concussion. Youth athletes may take more time to recover from concussion and are more prone to long-term serious problems from a concussion.

Even though a traditional brain scan (e.g., MRI or CT) may be "normal", the brain has still been injured. Animal and human research studies show that a second blow before the brain has recovered can result in serious damage to the brain. If your athlete suffers another concussion before completely recovering from the first one, this can lead to prolonged recovery (weeks to months), or even to severe brain swelling (Second Impact Syndrome) with devastating consequences.

There is an increasing concern that head impact exposure and recurrent concussions may contribute to long-term neurological problems. One goal of this concussion program is to prevent a too early return to play so that serious brain damage can be prevented.

Signs observed by teammates, parents and coaches include:

- | | |
|--|---|
| <ul style="list-style-type: none">• Looks dizzy• Looks spaced out• Confused about plays• Forgets plays• Is unsure of game, score, or opponent• Moves clumsily or awkwardly• Answers questions slowly | <ul style="list-style-type: none">• Slurred speech• Shows a change in personality or way of acting• Can't recall events before or after the injury• Seizures or has a fit• Any change in typical behavior or personality• Passes out |
|--|---|

Symptoms may include one or more of the following:

- | | |
|--|--|
| <ul style="list-style-type: none">• Headaches• "Pressure in head"• Nausea or throws up• Neck pain• Has trouble standing or walking• Blurred, double, or fuzzy vision• Bothered by light or noise• Feeling sluggish or slowed down• Feeling foggy or groggy• Drowsiness• Change in sleep patterns | <ul style="list-style-type: none">• Loss of memory• "Don't feel right"• Tired or low energy• Sadness• Nervousness or feeling on edge• Irritability• More emotional• Confused• Concentration or memory problems• Repeating the same question/comment |
|--|--|

What is Return to Learn?

Following a concussion, student athletes may have difficulties with short- and long-term memory, concentration and organization. They will require rest while recovering from injury (e.g., avoid reading, texting, video games, loud movies), and may even need to stay home from school for a few days. As they return to school, the schedule might need to start with a few classes or a half-day depending on how they feel. If recovery from a concussion is taking longer than expected, they may also benefit from a reduced class schedule and/or limited homework; a formal school assessment may also be necessary. Your school or doctor can help suggest and make these changes. Student athletes should complete the Return to Learn guidelines and return to complete school before beginning any sports or physical activities, unless your doctor makes other recommendations. Go to the CIF website (cifstate.org) for more information on Return to Learn.

How is Return to Play (RTP) determined?

Concussion symptoms should be completely gone before returning to competition. A RTP progression involves a gradual, step-wise increase in physical effort, sports-specific activities and the risk for contact. If symptoms occur with activity, the progression should be stopped. If there are no symptoms the next day, exercise can be restarted at the previous stage.

RTP after concussion should occur only with medical clearance from a medical doctor trained in the evaluation and management of concussions, and a step-wise progression program monitored by an athletic trainer, coach, or other identified school administrator. Please see cifstate.org for a graduated return to play plan. [AB 2127, a California state law effective 1/1/15, states that return to play (i.e., full competition) must be **no sooner** than 7 days after the concussion diagnosis has been made by a physician.]

Final Thoughts for Parents and Guardians:

It is well known that high school athletes will often not talk about signs of concussions, which is why this information sheet is so important to review with them. Teach your child to tell the coaching staff if he or she experiences such symptoms, or if he or she suspects that a teammate has had a concussion. You should also feel comfortable talking to the coaches or athletic trainer about possible concussion signs and symptoms that you may be seeing in your child.

References:

- American Medical Society for Sports Medicine position statement: concussion in sport (2013)
- Consensus statement on concussion in sport: the 4th International Conference on Concussion in Sport held in Zurich, November 2012
- <http://www.cdc.gov/concussion/HeadsUp/youth.html>

School: _____

CIF Concussion Information Sheet

You are receiving this information sheet about concussions because of California state law AB 25 (effective January 1, 2012), now Education Code § 49475:

1. *The law requires a student athlete who may have a concussion during a practice or game to be removed from the activity for the remainder of the day.*
2. *Any athlete removed for this reason must receive a written note from a medical doctor trained in the management of concussion before returning to practice.*
3. *Before an athlete can start the season and begin practice in a sport, a concussion information sheet must be signed and returned to the school by the athlete and the parent or guardian.*

Every 2 years all coaches are required to receive training about concussions (AB 1451), as well as certification in First Aid training, CPR, and AEDs (life-saving electrical devices that can be used during CPR).

For current and up-to-date information on concussions you can visit:
<http://www.cdc.gov/concussion/HeadsUp/youth.html>

I acknowledge that I have received and read the CIF Concussion Information Sheet.

Student-Athlete Name
Printed

Student-Athlete
Signature

Date

Parent or Legal Guardian
Printed

Parent or Legal Guardian
Signature

Date

Forms and Templates S

CIF Information Sheet and Signature Form for Sudden Cardiac Arrest

Keep Their Heart in the Game

A Sudden Cardiac Arrest Information Sheet for Athletes and Parents/Guardians

What is sudden cardiac arrest?

Sudden cardiac arrest (SCA) is when the heart stops beating, suddenly and unexpectedly. When this happens blood stops flowing to the brain and other vital organs. SCA is NOT a heart attack. A heart attack is caused by a blockage that stops the flow of blood to the heart. SCA is a malfunction in the heart's electrical system, causing the victim to collapse. The malfunction is caused by a congenital or genetic defect in the heart's structure.

How common is sudden cardiac arrest in the United States?

As the leading cause of death in the U.S., there are more than 300,000 cardiac arrests outside hospitals each year, with nine out of 10 resulting in death. Thousands of sudden cardiac arrests occur among youth, as it is the #2 cause of death under 25 and the #1 killer of student athletes during exercise.

Who is at risk for sudden cardiac arrest?

SCA is more likely to occur during exercise or physical activity, so student-athletes are at greater risk. While a heart condition may have no warning signs, studies show that many young people do have symptoms but neglect to tell an adult. This may be because they are embarrassed, they do not want to jeopardize their playing time, they mistakenly think they're out of shape and need to train harder, or they simply ignore the symptoms, assuming they will "just go away." Additionally, some health history factors increase the risk of SCA.

FAINTING
is the
#1 SYMPTOM
OF A HEART CONDITION

What should you do if your student-athlete is experiencing any of these symptoms?

We need to let student-athletes know that if they experience any SCA-related symptoms it is crucial to alert an adult and get follow-up care as soon as possible with a primary care physician. If the athlete has any of the SCA risk factors, these should also be discussed with a doctor to determine if further testing is needed. Wait for your doctor's feedback before returning to play, and alert your coach, trainer and school nurse about any diagnosed conditions.

What is an AED?

An automated external defibrillator (AED) is the only way to save a sudden cardiac arrest victim. An AED is a portable, user-friendly device that automatically diagnoses potentially life-threatening heart rhythms and delivers an electric shock to restore normal rhythm. Anyone can operate an AED, regardless of training. Simple audio direction instructs the rescuer when to press a button to deliver the shock, while other AEDs provide an automatic shock if a fatal heart rhythm is detected. A rescuer cannot accidentally hurt a

victim with an AED—quick action can only help. AEDs are designed to only shock victims whose hearts need to be restored to a healthy rhythm. Check with your school for locations of on-campus AEDs.



The Cardiac Chain of Survival

On average it takes EMS teams up to 12 minutes to arrive to a cardiac emergency. Every minute delay in attending to a sudden cardiac arrest victim decreases the chance of survival by 10%. Everyone should be prepared to take action in the first minutes of collapse.

Early Recognition of Sudden Cardiac Arrest



Collapsed and unresponsive.
Gasping, gurgling, snorting, moaning or labored breathing noises.
Seizure-like activity.

Early Access to 9-1-1



Confirm unresponsiveness.
Call 9-1-1 and follow emergency dispatcher's instructions.
Call any on-site Emergency Responders.

Early CPR



Begin cardiopulmonary resuscitation (CPR) immediately. Hands-only CPR involves fast and continual two-inch chest compressions—about 100 per minute.

Early Defibrillation



Immediately retrieve and use an automated external defibrillator (AED) as soon as possible to restore the heart to its normal rhythm. Mobile AED units have step-by-step instructions for a bystander to use in an emergency situation.

Early Advanced Care



Emergency Medical Services (EMS) Responders begin advanced life support including additional resuscitative measures and transfer to a hospital.

Keep Their Heart in the Game

Recognize the Warning Signs & Risk Factors of Sudden Cardiac Arrest (SCA)

Tell Your Coach and Consult Your Doctor if These Conditions are Present in Your Student-Athlete

Potential Indicators That SCA May Occur

- Fainting or seizure, especially during or right after exercise
- Fainting repeatedly or with excitement or startle
- Excessive shortness of breath during exercise
- Racing or fluttering heart palpitations or irregular heartbeat
- Repeated dizziness or lightheadedness
- Chest pain or discomfort with exercise
- Excessive, unexpected fatigue during or after exercise

Factors That Increase the Risk of SCA

- Family history of known heart abnormalities or sudden death before age 50
- Specific family history of Long QT Syndrome, Brugada Syndrome, Hypertrophic Cardiomyopathy, or Arrhythmogenic Right Ventricular Dysplasia (ARVD)
- Family members with unexplained fainting, seizures, drowning or near drowning or car accidents
- Known structural heart abnormality, repaired or unrepaired
- Use of drugs, such as cocaine, inhalants, "recreational" drugs, excessive energy drinks or performance-enhancing supplements

What is CIF doing to help protect student-athletes?

CIF amended its bylaws to include language that adds SCA training to coach certification and practice and game protocol that empowers coaches to remove from play a student-athlete who exhibits fainting—the number one warning sign of a potential heart condition. A student-athlete who has been removed from play after displaying signs or symptoms associated with SCA may not return to play until he or she is evaluated and cleared by a licensed health care provider. Parents, guardians and caregivers are urged to dialogue with student-athletes about their heart health and everyone associated with high school sports should be familiar with the cardiac chain of survival so they are prepared in the event of a cardiac emergency.

I have reviewed and understand the symptoms and warning signs of SCA and the new CIF protocol to incorporate SCA prevention strategies into my student's sports program.

STUDENT-ATHLETE SIGNATURE

PRINT STUDENT-ATHLETE'S NAME

DATE

PARENT/GUARDIAN SIGNATURE

PRINT PARENT/GUARDIAN'S NAME

DATE

For more information about Sudden Cardiac Arrest visit

California Interscholastic Federation
<http://www.cifstate.org>

Eric Paredes Save A Life Foundation
<http://www.epsavealife.org>

National Federation of High Schools
(20-minute training video)
<https://nfhslearn.com/courses/61032>



Forms and Templates T

Hiring Classified Employees: Consideration of Arrests and/or Convictions

Consideration of Arrests and/or Convictions¹ in Hiring² Classified Employees

OFFENSES	Conviction and none of the other columns apply	Conviction dismissed - Penal Code § 1203.4 ³	Conviction dismissed - Penal Code § 1203.4a ⁴	Conviction dismissed - Penal Code § 1210.1	Conviction rehab'd - cert. of rehab and pardon ^{5, 6}	Conviction rehab'd - judicial finding of rehab ⁷	Conviction rehab'd - Gov. Board determin. of rehab ⁸	Conviction subject to the process and jurisdiction of juvenile court law ⁹
Violent Felony ¹⁰	Must	Must	N/A	N/A	May*	Must	N/A	Cannot
Serious Felony ¹¹	Must	Must	N/A	N/A	May*	May* ¹²	N/A	Cannot
Sex Offense ^{13, 14}	Must	See footnotes ^{15, 16}	Misd. Felony May N/A	N/A	Must	Must	N/A	Cannot
Controlled Substance ¹⁷	Must	May	May N/A	Cannot	May	May	May	Cannot
All other offenses	May ¹⁸	May	May N/A	Cannot	May	May	N/A	Cannot

MUST CONSIDER CONVICTION Prohibited from hiring, unless other exceptions to general hiring prohibition for the offense apply.

MAY CONSIDER CONVICTION May hire, can consider the conviction before hiring. May be prohibited from using conviction to deny employment if adverse impact would result.¹⁹

CANNOT CONSIDER CONVICTION May hire, and cannot use the conviction to deny employment.

* The conviction cannot be the sole basis for not hiring. (Ed. Code, § 45122.1, subd. (e) and (f).)

¹ A conviction includes a conviction by a jury, a plea of guilty, or a plea of *nolo contendere* (no contest).

² Employers are now prohibited from utilizing certain forms of criminal history in employment decisions. (2 CCR, § 11017.1, subds. (a), (c)(1); Labor Code, § 432.7.)

³ Ed. Code, § 44008 provides that a termination of probation and dismissal of an accusation or information pursuant to Penal Code section 1203.4 shall not have any effect.

⁴ These may be considered per the exception in Labor Code, § 432.7(m).

⁵ Ed. Code, § 45122.1, subd. (e).

⁶ Note: if "pardon" in this sense means "judicially dismissed" these might not be considerable per 2 CCR, § 11017.1, subd. (b)(3).

⁷ Ed. Code, § 45122.1, subd. (f).

⁸ Note: Must be rehabilitated for at least five (5) years.

⁹ Any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law, may not be considered as a factor in hiring. (2 CCR, § 11017.1, subd. (b)(4); Labor Code, § 432.7.)

¹⁰ Applies even if offense is from a different jurisdiction but, if it had been committed in California, would have been punishable as a violent or serious felony. (Ed. Code, §§ 45122.1, subd. (a), 45122.2, subd. (b).) Penal Code section 667.5, subdivision (c) defines what constitutes a violent felony for the purpose of this determination.

¹¹ Ed. Code, § 45122.1, subd. (a). Penal Code section 1192.7, subdivision (c) defines what constitutes a serious felony for the purpose of this determination.

¹² Person must prove to the sentencing court, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one (1) year. Serious felony must not also constitute a violent felony. (Ed. Code, § 44830.1, subd. (g).) (Ed. Code, § 45122.1, subd. (f).)

¹³ Ed. Code, § 45123, subd. (a). Education Code section 44010 defines what constitutes a sex offense for the purpose of this determination.

¹⁴ School districts are prohibited from employing sexually violent predators ("SVP"). (Ed. Code, § 45124.) Designation of an individual as an SVP is not a conviction but a psychiatric determination rendered by a court. As a practical matter, a conviction for a sex offense usually precedes this determination. If a court reverses its SVP determination, the previous SVP determination is no longer a bar to employment. However, school districts should consider any sex offense conviction using the chart above and separately consider an SVP determination if it is not reversed.

¹⁵ As a general rule, a school district may not employ persons who have been convicted of a sex offense, unless the conviction is "reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed." (Ed. Code, § 45123.)

¹⁶ The following felonies cannot be dismissed pursuant to Penal Code section 1203.4: Penal Code §§ 286, subd. (c); 288, 288a, subd. (c); 288.5; 289, subd. (j); 311.1; 311.2; 311.3; 311.11; 261.5, subd. (d). (Id. at subd. (b).)

¹⁷ Ed. Code, § 45123, subd. (b). Education Code section 44011 defines what constitutes a prohibited controlled substance offense.

¹⁸ Non-felony conviction for possession of marijuana that is two or more years old may NOT be considered. (2 CCR, § subd. (b)(5).)

¹⁹ Employers are prohibited from utilizing this conviction in employment decision, if doing so would have an adverse impact on applicant on a protected basis enumerated in the law (e.g., race, color, or national origin, etc.) that the employer cannot prove is job-related and consistent with business necessity. (See 2 CCR, § 11017.1 for specific criteria.)

Disclaimer: As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this document does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein. Copyright © 2019 Lozano Smith - All rights reserved. No portion of this work may be copied, or sold or used for any commercial advantage or private gain, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. - Rev. September 27, 2019

Forms and Templates U

Hiring Certificated Employees: Consideration of Convictions

Consideration of Convictions¹ in Hiring² Certificated Employees

OFFENSES	Conviction and none of the other columns apply	Conviction followed by dismissal under Penal Code § 1203.4 ³	Conviction followed by dismissal under Penal Code § 1203.4a ⁴	Conviction followed by dismissal under Penal Code § 1210.1	Conviction with Certificate of Rehabilitation and Pardon	Conviction with subsequent judicial finding of rehabilitation	Conviction was subject to the process and jurisdiction of juvenile court law ⁵
Violent Felony ⁶	Must	May	N/A	N/A	May*	Must	Cannot
Serious Felony ⁷	Must	May	N/A	N/A	May*	May ⁸ *	Cannot
Sex Offense ⁹	Must	See footnotes ^{10, 11}	Misdemeanor May	N/A	Must	Must	Cannot
Controlled Substance ¹²	Must	May	May	Cannot	May	May	Cannot
All other offenses	May ¹³	May	May	Cannot	May	May	Cannot

MUST CONSIDER CONVICTION	Prohibited from hiring, unless other exceptions to general hiring prohibition for the offense apply.
MAY CONSIDER CONVICTION	May hire, may consider the conviction before hiring. May be prohibited from using conviction to deny employment if adverse impact would result. ¹⁴
CANNOT CONSIDER CONVICTION	May hire, and cannot use the conviction to deny employment.

* The conviction cannot be the sole basis for not hiring. (Ed. Code, § 44830.1, subd. (f) and (g).)

¹ A conviction includes a conviction by a jury, a plea of guilty, or a plea of *nolo contendere* (no contest).

² Employers are now prohibited from utilizing certain forms of criminal history in employment decisions. (2 CCR, § 11017.1, subd. (a); Labor Code, § 432.7.)

³ Ed. Code, § 44008 provides that a termination of probation and dismissal of an accusation or information pursuant to Penal Code section 1203.4 shall not have any effect.

⁴ These may be considered per the exception in Labor Code, § 432.7(m).

⁵ Any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law, may not be considered a factor in hiring. (2 CCR, § 11017.1, subd. (b)(4); Labor Code, § 432.7.)

⁶ A violent felony is any felony listed in Penal Code section 667.5. (Ed. Code, § 44830.1, subd. (c)(1).)

⁷ A serious felony is any felony listed in Penal Code section 1192.7. (Ed. Code, § 44830.1, subd. (c)(1).)

⁸ Person must prove to the sentencing court, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one (1) year. Serious felony must not also constitute a violent felony. (Ed. Code, § 44830.1, subd. (g).)

⁹ See what constitutes a sex offense in Education Code section 44010.

¹⁰ As a general rule, a school district may not employ persons who have been convicted of a sex offense, unless the conviction is "reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed." (Ed. Code, § 44836.) However, if the victim was a minor, the district may not employ the person even if there is a dismissal under section 1203.4 of the Penal Code. (Id.)

¹¹ The following felonies cannot be dismissed pursuant to Penal Code section 1203.4: Penal Code §§ 286, subd. (c); 288; 288a, subd. (c); 288.5; 289, subd. (j); 311.1; 311.2; 311.3; 311.11; 261.5, subd. (d). (Id. at subd. (b).)

¹² See what constitutes a prohibited controlled substance offense in Education Code section 44011.

¹³ Non-felony conviction for possession of marijuana that is two or more years old may NOT be considered. (2 CCR, § subd (b)(5).)

¹⁴ Employers are prohibited from utilizing this conviction in employment decision, if doing so would have an adverse impact on applicant on a protected basis enumerated in the law (e.g., race, color, or national origin, etc.) that the employer cannot prove is job-related and consistent with business necessity. (See 2 CCR, § 11017.1 for specific criteria.)

© 2021 Public Risk Innovation, Solutions and Management, and Lozano Smith

All rights reserved. No portion of this work may be copied, or sold or used for any commercial advantage or private gain, nor any derivative work prepared there from, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client.

Disclaimer: As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this document does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.