

**Mendocino Unified School District**

PO Box 1154, Mendocino, CA 95460

Telephone (707) 937-5868

Fax (707) 937-0714

www.mendocinoused.org

**PHYSICIAN'S STATEMENT REQUESTING HOME AND HOSPITAL INSTRUCTION  
2016-2017**

To: Physician

We are allowed to provide educational services to homebound or hospitalized students only on authorization of a **licensed physician**. Please note that the State of California only allows **5 HOURS of service each week – thus this program should be used as a temporary and last resort.** This service will be continued as long as the pupil is under continued medical care and is considered to be unable to return to school. The district depends on you to notify us when the pupil's condition has improved sufficiently for them to return to school.

For your convenience, we have prepared the form below, which will give us the information we need. This form must be resubmitted **each semester** if illness/injury requires Home/Hospital. Thank you.

Date \_\_\_\_\_

Name of Student: \_\_\_\_\_ DOB: \_\_\_\_\_

The above named student is unable to attend regular school classes, but is ready and able to have home tutoring. My medical findings and recommendations are as follows:

Diagnosis: \_\_\_\_\_

**I estimate this student will be homebound until:** \_\_\_\_\_  
(Please give specific date.)

In order to protect the Home/Hospital tutor, who is instructing in the patient's home, please mark one of the below statements, and sign below:

☐ Patient **IS** a danger to the Home/Hospital Instructor

☐ Patient is **NOT** a danger to the Home/Hospital Instructor

Limitations, restrictions, or precautions the teacher should take in teaching this student:

Remarks: \_\_\_\_\_

Physician: \_\_\_\_\_ Signature: \_\_\_\_\_  
(print name)

Address: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

## MENDOCINO UNIFIED SCHOOL DISTRICT

### HIPAA-Compliant Authorizations for Exchange of Health & Education Information

Patient/Student Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

I hereby authorize \_\_\_\_\_ [insert health care provider name & title]  
and Mendocino Unified School District to exchange health and education information/records  
for the purpose listed below.

PO Box 1154, Mendocino, CA 95460 (707) 937-5868

\_\_\_\_\_ [insert address and phone of health care provider]

#### Description:

**The health information to be disclosed consists of:**

**The education information to be disclosed consists of:**

**Purpose: This information will be used for the following purpose(s):**

1. Educational evaluation and program planning
2. Health assessment and planning for health care services and treatment in school.
3. Other: \_\_\_\_\_

#### Authorization

This authorization is valid for one year. It will expire on \_\_\_\_\_ [insert date]. I understand that I may revoke this authorization at any time by submitting written notice of the withdrawal of my consent. I recognize that health records, once received by the school, may not be protected by the HIPAA privacy Rule, but will become educational records protected by the Family Educational Rights and Privacy Act. I also understand that if I refuse to sign, such refusal will not interfere with my child's ability to obtain health care.

\_\_\_\_\_  
Parent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Student Signature\*

\_\_\_\_\_  
Date

\*If a minor student is authorized to consent to health care without parental consent under federal or state law, only the student shall sign this authorization form.

Copies: Parent or student\*

Physician or other health care provider releasing the protected health information

School official requesting/receiving the protected health information

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**PHYSICIAN'S RELEASE FROM HOME AND HOSPITAL INSTRUCTION  
2016-2017**

*This form **must be completed and signed by the physician** and presented to the school office and confirmed **before** the student will be readmitted to class.*

Please readmit \_\_\_\_\_ to their regular school or classroom

Student's Name

setting, effective: \_\_\_\_\_

Date

My recommendations for this student are:

☐ Regular School Program

☐ Restricted activities, please specify: \_\_\_\_\_

☐ Other: \_\_\_\_\_

The above recommendations will be followed until further communication from the physician is received.

Comments: \_\_\_\_\_

Physician Signature \_\_\_\_\_ Date \_\_\_\_\_

Physician Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_



# Mendocino Unified School District

## Prop 39 Program

### Option 1

- Scope:
  - Comprehensive lighting (no schools w/solar) Interior and Exterior
  - (1) New Diesel Boiler for Upper Area
- Cost:
  - Total Project cost is \$314,401
  - Total Prop 39 Funding \$263,968 \*
    - \$12k Energy manager
    - \$251,968 Prop 39 funding
    - \* the above added equals
- Delta between approve amount and project ( District Buy Down) \$62,433
- Note: \$13,247 Energy Savings per year with Option, this does not included soft costs (ie lighting repair for 5 years, and labor)

### Option 2

- Scope:
  - Partial Lighting (Just High School)
  - (1) Same boiler as option 1
- Cost:
  - Same break down as above, less lighting (District Buy Down) \$11,580
- Note: \$11,158 Energy Savings per year with this option

### Option 3

- Scope:
  - (2) Boilers Upper and Lower system
  - Comprehensive lighting (no schools with Solar)
  - Same breakdown as above (District Buy Down) \$110,000
- Note: \$14,247 Energy Savings per year with this option



**Resolution 2016-23  
Mendocino Unified School District  
Mendocino, California  
Mendocino County, California**

**Resolution authorizing the Mendocino County Office of Education Superintendent of Schools to enter into a contract with a private school to provide educational services during the 2016-17 school year to a student from Mendocino Unified School District**

**WHEREAS**, the Mendocino Unified School District is responsible for the education of individuals with Exceptional Needs who reside within its attendance area, and

**WHEREAS**, a legally constituted I.E.P. team has determined that the District does not currently have an appropriate placement in its public schools, and

**WHEREAS**, Education Code Section 56365 requires that non-public, non-sectarian schools be available when the public school program is determined to be inappropriate for a handicapped student, and

**WHEREAS**, the Mendocino SELPA Local Plan for Special Education, which the District has adopted under the provision of Education Code 56170, provides that the Mendocino County Superintendent of Schools is the legal operator of all Special Education programs in this SELPA,

**BE IT FURTHER RESOLVED** that this body, the Mendocino Unified School District Board of Education, does hereby request the Mendocino County Superintendent of Schools to enter into a contract with North Valley School, a state certified non-public, non-sectarian private Special Education School, to implement the District's Individualized Education Program for an individual with exceptional needs of the Mendocino Unified School District.

(Continued on next page)

(Continued from previous page)

This resolution was adopted at a duly-called meeting by the Board of Trustees of the Mendocino Unified School District on **November 17, 2016** by the following vote:

President	Michael Schaeffer	_____
Clerk	Jessica Grinberg	_____
Member	Charles Acker	_____
Member	Mark Morton	_____
Member	Kathy Wylie	_____

\_\_\_\_\_  
Michael Schaeffer, President  
Board of Trustees

I, Jessica Grinberg, Clerk of the Board of Trustees of the Mendocino Unified School District, a public entity, State of California, do hereby certify that the foregoing to be a true and correct copy of a resolution was regularly introduced, passed, and adopted by the Board of Trustees at its meeting held on **November 17, 2016**, and that said resolution is now in full force and effect.

\_\_\_\_\_  
Jessica Grinberg, Clerk  
Board of Trustees  
Mendocino Unified School District  
Mendocino County, California

# Mendocino Unified School District

Jason Morse, Superintendent

44141 Little Lake Road • PO Box 1154 • Mendocino, CA 95460

Phone: 707.937.5868 Fax: 707.937.0714 www.mendocinoused.org

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## DISTRICT OF CHOICE REPORTING

November 17<sup>th</sup>, 2016

Department of Finance  
District Of Choice Reporting  
915 L Street  
Sacramento, CA 95814

To Whom It May Concern,

The purpose of this communication is to provide you with our annual District of Choice reporting.

Reporting information includes an account of the number of incoming and outgoing District of Choice requests made as well as the number approved and denied. Additionally, the following information is included in the report.

- Gender
- Race and Ethnicity
- Socioeconomic group - self-reported
- English Learner classification
- Individuals with exceptional needs, as defined in Section 56026.
- District of Residence

The Mendocino Unified School District reported and approved this data to the Mendocino Unified School District Governing Board. Copies of the report were also sent to each school district that is geographically adjacent to the Mendocino Unified School District as well as the Mendocino County Superintendent of Schools office.

Please feel free to contact me with any additional questions or concerns you might have regarding the enclosed District of Choice Report for the 2016-17 school year.

Sincerely,



Jason Morse  
Superintendent, Mendocino Unified School District

Attachment

# Mendocino Unified School District

Jason Morse, Superintendent

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Phone: 707.937.5868 Fax: 707.937.0714 [www.mendocinoused.org](http://www.mendocinoused.org)

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## DISTRICT OF CHOICE REPORTING

November 17<sup>th</sup>, 2016

To the Superintendent of Schools at the following agencies:

Mendocino County Office of Education (fax 462-0379)

Anderson Valley Unified School District (fax 895-2665)

Manchester Elementary School District (fax 882-3106)

Point Arena Joint Union High School District (fax 882-2848)

Ukiah Unified School District (fax 463-2120)

Willits Unified School District (fax 459-7862)

The purpose of this communication is to provide you with our annual District of Choice reporting.

District of Choice legislation provides an alternative avenue for parents/guardians to establish residency in a school district where they wish their child to attend. The District of Choice program includes reporting requirements to geographically adjacent school districts. Reporting information includes an account of the number of incoming and outgoing District of Choice requests made as well as the number approved and denied.

Attached is the District of Choice report for the 2016-17 school year. The Mendocino Unified School District reported and approved this data to the Mendocino Unified School District Governing Board.

Please feel free to contact me with any additional questions or concerns you might have regarding the District of Choice Program.

Sincerely,



Jason Morse  
Superintendent

Attachment

Mendocino Unified School District  
2016-2017 Annual Report - District of Choice

**Background:**

Education Code Section 48313 requires that the Superintendent annually report on the number of students who exited the district pursuant to the District of Choice program. Additionally, a reporting must be made of those students who had a District of Choice application denied that includes the reason for the denial. Moreover, the number of students who entered the district pursuant to the District of Choice program must be reported. Additionally, with regard to incoming students a number of other criteria must be included in the accounting. Below is an accounting of the students who either entered or exited the Mendocino Unified School District as a result of the District of Choice legislation and policy for the 2016-17 school year.

Number of students who exited the Mendocino Unified District of Choice Program	34
Number of students who entered the Mendocino Unified District of Choice Program	76
Number of students who had a District of Choice Application denied in 2016-17	0

**Legend For Acronyms - Page 4**

Gender	Race	Socio Economic Disadvantaged	Disability Exceptional Needs	English Language Status	Grade Level	District of Residence
Students Entering Mendocino Unified						
F	500	P		EL	10	Fort Bragg USD
M	700	P	290	EO	12	Fort Bragg USD
M	700	P	290	EO	5	Fort Bragg USD
F	500	R		EO	7	Fort Bragg USD
F	500	R		EO	2	Fort Bragg USD
M	700	P	290	EO	5	Fort Bragg USD
M	700	P	290	EO	12	Fort Bragg USD
F	700	P		EO	8	Fort Bragg USD
M	700	P		EO	9	Fort Bragg USD
M	700	F		EO	10	Fort Bragg USD
F	700	P		EO	11	Fort Bragg USD
F	700	P		EO	12	Fort Bragg USD
F	700	R		EO	7	Fort Bragg USD
F	700	R		EO	5	Fort Bragg USD
M	700	R		EO	3	Fort Bragg USD
M	700	P		EO	8	Fort Bragg USD
F	700	R		EO	0	Fort Bragg USD
F	700	P		EO	3	Fort Bragg USD
F	700	P		EO	0	Fort Bragg USD
F	500	P		EO	4	Fort Bragg USD
F	500	P		EO	10	Fort Bragg USD

Mendocino Unified School District  
2016-2017 Annual Report - District of Choice

Gender	Race	Socio Economic Disadvantaged	Disability Exceptional Needs	English Language Status	Grade Level	District of Residence
F	700	P		EO	11	Fort Bragg USD
M	700	F		EO	12	Fort Bragg USD
M	700	P		EO	6	Fort Bragg USD
M	700	R		EO	1	Fort Bragg USD
F	700	R		EO	11	Fort Bragg USD
M	700	R		EO	6	Fort Bragg USD
F	700	P		EO	5	Fort Bragg USD
F	700	F		EO	10	Fort Bragg USD
M	700	F	290	EO	10	Fort Bragg USD
F	700	P		EO	11	Fort Bragg USD
M	700	P	280	EO	11	Fort Bragg USD
F	700	F		EO	7	Fort Bragg USD
F	700	F		EO	5	Fort Bragg USD
M	700	P		EO	12	Fort Bragg USD
M	700	P	290	EO	11	Fort Bragg USD
M	700	P		EO	0	Fort Bragg USD
M	700	P		EO	3	Fort Bragg USD
M	700	P	290	EO	10	Fort Bragg USD
F	700	P		EO	8	Fort Bragg USD
F	700	P		EO	0	Fort Bragg USD
M	700	P		EO	12	Fort Bragg USD
F	700	P		EO	12	Fort Bragg USD
M	299	P		EO	9	Fort Bragg USD
F	700	P		EO	11	Fort Bragg USD
F	700	P		EO	10	Fort Bragg USD
F	700	P		EO	1	Fort Bragg USD
M	500	F	290	EO	8	Fort Bragg USD
M	700	P		EO	9	Fort Bragg USD
F	700	P		EO	9	Fort Bragg USD
M	700	P		EO	12	Fort Bragg USD
M	700	F		EO	12	Fort Bragg USD
M	700	P		EO	11	Fort Bragg USD
M	700	P		EO	9	Fort Bragg USD
M	700	R		EO	9	Fort Bragg USD
M	700	R	280	EO	6	Fort Bragg USD
M	700	R		EO	5	Fort Bragg USD
F	700	F		EO	9	Fort Bragg USD
M	700	P	290	EO	11	Fort Bragg USD

Mendocino Unified School District  
2016-2017 Annual Report - District of Choice

Gender	Race	Socio Economic Disadvantaged	Disability Exceptional Needs	English Language Status	Grade Level	District of Residence
M	700	P		EO	5	Fort Bragg USD
F	700	P		EO	4	Fort Bragg USD
M	700	P		EO	8	Fort Bragg USD
F	700	P		EO	6	Fort Bragg USD
F	700	P		EO	3	Fort Bragg USD
F	700	P		EO	6	Anderson Valley
M	299	P		EO	8	Anderson Valley
M	299	P		EO	5	Anderson Valley
M	299	P		EO	5	Anderson Valley
F	700	P	290	EO	12	Anderson Valley
M	700	P		EO	4	Anderson Valley
F	700	P		EO	10	Anderson Valley
F	700	P		EO	10	Anderson Valley
F	700	P		EO	5	Manchester
F	500	P		EO	11	Point Arena
M	700	P		EO	9	Point Arena
M	700	P		EO	10	Point Arena
Students Exiting Mendocino Unified						
M	700	NA*	NA*	NA*	10	Mendocino USD
M	700	NA*	NA*	NA*	4	Mendocino USD
F	500	NA*	NA*	NA*	12	Mendocino USD
M	500	NA*	NA*	NA*	10	Mendocino USD
M	700	NA*	NA*	NA*	1	Mendocino USD
F	500	NA*	NA*	NA*	7	Mendocino USD
M	700	NA*	NA*	NA*	3	Mendocino USD
M	700	NA*	NA*	NA*	8	Mendocino USD
M	700	NA*	NA*	NA*	8	Mendocino USD
F	700	NA*	NA*	NA*	6	Mendocino USD
F	700	NA*	NA*	NA*	4	Mendocino USD
M	700	NA*	NA*	NA*	5	Mendocino USD
F	700	NA*	NA*	NA*	2	Mendocino USD
M	700	NA*	NA*	NA*	2	Mendocino USD
F	500	NA*	NA*	NA*	7	Mendocino USD
M	500	NA*	NA*	NA*	5	Mendocino USD
M	700	NA*	NA*	NA*	11	Mendocino USD
M	700	NA*	NA*	NA*	11	Mendocino USD
M	500	NA*	NA*	NA*	9	Mendocino USD

Mendocino Unified School District  
2016-2017 Annual Report - District of Choice

Gender	Race	Socio Economic Disadvantaged	Disability Exceptional Needs	English Language Status	Grade Level	District of Residence
M	700	NA*	NA*	NA*	10	Mendocino USD
M	700	NA*	NA*	NA*	6	Mendocino USD
F	700	NA*	NA*	NA*	5	Mendocino USD
F	700	NA*	NA*	NA*	3	Mendocino USD
M	700	NA*	NA*	NA*	1	Mendocino USD
M	700	NA*	NA*	NA*	5	Mendocino USD
F	700	NA*	NA*	NA*	12	Mendocino USD
F	700	NA*	NA*	NA*	10	Mendocino USD
M	700	NA*	NA*	NA*	8	Mendocino USD
F	700	NA*	NA*	NA*	9	Mendocino USD
M	700	NA*	NA*	NA*	7	Mendocino USD
F	700	NA*	NA*	NA*	2	Mendocino USD
M	700	NA*	NA*	NA*	9	Mendocino USD
M	700	NA*	NA*	NA*	5	Mendocino USD
M	700	NA*	NA*	NA*	3	Mendocino USD

Mendocino Unified School District  
2016-2017 Annual Report - District of Choice

**LEGEND**

**Gender**

M- Male

F- Female

**Race**

299 – Other Asian

700- White

600- Black or African American

500 – Hispanic or Latino

100- American Indian or Alaska Native

203- Korean

**Socio Economic Disadvantaged**

F- Free

R- Reduced pay

P- Full pay

**District of Residence**

2365565 - Fort Bragg Unified

2365540 – Anderson Valley Unified

2365581 – Mendocino Unified

**Disability Exceptional Needs**

290 – Specific Learning Disability

280 – Other Health Impairment

**English Language Status**

EO – English Only

EL – English Learner

\*NA – Not Available



**Administration**

***Superintendent's Contract***

*\*\*\*Note: The following optional policy should be modified to reflect district practice.\*\*\**

*The Governing Board believes that the Superintendent's employment contract should outline the framework through which the Board and Superintendent are to work together to achieve district goals and objectives. When approving the Superintendent's employment contract, the Board shall consider the need for stability in district administration and shall ensure the best use of district resources.*

*\*\*\*Note: The following list of contract components is consistent with a template for Superintendent contracts developed by CSBA. The annotated template contract with additional context and suggestions is available by contacting [legal@csba.org](mailto:legal@csba.org).\*\*\**

*The contract shall be reviewed by the district's legal counsel and may include the following:*

- 1. Term of the contract, which shall be for no more than four years pursuant to Education Code 35031*
- 2. Length of the work year and hours of work*

*\*\*\*Note: The contract should include the salary, health and welfare benefits, and other compensation for the position, as provided in item #3 below. Federal law (26 USC 105; 42 USC 300gg-16; 26 CFR 1.105-11) prohibits favoring "highly compensated" individuals (i.e., the highest paid 25 percent of all employees, with specified exceptions) in terms of the level of benefits provided. Although implementation of this provision with respect to group health plans has been delayed until the issuance of federal regulations or guidance, it is recommended that districts prepare to comply with the expected rules. See AR 4154/4254/4354 - Health and Welfare Benefits.\*\*\**

- 3. Salary, health and welfare benefits, and other compensation for the position*
- 4. Reimbursement of work-related expenses, including mileage reimbursement, consistent with Board policies, regulations, and guidelines applicable to other professional administrative staff*

*The contract may also address payment for professional dues and activities, the district's provision of cell phones or other technological devices, and the Superintendent's use of his/her personal vehicle.*

- 5. Vacation, illness and injury leave, and personal leaves*
- 6. General duties and responsibilities of the position*
- 7. Criteria, process, and procedure for annual evaluation of the Superintendent*

*(cf. 2140 - Evaluation of the Superintendent)*

8. *A statement that any subsequent increase in the Superintendent's salary shall be at the sole discretion of the Board*

9. *A statement that there shall be no automatic renewal or extension of the contract, although the Board can enter into a new contract with the Superintendent prior to the expiration of the existing contract*

*\*\*\*Note: Pursuant to Education Code 35031, the Governing Board must notify the Superintendent at least 45 days in advance if it decides to not reemploy him/her. If the Board fails to provide the required prior written notice, the Superintendent shall be deemed reemployed for a term of the same length as the one completed, under the same terms and conditions, and with the same compensation.\*\*\**

10. *Timeline for providing written notice to the Superintendent if the Board does not wish to enter into a new contract, which shall be at least 45 days in advance of the expiration of the term of the contract pursuant to Education Code 35031, and the responsibility of the Superintendent to remind the Board in a timely manner of the requirement to give notice*

11. *Conditions and process for termination of the contract, including the maximum cash settlement that the Superintendent may receive if the contract is terminated prior to its expiration date*

12. *Matters related to liability and indemnification against demands, claims, suits, actions, and legal proceedings brought against the Superintendent in his/her official capacity in the performance of duties related to his/her employment*

*\*\*\*Note: Pursuant to Government Code 54957, personnel matters related to the appointment or employment of an employee may be discussed in closed session under the "personnel exception." However the Board may not discuss or act upon any proposed change in compensation other than a reduction of compensation that results from the imposition of discipline in closed session under this exception. In San Diego Union v. City Council, a California Court of Appeal held that the "personnel exception" provided in Government Code 54957 does not extend to discussions of salary and compensation.\*\*\**

*\*\*\*Note: Notwithstanding Government Code 54957, the Board is authorized pursuant to Government Code 54957.6, the "labor exception," to hold closed sessions with the district's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits to its represented and unrepresented employees, including the Superintendent. The Attorney General has opined in 57 Ops. Cal. Atty. Gen. 209 (1974) that a board may only meet in closed session for such purposes with a designated representative who is involved with the "bona fide" negotiations with represented and/or unrepresented employees. The Attorney General's publication The Brown Act: Open Meetings for Local Legislative Bodies, also states that the "labor exception" applies to meeting in closed session to instruct its representatives concerning negotiations with prospective employees. Boards wishing to discuss the Superintendent's salary in closed session under the "labor exception" are encouraged to consult legal counsel before doing so.\*\*\**

*\*\*\*Note: In addition, pursuant to Government Code 54956, the Board is prohibited from deliberating on the salary or other compensation of the Superintendent at a special meeting. See BB 9320 - Meetings and Notices and BB 9321 - Closed Session Purposes and Agendas.\*\*\**

*\*\*\*Note: The following paragraph should be revised to reflect district practice.\*\*\**

*The Board may deliberate about terms of the contract in closed session at a regular meeting. Discussions regarding the salary, salary schedule, or other compensation may occur in closed session only as permitted under Government Code 54957.6 between the Board and its designated representative(s) (the "labor exception"), for the purpose of reviewing the Board's position or instructing the designated representative(s) prior to or during bona fide negotiations with the current or prospective Superintendent. (Government Code 54956, 54957, 54957.6)*

*The Board may consult with district legal counsel prior to holding a closed session with the designated representative(s) to discuss compensation to be paid to the current or prospective Superintendent.*

*Terms of the contract shall remain confidential until the ratification process commences.*

*The Board shall take final action on the Superintendent's contract in an open meeting, which shall be reflected in the Board's minutes. Copies of the contract shall be available to the public upon request. (Government Code 53262, 54957.6)*

#### *Termination of Contract*

*\*\*\*Note: Pursuant to Government Code 53260, every employee contract must include a provision limiting the maximum cash settlement the employee may receive upon termination of the contract to an amount equal to his/her monthly salary multiplied by the number of months left on the contract. For a Superintendent contract executed prior to January 1, 2016, if the unexpired term is greater than 18 months, this maximum is equal to the monthly salary multiplied by 18. For a Superintendent contract executed on or after January 1, 2016, Government Code 53260, as amended by AB 215 (Ch. 240, Statutes of 2015), provides that the maximum cash settlement is the monthly salary multiplied by 12. Cash settlements may be less than these maximums. The district must make termination agreements available to the public upon request. See AR 4117.5/4217.5/4317.5 - Termination Agreements.\*\*\**

*Prior to the expiration of the contract, the Board may terminate the Superintendent's employment contract in accordance with law and applicable contract provisions.*

*In such an event, any cash settlement that the Superintendent may receive upon termination of the contract shall not exceed his/her monthly salary multiplied by the number of months left on the contract or, if the unexpired term of the contract is more than 18 months and the contract was executed prior to January 1, 2016, no greater than the Superintendent's monthly salary multiplied by 18. For any contract executed on or after January 1, 2016, any cash settlement shall not exceed the Superintendent's monthly salary multiplied by 12. (Government Code 53260)*

*The cash settlement shall not include any noncash items other than health benefits, which may be continued for the same duration of time as covered in the settlement or until the Superintendent finds other employment, whichever occurs first. (Government Code 53260, 53261)*

*\*\*\*Note: AB 215 (Ch. 240, Statutes of 2015) amended Government Code 53260 to eliminate the option to provide a settlement equivalent to up to six months' salary when the Superintendent's contract is terminated for specified causes. \*\*\**

*However, when the termination of the Superintendent's contract is based upon the Board's belief and subsequent confirmation through an independent audit that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, no cash or noncash settlement of any amount shall be provided. (Government Code 53260)*

*In addition, if the Superintendent is convicted of a crime involving an abuse of his/her office or position, he/she shall reimburse the district for payments he/she receives as paid leave salary pending investigation or as cash settlement upon his/her termination, and for any funds expended by the district in his/her defense against a crime involving his/her office or position. (Government Code 53243-53243.4, 53260)*

*Legal Reference:*

*EDUCATION CODE*

*35031 Term of employment*

*41325-41329.3 Conditions of emergency apportionment*

*GOVERNMENT CODE*

*3511.1-3511.2 Local agency executives*

*53243-53243.4 Abuse of office*

*53260-53264 Employment contracts*

*54954 Time and place of regular meetings*

*54956 Special meetings*

*54957 Closed session personnel matters*

*54957.1 Closed session, public report of action taken*

*54957.6 Closed sessions regarding employee matters*

*UNITED STATES CODE, TITLE 26*

*105 Self-insured medical reimbursement plan; definition of highly compensated individual*

*UNITED STATES CODE, TITLE 42*

*300gg-16 Group health plan; nondiscrimination in favor of highly compensated individuals*

*CODE OF FEDERAL REGULATIONS*

*1.105-11 Self-insured medical reimbursement plan*

*COURT DECISIONS*

*San Diego Union v. City Council, (1983) 146 Cal.App.3d 947*

*ATTORNEY GENERAL OPINIONS*

*57 Ops. Cal. Atty. Gen. 209 (1974)*

*Management Resources:*

*CSBA PUBLICATIONS*

*Superintendent Contract Template, 2015*

*ATTORNEY GENERAL PUBLICATIONS*

*The Brown Act: Open Meetings for Local Legislative Bodies, 2003*

*WEB SITES*

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

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

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

*(11/11 12/15) 6/16*



**Administration**

**Superintendent's Contract**

In approving employment contracts with the Superintendent, the Governing Board wishes to encourage the Superintendent's long-term commitment to the district and community while carefully considering the financial and legal implications of the contract in order to protect the district from any potentially adverse obligations.

The Board shall designate a representative to negotiate with the Superintendent on its behalf and shall consult legal counsel to draft the contract document.

The Board shall deliberate in closed session about the terms of the contract. (Government Code 54957)

Terms of the contract shall remain confidential until the ratification process commences.

The Board shall ratify the Superintendent's contract in an open meeting, which shall be reflected in the Board's minutes. Copies of the contract shall be available to the public upon request. (Government Code 53262)

The contract shall include, but not be limited to, provisions for salary and benefits, annual evaluations, term of the contract, and conditions for termination of the contract. The contract should also include general responsibilities and duties of the Superintendent.

The term of the contract shall be for no more than four years. (Education Code 35031)

During the term of the contract, the Board may reemploy the Superintendent on those terms and conditions mutually agreed upon by the Board and Superintendent. (Education Code 35031)

In the event that the Board determines not to reemploy the Superintendent, the Board shall provide written notice to the Superintendent at least 45 days in advance of the expiration of the term of the contract. (Education Code 35031)

The Superintendent's contract shall include a provision specifying the maximum cash settlement that the Superintendent may receive upon termination of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be no more than the Superintendent's monthly salary multiplied by 18. The cash settlement shall not include any noncash items other than health benefits, which may be continued for the unexpired term of the contract up to 18 months or until the Superintendent finds other employment, whichever occurs first. (Government Code 53260, 53261)

If the Board terminates the Superintendent's contract upon its belief and subsequent confirmation pursuant to an independent audit that the Superintendent has engaged in fraud, misappropriation of funds, or other illegal practices, the maximum settlement shall be within the limits prescribed by law, as determined by an administrative law judge. (Government Code 53260)

Legal Reference:

EDUCATION CODE

35031 Term of employment

41325-41329.3 Conditions of emergency apportionment

GOVERNMENT CODE

53260-53264 Employment contracts

54954 Time and place of regular meetings

54957 Closed session personnel matters

54957.1 Closed session, public report of action taken



**Bylaws of the Board**

***Closed Session Purposes and Agendas***

***\*\*\*Note: Pursuant to Government Code 54962, the Governing Board may hold a closed session only for purposes expressly authorized by the Brown Act (Government Code 54950-54963) or by a provision of the Education Code.\*\*\****

*The Governing Board is committed to complying with state open meeting laws and modeling transparency in its conduct of district business. The Board shall hold closed sessions only for purposes authorized by law. A closed session may be held during a regular, special, or emergency meeting in accordance with law.*

***\*\*\*Note: Government Code 54954.5 provides specific agenda descriptions for most closed session items authorized by the Brown Act.\*\*\****

*Each agenda shall contain a general description of each closed session item to be discussed at the meeting, as required by law. (Government Code 54954.2)*

*(cf. 9320 - Meetings and Notices)*

*(cf. 9322 - Agenda/Meeting Materials)*

***\*\*\*Note: Government Code 54957.7 states that before holding any closed session, the Board must disclose in an open meeting the item(s) to be discussed in the closed session. The Board may either state the information on the agenda or refer the public to the item(s) as listed by number or letter on the agenda. These disclosures may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements. In addition, the Board is required to reconvene in open session upon conclusion of a closed session to report any action taken in the closed session.\*\*\****

*The Board shall disclose in open session the items to be discussed in closed session. In the closed session, the Board may consider only those matters covered in its statement. After the closed session, the Board shall reconvene in open session before adjourning the meeting, and when applicable, shall disclose any action taken in the closed session, in the manner prescribed by Government Code 54957.1. (Government Code 54957.7)*

*The Board shall not disclose any information that is protected by state or federal law. In addition, no victim or alleged victim of tortious sexual conduct or child abuse shall be identified in any Board agenda, notice, announcement, or report required by the Brown Act, unless the identity of the person has previously been publicly disclosed. (Government Code 54957.7, 54961)*

***\*\*\*Note: Pursuant to Government Code 54963, a Board member who discloses confidential information received in a closed session may be referred to the local grand jury or may be subject to action in a court of law. For a definition of confidential information and the actions that may be taken against a Board member if such information is disclosed, see BB 9011 - Disclosure of Confidential/Privileged Information.\*\*\****

*A Board member shall not disclose confidential information received in a closed session unless the Board authorizes the disclosure of that information. (Government Code 54963)*  
*Personnel Matters*

*\*\*\*Note: Government Code 54957 authorizes the use of closed sessions for personnel matters described below. For the purpose of these closed sessions, "employee" includes an officer or independent contractor who functions as an officer or employee but excludes Board members. The Attorney General has concluded that it is appropriate to use a closed session to discuss and evaluate Superintendent performance. (59 Ops.Cal.Atty.Gen. 532 (1976)) However, under the "personnel exception," the Board may not discuss or act upon any proposed change in compensation other than a reduction of compensation that results from the imposition of discipline in closed session under this exception.\*\*\**

*\*\*\*Note: In Fischer v. Los Angeles Unified School District, the court interpreted Government Code 54957 and found that the right to request an open session applies only when the Board hears specific complaints or charges brought against the employee. Thus, the right to request an open session does not apply when the Board is meeting in closed session to consider the appointment, employment, evaluation of performance, discipline, or dismissal of an employee.\*\*\**

*The Board may hold a closed session under the "personnel exception" to consider the appointment, employment, evaluation of performance, discipline, or dismissal of an employee. Such a closed session shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline. (Government Code 54957)*

*\*\*\*Note: Pursuant to Government Code 54957, failure of the Board to give an employee against whom a "specific complaint or charge" has been made the notice described below will render any action taken by the Board in the closed session null and void. Determining whether a "specific complaint or charge" is involved is usually fact-specific and the Board should consult legal counsel as necessary. In Furtado v. Sierra Community College District, the court held that the term "specific complaints or charges" as used in Government Code 54957 does not include negative comments in an employee's performance evaluation. In another decision, Bell v. Vista Unified School District, the court determined that a presentation to the board by a district staff member regarding an employee's violation of a California Interscholastic Federation rule constituted a "complaint or charge" and thus the employee was entitled to 24-hour notice. Yet another ruling, Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, held that when a board rejects its hearing officer's findings of fact and conducts its own hearing, the employee must be given 24-hour notice.\*\*\**

*\*\*\*Note: Furthermore, an Attorney General opinion (78 Ops.Cal.Atty.Gen. 218 (1995)) has clarified that a probationary certificated employee does not have the right to an open session when the Board is discussing whether or not to reemploy him/her for a third consecutive school year. Education Code 44929.21 allows the Board to non-reelect a probationary certificated employee at the end of the first or second school year as long as written notice is given in accordance with law; see AR 4117.6 - Decision Not to Rehire.\*\*\**

*The Board may also hold a closed session to hear complaints or charges brought against an employee by another person or employee, unless the employee requests an open session. Before the Board holds a closed session on specific complaints or charges brought against an employee, the employee shall receive written notice of his/her right to have the complaints or charges heard in open session if desired. This notice shall be delivered personally or by mail at least 24 hours before the time of the session. (Government Code 54957)*

*The Board may hold a closed session to discuss a district employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan. (Government Code 54957.10)*

*Agenda items related to district employee appointments and employment shall describe the position to be filled. Agenda items related to performance evaluations shall specify the title of the employee being reviewed. Agenda items related to employee discipline, dismissal, or release require no additional information. (Government Code 54954.5)*

#### *Negotiations/Collective Bargaining*

*\*\*\*Note: The Educational Employment Relations Act (Government Code 3540-3549.3) makes four specific exemptions from the Brown Act related to negotiations. Government Code 54957.6 provides that for the purpose of closed sessions related to collective bargaining, "employee" includes an officer or independent contractor who functions as an officer or employee but excludes any elected official, Board member, or other independent contractor. \*\*\**

*Unless otherwise agreed upon by the parties involved, the following shall not be subject to the Brown Act: (Government Code 3549.1)*

- 1. Any meeting and negotiating discussion between the district and a recognized or certified employee organization*
- 2. Any meeting of a mediator with either party or both parties to the meeting and negotiating process*
- 3. Any hearing, meeting, or investigation conducted by a factfinder or arbitrator*
- 4. Any executive (closed) session of the district or between the district and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives*

*\*\*\*Note: The Board is authorized pursuant to Government Code 54957.6, the "labor exception," to hold closed sessions with the district's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits to its represented and unrepresented employees, including the Superintendent. The Attorney General has opined in 57 Ops. Cal. Atty. Gen. 209 (1974) that a board may not meet in closed session for such purposes without the use of a designated representative who is involved with the "bona fide"*

*negotiations with represented and/or unrepresented employees. The Attorney General's publication The Brown Act: Open Meetings for Local Legislative Bodies also states that the "labor exception" applies to meeting in closed session to instruct its negotiator concerning negotiations with prospective employees. \*\*\**

*The Board may meet in closed session to review the Board's position and/or instruct its designated representative regarding salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees. Prior to the closed session, the Board shall identify its designated representative in open session. Any closed session held for this purpose may include discussions of the district's available funds and funding priorities, but only insofar as they relate to providing instructions to the Board's designated representative. (Government Code 54957.6)*

*Closed sessions may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. For unrepresented employees, closed sessions held pursuant to Government Code 54957.6 shall not include final action on the proposed compensation of one or more unrepresented employees. (Government Code 54957.6)*

*For represented employees, the Board may also meet in closed session regarding any other matter within the statutorily provided scope of representation. (Government Code 54957.6)*

*The Board also may meet in closed session with a state conciliator or mediator who has intervened in proceedings regarding any of the purposes enumerated in Government Code 54957.6.*

*Agenda items related to negotiations shall specify the name of the district's designated representative(s) attending the closed session. If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative as long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the organization representing the employee(s) or the position title of the unrepresented employee who is the subject of the negotiations. (Government Code 54954.5)*

#### *Matters Related to Students*

*The Board shall meet in closed session to consider the expulsion of a student, unless the student submits a written request at least five days before the date of the hearing that the hearing be held in open session. Regardless of whether the expulsion hearing is conducted in open or closed session, the Board may meet in closed session for the purpose of deliberating and determining whether the student should be expelled. (Education Code 48918)*

*The Board shall meet in closed session to address any student matter that may involve disclosure of confidential student information, or to consider a suspension, disciplinary action, or any other action against a student except expulsion. If a written request for open session is received from the parent/guardian or adult student, it will be honored to the extent that it does not violate the privacy rights of any other student. (Education Code 35146, 48912, 49070)*

*\*\*\*Note: Although Government Code 54954.2 requires the agenda to have a brief general description of all closed session items to be discussed, Government Code 54954.5 provides no specific description of agenda items related to closed sessions authorized by the Education Code. Since the purpose of conducting the closed session is to protect student privacy rights, the following optional paragraph provides that student names shall not be included on the agenda.\*\*\**

*Agenda items related to student matters shall briefly describe the reason for the closed session, such as "student expulsion hearing" or "grade change appeal," without violating the confidentiality rights of individual students. The student shall not be named on the agenda, but a number may be assigned to the student in order to facilitate record keeping. The agenda shall also state that the Education Code requires closed sessions in these cases in order to prevent the disclosure of confidential student record information.*

#### *Security Matters*

*The Board may meet in closed session with the Governor, Attorney General, district attorney, district legal counsel, sheriff or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings; to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service; or to the public's right of access to public services or public facilities. (Government Code 54957)*

*\*\*\*Note: Government Code 54956.5 authorizes an emergency meeting in closed session to meet with the law enforcement officials specified above pursuant to Government Code 54957. Two-thirds of the Board members present at the meeting must agree to the need for the closed session. Those emergency situations that necessitate a need for an emergency meeting are listed in BB 9320 - Meetings and Notices and include a terrorist attack, crippling disaster, or other activity that impairs public health or safety. For a list of actions for which more than a majority vote of the Board is required, see BB 9323.2 - Actions by the Board.\*\*\**

*The Board may meet in closed session during an emergency meeting held pursuant to Government Code 54956.5 to meet with law enforcement officials for the emergency purposes specified in Government Code 54957 if agreed to by a two-thirds vote of the Board members present. If less than two-thirds of the members are present, then the Board must agree by a unanimous vote of the members present. (Government Code 54956.5)*

*Agenda items related to security matters shall specify the name of the law enforcement agency and the title of the officer, or name of applicable agency representative and title, with whom the Board will consult. (Government Code 54954.5)*

#### *Conference with Real Property Negotiator*

*\*\*\*Note: An Attorney General opinion (94 Ops.Cal.Atty.Gen. 82 (2011)) has concluded that only three subjects related to real property negotiations may be considered in closed session: (1)*

*the amount of consideration the local agency is willing to pay or accept in exchange for the real property rights to be acquired or transferred; (2) the form, manner, and timing of how that consideration will be paid; and (3) items that are essential to arriving at the authorized price and payment terms. Although Attorney General opinions are not binding, they are accorded deference by the courts.\*\*\**

*The Board may meet in closed session with its real property negotiator prior to the purchase, sale, exchange, or lease of real property by or for the district in order to grant its negotiator authority regarding the price and terms of payment for the property. (Government Code 54956.8)*

*Before holding the closed session, the Board shall hold an open and public session to identify its negotiator(s) and the property under negotiation and to specify the person(s) with whom the negotiator may negotiate. (Government Code 54956.8)*

*For purposes of real property transactions, negotiators may include members of the Board. (Government Code 54956.8)*

*Agenda items related to real property negotiations shall specify the district negotiator attending the closed session. If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator as long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the negotiating parties and the street address of the real property under negotiation. If there is no street address, the agenda item shall specify the parcel number or another unique reference of the property. The agenda item shall also specify whether instruction to the negotiator will concern price, terms of payment, or both. (Government Code 54954.5)*

#### *Pending Litigation*

*Based on the advice of its legal counsel, the Board may hold a closed session to confer with or receive advice from its legal counsel regarding a pending litigation when a discussion of the matter in open session would prejudice the district's position in the litigation. For this purpose, "litigation" means any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. (Government Code 54956.9)*

*\*\*\*Note: Pursuant to Government Code 54956.9, the district is considered to be a "party," or to have "significant exposure," to a litigation if any of its officers or employees is a party or has significant exposure to the litigation under circumstances specified in items #1 and #2 below.\*\*\**

*Litigation is considered "pending" in any of the following circumstances: (Government Code 54956.9)*

- 1. Litigation to which the district is a "party" has been initiated formally. (Government Code 54956.9(a))*
- 2. A point has been reached where, in the Board's opinion based on the advice of its legal*

*counsel regarding the "existing facts and circumstances," there is a "significant exposure to litigation" against the district, or the Board is meeting solely to determine whether, based on existing facts or circumstances, a closed session is authorized. (Government Code 54956.9(b))*

*Existing facts and circumstances for these purposes are limited to the following: (Government Code 54956.9)*

- a. Facts and circumstances that might result in litigation against the district but which the district believes are not yet known to potential plaintiffs and which do not need to be disclosed.*
  - b. Facts and circumstances including, but not limited to, an accident, disaster, incident, or transactional occurrence which might result in litigation against the district, which are already known to potential plaintiffs and which must be publicly disclosed before the closed session or specified on the agenda.*
  - c. The receipt of a claim pursuant to the Tort Claims Act or a written threat of litigation from a potential plaintiff. The claim or written communication must be available for public inspection.*
- (cf. 3320 - Claims and Actions Against the District)*
- d. A threat of litigation made by a person in an open meeting on a specific matter within the responsibility of the Board.*
  - e. A threat of litigation made by a person outside of an open meeting on a specific matter within the responsibility of the Board, provided that the district official or employee receiving knowledge of the threat made a record of the statement before the meeting and the record is available for public inspection. Such record does not need to identify an alleged victim of tortious sexual conduct or anyone making a threat on his/her behalf or identify an employee who is the alleged perpetrator of any unlawful or tortious conduct, unless the identity of this person has been publicly disclosed.*

*3. Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation. (Government Code 54956.9(c))*

*Before holding a closed session pursuant to the pending litigation exception, the Board shall state on the agenda or publicly announce the subdivision of Government Code 54956.9 under which the closed session is being held. If authority is based on Government Code 54956.9(a), the Board shall either state the title or specifically identify the litigation to be discussed or state that doing so would jeopardize the district's ability to effectuate service of process upon unserved parties or to conclude existing settlement negotiations to its advantage. (Government Code 54956.9)*

*Agenda items related to pending litigation shall be described as a conference with legal counsel regarding either "existing litigation" or "anticipated litigation." (Government Code 54954.5)*

*"Existing litigation" items shall identify the name of the case specified by either the claimant's*

*name, names of parties, or case or claim number, unless the Board states that to identify the case would jeopardize service of process or existing settlement negotiations. (Government Code 54954.5)*

*"Anticipated litigation" items shall state that there is significant exposure to litigation pursuant to Government Code 54956.9(b) and shall specify the potential number of cases. When the district expects to initiate a suit, items related to anticipated litigation shall state that the discussion relates to the initiation of litigation pursuant to Government Code 54956.9(c) and shall specify the potential number of cases. The agenda or an oral statement before the closed session may be required to provide additional information regarding existing facts and circumstances described in item #2 b-e above. (Government Code 54954.5)*

#### *Joint Powers Agency Issues*

*\*\*\*Note: The following section applies to districts participating in a joint powers agency (JPA) for insurance pooling or in a self-insurance authority.\*\*\**

*The Board may meet in closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by a joint powers agency (JPA) formed for the purpose of insurance pooling or self-insurance authority of which the district is a member. (Government Code 54956.95)*

*Closed session agenda items related to liability claims shall specify the claimant's name and the name of the agency against which the claim is made. (Government Code 54954.5)*

*\*\*\*Note: Pursuant to Government Code 54956.96, a JPA may adopt a provision, either through a policy or through the joint powers agreement, authorizing a school district Board member serving on the JPA board to disclose confidential information received during the JPA board's closed session under the circumstances specified below. Government Code 54954.5 provides an agenda description for the purpose of this closed session. The following optional paragraphs are for use by districts that participate in a JPA that has adopted such a provision.\*\*\**

*When the board of the JPA has so authorized and upon advice of district legal counsel, the Board may meet in closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the JPA. During the Board's closed session, a Board member serving on the JPA board may disclose confidential information acquired during a closed session of the JPA to fellow Board members. (Government Code 54956.96)*

*The Board member may also disclose the confidential JPA information to district legal counsel in order to obtain advice on whether the matter has direct financial or liability implications for the district. (Government Code 54956.96)*

*Closed session agenda items related to conferences involving a JPA shall specify the closed session description used by the JPA and the name of the Board member representing the district on the JPA board. Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives shall also be included. (Government Code 54954.5)*

### *Review of Audit Report from California State Auditor's Office*

*\*\*\*Note: Government Code 54956.75 authorizes the Board to meet in closed session to discuss a final draft audit report from the California State Auditor's Office. This authority relates to situations in which a member of the legislature has requested the California State Auditor's Office to audit a school district. This audit is separate from the annual audit that districts must conduct pursuant to Education Code 41020. The law does not authorize the Board to meet in closed session to discuss the district's annual audit.\*\*\**

*Upon receipt of a confidential final draft audit report from the California State Auditor's Office, the Board may meet in closed session to discuss its response to that report. After public release of the report from the California State Auditor's Office, any Board meeting to discuss the report must be conducted in open session, unless exempted from that requirement by some other provision of law. (Government Code 54956.75)*

*Closed session agenda items related to an audit by the California State Auditor's Office shall state "Audit by California State Auditor's Office." (Government Code 54954.5)*

### *Review of Assessment Instruments*

*The Board may meet in closed session to review the contents of any student assessment instrument approved or adopted for the statewide testing system. Before any such meeting, the Board shall agree by resolution to accept any terms or conditions established by the State Board of Education for this review. (Education Code 60617)*

*(cf. 6162.5 - Student Assessment)*

*\*\*\*Note: The following optional paragraph provides for compliance with Government Code 54954.2, which requires the agenda to have a brief general description of all closed session items to be discussed. Government Code 54954.5 provides no specific description of agenda items related to closed sessions authorized by the Education Code.\*\*\**

*Agenda items related to the review of student assessment instruments shall state that the Board is reviewing the contents of an assessment instrument approved or adopted for the statewide testing program and that Education Code 60617 authorizes a closed session for this purpose in order to maintain the confidentiality of the assessment under review.*

### *Legal Reference:*

#### *EDUCATION CODE*

*35145 Public meetings*

*35146 Closed session (re student suspension)*

*44929.21 Districts with ADA of 250 or more*

*48912 Governing board suspension*

*48918 Rules governing expulsion procedures; hearings and notice*

*49070 Challenging content of students records*

*60617 Meetings of governing board*

**GOVERNMENT CODE**

*3540-3549.3 Educational Employment Relations Act*

*6252-6270 California Public Records Act*

*54950-54963 The Ralph M. Brown Act*

**COURT DECISIONS**

*Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners, (2003) 107 Cal.App.4th 860*

*Bell v. Vista Unified School District, (2001) 82 Cal.App. 4th 672*

*Fischer v. Los Angeles Unified School District, (1999) 70 Cal.App. 4th 87*

*Furtado v. Sierra Community College District (1998) 68 Cal.App. 4th 876*

*Roberts v. City of Palmdale, (1993) 5 Cal.App. 4th 363*

*Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, (1968) 263 Cal.App. 2d 41*

*San Diego Union v. City Council, (1983) 146 Cal.App.3d 947*

**ATTORNEY GENERAL OPINIONS**

*94 Ops. Cal. Atty. Gen. 82 (2011)*

*86 Ops. Cal. Atty. Gen. 210 (2003)*

*78 Ops. Cal. Atty. Gen. 218 (1995)*

*59 Ops. Cal. Atty. Gen. 532 (1976)*

*57 Ops. Cal. Atty. Gen. 209 (1974)*

**Management Resources:**

**CSBA PUBLICATIONS**

*The Brown Act: School Boards and Open Meeting Laws, 2009*

**ATTORNEY GENERAL PUBLICATIONS**

*The Brown Act: Open Meetings for Legislative Bodies, 2003*

**LEAGUE OF CALIFORNIA CITIES PUBLICATIONS**

*Open and Public IV: A Guide to the Ralph M. Brown Act, rev. July 2010*

**WEB SITES**

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

*California Attorney General's Office: <http://www.oag.ca.gov>*

*League of California Cities: <http://www.cacities.org>*

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**Bylaws of the Board**

**Closed Session Purposes and Agendas**

The Governing Board may hold closed sessions only for purposes identified in law and placed on the meeting agenda in the manner required by law. The Board may hold a closed session at any time during a regular or special meeting. No closed session may be held during an emergency meeting of the Board.

The Board shall disclose in open meeting the items to be discussed in closed session. In the closed

session, the Board may consider only those matters covered in its statement. (GC 54957.7)

No agenda, notice, announcement, or report required by the Brown Act need identify any victim or alleged victim or tortuous sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

**Personnel Matters**

The Board may hold closed sessions to consider the appointment, employment evaluation of performance, or dismissal of an employee, or to hear complaints or charges against an employee, unless the employee requests a public hearing. These sessions shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline. (Government Code 54957)

Before the Board holds a closed session on specific complaints or charges brought against an employee, the employee shall receive written notice of his/her right to have the complaints or charges heard in open session if desired. This notice shall be delivered personally or by mail at least 24 hours before the time of the session. (Government Code 54957).

Agenda items related to employee appointments shall describe the position to be filled. Agenda items related to performance evaluations shall specify the title of the employee being reviewed. Agenda items related to employee discipline, dismissal or release require no additional information. (Government Code 54954.5)

The Board may hold closed sessions to discuss a district employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan. (Government Code 54957.10)

**Negotiations/Collective Bargaining:**

Unless otherwise agreed upon by the parties involved, the following meetings and executive sessions held for negotiation with represented employees shall not be subject to Brown Act requirements.

1. Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.
2. Any meeting of a mediator with either party or both parties to the meeting and negotiating process.
3. Any hearing, meeting, or investigation conducted by a fact finder or arbitrator.
4. Any executive (closed) session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

Closed sessions shall be for the purpose of reviewing the Board's position and instructing the Board's designated representative. Closed session meetings may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. 9GC 54957.6)

The Board may meet in closed session with the Board's designated representative regarding employee salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees. These closed sessions may include discussions of the District's available funds and funding priorities, but only insofar as they relate to providing instructions to the District's designated representative. (GC 54957.6)

For represented employees, the Board may also meet in closed session to hear any other matter

within the statutorily-provided scope of representation. (GC 54957.6)

For unrepresented employees, closed sessions held pursuant to Government Code 54957.6 shall not include final action on the proposed compensation of one or more un-represented employees. 9GC 54957.6)

The Board also may meet in closed session with a state conciliator or a mediator who has intervened in these proceedings. 9GC 54957.6)

Agenda items related to negotiations shall specify the name of the District's designated

representative(s) attending the closed session. If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session. The agenda shall also specify the name of the organization representing the employee(s) or the position title of the unrepresented employee who is the subject of the negotiations. 9GC 54954.5)

#### Matters Related to Students

The Board shall meet in closed session to consider a suspension, disciplinary action, or any other action, except expulsion, in connection with a student if a public hearing on the matter would violate student privacy rights. If a written request for open session is received from the parent/guardian or adult student, it will be honored to the extent that it does not violate the privacy rights of any other student (Ed code 35146, 48912, 49073-49079).

The Board shall meet in closed session to consider the expulsion of a student, unless the student submits a written request at least five days before the date of the hearing that the hearing be held in open session. Regardless of whether the expulsion hearing is conducted in open or closed session, the Board may meet in closed session for the purpose of deliberating

and determining whether the student should be expelled. (Education Code 48918)

Agenda items related to student matters shall briefly describe the reason for the closed session, such as "student expulsion hearing," "grade change appeal," or "interdistrict attendance request," without violating the confidentiality rights of individual students. The student shall not be named on the agenda, but a number may be assigned to the student in order to facilitate record keeping. The agenda shall also state that the Education Code requires closed sessions in these cases in order to prevent the disclosure of confidential student record information.

#### Security Matters

The Board may meet in closed session with the Attorney General, District Attorney, Sheriff, or Chief of Police, or their respective deputies, on matters posing a threat to the security of public buildings or to the public's right of access to public services or public facilities. (Government Code 54957)

Agenda items related to security matters shall specify the name of the law enforcement agency and the title of the officer with whom the Board will consult. (Government Code 54954.5)

#### Conference with Real Property Negotiator

The Board may meet in closed session with the Board's real property negotiator prior to the purchase, sale, exchange, or lease of real property in order to instruct the negotiator regarding the price and terms of the property. (Government Code 54956.8)

Prior to holding the closed session, the Board shall hold an open and public session to identify its negotiator(s), the property under negotiation and specify the person(s) with whom the negotiator may negotiate. (Government Code 54956.8)

For purposes of real property transactions, negotiators may include members of the Board. (Government Code 54956.8)

Agenda items related to real property negotiations shall specify the District negotiator attending the closed session. If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior

to the closed session. The agenda shall also specify the name of the negotiating parties and the street address of the real property under negotiation. If there is no street address, the agenda items shall specify the parcel number or another unique

reference of the property. The agenda item shall also specify whether instruction to the negotiator will concern price, terms of payment, or both. (GC 54954.5)

#### Pending Litigation

Based on the advice of its legal counsel, the Board may hold a closed session to confer with its legal counsel regarding pending litigation when a discussion of the matter in open session would prejudice the Board's position in the case. For this purpose, "Litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. (Government Code 54956.9)

Litigation is considered "pending" when any of the following circumstances exist:

1. When litigation to which the Board is a party has been initiated formally. (Government Code 54956.9)
2. A point has been reached where, in the Board's opinion based on existing facts and circumstances and the advice of legal counsel, the Board is meeting solely to determine whether based on existing facts or circumstances, a closed session is authorized. (Government Code 54956.9b)
3. Based on existing facts and circumstances, the Board has decided to initiate or is deciding whether to initiate litigation (Government Code 54956.9c)

"Existing facts and circumstances" authorizing a closed session pursuant to Government Code 54956.9(b) are limited to the following:

1. Facts and circumstances that might result in litigation against the District but which the District believes are not yet known to potential plaintiffs and which do not need to be disclosed.
2. Facts and circumstances including, but not limited to, an accident, disaster, incident or transactional occurrence which might result in litigation against the district, which are already known to potential plaintiffs, and which must be publicly disclosed before the closed session or specified on the agenda.
3. The receipt of a claim pursuant to the Tort Claims Act or a written threat of litigation from a potential plaintiff. The claim or written communication must be available for public inspection.

4. A threat of litigation made by a person in an open meeting and related to a matter for which the Board has responsibility.
5. A threat of litigation made by a person outside of an open meeting and related to a matter for which the Board has responsibility, provided that the District official or employee receiving knowledge of the threat made a record of the statement before the meeting and the record is available for public inspection. The record does not need to identify an alleged victim of tortuous sexual conduct or anyone making a threat on their behalf or identify an employee who is the alleged perpetrator of any unlawful or tortuous conduct, unless this identity has already been made public.

Before holding a closed session pursuant to this section, the Board shall state on the agenda or publicly announce the subdivision of Government Code 54956.9 under which the closed session is being held. If authority is based on subdivision (a), the Board shall either state the title or specifically identify the litigation to be discussed or state that doing so would jeopardize the District's ability to effectuate service of process upon un-served parties or to conclude existing settlement negotiations to its advantage. (Government Code 54956.9)

Agenda items related to pending litigation shall be described as a conference with legal counsel regarding "Existing Litigation" or "Anticipated Litigation." (Government Code 54954.5)

"Existing litigation" items shall identify the name of the case specified by either the claimant's name, names of parties and case or claim number, unless the Board states that to identify the case would jeopardize service of process or existing settlement negotiations. (Government Code 54954.5)

"Anticipated litigation" items shall state that there is significant exposure to litigation pursuant to Government Code 54956.9(b) and shall specify the potential number of cases. When the District expects to initiate a suit, items related to anticipated litigation shall state that the discussion relates to the initiation of litigation pursuant to Government Code

54956.9(c) and shall specify the potential number of cases.

The agenda or an oral statement before the closed session may also be required to provide

additional information pursuant to Items # 2-5 above (GC 54954.5, 54956.9b (3) (B-E))

#### JPA/Self-Insurance Liability Claims

The Board may meet in closed session to discuss a claim against a joint powers authority or self-insurance authority of which it is a member, for the payment of tort liability losses, public liability losses, or workers' compensation liability.

Closed session agenda items related to liability claims shall specify the claimant's name and the name of the agency against which the claim is made. (Government Code 54956.95)

#### Review of Assessment Instruments

The Board may meet in closed session to review the contents of any student assessment instrument approved or adopted for the statewide testing system. Before any such meeting, the Board shall agree by resolution to accept any terms or conditions established by the State Board of Education for this review. (ECD 60617)

Agenda items related to the review of student assessment instruments shall state that the Board is reviewing the contents of an assessment instrument approved or adopted for the statewide testing program and that the Education Code requires closed session for this purpose in order to maintain the confidentiality of the assessment under review.

#### Legal Reference:

##### EDUCATION CODE

35145 Public meetings

35146 Closed session (re student suspension)

44929.21 Districts with ADA of 250 or more

48918 Rules governing expulsion procedures; hearings and notice

49073 Release of directory information

49076 Access to records by persons without written parental consent

49079 Notification to teacher re: students whose actions are grounds for suspension or expulsion

60617 Meetings of governing board

##### GOVERNMENT CODE

3540-3549.3 Educational Employment Relations Act

6250-6268 California Public Records Act

54950-54962 The Ralph M. Brown Act

##### COURT DECISIONS

Bell v. Vista Unified School District, (2001) 82 Cal.App. 4th 672

Fischer v. Los Angeles Unified School District, (1999) 70 Cal.App. 4th 87

Furtado v. Sierra Community College District, (1998) 68 Cal. App. 4th 876

Roberts v. City of Palmdale, (1993) 5 Cal.4th 363

Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, (1968) 263 Cal.App. 2d 41, 69 Cal. Rptr. 480

##### ATTORNEY GENERAL OPINIONS

78 Ops.Cal.Atty.Gen. 218 (1995)

59 Ops.Cal.Atty.Gen. 532 (1976)

**Personnel**

***Family Care and Medical Leave***

*\*\*\*Note: The following optional administrative regulation addresses mandatory subjects of bargaining. The laws referenced in this regulation provide minimum amounts of leave which the district must grant its employees if more generous benefits are not provided as part of its collective bargaining agreement. Any covered subject that is already addressed in the district's collective bargaining agreements should be deleted from this administrative regulation.\*\*\**

*\*\*\*Both federal and state law provide for family care and medical leave (29 USC 2601-2654, the Family and Medical Leave Act of 1993 (FMLA), and Government Code 12945.1-12945.2, the California Family Rights Act (CFRA)). However, these laws do not always provide identical rights or operate in the same manner. For example, pregnancy as a "serious health condition" is covered under FMLA but not under CFRA. Instead, under California law, a female employee who is disabled due to pregnancy, childbirth, or a related medical condition is entitled to pregnancy disability leave (PDL) pursuant to Government Code 12945.\*\*\**

*\*\*\*The California Fair Employment and Housing Council's final revised CFRA regulations, effective July 1, 2015, are incorporated throughout this administrative regulation where relevant. 2 CCR 11087-11098, as retitled, renumbered, and amended by Register 2015, No. 17, have adopted and in several instances clarified many of the provisions in 29 CFR 825.100-825.127, the implementing regulations for FMLA. Where there is a difference between state and federal law, the law that grants the greatest benefits generally controls. In those situations, legal counsel should be consulted as needed.\*\*\**

*The district shall not deny any eligible employee his/her right to family care, medical, or pregnancy disability leave (PDL) pursuant to the Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), or the Fair Employment and Housing Act (FEHA) or restrain or interfere with the employee's exercise of such right. In addition, the district shall not discharge an employee or discriminate or retaliate against him/her for taking such leave or for his/her opposition to or challenge of any unlawful district practice in relation to any of these laws or for his/her involvement in any related inquiry or proceeding. (Government Code 12945, 12945.2; 2 CCR 11094; 29 USC 2615)*

***Definitions***

*The words and phrases defined below shall have the same meaning throughout this administrative regulation except where a different meaning is otherwise specified.*

*Child (son or daughter) means a biological, adopted, or foster child; a stepchild; a legal ward; or a child to whom the employee stands in loco parentis, as long as the child is under 18 years of age or an adult dependent child. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611)*

*Eligible employee for FMLA and CFRA purposes means an employee who has been employed with the district for at least 12 months and who has at least 1,250 hours of service with the district during the previous 12-month period. However, these requirements shall not apply when an employee applies for PDL. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.110)*

*Employee disabled by pregnancy means a woman who, in the opinion of her health care provider, is: (2*

1. *Unable because of pregnancy to perform any one or more of the essential functions of her job or to perform any of them without undue risk to herself, her pregnancy's successful completion, or to other persons*

2. *Suffering from severe "morning sickness" or needs to take time off for prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, postpartum depression, childbirth, loss or end of pregnancy, recovery from childbirth or loss or end of pregnancy, or any other pregnancy-related condition*

*Parent means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child. Parent does not include a spouse's parents. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.122)*

*\*\*\*Note: 2 CCR 11087, effective July 1, 2015, clarifies that a "serious health condition" could arise from injuries that are not work-related and includes treatment for substance abuse. \*\*\**

*Serious health condition means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or his/her child, parent, or spouse, including, but not limited to, treatment for substance abuse, that involves either of the following: (Government Code 12945.2; 2 CCR 11087, 11097; 29 USC 2611; 29 CFR 825.113-825.115)*

1. *Inpatient care in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity*

*A person is considered an inpatient when a health care facility formally admits him/her to the facility with the expectation that he/she will remain overnight and occupy a bed, even if it later develops that the person can be discharged or transferred to another facility and does not actually remain overnight.*

*Incapacity means the inability to work, attend school, or perform other regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.*

2. *Continuing treatment or continuing supervision by a health care provider, including one or more of the following:*

a. *A period of incapacity of more than three consecutive full days*

b. *Any period of incapacity or treatment for such incapacity due to a chronic serious health condition*

c. *Any period of incapacity due to pregnancy or for prenatal care under FMLA*

d. *Any period of incapacity which is permanent or long term due to a condition for which treatment may not be effective*

e. *Any period of absence to receive multiple treatments, including recovery, by a health care provider*

*\*\*\*Note: Family Code 300, as amended by SB 1306 (Ch. 82, Statutes of 2014), defines marriage as a personal relationship arising out of a civil contract between "two persons" rather than between a man and woman. In addition, pursuant to Family Code 297.5, registered domestic partners have the same rights,*

*protections, and benefits as spouses. \*\*\**

*Spouse means a partner in marriage as defined in Family Code 300, including same sex partners in marriage, or a registered domestic partner within the meaning of Family Code 297-297.5. (Family Code 297, 297.5, 300; 2 CCR 11087; 29 CFR 825.122)*

### *Eligibility*

*\*\*\*Note: Pursuant to Government Code 12945.2 and 29 USC 2611, a district is required to grant family care and medical leave to an eligible employee for any of the reasons stated below, except where the district employs fewer than 50 employees within 75 miles of the worksite where the employee requesting the leave is employed. \*\*\**

*The district shall grant FMLA or CFRA leave to eligible employees for any of the following reasons: (Government Code 12945.2; 29 USC 2612; 29 CFR 825.112)*

- 1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child (baby bonding)*
- 2. To care for the employee's child, parent, or spouse with a serious health condition*
- 3. The employee's own serious health condition that makes him/her unable to perform one or more essential functions of his/her position*

*\*\*\*Note: Pursuant to 29 CFR 825.126, FMLA military family leave is available to any eligible employee for a qualifying exigency while the employee's spouse, son, daughter, or parent who is a military member is on covered active duty during deployment to a foreign country. For requirements related to qualifying exigency leave, see the section "Military Family Leave Resulting from Qualifying Exigencies" below. \*\*\**

- 4. Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)*

*\*\*\*Note: Pursuant to 29 CFR 825.127, military caregiver leave is available to any eligible employee who is a family member of a covered servicemember with a serious injury or illness. For requirements related to military caregiver leave, see the section on "Military Caregiver Leave" below. \*\*\**

- 5. To care for a covered servicemember with a serious injury or illness if the covered servicemember is the employee's spouse, child, parent, or next of kin, as defined*

*\*\*\*Note: Under federal law, pregnancy as a "serious health condition" is covered as part of FMLA leave. However, disability due to pregnancy is explicitly excluded from coverage under CFRA (2 CCR 11093). Instead, pursuant to Government Code 12926 and 12945, any California employee who is "disabled because of pregnancy, childbirth, or related medical conditions" is entitled to unpaid PDL of up to four months if the employer has five or more employees. Therefore, such an employee is entitled to up to four months of PDL and an additional 12 weeks of CFRA leave following the birth of the child. \*\*\**

*\*\*\*Additionally, pursuant to 2 CCR 11037, PDL is not subject to eligibility requirements for other FMLA and CFRA leaves, such as minimum hours worked or length of service. \*\*\**

*In addition, the district shall grant PDL to any female employee who is disabled by pregnancy, childbirth, or other related medical condition. (Government Code 12945; 2 CCR 11037)*

### *Terms of Leave*

*\*\*\*Note: Leaves common to CFRA and FMLA run concurrently so that total leave to which an employee is entitled would be 12 work weeks.\*\*\**

*An eligible employee shall be entitled to a total of 12 work weeks of FMLA or CFRA leave during any 12-month period, except in the case of leave to care for a covered servicemember as provided under "Military Caregiver Leave" below. To the extent allowed by law, CFRA and FMLA leaves shall run concurrently. (Government Code 12945.2; 29 USC 2612)*

*\*\*\*Note: To determine the 12-month period in which the leave entitlement occurs, the district may use any of the methods identified in 29 CFR 825.200 and specified in options #1-4 below. However, a district may choose not to use any of these options and may instead choose some other fixed 12-month period. Whichever option is selected, it must be applied uniformly to all employees. If the district fails to select a method for calculating the 12-month period, the method that provides the most beneficial outcome for the employee will be used. Pursuant to 2 CCR 11090, if the district decides to change the calculation method, it must provide at least 60 days' notice to all employees.\*\*\**

*This 12-month period shall coincide with the fiscal year. (29 CFR 825.200)*

*\*\*\*Note: 2 CCR 11042 clarifies that the four months of PDL to which an employee is entitled means the number of days or hours that the employee would normally work within the four calendar months.\*\*\**

*In addition, for each pregnancy, any female employee who is disabled by pregnancy, childbirth, or other related condition shall be entitled to PDL for the period of the disability not to exceed four months. For a part-time employee, the four months shall be calculated on a proportional basis. (Government Code 12945; 2 CCR 11042)*

*\*\*\*Note: While leaves common to CFRA and FMLA run concurrently, PDL is separate and distinct from CFRA leave. Consequently, pursuant to 2 CCR 11046, a female employee who is "disabled by pregnancy" may be entitled to up to four months of PDL, followed by 12 work weeks of CFRA leave for the birth of the child (baby bonding). Determining which leaves run concurrently is a complex endeavor and districts should consult legal counsel as needed.\*\*\**

*PDL shall run concurrently with FMLA leave for disability caused by an employee's pregnancy. At the end of the employee's FMLA leave for disability caused by pregnancy, or at the end of four months of PDL, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 work weeks, for the reason of the birth of her child or to bond with or care for the child. (Government Code 12945, 12945.2; 2 CCR 11046, 11093)*

*Leave taken for the birth or placement of a child must be concluded within the 12-month period beginning on the date of the birth or placement of the child. Such leave does not need to be taken in one continuous period of time. (2 CCR 11090; 29 USC 2612)*

*\*\*\*Note: The following optional paragraph is for use by districts that limit family care and medical leave related to the birth or placement of a child to a total of 12 work weeks when both parents work for the district. However, pursuant to 2 CCR 11088, such limit on employees' entitlement to family care and*

*medical leave for any other qualifying purpose is prohibited.\*\*\**

*If both parents of a child work for the district, their family care and medical leave related to the birth or placement of the child shall be limited to a combined total of 12 work weeks. This restriction shall apply regardless of the legal status of both parents' relationship. (Government Code 12945.2; 2 CCR 11088; 29 USC 2612)*

#### *Use/Substitution of Paid Leave*

*An employee shall use his/her accrued vacation leave, other accrued time off, and any other paid time off negotiated with the district for any otherwise unpaid FMLA or CFRA leave not involving his/her own serious health condition. For PDL, CFRA, or FMLA leave due to an employee's own serious health condition, the employee shall use accrued sick leave and may use accrued vacation leave and other paid time off at his/her option. (Government Code 12945, 12945.2; 2 CCR 11044; 29 USC 2612)*

*The district and employee may also negotiate for the employee's use of any additional paid or unpaid time off instead of using the employee's CFRA leave. (2 CCR 11092)*

#### *Intermittent Leave/Reduced Work or Leave Schedule*

*PDL and family care and medical leave for the serious health condition of an employee or his/her child, parent, or spouse may be taken intermittently or on a reduced work or leave schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, the district shall limit leave increments to the shortest period of time that the district's payroll system uses to account for absences or use of leave provided it is not to be greater than one hour. (2 CCR 11042, 11090; 29 USC 2612)*

*\*\*\*Note: Generally, the minimum duration of CFRA leave to care for a child (baby bonding) is two weeks. However, pursuant to 2 CCR 11090, the district must grant a request for CFRA leave of less than two weeks duration on any two occasions and may grant additional requests.\*\*\**

*The basic minimum duration of leave for the birth or placement of a child shall be two weeks. However, the district shall grant a request for such leave of less than two weeks on any two occasions. (2 CCR 11090; 29 USC 2612)*

*\*\*\*Note: Pursuant to 2 CCR 11041, the district must accommodate the transfer request of a pregnant employee to the same extent that it accommodates transfer requests for other temporarily disabled employees.\*\*\**

*The district may require an employee to transfer temporarily to an available alternative position if the employee is pregnant and provides medical certification from her health care provider of a medical need for intermittent leave or leave on a reduced work or leave schedule or if the employee's need for the intermittent leave or leave on a reduced work or leave schedule is foreseeable based on his/her planned medical treatment or that of a family member. This alternative position must have equivalent pay and benefits and must better accommodate recurring periods of leave than the employee's regular job, and the employee must be qualified for the position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work or leave schedule. (2 CCR 11041, 11090; 29 USC 2612)*

#### *Request for Leave*

*\*\*\*Note: Pursuant to 2 CCR 11050 and 11091, an employee is required to notify the district of the need to take PDL or family care and medical leave. The employee must provide at least verbal notice sufficient to make the district aware that the employee needs qualifying leave, and the anticipated timing and duration of the leave. However, the employee does not need to assert rights under CFRA or FMLA or even mention CFRA or FMLA to meet the notice requirement, but must state the reason the leave is needed. Effective July 1, 2015, 2 CCR 11091 requires the district to respond to leave requests as soon as practicable and, in any event, no later than five business days after receiving the employee's request. The district must also attempt to respond to the leave request before the date the leave is due to begin. If there is a question about whether leave is FMLA/CFRA qualifying or if the district is considering denying CFRA leave based on an employee's refusal to provide further information, legal counsel should be consulted.\*\*\**

*The district shall consider an employee's request for PDL or family care and medical leave only if the employee provides at least verbal notice sufficient to make the district aware of the need to take the leave and the anticipated timing and duration of the leave. (2 CCR 11050, 11091)*

*For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement. However, he/she must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and medical leave, the Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 11091)*

*The district shall respond to requests for leave as soon as practicable, but no later than five business days after receiving the employee's request. (2 CCR 11091)*

*\*\*\*Note: Both 29 CFR 825.300 and 2 CCR 11091 require the district to provide an employee with notice of the designation of leave as either qualifying for CFRA or FMLA protection. See section entitled "Notifications" below for further requirements of this "designation notice" as well as other required notifications.\*\*\**

*\*\*\*Pursuant to 2 CCR 11091, an employee has the obligation to respond to questions designed to determine whether an absence is potentially CFRA qualifying. If the district is unable to determine whether requested leave is CFRA qualifying because of employee's refusal to respond to its inquiries, the employee may be denied CFRA protection.\*\*\**

*Based on the information provided by the employee, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. Failure of an employee to respond to permissible inquiries regarding the leave request may result in denial of CFRA protection if the district is unable to determine whether the leave is CFRA qualifying. (2 CCR 11091; 29 CFR 825.300)*

*\*\*\*Note: Pursuant to 2 CCR 11091, the district may require an employee to provide at least 30 days advance notice of the need for family care and medical leave, if the need is foreseeable. If the district requires such advance notice from employees, then the district's notification of FMLA/CFRA rights must so specify; see section below entitled "Notifications." \*\*\**

*\*\*\*Pursuant to 2 CCR 11050, an employee requesting PDL is required to provide the district at least 30 days advance notice if the need for PDL is foreseeable.\*\*\**

*When an employee is able to foresee the need for the PDL or family care and medical leave at least 30 days*

*in advance of the leave, the employee shall provide the district with at least 30 days advance notice before the leave. When the 30 days notice is not practicable because of a lack of knowledge of when leave will be required to begin, a change in circumstances, a medical emergency, or other good cause, the employee shall provide the district with notice as soon as practicable. Failure of an employee to provide required notice may result in a denial of leave. (2 CCR 11050, 11091)*

*In all instances, the employee shall consult with the Superintendent or designee and make a reasonable effort to schedule, subject to the health care provider's approval, any planned appointment or medical treatment or supervision so as to minimize disruption to district operations. (Government Code 12945.2; 2 CCR 11050, 11091)*

### *Certification of Health Condition*

*\*\*\*Note: The following optional section is for use by districts that require an employee to submit a medical certification of the need for leave along with the request for PDL or family care and medical leave for his/her own serious health condition or to care for a child, parent, or spouse with a serious health condition. In order to help avoid claims of discrimination, the district should generally treat all employees uniformly; thus, districts using this section should request a medical certification from all employees.\*\*\**

*\*\*\*Districts requiring written medical certification from employees who request reasonable accommodation, transfer, or disability leave because of pregnancy may develop their own form, utilize one provided by the employee's health care provider, or use the form provided in 2 CCR 11050 or 11097, as applicable.\*\*\**

*Within five business days of an employee's request for family care and medical leave for his/her own or his/her child's, parent's, or spouse's serious health condition, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave. Upon receiving the district's request, the employee shall provide the certification within 15 days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR 11091; 29 CFR 825.305)*

*The certification shall include the following: (Government Code 12945.2; 2 CCR 11087; 29 USC 2613)*

- 1. The date on which the serious health condition began*
- 2. The probable duration of the condition*

*\*\*\*Note: Item #3 below addresses an eligible employee's request for leave to care for his/her child, parent, or spouse. In such a case, 2 CCR 11087 provides that the health care provider's certification need not identify the serious health condition involved.\*\*\**

- 3. If the employee is requesting leave to care for a child, parent, or spouse with a serious health condition, both of the following:*
  - a. Statement that the serious health condition warrants the participation of the employee to provide care, such as by providing psychological comfort, arranging for third party care, or directly providing or participating in the medical care of the child, parent, or spouse during a period of the treatment or supervision*
  - b. Estimated amount of time the health care provider believes the employee needs to care for the child,*

parent, or spouse

4. If the employee is requesting leave because of his/her own serious health condition, a statement that due to the serious health condition, he/she is unable to work at all or is unable to perform one or more essential functions of his/her job

5. If the employee is requesting leave for intermittent treatment or on a reduced work or leave schedule for planned medical treatment, a statement of the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave

When an employee has provided sufficient medical certification to enable the district to determine whether the employee's leave request is FMLA/CFRA-eligible, the Superintendent or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The Superintendent or designee may also retroactively designate leave as FMLA/CFRA leave as long as appropriate notice is given to the employee and there is no harm or injury to the employee. (2 CCR 11091; 29 CFR 825.301)

If the Superintendent or designee doubts the validity of a certification that accompanies a request for leave for the employee's own serious health condition, he/she may require the employee to obtain a second opinion from a district-approved health care provider, at district expense. If the second opinion is contrary to the first, the Superintendent or designee may require the employee to obtain a third medical opinion from a third health care provider approved by both the employee and the district, again at district expense. The opinion of the third health care provider shall be final and binding. (Government Code 12945.2; 2 CCR 11091; 29 USC 2613)

For PDL, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is unforeseen, the Superintendent or designee shall request the medical certification within two business days after the leave commences. The Superintendent or designee may request certification at some later date if he/she has reason to question the appropriateness of the leave or its duration. (2 CCR 11050)

For PDL that is foreseeable and for which at least 30 days notice has been given, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the certification within the time frame specified by the Superintendent or designee which must be at least 15 days after the request, unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts. (2 CCR 11050)

Medical certification for PDL purposes shall include a statement that the employee needs to take the leave because she is disabled by pregnancy, childbirth, or a related medical condition, the date on which the employee became disabled because of pregnancy, and the estimated duration of the leave. (2 CCR 11050)

If additional PDL or family care and medical leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification in the manner specified for the leave. (Government Code 12945.2; 2 CCR 11050; 29 USC 2613)

\*\*\*Note: Government Code 12940 and other provisions of the California Genetic Information Nondiscrimination Act of 2011 prohibit employers from requesting or requiring genetic information of employees or family members of employees unless specifically authorized by law. A district which believes that an employee's leave may require obtaining this information should consult with legal counsel.\*\*\*

*The Superintendent or designee shall not request any genetic information related to an employee except as authorized by law in accordance with the California Genetic Information Nondiscrimination Act of 2011.*

#### *Release to Return to Work*

*\*\*\*Note: The following optional section is for use by districts that choose to require a return-to-work certification and may be modified to list the specific positions for which certification is required. Pursuant to 2 CCR 11091, the district may require an employee to submit a return-to-work certification from his/her health provider, stating that he/she is able to return to work. However, this requirement may only be made if the district has a uniformly applied practice of requiring such releases when employees return to work after illness, injury, or disability and the practice is not forbidden by its collective bargaining agreement. 2 CCR 11050 has similar requirements when an employee is returning to work after PDL. \*\*\**

*\*\*\*Effective July 1, 2015, 2 CCR 11091 requires all fitness-for-duty examinations after an employee's return from a CFRA leave to be job-related and consistent with business necessity. \*\*\**

*Upon expiration of an employee's PDL or family care and medical leave taken for his/her own serious health condition, the employee shall present certification from the health care provider that he/she is able to resume work.*

*\*\*\*Note: Pursuant to 29 CFR 825.312, when the health care provider certifies that the employee is able to resume work, the district may also require the health care provider to address the employee's ability to perform the essential functions of the job. If such a requirement is imposed, then the district must provide the employee with a list of the essential functions of his/her job with the "designation notice"; see section entitled "Notifications" below. \*\*\**

*\*\*\*The following paragraph is optional and should be deleted by districts that do not require certification of an employee's ability to perform the essential functions of the job. \*\*\**

*The certification from the employee's health care provider shall address the employee's ability to perform the essential functions of his/her job.*

#### *Rights to Reinstatement*

*\*\*\*Note: Pursuant to Government Code 12945.2, 2 CCR 11043 and 11089, and 29 USC 2614, an employee on PDL or family care and medical leave has the right to be reinstated to the same or a comparable position when he/she returns from such leave. However, such an employee has no greater right to reinstatement or other benefits than he/she would have if he/she had been continuously employed. In addition, in certain situations described below, the district may be relieved of the obligation to reinstate an employee. \*\*\**

*\*\*\*The process for determining whether an employee is a "key employee" to whom the guarantee of reinstatement would not apply requires a detailed analysis and specific notifications to the employee. Legal counsel should be consulted if the district intends to deny leave or reinstatement. \*\*\**

*Upon granting an employee's request for PDL or FMLA/CFRA leave, the Superintendent or designee shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (Government Code 12945.2; 2 CCR 11043, 11089; 29 USC 2614)*

*However, the district may refuse to reinstate an employee returning from FMLA or CFRA leave to the same*

or a comparable position if all of the following apply: (Government Code 12945.2; 2 CCR 11089; 29 USC 2614)

1. The employee is a salaried "key employee" who is among the highest paid 10 percent of district employees who are employed within 75 miles of the employee's worksite.
2. The refusal is necessary to prevent substantial and grievous economic injury to district operations.
3. The district informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service.

\*\*\*Note: Pursuant to 2 CCR 11089, as amended by Register 2015, No. 17, and 29 CFR 825.216, an employee who obtains FMLA or CFRA leave fraudulently is not protected by its job restoration provisions.\*\*\*

The district may also refuse to reinstate an employee to the same or a comparable position if the FMLA/CFRA leave was fraudulently obtained by the employee. (2 CCR 11089; 29 CFR 825.216)

The district may refuse to reinstate an employee to the same position after taking PDL if, at the time the reinstatement is requested, the employee would not otherwise have been employed in that position for legitimate business reasons unrelated to the employee's PDL. (2 CCR 11043)

#### *Maintenance of Benefits/Failure to Return from Leave*

During the period when an employee is on PDL or family care and medical leave, he/she shall maintain his/her status with the district and the leave shall not constitute a break in service for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. (Government Code 12945.2; 2 CCR 11092; 29 USC 2614)

\*\*\*Note: Pursuant to 2 CCR 11044 and 11092, the time that the district maintains and pays for group health coverage during PDL shall not be used to meet its obligation to pay for 12 weeks of group health coverage during leave taken under CFRA, even where the district designates the PDL as FMLA or CFRA leave. The entitlements to employer-paid group health coverage during PDL and during CFRA are two separate and distinct entitlements.\*\*\*

For up to a maximum of four months for PDL and 12 work weeks for other family care and medical leave, the district shall continue to provide an eligible employee the group health plan coverage that was in place before he/she took the leave. The employee shall reimburse the district for premiums paid during the leave if he/she fails to return to district employment after the expiration of all available leaves and the failure is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond his/her control. (Government Code 12945.2; 2 CCR 11044, 11092; 29 USC 2614; 29 CFR 825.213)

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

In addition, during the period when an employee is on PDL or family care and medical leave, the employee shall be entitled to continue to participate in other employee benefit plans including life insurance, short-term or long-term disability insurance, accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to an unpaid leave taken for any other purpose. However, for purposes of pension and retirement plans, the district shall

not make plan payments for an employee during any unpaid portion the leave period and the leave period shall not be counted for purposes of time accrued under the plan. (Government Code 12945.2; 2 CCR 11044, 11092)

### *Military Family Leave Resulting from Qualifying Exigencies*

*\*\*\*Note: The following optional section reflects 29 USC 2611 and 2612 which authorize an eligible employee to take up to 12 work weeks of unpaid FMLA leave to attend to an "exigency" arising out of the fact that the employee's spouse, child, or parent is on active duty or on call to active duty status in the National Guard or Reserves, or is a member of the regular Armed Forces on deployment to a foreign country.\*\*\**

*\*\*\*Pursuant to 29 CFR 825.200, an employee is entitled to 12 work weeks of qualifying exigency leave during each 12-month period established by the district; see section entitled "Terms of Leave" above. According to the U.S. Department of Labor's (DOL) Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers, an employee may take all 12 weeks of his/her FMLA leave entitlement as a qualifying exigency leave or take a combination of the 12 weeks of leave for both qualifying exigency leave and other FMLA leave, such as leave for a serious health condition.\*\*\**

*\*\*\*Because CFRA does not cover similar leave, CFRA leave is not exhausted when utilizing military family leave.\*\*\**

*An eligible employee may take up to 12 work weeks of unpaid FMLA leave, during each 12-month period established by the district in the section entitled "Terms of Leave" above, for one or more qualifying exigencies while his/her child, parent, or spouse who is a military member is on covered active duty or on call to covered active duty status. (29 USC 2612; 29 CFR 825.126)*

*Covered active duty means duty during the deployment of a member of the regular Armed Forces to a foreign country or duty during the deployment of a member of the National Guard or Reserves to a foreign country under a call or an order to active duty in support of a contingency operation pursuant to law. (29 USC 2611; 29 CFR 825.126)*

*\*\*\*Note: Pursuant to 29 CFR 825.126, a "qualifying exigency" may include "any other event" agreed to by the district and the employee. As an example of such other event, the DOL's Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers lists leave to spend time with the military member either prior to or post deployment or to attend to household emergencies that would normally have been handled by the military member.\*\*\**

*Qualifying exigencies include time needed to: (29 CFR 825.126)*

- 1. Address issues arising from short notice deployment of up to seven calendar days from the date of receipt of call or order of short notice deployment*
- 2. Attend military events and related activities, such as any official ceremony or family assistance program related to the covered active duty or call to covered active duty status*
- 3. Arrange child care or attend school activities arising from the covered active duty or call to covered active duty, such as arranging for alternative child care, enrolling or transferring a child to a new school, or attending meetings*

4. *Make or update financial and legal arrangements to address a military member's absence*
5. *Attend counseling provided by someone other than a health care provider*
6. *Spend time (up to 15 days of leave per instance) with a military member who is on short-term, temporary, Rest and Recuperation leave during deployment*
7. *Attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings*
8. *Care for a military member's parent who is incapable of self-care when the care is necessitated by the military member's covered active duty*
9. *Address any other event that the employee and district agree is a qualifying exigency*

*The employee shall provide the Superintendent or designee with notice of the need for the qualifying exigency leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR 825.302)*

*\*\*\*Note: The district may require the employee to provide certification of the qualifying exigency containing the information specified in 29 CFR 825.309. A form has been developed by DOL for this purpose and is available on its web site.\*\*\**

*\*\*\*The following paragraph is optional and should be deleted by those districts that do not require such documentation. In order to help avoid claims of discrimination, the district should generally treat all employees uniformly; thus, districts using this paragraph should request certification from all employees requesting such leave.\*\*\**

*An employee who is requesting leave for qualifying exigencies shall provide the Superintendent or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Superintendent or designee with certification of the qualifying exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309.*

*The employee's qualifying exigency leave may be taken on an intermittent or reduced work or leave schedule basis. (29 CFR 825.302)*

*\*\*\*Note: Pursuant to 29 USC 2612 and 29 CFR 825.207, the district has the option to require or give employees discretion to use paid leave when taking FMLA/CFRA leave; see Options 1 and 2 in the section entitled "Use/Substitution of Paid Leave" above. Whichever option is selected by the district with regards to FMLA/CFRA leave is also applicable to qualified exigency leave.\*\*\**

*During the period of qualified exigency leave, the district's rule regarding an employee's use of his/her accrued vacation leave and any other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.*

#### *Military Caregiver Leave*

*\*\*\*Note: 29 USC 2612 and 29 CFR 825.127 authorize an eligible employee to take up to 26 work weeks of unpaid military caregiver leave, as defined below, during a single 12-month period. As is the case with other FMLA leaves, only districts that employ at least 50 employees within 75 miles of the worksite where*

*the employee requesting the leave is employed are required to grant the military caregiver leave; see the section entitled "Eligibility" above.\*\*\**

*\*\*\*According to the DOL's Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers, if an employee does not use the entire 26-week entitlement in a single 12-month period, unused weeks cannot be carried over into another 12-month period. However, the employee may qualify for nonmilitary FMLA leave.\*\*\**

*The district shall grant an eligible employee up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date the leave is taken, to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, the employee must be the spouse, son, daughter, parent, or next of kin of the covered servicemember. This 26-week period is not in addition to, but rather is inclusive of, the 12 work weeks of leave that may be taken for other FMLA qualifying reasons. (29 USC 2611, 2612; 29 CFR 825.127)*

*Covered servicemember may be: (29 CFR 825.127)*

- 1. A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a serious injury or illness*
- 2. A veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran*

*\*\*\*Note: Unlike the provisions for other FMLA/CFRA leave, 29 CFR 825.127 places no age limit on the definition of "son or daughter," as detailed below. In addition, 29 CFR 825.127 defines "next of kin" of a covered servicemember in relation to military caregiver leave.\*\*\**

*Son or daughter of a covered servicemember means the biological, adopted, or foster child, stepchild, legal ward, or a child of any age for whom the covered servicemember stood in loco parentis. (29 CFR 825.127)*

*Parent of a covered servicemember means the covered servicemember's biological, adopted, step, or foster parent, or any other individual who stood in loco parentis to the covered servicemember (except "parents in law"). (29 CFR 825.127)*

*Next of kin means the nearest blood relative to the covered servicemember, or as designated in writing by the covered servicemember. (29 USC 2611, 2612)*

*Outpatient status means the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 USC 2611; 29 CFR 825.127)*

*\*\*\*Note: 29 USC 2611 defines "serious injury or illness" for active members of the Armed Forces and for veterans, as provided below. Pursuant to 29 CFR 825.127, one of the four conditions listed in item #2 below must be present for a veteran's injury or illness to qualify as a "serious injury or illness" for the purpose of this leave.\*\*\**

*Serious injury or illness means: (29 USC 2611; 29 CFR 825.127)*

1. For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty while on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

2. For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:

a. A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered him/her unable to perform the duties of his/her office, grade, rank, or rating

b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition

c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to his/her military service or that would do so but for treatment received by the veteran

d. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers

\*\*\*Note: As is the case for other types of FMLA/CFRA leave, 29 CFR 825.302 and 825.303 require the employee, when the need for the leave is foreseeable, to provide 30 days advance notice to the district before the leave is to begin.\*\*\*

The employee shall provide reasonable and practicable notice of the need for the leave in accordance with the procedures in the section entitled "Request for Leave" above.

\*\*\*Note: 29 CFR 825.310 authorizes the district to require employees to provide certification of the need for the leave, which is to be completed by an authorized health care provider of the covered servicemember.\*\*\*

\*\*\*The following paragraph is optional. In order to help avoid claims of discrimination, the district should generally treat all employees uniformly; thus, districts using this paragraph should request a medical certification from all employees requesting such leave.\*\*\*

An employee requesting leave to care for a covered servicemember with a serious injury or illness shall provide the Superintendent or designee with certification from an authorized health care provider of the servicemember that contains the information specified in 29 CFR 825.310.

\*\*\*Note: Pursuant to 29 CFR 825.127, an employee may take up to a total of 26 work weeks of leave for both regular FMLA and military caregiver leave during the 12-month leave entitlement period. However, the employee may not take more than 12 weeks for regular FMLA leave. For example, according to the DOL's Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers, an employee could take 12 weeks of FMLA leave to care for a newborn child and 14 weeks of military caregiver leave, but could not take 16 weeks to care for a newborn and 10 weeks of military caregiver leave. If the leave qualifies as both military caregiver leave and leave to care for a family member with a serious

health condition, 29 CFR 825.127 specifies that the district must first designate the leave as military caregiver leave.\*\*\*

The leave may be taken intermittently or on a reduced work or leave schedule when medically necessary. An employee taking military caregiver leave in combination with other leaves pursuant to this administrative regulation shall be entitled to a combined total of 26 work weeks of leave during a single 12-month period. When both spouses work for the district and both wish to take such leave, the spouses are limited to a maximum combined total of 26 work weeks during a single 12-month period. (29 USC 2612)

\*\*\*Note: Pursuant to 29 USC 2612 and 29 CFR 825.207, the district has the option to require or give employees discretion to substitute paid leave when taking FMLA/CFRA leave; see Options 1 and 2 in section entitled "Use/Substitution of Paid Leave" above. Whichever option is selected by the district with regards to FMLA/CFRA leave is also applicable to military caregiver leave.\*\*\*

During the period of military caregiver leave, the district's rule regarding an employee's use of his/her accrued vacation leave and other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

### Notifications

\*\*\*Note: Both 29 CFR 825.300 and 2 CCR 11095 require employers to provide general notification to employees of their rights under the FMLA/CFRA as well as specific notifications when an employee has requested leave, as detailed below. 2 CCR 11049 contains similar notice requirements for PDL purposes. Samples of notices which describe an employee's rights are available on the web sites of the California Department of Fair Employment and Housing and the DOL.\*\*\*

\*\*\*2 CCR 11095, as amended by Register 2015, No. 17, authorizes districts to meet the notice posting requirement through electronic posting and further clarifies the requirement for translation of the notice when 10 percent or more of the workforce at any facility are persons with a primary language other than English.\*\*\*

The Superintendent or designee shall provide the following notifications regarding state and federal law related to PDL or FMLA/CFRA leave:

1. General Notice: Information explaining the provisions of the FEHA/PDL and FMLA/CFRA and employee rights and obligations shall be posted in a conspicuous place on district premises, or electronically, and shall be included in employee handbooks. (2 CCR 11049, 11095; 29 USC 2619)

\*\*\*Note: Pursuant to 2 CCR 11050 and 11091, a district may require an employee, when the need for the leave is foreseeable, to provide at least 30 days advance notice before the leave is to begin; see the section entitled "Request for Leave" above. 2 CCR 11049 and 11091 specify that districts requiring such notice from employees must give them "reasonable advance notice" of their obligation and that incorporation of the requirement into the general notice satisfies the "advance notice" requirement.\*\*\*

\*\*\*The following optional paragraph is for use by districts that require employees to provide advance notice.\*\*\*

The general notice shall also explain an employee's obligation to provide the Superintendent or designee with at least 30 days notice of the need for the requested leave, when the need is reasonably foreseeable at least 30 days prior to the start of the leave. (2 CCR 11050, 11091)

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

2. *Eligibility Notice: When an employee requests leave, including PDL, or when the Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent or designee shall, within five business days, provide notification to the employee of his/her eligibility to take such leave. (2 CCR 11049, 11091; 29 CFR 825.300)*

3. *Rights and Responsibilities Notice: Each time the eligibility notice is provided to an employee, the Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as applicable: (29 CFR 825.300)*

a. *A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying*

*\*\*\*Note: Item #3b below is for use by districts that require medical certification to the effect that the employee is able to resume work. See the section entitled "Release to Return to Work" above.\*\*\**

b. *Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification*

c. *The employee's right to use paid leave, whether the district will require use of paid leave, conditions related to any use of paid leave, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave*

d. *Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis*

e. *The employee's status as a "key employee" if applicable, potential consequence that restoration may be denied following the FMLA leave, and explanation of the conditions required for such denial*

f. *The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave*

g. *The employee's potential liability for health insurance premiums paid by the district during the employee's unpaid FMLA leave should the employee not return to service after the leave*

*Any time the information provided in the above notice changes, the Superintendent or designee shall, within five business days of his/her receipt of an employee's first notice of need for leave, provide the employee with a written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)*

4. *Designation Notice: When the Superintendent or designee has information (e.g., sufficient medical certification) to determine whether the leave qualifies as FMLA/CFRA leave, he/she shall, within five business days, provide written notification designating the leave as FMLA/CFRA qualifying or, if the leave will not be so designated, the reason for that determination. (2 CCR 11091; 29 CFR 825.300)*

*If the amount of leave needed is known, the notice shall include the number of hours, days, or weeks that will be counted against the employee's FMLA/CFRA entitlement. If it is not possible to provide that number at the time of the designation notice, notification shall be provided of the amount of leave counted against the employee's entitlement upon request by the employee and at least once in every 30-day period if leave was taken in that period. (29 CFR 825.300)*

*\*\*\*Note: 29 CFR 825.300 requires the designation notice to specify whether the district requires paid leave to be used during an otherwise unpaid family care and medical leave, whether the district requires an employee to present release to return to work certification, and whether that certification must address the employee's ability to perform the essential functions of the job. See the sections entitled "Use/Substitution of Paid Leave" and "Release to Return to Work" above. The following paragraph should be revised to reflect district practice.\*\*\**

*If the district requires paid leave to be used during an otherwise unpaid family care and medical leave, the notice shall so specify. If the district requires an employee to present a release to return to work certification that addresses the employee's ability to perform the essential functions of the job, the notice shall also specify that requirement. (2 CCR 11091, 11097; 29 CFR 825.300)*

*Any time the information provided in the designation notice changes, the Superintendent or designee shall, within five business days, provide the employee with written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)*

#### *Records*

*\*\*\*Note: Government Code 12946, 29 USC 2616, and 29 CFR 825.500 require districts to maintain records of, among other things, applications, dates, and personnel and employment action related to family care and medical leave. Pursuant to 42 USC 2000ff-1, any individually identifiable genetic information possessed by the district must be treated as a confidential medical record of the employee involved.\*\*\**

*The Superintendent or designee shall maintain records pertaining to an individual employee's use of family care and medical leave in accordance with law. (Government Code 12946; 29 USC 2616; 42 USC 2000ff-1; 29 CFR 825.500)*

#### *Legal Reference:*

##### *EDUCATION CODE*

*44965 Granting of leaves of absence for pregnancy and childbirth*

##### *FAMILY CODE*

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

*300 Validity of marriage*

##### *GOVERNMENT CODE*

*12926 Fair employment and housing act, definitions*

*12940 Unlawful employment practices*

*12945 Pregnancy; childbirth or related medical condition; unlawful practice*

*12945.1-12945.2 California Family Rights Act*

*12946 Fair Employment and Housing Act: discrimination prohibited*

##### *CODE OF REGULATIONS, TITLE 2*

*11035-11051 Sex discrimination: pregnancy, childbirth and related medical conditions*

*11087-11098 California Family Rights Act*

*UNITED STATES CODE, TITLE 1*

*7 Definition of marriage*

*UNITED STATES CODE, TITLE 29*

*2601-2654 Family and Medical Leave Act of 1993, as amended*

*UNITED STATES CODE, TITLE 42*

*2000ff-1-2000ff-11 Genetic Information Nondiscrimination Act of 2008*

*CODE OF FEDERAL REGULATIONS, TITLE 29*

*825.100-825.800 Family and Medical Leave Act of 1993*

*COURT DECISIONS*

*United States v. Windsor, (2013) 699 F.3d 169*

*Faust v. California Portland Cement Company, (2007) 150 Cal.App.4th 864*

*Tellis v. Alaska Airlines, (9th Cir., 2005) 414 F.3d 1045*

*Management Resources:*

*FEDERAL REGISTER*

*The Family and Medical Leave Act; Final Rule; February 6, 2013. Vol. 78, No. 25, pages 8903-8947*

*U.S. DEPARTMENT OF LABOR PUBLICATIONS*

*Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers*

*WEB SITES*

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

*U.S. Department of Labor, FMLA: <http://www.dol.gov/whd/fmla>*

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**Personnel**

**Family Care and Medical Leave**

The district shall not interfere with, restrain, or deny the exercise or attempted exercise by any eligible employee of his/her right to any family care and medical leave or pregnancy disability leave (PDL) provided through the Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), or the Fair Employment and Housing Act (FEHA), nor shall it discharge or discriminate or retaliate against any employee for his/her involvement in any inquiry or proceeding related to any leave under any of these laws or his/her opposition to or challenge of any unlawful district practice in relation to any rights granted by any of these laws. (Government Code 12945, 12945.2; 29 USC 2615)

**Definitions**

The words and phrases defined below shall have the same meaning throughout this administrative regulation except where a different meaning is otherwise specified.

Child (son or daughter) means a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis as long as the child is under 18 years of age or an adult dependent child. (Government Code 12945.2; 29 USC 2611)

Eligible employee for FMLA and CFRA purposes means an employee who has been employed with the district for at least 12 months and who has at least 1,250 hours of service with the district during the previous 12-month period. However, these requirements shall not apply when an employee applies for PDL. (Government Code 12945.2; 29 USC 2611; 29 CFR 825.110)

Employee disabled by pregnancy means a woman who, in the opinion of her health care provider, is unable because of pregnancy to perform any one or more of the essential functions of her job or to perform any of them without undue risk to herself, her pregnancy's successful completion, or other persons; or who is suffering from severe "morning sickness" or needs to take time off for any pregnancy-related condition including, but not limited to, prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, childbirth, loss or end of pregnancy, or recovery from childbirth or loss or end of pregnancy. (2 CCR 7291.2)

Parent means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child. Parent does not include a spouse's parents. (Government Code 12945.2; 2 CCR 7297.0; 29 USC 2611; 29 CFR 825.122)

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves either of the following: (Government Code 12945.2; 29 USC 2611; 29 CFR 825.113-825.115)

1. Inpatient care in a hospital, hospice, or residential health care facility
2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:
  - a. A period of incapacity of more than three consecutive full days
  - b. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition

- c. Any period of incapacity due to pregnancy or for prenatal care under FMLA
- d. Any period of incapacity which is permanent or long term due to a condition for which treatment may not be effective
- e. Any period of absence to receive multiple treatments, including recovery, by a health care provider

Spouse means a partner in marriage as defined in Family Code 300. In addition, for purposes of CFRA, a registered domestic partner shall have the same rights, protections, and benefits as a spouse and protections provided to a spouse's child shall also apply to a child of a registered domestic partner. (Family Code 297.5, 300; 2 CCR 7297.0; 29 CFR 825.122)

### Eligibility

The district shall grant FMLA or CFRA leave to eligible employees for any of the following reasons: (Family Code 297.5; Government Code 12945.2; 29 USC 2612; 29 CFR 825.112)

1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child
2. To care for the employee's child, parent, or spouse with a serious health condition
3. The employee's own serious health condition that makes him/her unable to perform one or more essential functions of his/her position
4. Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)
5. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent, or next of kin, as defined, of the servicemember

In addition, the district shall grant any pregnant female employee PDL during pregnancy, when she is disabled by pregnancy, childbirth, or any related medical condition. (Government Code 12945; 2 CCR 7291.4)

### Terms of Leave

An eligible employee shall be entitled to a total of 12 work weeks of FMLA or CFRA leave during any 12-month period, except in the case of leave to care for a covered service member as provided under "Military Caregiver Leave" below. (Government Code 12945.2; 29 USC 2612)

This 12-month period shall coincide with the fiscal year. (29 CFR 825.200)

In addition, for each pregnancy, a female employee shall be entitled to PDL for the period of the disability not to exceed four months. (Government Code 12945; 2 CCR 7291.9)

PDL shall run concurrently with FMLA leave for disability caused by an employee's pregnancy. At the end of the employee's FMLA leave for disability caused by pregnancy, or at the end of four months of PDL, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 work weeks for the reason of the birth of her child, if the child has been born by this date (e.g., baby bonding), whether

or not she or the child has a serious health condition or disability. To the extent allowed by law, CFRA and FMLA leaves shall run concurrently. (Government Code 12945, 12945.2; 2 CCR 7291.13, 7297.6)

Leave taken for the birth or placement of a child must be concluded within the 12-month period beginning on the date of the birth or placement of the child. Such leave does not need to be taken in one continuous period of time. The basic minimum duration of leave for the birth or placement of a child shall be two weeks. However, the district shall grant a request for leave of less than two weeks' duration on any two occasions. (2 CCR 7297.3; 29 USC 2612)

If both parents of a child work for the district, their family care and medical leave related to the birth or placement of the child shall be limited to a combined total of 12 weeks. This restriction shall apply whether the parents are married, not married, or registered domestic partners. (Government Code 12945.2; 2 CCR 7297.1; 29 USC 2612)

#### Use/Substitution of Paid Leave

During the period of PDL or any FMLA or CFRA leave, the employee may elect to use his/her accrued vacation leave, accrued sick leave, other accrued time off, or any other paid or unpaid time off negotiated with the district. (Government Code 12945, 12945.2; 2 CCR 7291.11; 29 USC 2612)

#### Intermittent Leave/Reduced Work or Leave Schedule

PDL and family care and medical leave for the serious health condition of an employee or his/her child, parent, or spouse may be taken intermittently or on a reduced work or leave schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, the district may limit leave increments to the shortest period of time that the district's payroll system uses to account for absences or use of leave, not to be greater than one hour. (2 CCR 7291.9, 7297.3; 29 USC 2612)

The district may require an employee to transfer temporarily to an available alternative position if the employee is pregnant and provides medical certification from her health care provider of the medical need for intermittent leave or leave on a reduced work or leave schedule or if the employee's need for the intermittent leave or leave on a reduced work or leave schedule is foreseeable based on his/her planned medical treatment or that of a family member. This alternative position must have equivalent pay and benefits and must better accommodate recurring periods of leave than the employee's regular job, and the employee must be qualified for the position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work or leave schedule. (2 CCR 7291.8, 7297.3; 29 USC 2612)

#### Request for Leave

An employee shall provide at least verbal notice sufficient to make the district aware of the need to take PDL or family care and medical leave and the anticipated timing and duration of the leave. (2 CCR 7291.17, 7297.4)

For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement; however, he/she must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and medical leave, the Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 7297.4)

Based on the information provided by the employee, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the

employee. (2 CCR 7297.4)

When the need for the PDL or family care and medical leave is foreseeable, the employee shall provide the district with at least 30 days advance notice before the leave. The employee shall consult with the Superintendent or designee and make a reasonable effort to schedule, subject to the health care provider's approval, any planned appointment or medical treatment or supervision so as to minimize disruption to district operations. (Government Code 12945.2; 2 CCR 7291.17, 7297.4)

When the 30 days notice is not practicable because of a lack of knowledge of when leave will be required to begin, a change in circumstances, a medical emergency, or other good cause, the employee shall provide the district with notice as soon as practicable. (2 CCR 7291.17, 7297.4)

#### Certification of Health Condition

Within five business days of an employee's request for family care and medical leave for his/her own or his/her child's, parent's, or spouse's serious health condition, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave. Upon receiving the district's request, the employee shall provide the certification within 15 days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR 7297.4; 29 CFR 825.305)

The certification shall include the following: (Government Code 12945.2; 2 CCR 7297.0; 29 USC 2613)

1. The date on which the serious health condition began
2. The probable duration of the condition
3. If the employee is requesting leave to care for a child, parent, or spouse with a serious health condition, both of the following:
  - a. Statement that the serious health condition warrants the participation of the employee to provide care during a period of the treatment or supervision of the child, parent, or spouse
  - b. Estimated amount of time the health care provider believes the employee needs to care for the child, parent, or spouse
4. If the employee is requesting leave because of his/her own serious health condition, a statement that due to the serious health condition, he/she is unable to work at all or is unable to perform one or more essential functions of his/her job
5. If the employee is requesting leave for intermittent treatment or on a reduced work or leave schedule for planned medical treatment, a statement of the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave

In addition, at the employee's option, the certification may include a diagnosis identifying the serious health condition. (2 CCR 7297.0)

When an employee has provided sufficient medical certification to enable the district to determine whether the employee's leave request is FMLA/CFRA-eligible, the Superintendent or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The Superintendent or designee may also retroactively designate leave as FMLA/CFRA as long as there is no harm to the employee. (29 CFR 825.301)

If the Superintendent or designee doubts the validity of a certification that accompanies a request for leave for the employee's own serious health condition, he/she may require the employee to obtain a second opinion from a district-approved health care provider, at district expense. If the second opinion is contrary to the first, the Superintendent or designee may require the employee to obtain a third medical opinion from a health care provider approved by both the employee and the district, again at district expense. The opinion of the third health care provider shall be final and binding. (Government Code 12945.2; 29 USC 2613)

For PDL, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is unforeseen, the Superintendent or designee shall request the medical certification within two business days after the leave commences. The Superintendent or designee may request certification at some later date if he/she has reason to question the appropriateness of the leave or its duration. (2 CCR 7291.17)

For PDL that is foreseeable and for which at least 30 days notice has been given, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the certification within the time frame specified by the Superintendent or designee which must be at least 15 days after the request, unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts. (2 CCR 7291.17)

Medical certification for PDL purposes shall include a statement that the employee needs to take the leave because she is disabled by pregnancy, childbirth, or a related medical condition, the date on which the employee became disabled because of pregnancy, and the estimated duration of the leave. (2 CCR 7291.17)

The Superintendent or designee shall not request any genetic information, as defined in 42 USC 2000ff, from any employee or his/her family member except as necessary to comply with a certification requirement for PDL or FMLA/CFRA leave purposes or with the prior written authorization of the employee. Any such genetic information received by the district shall be kept confidential in accordance with law. (42 USC 2000ff-1, 2000ff-5)

If additional PDL or family care and medical leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification in the manner specified for the leave. (Government Code 12945.2; 2 CCR 7291.17; 29 USC 2613)

#### Fitness for Duty Certification/Release to Return to Work

Upon expiration of an employee's PDL or family care and medical leave taken for his/her own serious health condition, the employee shall present certification from the health care provider that he/she is able to resume work.

\*\*\*Note: Pursuant to 29 CFR 825.312, when the health care provider certifies that the employee is able to resume work, the district may also require the health care provider to address the employee's ability to perform the essential functions of the job. If such a requirement is imposed, then the district must provide the employee with a list of the essential functions of his/her job with the "designation notice": see section entitled "Notifications" below.\*\*\*

\*\*\*Note: The following paragraph is optional and should be deleted by districts that do not require certification of an employee's ability to perform the essential functions of the job.\*\*\*

The certification from the employee's health care provider shall address the employee's ability to perform the essential functions of his/her job.

#### Rights to Reinstatement

However, the district may refuse to reinstate an employee returning from family care and medical leave to the same or a comparable position if all of the following apply: (Government Code 12945.2; 29 USC 2614)

1. The employee is a salaried "key employee" who is among the highest paid 10 percent of district employees who are employed within 75 miles of the employee's worksite.

2. The refusal is necessary to prevent substantial and grievous economic injury to district operations.
3. The district informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service.

The district may refuse to reinstate an employee to the same position after taking PDL if, at the time the reinstatement is requested, the employee would not otherwise have been employed in that position for legitimate business reasons unrelated to the employee's PDL. (2 CCR 7291.10)

#### Maintenance of Benefits/Failure to Return from Leave

During the period when an employee is on PDL or family care and medical leave, he/she shall maintain his/her status with the district and the leave shall not constitute a break in service for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. (Government Code 12945.2; 29 USC 2614)

For up to a maximum of four months for PDL or 12 work weeks for other family care and medical leave, the district shall continue to provide an eligible employee the group health plan coverage that was in place before he/she took the leave. The employee shall reimburse the district for premiums paid during the leave if he/she fails to return to district employment after the expiration of all available leaves and the failure is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond his/her control. (Government Code 12945.2; 2 CCR 7291.11; 29 USC 2614; 29 CFR 825.213)

In addition, during the period when an employee is on PDL or family care and medical leave, the employee shall be entitled to continue to participate in other employee benefit plans including life insurance, short-term or long-term disability insurance, accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to an unpaid leave taken for any other purpose. However, for purposes of pension and retirement plans, the district shall not be required to make plan payments for an employee during the leave period and the leave period shall not be counted for purposes of time accrued under the plan. (Government Code 12945.2; 2 CCR 7291.11)

#### Military Family Leave Resulting from Qualifying Exigencies

An eligible employee may take up to 12 work weeks of unpaid leave during the 12-month period established by the district while a military member is on covered active duty or call to covered active duty status for one or more qualifying exigencies. (29 USC 2612; 29 CFR 825.126)

Military member means an employee's spouse, son, daughter, or parent on covered active duty or call to covered active duty status. (29 CFR 825.126)

Covered active duty means duty during the deployment of a member of the regular Armed Forces to a foreign country or duty during the deployment of a member of the National Guard or Reserves to a foreign country under a call or order to active duty in support of a contingency operation pursuant to law. (29 USC 2611; 29 CFR 825.126)

Qualifying exigencies include time needed to: (29 CFR 825.126)

1. Address issues arising from short notice deployment (up to seven calendar days from the date of receipt of call or order of short notice deployment)
2. Attend military events and related activities, such as any official ceremony or family assistance program related to the covered active duty or call to covered active duty status

3. Arrange childcare or attend school activities arising from the covered active duty or call to covered active duty, such as arranging for alternative child care, enrolling or transferring a child to a new school, or attending meetings
  4. Make or update financial and legal arrangements to address a military member's absence
  5. Attend counseling provided by someone other than a health care provider
  6. Spend time (up to 15 days of leave per instance) with a military member who is on short-term, temporary, Rest and Recuperation leave during deployment
  7. Attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings
  8. Care for a military member's parent who is incapable of self-care when the care is necessitated by the military member's covered active duty
  9. Address any other event that the employee and district agree is a qualifying exigency
- The employee shall provide the Superintendent or designee with notice of the need for the qualifying exigency leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR 825.302)

An employee who is requesting such leave for the first time shall provide the Superintendent or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the Superintendent or designee with certification of the qualifying exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309.

The employee's qualifying exigency leave may be taken on an intermittent or reduced work or leave schedule basis. (29 CFR 825.302)

During the period of qualified exigency leave, the district's rule regarding an employee's use of his/her accrued vacation leave and any other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

#### Military Caregiver Leave

The district shall grant up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date of leave taken, to an eligible employee to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, an employee must be the spouse, son, daughter, parent, or next of kin of the covered servicemember. This 26-week period is not in addition to, but rather is inclusive of, the 12 work weeks of leave that may be taken for other FMLA qualifying reasons. (29 USC 2611, 2612; 29 CFR 825.127)

Covered service member may be: (29 CFR 825.127)

1. A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a serious injury or illness
2. A veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran

Son or daughter of a covered servicemember means the biological, adopted, or foster child, stepchild, legal ward, or a child of any age for whom the covered servicemember stood in loco parentis. (29 CFR 825.127)

Parent of a covered servicemember means the covered servicemember's biological, adopted, step, or foster parent, or any other individual who stood in loco parentis to the covered servicemember (except "parents in law"). (29 CFR 825.127)

Next of kin means the nearest blood relative to the covered servicemember, or as designated in writing by the covered servicemember. (29 USC 2611, 2612)

Outpatient status means the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 USC 2611; 29 CFR 825.127)

Serious injury or illness means: (29 USC 2611; 29 CFR 825.127)

1. For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty while on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating
2. For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:
  - a. A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered him/her unable to perform the duties of his/her office, grade, rank, or rating
  - b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition
  - c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to his/her military service or that would do so but for treatment received by the veteran
  - d. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers

An employee requesting leave to care for a covered servicemember with a serious injury or illness shall provide the Superintendent or designee with certification from an authorized health care provider of the servicemember that contains the information specified in 29 CFR 825.310.

The leave may be taken intermittently or on a reduced work or leave schedule when medically necessary. An employee taking military caregiver leave in combination with other leaves pursuant to this administrative regulation shall be entitled to a combined total of 26 work weeks of leave during a single 12-month period. When both spouses work for the district and both wish to take such leave, the spouses are limited to a maximum combined total of 26 work weeks during a single 12-month period. (29 USC 2612)

During the period of military caregiver leave, the district's rule regarding an employee's use of his/her accrued vacation leave and other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

#### Notifications

The Superintendent or designee shall provide the following notifications about state and federal law related to PDL or FMLA/CFRA leave:

1. General Notice: Information explaining the provisions of the FEHA and FMLA/CFRA and employee rights and obligations shall be posted in a conspicuous place on district premises, or electronically, and shall be included in employee handbooks. (2 CCR 7291.16, 7297.9; 29 USC 2619)

The general notice shall also explain an employee's obligation to provide the Superintendent or designee with at least 30 days notice of the need for the leave, when the need for the leave is reasonably foreseeable. (2 CCR 7291.17, 7297.4)

2. Eligibility Notice: When an employee requests leave, including PDL, or when the Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent or designee shall, within five business days, provide notification to the employee of his/her eligibility to take such leave. (2 CCR 7291.16; 29 CFR 825.300)

3. Rights and Responsibilities Notice: Each time the eligibility notice is provided to an employee, the Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as appropriate: (29 CFR 825.300)

- a. A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying
- b. Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification
- c. The employee's right to substitute paid leave, whether the district will require substitution of paid leave, conditions related to any substitution, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave
- d. Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis
- e. If applicable, the employee's status as a "key employee," potential consequence that restoration may be denied following the FMLA leave, and explanation of the conditions required for such denial
- f. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave
- g. The employee's potential liability for health insurance premiums paid by the district during the employee's unpaid FMLA leave should the employee not return to service after the leave

Any time the information provided in the above notice changes, the Superintendent or designee shall, within five business days of his/her receipt of an employee's first notice of need for leave, provide the employee with a written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)

4. Designation Notice: When the Superintendent or designee has information (e.g., sufficient medical certification) to determine whether the leave qualifies as FMLA/CFRA leave, he/she shall, within five business days, provide written notification designating the leave as FMLA/CFRA qualifying or, if the leave will not be so designated, the reason for that determination. (29 CFR 825.300)

If the amount of leave needed is known, the notice shall include the number of hours, days, or weeks that

will be counted against the employee's FMLA/CFRA entitlement. If it is not possible to provide that number at the time of the designation notice, notification shall be provided of the amount of leave counted against the employee's entitlement upon request by the employee and at least once in every 30-day period if leave was taken in that period. (29 CFR 825.300)

If the district requires paid leave to be substituted for unpaid family care and medical leave, the notice shall so specify. If the district requires an employee to present a fitness-for-duty certification that addresses the employee's ability to perform the essential functions of the job, the notice shall also specify that requirement. (29 CFR 825.300)

Any time the information provided in the designation notice changes, the Superintendent or designee shall, within five business days, provide the employee with written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)

#### Records

The Superintendent or designee shall maintain records pertaining to an individual employee's use of family care and medical leave in accordance with law. (Government Code 12946; 29 USC 2616; 42 USC 2000ff-1; 29 CFR 825.500)

#### Legal Reference:

##### EDUCATION CODE

44965 Granting of leaves of absence for pregnancy and childbirth

##### FAMILY CODE

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

300 Validity of marriage

##### GOVERNMENT CODE

12940 Unlawful employment practices

12945 Pregnancy; childbirth or related medical condition; unlawful practice

12945.1-12945.2 California Family Rights Act

12946 Fair Employment and Housing Act: discrimination prohibited

##### CODE OF REGULATIONS, TITLE 2

7291.2-7291.17 Sex discrimination: pregnancy and related medical conditions

7297.0-7297.11 Family care leave

##### UNITED STATES CODE, TITLE 1

7 Definition of marriage

##### UNITED STATES CODE, TITLE 29

2601-2654 Family and Medical Leave Act of 1993, as amended

##### UNITED STATES CODE, TITLE 42

2000ff-1-2000ff-11 Genetic Information Nondiscrimination Act of 2008

##### CODE OF FEDERAL REGULATIONS, TITLE 29

825.100-825.800 Family and Medical Leave Act of 1993

##### COURT DECISIONS

United States v. Windsor, (2013) 699 F.3d 169

Re Marriage Cases, (2008) 43 Cal.4th 757

Faust v. California Portland Cement Company, (2007) 150 Cal.App.4th 864

Tellis v. Alaska Airlines, (9th Cir., 2005) 414 F.3d 1045

### ***Uniform Complaint Procedures (UCP)***

*This document contains rules and instructions about the filing, investigation and resolution of a Uniform Complaint Procedures (UCP) complaint regarding an alleged violation by Mendocino Unified School District of federal or state laws or regulations governing educational programs, including allegations of unlawful discrimination, harassment, intimidation, bullying and non-compliance with laws relating to pupil fees and our Local Control and Accountability Plan (LCAP).*

*This document presents information about how we process UCP complaints concerning particular programs or activities in which we receive state or federal funding. A UCP complaint is a written and signed statement by a complainant alleging a violation of federal or state laws or regulations, which may include an allegation of unlawful discrimination, harassment, intimidation, bullying or charging pupil fees for participation in an educational activity or non-compliance with the requirements of our LCAP. A complainant is any individual, including a person's duly authorized representative or an interested third party, public agency, or organization who files a written complaint alleging violation of federal or state laws or regulations, including allegations of unlawful discrimination, harassment, intimidation, bullying and non-compliance with laws relating to pupil fees or non-compliance with the requirements of our LCAP. If the complainant is unable to put the complaint in writing, due to a disability or illiteracy, we shall assist the complainant in the filing of the complaint.*

*Programs and activities that are implemented by our district and subject to the UCP in which we receive state or federal funding are:*

- *Career Technical Education*
- *Child Care and Development Programs including state preschool*
- *Consolidated Categorical Programs*
- *Discrimination, Harassment, Intimidation, and Bullying*
- *Foster and Homeless Youth*
- *Local Control Funding Formula and Local Control Accountability Plans*
- *Migrant Education*
- *NCLB Titles I-VII*
- *Nutrition Services - USDA Civil Rights*
- *Regional Occupational Centers and Programs*
- *School Facilities*
- *Special Education*
- *Tobacco-Use Prevention Education Program*
- *Unlawful Pupil Fees*

*The following complaints shall be referred to other agencies for appropriate resolution and are not subject to our UCP process set forth in this document unless these procedures are made applicable by separate interagency agreements:*

1. *Allegations of child abuse shall be referred to County Dept of Social Services (DSS), Protective Services Division or appropriate law enforcement agency.*
2. *Health and safety complaints regarding a Child Development Program shall be referred to Dept of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.*
3. *Employment discrimination, harassment, intimidation or bullying complaints shall be sent to the State Dept of Fair Employment and Housing (DFEH).*

*4. Allegations of fraud shall be referred to the Legal, Audits and Compliance Branch in the California Department of Education (CDE).*

*A pupil fee is a fee, deposit, or other charge imposed on pupils, or a pupil's parents or guardians, in violation of state codes and constitutional provisions which require educational activities to be provided free of charge to all pupils without regard to their families' ability or willingness to pay fees or request special waivers. Educational activities are those offered by a school, school district, charter school, or county office of education that constitute a fundamental part of education, including, but not limited to, curricular and extracurricular activities.*

*A pupil fee includes, but is not limited to, all of the following:*

- 1. A fee charged to a pupil as a condition for registering for school or classes, or as a condition for participation in a class or an extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.*
- 2. A security deposit, or other payment, that a pupil is required to make to obtain a lock, locker, book, class apparatus, musical instrument, clothes, or other materials or equipment.*
- 3. A purchase that a pupil is required to make to obtain materials, supplies, equipment, or clothes associated with an educational activity.*

*The LCAP is an important component of the Local Control Funding Formula (LCFF), the revised school finance system that overhauled how California funds its K-12 schools. Under the LCFF we are required to prepare an LCAP, which describes how we intend to meet annual goals for our pupils, with specific activities to address state and local priorities identified pursuant to Education Code Section 52060(d).*

***The responsibilities of the Mendocino Unified School District***

*We have the primary responsibility to insure compliance with applicable state and federal laws and regulations. We shall investigate complaints alleging failure to comply with applicable state and federal laws and regulations including, but not limited to, allegations about discrimination, harassment, intimidation, bullying and noncompliance with laws relating to pupil fees for participation in an educational activity and LCAP and seek to resolve those complaints in accordance with our Uniform Complaint Procedures.*

*We shall ensure annual dissemination of the written notice of our complaint procedures to students, employees, parents or guardians of its students, school and district advisory committees member, appropriate private school officials or representatives, and other interested parties that includes information regarding unlawful pupil fees and LCAP requirements.*

*An appeal is a request made in writing to a level higher than the original reviewing level by an aggrieved party requesting reconsideration or a reinvestigation of the lower adjudicating body's decision.*

*Our UCP Annual Notice shall also include information regarding the requirements of Education Code sections 49010 through 49013 relating to pupil fees and information regarding the requirements of Education Code section 52075 relating to the LCAP.*

*Our UCP Annual Notice shall be in English and in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.*

To file a program or Civil Rights complaint, please contact one of the following agencies listed below: Child Nutrition Programs Civil Rights and Program Complaint Coordinator, California Department of Education, Nutrition Services Division, 1430 N. Street, Room 4503, Sacramento, CA 95814-2342, 916-323-8521 or 800-952-5609; or USDA, Director, Office of Adjudication, 1400 Independence Avenue, Southwest Washington, D.C. 20250-9410, 866-632-9992, Federal Relay Service 800-877-8339 (English), or 800-845-6136 (Spanish).

The following is responsible for receiving and investigating complaints and ensuring our compliance:

Name or title: Jason Morse, Superintendent  
Unit or office: District Office  
Address: P.O. Box 1154, 44141 Little Lake Road, Mendocino, CA 95460  
Phone: 707-937-5868 E-mail address: jmorse@mcn.org

The above, responsible for compliance and investigations, is knowledgeable about the laws and programs assigned to investigate.

We will investigate all allegations of unlawful discrimination, harassment, intimidation or bullying against any protected group as identified in Education Code section 200 and 220 and Government Code section 11135, including any actual or perceived characteristics as set forth in Penal Code section 422.55 or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics in any program or activity conducted by the LEA, which is funded directly by, or that receives or benefits from any state financial assistance.

An unlawful discrimination, harassment, intimidation and bullying complaint shall be filed no later than six months from the date the alleged discrimination, harassment, intimidation or bullying occurred, or six months from the date the complainant first obtained knowledge of the facts of the alleged discrimination, harassment, intimidation or bullying.

The time for filing a discrimination, harassment, intimidation or bullying complaint may be extended in writing by our district superintendent or his or her designee, upon written request by the complainant setting forth the reasons for the extension. The period for filing a discrimination, harassment, intimidation or bullying complaint may be extended by our superintendent or his or her designee for good cause for a period not to exceed 90 calendar days following the expiration of the six month time period. Our superintendent shall respond immediately upon a receipt of a request for extension.

The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, harassment, intimidation, and bullying or by one who believes an individual or any specific class of individuals has been subjected to discrimination, harassment, intimidation, and bullying prohibited by this part.

We ensure that complainants are protected from retaliation and that the identity of a complainant alleging discrimination, harassment, intimidation, and bullying remain confidential as appropriate.

An investigation of a discrimination, harassment, intimidation, and bullying complaint shall be conducted in a manner that protects confidentiality of the parties and maintains the integrity of the process.

Complainants are advised of the right to pursue civil law remedies under state or federal discrimination, harassment, intimidation or bullying laws. Civil law remedies, including injunctions, restraining orders, or other remedies or orders may also be available at any time.

*If we find merit in a pupil fees and/or an LCAP complaint we shall provide a remedy to all affected pupils, parents, and guardians that, in the case of pupil fees, includes reasonable efforts by us to ensure full reimbursement to all affected pupils, parents, and guardians, subject to procedures established through regulations adopted by the state board.*

*We submitted our UCP policies and procedures to our local governing board for approval and adoption (see the top of this document for final adoption date).*

### ***Filing a complaint with the Mendocino Unified School District***

*Except for Williams complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or misassignments, and complaints that allege discrimination, harassment, intimidation, and bullying, any individual, public agency or organization may file a written complaint with our district superintendent or his or her designee alleging a matter which, if true, would constitute a violation by our LEA of federal or state law or regulation governing a program. A pupil fees complaint may be filed with the principal of a school.*

*A pupil fees complaint and/or an LCAP complaint may be filed anonymously if the complaint provides evidence or information leading to evidence to support an allegation of noncompliance with laws relating to pupil fees.*

*A pupil fee complaint shall be filed no later than one year from the date the alleged violation occurred.*

*We will attempt in good faith by engaging in reasonable efforts to identify and fully reimburse all pupils, parents and guardians who paid a pupil fee within one year prior to the filing of the complaint.*

*The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, to present evidence or information.*

*Refusal by the complainant to provide the investigator with documents or other evidence related to the allegations in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation, may result in the dismissal of the complaint because of a lack of evidence to support the allegations.*

*Refusal by Mendocino Unified School District to provide the investigator with access to records and/or other information related to the allegation in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation, may result in a finding based on evidence collected that a violation has occurred and may result in the imposition of a remedy in favor of the complainant.*

*Except for Williams complaints and pupil fees complaints, a UCP complaint will be investigated and a written report (also known as the Decision) issued to the complainant within 60 days from the date of the receipt of the complaint, unless the complainant agrees in writing to an extension of time.*

*We shall issue a Decision based on the evidence and will contain the following elements:*

- (i) the findings of fact based on the evidence gathered,*
- (ii) conclusion of law,*

- (iii) disposition of the complaint,
- (iv) the rationale for such disposition,
- (v) corrective actions, if any are warranted,
- (vi) notice of the complainant's right to appeal our LEA Decision to the CDE, and
- (vii) procedures to be followed for initiating an appeal to the CDE.

*Nothing in this document shall prohibit anyone involved in the complaint from utilizing alternative methods to resolve the allegations, such as mediation. Nor are we prohibited from resolving complaints prior to the formal filing of a written complaint. Mediation is a problem solving activity whereby a third party assists the parties to the dispute in resolving the complaint.*

*Copies of these complaint procedures shall be available free of charge.*

*Federal and State Laws cited:*

1. 34 Code of Federal Regulations [CFR] §§ 300.510-511
2. California Code of Regulations [CCR] Title 5 §§ 4600-4687
3. California Code of Regulations [CCR] Title 5 § 4610(b)
4. California Code of Regulations [CCR] Title 5 § 4622
5. California Code of Regulations [CCR] Title 5 §§ 4630-4631
6. California Education Code [EC] §§ 200, 220, 262.3
7. California Education Code [EC] §§ 234 - 234.5
8. California Education Code [EC] § 35186
9. California Education Code [EC] § 48985
10. California Education Code [EC] §§ 49010 - 49013
11. California Education Code [EC] § 52075
12. California Government Code [GC] §§ 11135, 11138
13. California Penal Code (PC) § 422.55

California Department of Education June 2015



### **Uniform Complaint Procedures (UCP)**

This document contains rules and instructions about the filing, investigation and resolution of a Uniform Complaint Procedures (UCP) complaint regarding an alleged violation by Mendocino Unified School District of federal or state laws or regulations governing educational programs, including allegations of unlawful discrimination, harassment, intimidation, bullying and non-compliance with laws relating to pupil fees and our Local Control and Accountability Plan (LCAP).

This document presents information about how we process UCP complaints concerning particular programs or activities in which we receive state or federal funding. A UCP complaint is a written and signed statement by a complainant alleging a violation of federal or state laws or regulations, which may include an allegation of unlawful discrimination, harassment, intimidation, bullying or charging pupil fees for participation in an educational activity or non-compliance with the requirements of our LCAP. A complainant is any individual, including a person's duly authorized representative or an interested third party, public agency, or organization who files a written complaint alleging violation of federal or state laws or regulations, including allegations of unlawful discrimination, harassment, intimidation, bullying and non-compliance with laws relating to pupil fees or non-compliance with the requirements of our LCAP. If the complainant is unable to put the complaint in writing, due to a disability or illiteracy, we shall assist the complainant in the filing of the complaint.

Programs and activities that are implemented by our district and subject to the UCP in which we receive state or federal funding are:

- Career Technical Education
- Child Care and Development Programs including state preschool
- Consolidated Categorical Programs
- Discrimination, Harassment, Intimidation, and Bullying
- Foster and Homeless Youth
- Local Control Funding Formula and Local Control Accountability Plans
- Migrant Education
- NCLB Titles I-VII
- Nutrition Services - USDA Civil Rights
- Regional Occupational Centers and Programs
- School Facilities
- Special Education
- Tobacco-Use Prevention Education Program
- Unlawful Pupil Fees

The following complaints shall be referred to other agencies for appropriate resolution and are not subject to our UCP process set forth in this document unless these procedures are made applicable by separate interagency agreements:

1. Allegations of child abuse shall be referred to County Dept of Social Services (DSS), Protective Services Division or appropriate law enforcement agency.
2. Health and safety complaints regarding a Child Development Program shall be referred to Dept of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.
3. Employment discrimination, harassment, intimidation or bullying complaints shall be sent to the State Dept of Fair Employment and Housing (DFEH).

4. Allegations of fraud shall be referred to the Legal, Audits and Compliance Branch in the California Department of Education (CDE).

A pupil fee is a fee, deposit, or other charge imposed on pupils, or a pupil's parents or guardians, in violation of state codes and constitutional provisions which require educational activities to be provided free of charge to all pupils without regard to their families' ability or willingness to pay fees or request special waivers. Educational activities are those offered by a school, school district, charter school, or county office of education that constitute a fundamental part of education, including, but not limited to, curricular and extracurricular activities.

A pupil fee includes, but is not limited to, all of the following:

1. A fee charged to a pupil as a condition for registering for school or classes, or as a condition for participation in a class or an extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.
2. A security deposit, or other payment, that a pupil is required to make to obtain a lock, locker, book, class apparatus, musical instrument, clothes, or other materials or equipment.
3. A purchase that a pupil is required to make to obtain materials, supplies, equipment, or clothes associated with an educational activity.

The LCAP is an important component of the Local Control Funding Formula (LCFF), the revised school finance system that overhauled how California funds its K-12 schools. Under the LCFF we are required to prepare an LCAP, which describes how we intend to meet annual goals for our pupils, with specific activities to address state and local priorities identified pursuant to Education Code Section 52060(d).

#### **The responsibilities of the Mendocino Unified School District**

We have the primary responsibility to insure compliance with applicable state and federal laws and regulations. We shall investigate complaints alleging failure to comply with applicable state and federal laws and regulations including, but not limited to, allegations about discrimination, harassment, intimidation, bullying and noncompliance with laws relating to pupil fees for participation in an educational activity and LCAP and seek to resolve those complaints in accordance with our Uniform Complaint Procedures.

We shall ensure annual dissemination of the written notice of our complaint procedures to students, employees, parents or guardians of its students, school and district advisory committees member, appropriate private school officials or representatives, and other interested parties that includes information regarding unlawful pupil fees and LCAP requirements.

An appeal is a request made in writing to a level higher than the original reviewing level by an aggrieved party requesting reconsideration or a reinvestigation of the lower adjudicating body's decision.

Our UCP Annual Notice shall also include information regarding the requirements of Education Code sections 49010 through 49013 relating to pupil fees and information regarding the requirements of Education Code section 52075 relating to the LCAP.

Our UCP Annual Notice shall be in English and in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

The following is responsible for receiving and investigating complaints and ensuring our compliance:

Name or title: Jason Morse, Superintendent  
Unit or office: District Office  
Address: P.O. Box 1154, 44141 Little Lake Road, Mendocino, CA 95460  
Phone: 707-937-5868 E-mail address: jmorse@mcn.org

The above, responsible for compliance and investigations, is knowledgeable about the laws and programs assigned to investigate.

We will investigate all allegations of unlawful discrimination, harassment, intimidation or bullying against any protected group as identified in Education Code section 200 and 220 and Government Code section 11135, including any actual or perceived characteristics as set forth in Penal Code section 422.55 or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics in any program or activity conducted by the LEA, which is funded directly by, or that receives or benefits from any state financial assistance.

An unlawful discrimination, harassment, intimidation and bullying complaint shall be filed no later than six months from the date the alleged discrimination, harassment, intimidation or bullying occurred, or six months from the date the complainant first obtained knowledge of the facts of the alleged discrimination, harassment, intimidation or bullying.

The time for filing a discrimination, harassment, intimidation or bullying complaint may be extended in writing by our district superintendent or his or her designee, upon written request by the complainant setting forth the reasons for the extension. The period for filing a discrimination, harassment, intimidation or bullying complaint may be extended by our superintendent or his or her designee for good cause for a period not to exceed 90 calendar days following the expiration of the six month time period. Our superintendent shall respond immediately upon a receipt of a request for extension.

The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, harassment, intimidation, and bullying or by one who believes an individual or any specific class of individuals has been subjected to discrimination, harassment, intimidation, and bullying prohibited by this part.

We ensure that complainants are protected from retaliation and that the identity of a complainant alleging discrimination, harassment, intimidation, and bullying remain confidential as appropriate.

An investigation of a discrimination, harassment, intimidation, and bullying complaint shall be conducted in a manner that protects confidentiality of the parties and maintains the integrity of the process.

Complainants are advised of the right to pursue civil law remedies under state or federal discrimination, harassment, intimidation or bullying laws. Civil law remedies, including, injunctions, restraining orders, or other remedies or orders may also be available at any time.

If we find merit in a pupil fees and/or an LCAP complaint we shall provide a remedy to all affected pupils, parents, and guardians that, in the case of pupil fees, includes reasonable efforts by us to ensure full reimbursement to all affected pupils, parents, and guardians, subject to procedures established through regulations adopted by the state board.

We submitted our UCP policies and procedures to our local governing board for approval and adoption (see the top of this document for final adoption date).

## **Filing a complaint with the Mendocino Unified School District**

Except for Williams complaints regarding instructional materials, emergency or urgent facilities conditions that pose a threat to the health or safety of pupils or staff, and teacher vacancies or misassignments, and complaints that allege discrimination, harassment, intimidation, and bullying, any individual, public agency or organization may file a written complaint with our district superintendent or his or her designee alleging a matter which, if true, would constitute a violation by our LEA of federal or state law or regulation governing a program. A pupil fees complaint may be filed with the principal of a school.

A pupil fees complaint and/or an LCAP complaint may be filed anonymously if the complaint provides evidence or information leading to evidence to support an allegation of noncompliance with laws relating to pupil fees.

A pupil fee complaint shall be filed no later than one year from the date the alleged violation occurred.

We will attempt in good faith by engaging in reasonable efforts to identify and fully reimburse all pupils, parents and guardians who paid a pupil fee within one year prior to the filing of the complaint.

The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, to present evidence or information.

Refusal by the complainant to provide the investigator with documents or other evidence related to the allegations in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation, may result in the dismissal of the complaint because of a lack of evidence to support the allegations.

Refusal by Mendocino Unified School District to provide the investigator with access to records and/or other information related to the allegation in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation, may result in a finding based on evidence collected that a violation has occurred and may result in the imposition of a remedy in favor of the complainant.

Except for Williams complaints and pupil fees complaints, a UCP complaint will be investigated and a written report (also known as the Decision) issued to the complainant within 60 days from the date of the receipt of the complaint, unless the complainant agrees in writing to an extension of time.

We shall issue a Decision based on the evidence and will contain the following elements:

- (i) the findings of fact based on the evidence gathered,
- (ii) conclusion of law,
- (iii) disposition of the complaint,
- (iv) the rationale for such disposition,
- (v) corrective actions, if any are warranted,
- (vi) notice of the complainant's right to appeal our LEA Decision to the CDE, and
- (vii) procedures to be followed for initiating an appeal to the CDE.

Nothing in this document shall prohibit anyone involved in the complaint from utilizing alternative methods to resolve the allegations, such as mediation. Nor are we prohibited from resolving complaints

prior to the formal filing of a written complaint. Mediation is a problem solving activity whereby a third party assists the parties to the dispute in resolving the complaint.

Copies of these complaint procedures shall be available free of charge.

Federal and State Laws cited:

1. 34 Code of Federal Regulations [CFR] §§ 300.510-511
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California Department of Education June 2015

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***Uniform Complaint Procedures (UCP) Annual Notice for 2016-17***

***For students, employees, parents/guardians, school and district advisory committee members, private school officials, and other interested parties***

*The Mendocino Unified School District has the primary responsibility for compliance with federal and state laws and regulations. We have established Uniform Complaint Procedures (UCP) to address allegations of unlawful discrimination, harassment, intimidation, and bullying, and complaints alleging violation of state or federal laws governing educational programs, the charging of unlawful pupil fees and the non-compliance of our Local Control and Accountability Plan (LCAP).*

*We will investigate all allegations of unlawful discrimination, harassment, intimidation or bullying against any protected group as identified in Education Code section 200 and 220 and Government Code section 11135, including any actual or perceived characteristics as set forth in Penal Code section 422.55 or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics in any program or activity conducted by the LEA, which is funded directly by, or that receives or benefits from any state financial assistance.*

*The UCP shall also be used when addressing complaints alleging failure to comply with state and/or federal laws in:*

- *Career Technical Education*
- *Child Care and Development Programs including state preschool*
- *Consolidated Categorical Programs*
- *Discrimination, Harassment, Intimidation, and Bullying*
- *Foster and Homeless Youth*
- *Local Control Funding Formula and Local Control Accountability Plans*
- *Migrant Education*
- *NCLB Titles I-VII*
- *Nutrition Services - USDA Civil Rights*
- *Regional Occupational Centers and Programs*
- *School Facilities*
- *Special Education*
- *Tobacco-Use Prevention Education Program*
- *Unlawful Pupil Fees*

*Pupil fees and/or LCAP complaints may be filed anonymously if the complainant provides evidence or information leading to evidence to support the complaint.*

*A pupil enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity.*

*A pupil fee includes, but is not limited to, all of the following:*

- 1. A fee charged to a pupil as a condition for registering for school or classes, or as a condition for participation in a class or an extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.*
- 2. A security deposit, or other payment, that a pupil is required to make to obtain a lock, locker, book, class apparatus, musical instrument, clothes, or other materials or equipment.*
- 3. A purchase that a pupil is required to make to obtain materials, supplies, equipment, or clothes associated with an educational activity.*

*A pupil fee complaint shall be filed no later than one year from the date the alleged violation occurred.*

*To file a program or Civil Rights complaint, please contact one of the following agencies listed below:*

*Child Nutrition Programs Civil Rights and Program Complaint Coordinator, California Department of Education, Nutrition Services Division, 1430 N. Street, Room 4503, Sacramento, CA 95814-2342, 916-323-8521 or 800-952-5609; or USDA, Director, Office of Adjudication, 1400 Independence Avenue, Southwest Washington, D.C. 20250-9410, 866-632-9992, Federal Relay Service 800-877-8339 (English), or 800-845-6136 (Spanish).*

*Complaints other than issues relating to pupil fees must be filed in writing with the following designated to receive complaints:*

*Name or title: \_\_\_\_\_ Jason Morse, Superintendent \_\_\_\_\_*  
*Unit or office: \_\_\_\_\_ District Office \_\_\_\_\_*  
*Address: \_\_\_\_\_ P.O. Box 1154, 44141 Little Lake Road, Mendocino, CA 95460 \_\_\_\_\_*  
*Phone: \_\_\_\_\_ 707-937-5868 \_\_\_\_\_ E-mail address: \_\_\_\_\_ jmorse@mcn.org \_\_\_\_\_*

*A pupil fees complaint is filed with the Mendocino Unified School District and/or the principal of a school.*

*Complaints alleging discrimination, harassment, intimidation, or bullying, must be filed within six (6) months from the date the alleged discrimination, harassment, intimidation, or bullying, occurred or the date the complainant first obtained knowledge of the facts of the alleged discrimination, harassment, intimidation, or bullying, unless the time for filing is extended by the superintendent or his or her designee.*

*Complaints will be investigated and a written Decision or report will be sent to the complainant within sixty (60) days from the receipt of the complaint. This sixty (60) day time period may be extended by written agreement of the complainant. The LEA person responsible for investigating the complaint shall conduct and complete the investigation in accordance with sections 4680-4687 and in accordance with local procedures adopted under section 4621.*

*The complainant has a right to appeal our Decision of complaints regarding specific programs, pupil fees and the LCAP to the California Department of Education (CDE) by filing a written appeal within 15 days of receiving our Decision.*

*The appeal must be accompanied by a copy of the originally-filed complaint and a copy of our Decision.*

*The complainant is advised of civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal discrimination, harassment, intimidation or bullying laws, if applicable.*

*A copy of our UCP compliant policies and procedures is available free of charge.*

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*California Department of Education • June 2015*



**Uniform Complaint Procedures (UCP) Annual Notice for 2016-17**

**For students, employees, parents/guardians, school and district advisory committee members, private school officials, and other interested parties**

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The UCP shall also be used when addressing complaints alleging failure to comply with state and/or federal laws in:

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- Consolidated Categorical Programs
- Discrimination, Harassment, Intimidation, and Bullying
- Foster and Homeless Youth
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- Migrant Education
- NCLB Titles I-VII
- Nutrition Services - USDA Civil Rights
- Regional Occupational Centers and Programs
- School Facilities
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- Unlawful Pupil Fees

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A pupil fee includes, but is not limited to, all of the following:

1. A fee charged to a pupil as a condition for registering for school or classes, or as a condition for participation in a class or an extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.
2. A security deposit, or other payment, that a pupil is required to make to obtain a lock, locker, book, class apparatus, musical instrument, clothes, or other materials or equipment.
3. A purchase that a pupil is required to make to obtain materials, supplies, equipment, or clothes associated with an educational activity.

A pupil fee complaint shall be filed no later than one year from the date the alleged violation occurred.

Complaints other than issues relating to pupil fees must be filed in writing with the following designated to receive complaints:

Name or title: Jason Morse, Superintendent  
Unit or office: District Office  
Address: P.O. Box 1154, 44141 Little Lake Road, Mendocino, CA 95460  
Phone: 707-937-5868 E-mail address: jrmorse@mcn.org

A pupil fees complaint is filed with the Mendocino Unified School District and/or the principal of a school.

Complaints alleging discrimination, harassment, intimidation, or bullying, must be filed within six (6) months from the date the alleged discrimination, harassment, intimidation, or bullying, occurred or the date the complainant first obtained knowledge of the facts of the alleged discrimination, harassment, intimidation, or bullying, unless the time for filing is extended by the superintendent or his or her designee.

Complaints will be investigated and a written Decision or report will be sent to the complainant within sixty (60) days from the receipt of the complaint. This sixty (60) day time period may be extended by written agreement of the complainant. The LEA person responsible for investigating the complaint shall conduct and complete the investigation in accordance with sections 4680-4687 and in accordance with local procedures adopted under section 4621.

The complainant has a right to appeal our Decision of complaints regarding specific programs, pupil fees and the LCAP to the California Department of Education (CDE) by filing a written appeal within 15 days of receiving our Decision.

The appeal must be accompanied by a copy of the originally-filed complaint and a copy of our Decision.

The complainant is advised of civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders that may be available under state or federal discrimination, harassment, intimidation or bullying laws, if applicable.

A copy of our UCP compliant policies and procedures is available free of charge.

**Personnel**

***Personal Leaves***

*For the purpose of any personal leave offered pursuant to state law, a registered domestic partner shall have the same rights, protections, and benefits as a spouse and protections provided to a spouse's child shall also apply to a child of a registered domestic partner. (Family Code 297.5)*

*Whenever possible, employees shall request personal leaves in advance and prepare suitable instructions, including lesson plans as applicable, for a substitute employee.*

***Bereavement***

*Employees are entitled to a leave of up to five days upon the death of any member of the employee's immediate family. No deduction shall be made from the employee's salary, nor shall such leave be deducted from any other leave to which the employee is entitled. (Education Code 44985, 45194)*

*Members of the immediate family include: (Education Code 44985, 45194)*

- 1. The mother, father, grandmother, grandfather, or grandchild of the employee or of the employee's spouse*
- 2. The employee's spouse, son, son-in-law, daughter, daughter-in-law, brother, or sister*
- 3. Any relative living in the employee's immediate household*

*At the employee's request, bereavement leave may be extended under personal necessity leave provisions as provided in the section "Personal Necessity" below. (Education Code 44981, 45207)*

***Personal Necessity***

*Employees may use a maximum of seven days of their accrued personal illness/injury leave (sick leave) during each school year for reasons of personal necessity. (Education Code 44981, 45207)*

*Acceptable reasons for the use of personal necessity leave include:*

- 1. Death of a member of the employee's immediate family when the number of days of absence exceeds the limits set by bereavement leave provisions (Education Code 44981, 45207)*
- 2. An accident involving the employee's person or property or the person or property of a member of the employee's immediate family (Education Code 44981, 45207)*
- 3. A serious illness of a member of the certificated employee's immediate family (Education Code 44981)*
- 4. A classified employee's appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or other order. (Education Code 45207)*

5. *Fire, flood, or other immediate danger to the home of the employee*
6. *Personal business of a serious nature which the employee cannot disregard*

*Leave for personal necessity may be allowed for other reasons at the discretion of the Superintendent or designee. However, personal necessity leave shall not be granted for purposes of personal convenience, for the extension of a holiday or vacation, or for matters which can be taken care of outside of working hours. The Superintendent or designee shall have final discretion as to whether or not a request reflects personal necessity.*

*Advance permission shall not be required of any employee in any case involving the death of a member of the employee's immediate family, an accident involving the employee's person or property or the person or property of a member of his/her immediate family, or the serious illness of a member of the employee's immediate family. (Education Code 44981, 45207)*

*However, the employee shall notify the Superintendent or designee of the need for the leave as soon as practicable.*

*After any absence due to personal necessity, the employee shall verify the absence by submitting a completed and signed district absence form to his/her immediate supervisor.*

#### *Legal Duties*

*An employee may take time off work in order to: (Labor Code 230)*

1. *Serve on an inquest jury or trial jury*
2. *Comply with a subpoena or other court order to appear as a witness*

*Notices, summons, and subpoenas for court appearances shall be submitted to the district office when requesting leave.*

*A classified employee called for jury duty shall be granted leave with pay up to the amount of the difference between his/her regular earnings and any amount received for jury fees. (Education Code 44037)*

*A certificated employee also shall be granted leave for jury duty with pay up to the amount of the difference between his/her regular earnings and any amount received for jury fees.*

*Employees shall be granted leave to appear in court as witnesses other than litigants or to respond to an official order from another governmental jurisdiction for reasons not brought about through the connivance or misconduct of the employee. Such employees shall receive pay up to the amount of the difference between the employee's regular earnings and any amount received for witness fees.*

#### *Leaves for Crime Victims*

*An employee may be absent from work in order to attend judicial proceedings related to a crime when he/she is a victim, or an immediate family member, registered domestic partner, or child of a registered domestic partner of a victim, of any of the following crimes: (Labor Code 230.2)*

1. *A violent felony as defined in Penal Code 667.5(c)*

2. *A serious felony as defined in Penal Code 1192.7(c)*
3. *A felony provision of law proscribing theft or embezzlement*

*For these purposes, the employee may use vacation, personal leave, personal illness/injury leave, unpaid leave, or compensatory time off that is otherwise available to the employee. (Labor Code 230.2)*

*Prior to taking time off, an employee shall give his/her supervisor a copy of the notice of each scheduled proceeding that is provided by the responsible agency, unless advance notice is not feasible. When advance notice is not feasible or an unscheduled absence occurs, the employee shall, within a reasonable time after the absence, provide documentation evidencing the judicial proceeding from the court or government agency setting the hearing, the district attorney or prosecuting attorney's office, or the victim/witness office that is advocating on behalf of the victim. (Labor Code 230.2)*

*The district shall keep confidential any records pertaining to the employee's absence from work by reason of this leave. (Labor Code 230.2)*

#### *Leaves for Victims of Domestic Violence, Sexual Assault and Stalking*

*An employee who is a victim of domestic violence, sexual assault, or stalking as defined by law may use vacation, sick leave, personal leave, or compensatory time off that is otherwise available to him/her under the terms of his/her employment to attend to the following activities: (Labor Code 230, 230.1, 246.5)*

1. *Obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the employee or his/her child*
2. *Seek medical attention for injuries caused by domestic violence, sexual assault, or stalking*
3. *Obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking*
4. *Obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking*
5. *Participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation*

*Prior to taking time off, an employee shall give reasonable notice to his/her supervisor, unless advance notice is not feasible. When an unscheduled absence occurs, the employee shall provide, within a reasonable period of time, certification of the absence in the form of any of the following: (Labor Code 230, 230.1)*

1. *A police report indicating that the employee was a victim of domestic violence, sexual assault, or stalking*
2. *A court order protecting or separating the employee from the perpetrator of an act of domestic violence, sexual assault, or stalking, or other evidence from the court or prosecuting attorney that the employee has appeared in court*

3. *Documentation from a domestic violence or sexual assault counselor as defined in Evidence Code 1037.1 or 1035.2, licensed medical professional or health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence, sexual assault, or stalking*

*The district shall maintain the confidentiality of such an employee to the extent authorized by law. (Labor Code 230, 230.1)*

#### *Personal Leave for a Child's School Activities*

*Any employee who is a parent/guardian or grandparent having custody of one or more children enrolled in grades K-12 or who attend a licensed day care facility may use up to 40 hours of personal leave, vacation, or compensatory time off each school year in order to participate in school or day care activities. Such leave shall not exceed eight hours in any month of the year. The employee shall give reasonable advance notice of the absence. (Labor Code 230.8)*

*In lieu of using vacation, personal leave, or compensatory time off, eligible employees may take unpaid leave for this purpose.*

*If both parents/guardians of a child are employed at the same work site, this leave shall be allowed for the first parent/guardian who applies. Simultaneous absence by the second parent/guardian may be granted by the Superintendent or designee. (Labor Code 230.8)*

*Upon request by the Superintendent or designee, the employee shall provide documentation from the school or licensed day care facility that he/she participated in school or licensed day care facility activities on a specific date and at a particular time. (Labor Code 230.8)*

#### *Service on Education Boards and Committees*

*Upon request, a certificated employee shall be granted up to 20 school days of paid leave per school year for service performed within the state on any education board, commission, committee, or group authorized by Education Code 44987.3 provided that all of the following conditions are met: (Education Code 44987.3)*

1. *The service is performed within the state.*
2. *The board, commission, organization, or group informs the district in writing of the service.*
3. *The board, commission, organization, or group agrees, prior to the service, to reimburse the district, upon the district's request, for compensation paid to the employee's substitute and for actual related administrative costs.*

#### *Employee Organization Activities*

*Upon request, any certificated or classified employee shall be granted a leave of absence without loss of compensation to serve as an elected officer of a district employee organization or any statewide or national employee organization with which the employee organization is affiliated. The leave shall include, but is not limited to, absence for purposes of attending periodic, stated, special, or regular meetings of the body of the organization. (Education Code 44987, 45210)*

*Upon request of an employee organization in the district or its state or national affiliate, a reasonable number of unelected classified employees shall be granted a leave of absence without loss of compensation for the purpose of attending important organizational activities authorized by the organization. The employee organization shall provide reasonable notification to the Superintendent or designee when requesting a leave of absence for employees for this purpose. (Education Code 45210)*

*When leave is granted for any of the above purposes, the employee organization shall reimburse the district within 10 days after receiving the district's certification of payment of compensation to the employee. (Education Code 44987, 45210)*

#### *Religious Leave*

*The Superintendent or designee may grant an employee up to three days of leave per year for religious purposes, provided that the leave is requested in advance and that it does not cause additional district expenditures, the neglect of assigned duties, or any other unreasonable hardship on the district.*

*The Superintendent or designee shall deduct the cost of hiring a substitute, when required, from the wages of the employee who takes religious leave.*

*No employee shall be discriminated against for using this leave or any additional days of unpaid leave granted for religious observances at the discretion of the Superintendent or designee.*

#### *Spouse on Leave from Military Deployment*

*An employee who works an average of 20 hours or more per week and whose spouse is a member of the United States Armed Forces, National Guard, or reserves may take up to 10 days of unpaid leave during a period that his/her spouse is on leave from deployment during a military conflict, as defined in Military and Veterans Code 395.10. (Military and Veterans Code 395.10)*

*Within two business days of receiving official notice that his/her spouse will be on leave from deployment, the employee shall provide the Superintendent or designee with notice of his/her intention to take the leave. The employee shall submit written documentation certifying that his/her spouse will be on leave from deployment during the time that the leave is requested. (Military and Veterans Code 395.10)*

#### *Leave for Emergency Duty*

*An employee may take time off to perform emergency duty as a volunteer firefighter, a reserve peace officer, or emergency rescue personnel. (Labor Code 230.3)*

*Any employee who performs duty as a volunteer firefighter, reserve peace officer, or emergency rescue personnel shall be permitted to take temporary leaves of absence, not to exceed an aggregate total of 14 days per calendar year, for the purpose of engaging in fire, law enforcement, or emergency rescue training. (Labor Code 230.4)*

*Under the following infrequent scenarios, (rare situations that involve life threatening circumstances), teachers who are volunteer firefighters may leave class under the sole condition that students are not left unsupervised at any time. In addition, the teacher-firefighter will coordinate coverage before leaving school (buddie teacher). There may be rare cases in which incidents occur prior to the start of a school day which should be treated under the same light as an emergency illness and coverage will need to be provided without the firefighter's coordination.*

*Scenarios:*

- *Traffic collisions with risk of severe injuries*
- *Cliff/water rescues with immediate life risk*
- *Structure fire with visible flames/smoke*
- *Vegetation fire greater than one acre with rapid rate of spread*
- *CPR in progress within the town of Mendocino*

*As soon as the teacher-firefighter recognizes that there are sufficient resources (various skills) at the scene, he/she will return to school. In addition, any leave will be documented and the proper compensation time removed.*

*Civil Air Patrol Leave*

*An employee may take up to 10 days of unpaid leave per calendar year, beyond any leave otherwise available to him/her, to respond to an emergency operational mission of the California Civil Air Patrol, provided that the employee has been employed by the district for at least a 90-day period immediately preceding the leave. Such leaves shall not exceed three days for a single mission, unless an extension is granted by the governmental entity authorizing the mission and is approved by the Superintendent or designee. (Labor Code 1501, 1503)*

*The employee shall give the district as much advance notice as possible of the intended dates of the leave. The Superintendent or designee may require certification from the proper Civil Air Patrol authority to verify the eligibility of the employee for the leave and may deny the leave if the employee fails to provide the required certification. (Labor Code 1503)*

*Legal Reference:*

*EDUCATION CODE*

*44036-44037 Leaves of absence for judicial and official appearances*

*44963 Power to grant leaves of absence (certificated)*

*44981 Leave of absence for personal necessity (certificated)*

*44985 Leave of absence due to death in immediate family (certificated)*

*44987 Service as officer of employee organization (certificated)*

*44987.3 Leave of absence to serve on certain boards, commissions, etc.*

*45190 Leaves of absence and vacations (classified)*

*45194 Bereavement leave of absence (classified)*

*45198 Effect of provisions authorizing leaves of absence*

*45207 Personal necessity (classified)*

*45210 Service as officer of employee organization (classified)*

*45240-45320 Merit system, classified employees*

*EVIDENCE CODE*

*1035.2 Sex assault counselor; definition*

*1037.1 Domestic violence counselor; definition*

## *FAMILY CODE*

*297-297.5 Registered domestic partner rights, protections, and benefits*

## *GOVERNMENT CODE*

*3543.1 Release time for representatives of employee organizations*

*12945.1-12945.2 California Family Rights Act*

## *LABOR CODE*

*230-230.2 Leave for victims of domestic violence, sexual assault, or specified felonies*

*230.3 Leave for emergency personnel*

*230.4 Leave for volunteer firefighters*

*230.8 Leave to visit child's school*

*233 Illness of child, parent, spouse, domestic partner or domestic partner's child*

*234 Absence control policy*

*246.5 Paid sick days, purposes for use*

*1500-1507 Civil Air Patrol leave*

## *MILITARY AND VETERANS CODE*

*395.10 Leave when spouse on leave from military deployment*

## *PENAL CODE*

*667.5 Violent felony, defined*

*1192.7 Serious felony, defined*

## *CALIFORNIA CONSTITUTION*

*Article 1, Section 8 Religious discrimination*

## *UNITED STATES CODE, TITLE 29*

*2601-2654 Family and Medical Leave Act*

## *UNITED STATES CODE, TITLE 42*

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

## *COURT DECISIONS*

*Rankin v. Commission on Professional Competence, (1988) 24 Cal.3d 167*

## *PUBLIC EMPLOYMENT RELATIONS BOARD DECISIONS*

*Berkeley Council of Classified Employees v. Berkeley Unified School District, (2008) PERB Decision No. 1954*

## *Management Resources:*

### *WEB SITES*

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

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

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

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

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**Personnel**

**Personal Leaves**

Whenever possible, employees shall request personal leaves in advance and prepare suitable lesson plans or instructions for a substitute employee.

**Bereavement**

Employees are entitled to a leave of up to three days, or five days if out-of-state travel is required, upon the death of any member of the employee's immediate family. No deduction shall be made from the employee's salary, nor shall such leave be deducted from any other leave to which the employee is entitled. (Education Code 44985, 45194)

Members of the immediate family include the mother, father, grandmother, grandfather or grandchild of the employee or of the employee's spouse; the employee's spouse, son, son-in-law, daughter, daughter-in-law, brother or sister; or any relative living in the employee's immediate household. (Education Code 44985, 45194)

At the employee's request, bereavement leave may be extended under personal necessity leave provisions. (Education Code 44981, 45207)

**Personal Necessity**

Employees may use up to ten days of their accrued sick leave during each contract year for reasons of personal necessity. (Education Code 44981, 45207)

Acceptable reasons for the use of personal necessity leave include:

1. Death of a member of the employee's immediate family when the number of days of absence exceeds the limits set by bereavement leave provisions (Education Code 44981, 45207)
2. An accident involving the employee's person or property or the person or property of a member of the employee's immediate family (Education Code 44981, 45207)
3. A serious illness of a member of the certificated employee's immediate family (Education Code 44981)
4. A classified employee's appearance in any court or before any administrative tribunal as a litigant, party or witness under subpoena or other order (Education Code 45207)
5. Personal property emergencies
6. Personal business of a serious nature which the employee cannot disregard

Leave for personal necessity may be allowed for other reasons at the discretion of the Superintendent or designee. However, in the case of classified employees, no such leave shall be granted for purposes of personal convenience, for the extension of a holiday or vacation, or for other matters which can be taken care of outside of working hours. The Superintendent or designee shall have final discretion as to whether a request reflects true personal necessity.

Advance permission shall not be required of any employee in cases involving the death of a member of the employee's immediate family or an accident involving the employee's person or property or the person or property of a member of his/her immediate family. Advance permission also shall not be required in cases involving the serious illness of a member of the employee's immediate family. (Education Code 44981, 45207)

After any absence due to personal necessity, the employee shall verify the absence by submitting a completed and signed district absence form to his/her immediate supervisor. Prior approval is required for some requests according to collective bargaining unit agreements.

### Legal Duties

Employees called for jury duty shall be granted leave with pay upon providing a “work certificate” from the court verifying the number of days served.

Certificated employees also shall be granted leave for jury duty with pay up to the amount of the difference between the employee's regular earnings and any amount received as juror's fees.

Employees shall be granted leaves to appear in court as witnesses other than litigants or to respond to an official order from another governmental jurisdiction for reasons not brought about through the connivance or misconduct of the employee. Such employees shall receive pay up to the amount of the difference between the employee's regular earnings and any amount received for witness fees.

An employee may take time off work in order to: (Labor Code 230)

1. Serve on an inquest jury or trial jury
2. Comply with a subpoena or other court order to appear as a witness

Notices, summons and subpoenas for court appearances shall be submitted to the district office when requesting leave.

### Leaves for Crime Victims

An employee may be absent from work in order to attend judicial proceedings related to a crime when he/she is a victim, immediate family member of a victim, registered domestic partner of a victim, or child of a registered domestic partner of a victim of the following crimes: (Labor Code 230.2)

1. A violent felony as defined in Penal Code 667.5(c)
2. A serious felony as defined in Penal Code 1192.7(c)
3. A felony provision of law proscribing theft or embezzlement

For these purposes, the employee may use vacation, personal leave, sick leave, compensatory time off that is otherwise available to the employee, or unpaid leave. (Labor Code 230.2)

Prior to taking time off, an employee shall give his/her supervisor a copy of the notice of each scheduled proceeding that is provided by the responsible agency, unless advance notice is not feasible. When advance notice is not feasible or an unscheduled absence occurs, the employee shall, within a reasonable time after the absence, provide documentation evidencing the judicial proceeding from the court or government agency setting the hearing, the district attorney or prosecuting attorney's office, or the victim/witness office that is advocating on behalf of the victim. (Labor Code 230.2)

The supervisor and Superintendent or designee shall keep confidential any records pertaining to the employee's absence from work. (Labor Code 230.2)

### Leaves for Victims of Domestic Violence or Sexual Assault

An employee who is a victim of domestic violence or sexual assault as defined by law may take time off work to obtain or attempt to obtain any relief, including but not limited to a temporary restraining order, restraining order or other injunctive relief to help ensure the health, safety or welfare of the employee or his/her child. (Labor Code 230)

In addition, an employee who is a victim of domestic violence or sexual assault may take time off work to attend to the following activities: (Labor Code 230.1)

1. Seek medical attention for injuries caused by domestic violence or sexual assault
2. Obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault
3. Obtain psychological counseling related to an experience of domestic violence or sexual assault
4. Participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation

An employee who is a victim of domestic violence or sexual assault may use vacation, personal leave or compensatory time off that is otherwise available to the employee under the applicable terms of employment. (Labor Code 230, 230.1)

Prior to taking time off, an employee shall give reasonable notice to his/her supervisor, unless advance notice is not feasible. When an unscheduled absence occurs, the employee shall provide, within a reasonable time, certification of the absence in the form of any of the following documents: (Labor Code 230. 230.1)

1. A police report indicating that the employee was a victim of domestic violence or sexual assault
  2. A court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee has appeared in court
  3. Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting from an act of domestic violence or sexual assault
- The supervisor and Superintendent or designee shall maintain the confidentiality of such an employee to the extent authorized by law. (Labor Code 230. 230.1)

#### Personal Leave for a Child's School Activities

Any employee who is a parent/guardian or grandparent having custody of one or more children who are enrolled in grades K-12, or who attend a licensed day care facility, may use up to 40 hours of personal leave, vacation or compensatory time off each school year in order to participate in school or day care activities. Such leave shall not exceed eight hours in any month of the year, and the employee shall give reasonable advance notice of the absence. (Labor Code 230.8)

In lieu of using vacation, personal leave or compensatory time off, eligible employees giving reasonable advance notice may take up to 40 hours without pay each school year for this purpose, not to exceed eight hours in any month.

If both parents of a child are employed at the same work site, this leave shall be allowed for the first parent who applies; simultaneous absence by the second parent may be granted by the Superintendent or designee. (Labor Code 230.8)

Upon request by the Superintendent or designee, the employee shall provide documentation from the school or licensed day care facility that he/she participated in school or licensed day care facility activities on a specific date and at a particular time. (Labor Code 230.8)

#### Service on Education Boards, Committees and State or Employee Organizations

Employees shall be granted up to 20 school days of paid leave per school year for service performed within the state on any education boards, commissions, committees or groups authorized by Education Code 44987.3 or statute, provided that all of the following conditions are met: (Education Code 44987.3)

1. The service is in the state of California.
2. The board, commission, organization or group informs the district in writing of the service.
3. The board, commission, organization or group agrees, prior to service, to reimburse the district, upon the district's request, for compensation paid to the employee's substitute and for actual related administrative costs.

Employees may take a leave of absence without loss of compensation to serve as an elected officer of a district employee organization or any statewide or national employee organization with which the local organization is affiliated. The leave shall include, but is not limited to, absence for purposes of attending periodic, stated, special or regular meetings of the body of the organization. (Education Code 44987, 45210) Following the district's payment to the employee for the leave of absence, the school district shall be reimbursed by the employee organization of which the employee is an elected officer for all compensation paid the employee on account of the leave.

#### Religious Leave

The Superintendent or designee may grant employees up to three days of leave per year for religious purposes, provided that the leave is requested in advance and that it does not cause additional district expenditures, the neglect of assigned duties or any other unreasonable hardship on the district.

No employee shall be discriminated against for using this leave or any additional days of unpaid leave granted for religious observances at the discretion of the Superintendent or designee.

#### Leave for Emergency Duty

An employee may take time off to perform emergency duty as a volunteer firefighter, a reserve peace officer, or emergency rescue personnel. (Labor Code 230.3)

An employee who is a volunteer firefighter shall be permitted to take temporary leaves of absence, not to exceed an aggregate total of 14 days per calendar year, for the purpose of engaging in fire or law enforcement training. (Labor Code 230.4)

#### Legal Reference:

##### EDUCATION CODE

44036-44037 Leaves of absence for judicial and official appearances

44963 Power to grant leaves of absence (certificated)

44981 Leave of absence for personal necessity (certificated)

44985 Leave of absence due to death in immediate family (certificated)

44987 Service as officer of employee organization (certificated)

44987.3 Leave of absence to serve on certain boards, commissions, etc.

45190 Leaves of absence and vacations (classified)

45194 Bereavement leave of absence (classified)

45198 Effect of provisions authorizing leaves of absence

45207 Personal necessity (classified)

45210 Service as officer of employee organization (classified)

##### FAMILY CODE

297.5 Domestic partner rights

##### GOVERNMENT CODE

3543.1 Release time for representatives of employee organizations

##### LABOR CODE

230-230.2 Leave for victims of domestic violence, sexual assault or specified felonies

230.3 Leave for emergency personnel

230.4 Leave for volunteer firefighters

230.8 Leave to visit child's school

233 Illness of child, parent, spouse, domestic partner or domestic partner's child

234 Absence control policy

##### PENAL CODE

667.5 Violent felony, defined

1192.7 Serious felony, defined

##### CALIFORNIA CONSTITUTION

Article 1, Section 8 Religious discrimination

##### UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VII, Civil Rights Act of 1964

##### COURT DECISIONS

Rankin v. Commission on Professional Competence (1988) 24 Cal.3d 167

Susan Strom

## Legal Opinion

**From:** Nancy Klein <nklein@sclscal.org>  
**Sent:** Monday, October 17, 2016 2:24 PM  
**To:** Susan Strom  
**Cc:** Jason Morse  
**Subject:** Volunteer Firefighters  
**Attachments:** AG Opinion- Reasonable Procedures Meet D Needs.rtf

Susan,

Attached is the Attorney General's opinion we discussed concerning employees who leave their school district duties to perform voluntary firefighter duties. The Attorney General concluded that a school district "may require the principal to follow reasonable procedures to ensure that the needs of the school are adequately met during any absence." The same reasoning would apply to other school district employees. Since teachers may be needed on site to adequately supervise students and classified employees may be needed to tend to school emergencies (e.g., threatened fire or flooding at school), I would recommend, at the very least, that employees check in with the site administrator before leaving school to give him/her the opportunity to assess whether district operations can continue safely in the absence of the firefighter-employees.

Labor Code sections 230.3 and 230.4 provide that employees must not be discriminated "against for taking time off to perform emergency duty as a volunteer firefighter..." and must be allowed to "take temporary leaves of absence, not to exceed an aggregate of 14 days per calendar year, for the purpose of engaging in fire...training." Neither Labor Code section specifies that the time off or leave of absence is with pay.

Nancy

Nancy L. Klein  
Sr. Associate General Counsel  
School and College Legal Services of California  
5350 Skylane Boulevard  
Santa Rosa, CA 95403  
Tel.) 707-524-2690 Fax) 707-578-0517



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**OF CALIFORNIA**

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78 Ops. Cal. Atty. Gen. 116 (Cal.A.G.), 1995 WL 274918

Office of the Attorney General

State of California  
Opinion No. 94-1111  
May 10, 1995

**\*1 THE HONORABLE SAL CANNELLA**  
**MEMBER OF THE CALIFORNIA STATE ASSEMBLY**

THE HONORABLE SAL CANNELLA, MEMBER OF THE CALIFORNIA STATE ASSEMBLY, has requested an opinion on the following question:

May the governing board of a school district discipline a school principal for taking time off to perform emergency duty as a volunteer firefighter?

#### CONCLUSION

The governing board of a school district may not discipline a school principal for taking time off to perform emergency duty as a volunteer firefighter, but may require the principal to follow reasonable procedures to ensure that the needs of the school are adequately met during any absence.

#### ANALYSIS

Section 35020 of the Education Code provides that “[t]he governing board of each school district shall fix and prescribe the duties to be performed by all persons in public school service in the school district.” Such duties, as required of a school principal, may be expected to include the principal’s presence at the school during regular school hours. However, if also serving as a volunteer firefighter,<sup>1</sup> the school principal may be called upon to perform emergency duties which could result in occasional, and sometimes lengthy, absences from the school.

We are asked to determine whether a school principal may attend to emergency firefighting duties as a volunteer firefighter during regular school hours without being subjected to disciplinary action by the school district. We conclude that while disciplinary action may not be undertaken, the school district board of trustees may require the principal to follow reasonable procedures to ensure that the needs of the school are adequately met during any absence.

Labor Code section 230.3<sup>2</sup> provides:

“(a) No employer shall discharge or in any manner discriminate against an employee for taking time off to perform emergency duty as a volunteer firefighter.

“(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has taken time off to perform emergency duty as a volunteer firefighter shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

“(c) Subdivisions (a) and (b) of this section shall not apply to any public safety agency or provider of emergency medical services when, as determined by the employer, the employee’s absence would hinder the availability of public safety or emergency medical services.

“(d) For purposes of this section, “volunteer firefighter” shall have the same meaning as the term “volunteer” in subdivision (m) of Section 50952 of the Government Code.”

\*2 In analyzing the language of section 230.3 so as to resolve the question presented, we bear in mind several well established principles of statutory construction. As explained by the Supreme Court in *Dyna-Med, Inc. v. Fair Employment and Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387:

“Pursuant to established principles, our first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. [Citations.] Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. [Citation.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. [Citation.]”

The role of the volunteer firefighter and the need for protective legislation was expressed in the legislative history of section 230.3 at the time of its enactment. (Stats. 1989, ch. 167, § 1.) The report of the Assembly Committee on Labor and Employment stated with respect to the proposed legislation:

“Volunteer firefighters play an important and often vital role, not only in combating fires in their community, but also in assisting the state and other governmental bodies in fighting regional fires. Membership in volunteer firefighter units should be encouraged. Volunteers should not be subjected to the possibility of job loss or other negative employment consequences as a result of their services to the community.”

While the legislative history expresses the general legislative intent in enacting section 230.3, we recognize that special rules of statutory construction apply when determining whether the general terms of a statute are applicable to a public agency and public officials. These rules were summarized by the Supreme Court in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 276-277, as follows:

“[I]n the absence of express words to the contrary, neither the state nor its subdivisions are included within the general words of a statute. [Citations.] But this rule excludes governmental agencies from the operation of general statutory provisions only if their inclusion would result in an infringement upon sovereign governmental powers. •Where . . . no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the Legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language only.’ [Citations.]”

\*3 We find it significant that although section 230.3 refers generally to an “employer,” it specifically refers to a “public safety agency.” (§ 230.3, subd. (c).) Under subdivision (c), section 230.3 is inapplicable to public safety agencies when the employee’s absence would hinder the availability of public safety services. The term “public safety agency” is not defined in the Labor Code, but it is used in the Government Code, where it is defined as “a functional division of a public agency which provides firefighting, police, medical, or other emergency services.” (Gov. Code, § 53102.) We may adopt such definition of “public safety agency” for purposes of section 230.3 under the principle of construction that “[t]he interpretation of an ambiguous statutory phrase may be aided by reference to other statutes which apply to similar or analogous subjects.” (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1008-1009.)

Accordingly, we find that the Legislature intended for section 230.3 to be applicable to public employers as well as private employers. If it had intended to exclude all public employers, there would have been no need to create the express exception for public safety agencies which appears in subdivision (c).<sup>3</sup> The exception would be mere surplusage. We construe the exception as indicating that only matters of public safety will justify an employer’s rejection of a call for the emergency services of a volunteer firefighter. Such construction is consistent with the legislative history of section 230.3 which expresses a strong public policy favoring the immediate availability of all volunteer firefighters when emergencies arise.<sup>4</sup>

Our construction of section 230.3 is also consistent with the provisions of section 220, which provide:

"Nothing in sections 200 to 211 and 215 to 219, inclusive, shall apply to the payment of wages of employees directly employed by the State or any county, incorporated city or town or other municipal corporation. All other employments are for the purposes of these sections private employments and subject to the provisions thereof."

Section 220 is part of the same legislative scheme (§§ 200-243) as section 230.3 and indicates that the Legislature could easily have excluded public employees from the requirements of the latter statute if it had so intended. (Cf., 73 Ops.Cal.Att'y.Gen. 13, 23 (1990).)

We therefore conclude that the term "employer," as used in section 230.3, applies to public as well as private employers. Nevertheless, we do not believe that section 230.3 and Education Code section 35020 must be treated as irreconcilable.<sup>1</sup> We are directed to harmonize statutes relating to the same subject wherever possible. (Dyna-Med, Inc. v. Fair Employment and Housing Com., supra, 43 Cal.3d at 1387.) Although advance notice of an emergency firefighting situation may not reasonably be expected, it would be incumbent upon the principal as the holder of a position of public trust<sup>6</sup> to inform the district of his firefighter status and to arrange with the district for a contingency plan to be utilized whenever he is called away for emergency firefighting duty. Such a plan could ensure that the public functions for which the principal is responsible do not unduly suffer as the result of any absence. The school district's ability to "fix and prescribe" the duties of its employees thus need not be fundamentally compromised in accommodating the public's emergency firefighting needs.

**\*4 It is concluded that the governing board of a school district may not discipline a school principal for taking time off to perform emergency duty as a volunteer firefighter, but may require the principal to follow reasonable procedures to ensure that the needs of the school are adequately met during any absence.**

Daniel E. Lungren  
Attorney General  
Gregory L. Gonot  
Deputy Attorney General

#### Footnotes

- <sup>1</sup> "Volunteer firefighter" means any person registered as a volunteer member of a regularly organized fire department of a city, county, city and county, or district, having official recognition of the government of the city, county, city and county, or district in which such department is located. (Gov. Code, § 50952, subs. (h). (m).)
- <sup>2</sup> Unless otherwise specified all section references hereinafter are to the Labor Code.
- <sup>3</sup> A school district would not be considered an agency which provides police, medical, or other emergency services.
- <sup>4</sup> We note that the Education Code contains specific provisions which govern the granting of leaves of absence to school employees for the purpose of appearing as a witness in court, responding to an official order from another governmental jurisdiction, or serving as a juror. (Ed. Code, §§ 44036-44037.) We do not find the call for volunteer firefighters to be in the nature of an "official order" and therefore regard Education Code section 44036 as inapplicable to the matter under consideration here.
- <sup>5</sup> "[W]hen a special and a general statute are in conflict, the former controls." (Agricultural Labor Relations Bd. v. Superior Court (1976) 16 Cal.3d 391, 420.) Here, section 230.3 would necessarily be considered the more specific if the two statutes could not be reconciled.
- <sup>6</sup> A school principal, as the highest level administrator within a particular school, is in a position which directly affects the school district's capacity to perform governmental functions. **If a principal is able to leave his post on an unscheduled basis for non-school related purposes, the district's ability to ensure proper management of the school could be diminished.** (See Nutter v. City of Santa Monica (1946) 74 Cal.App.2d 292, 302.)

