

CONCEPTS AND ROLES

The Board of Trustees recognizes that the success of district students and programs hinges on effective personnel. The Board desires to establish safe and supportive working conditions that will attract and retain staff members who are highly qualified and dedicated to the education and welfare of students. The district's personnel policies and related regulations shall be designed to ensure a supportive, positive climate and shall be consistent with collective bargaining agreements and in conformance with state and federal law and regulations.

As the legal representative of the district in negotiations with employee representatives, the Board shall set goals and guidelines for collective bargaining, select the bargaining team, maintain communications during the bargaining process, and adopt the negotiated contract. Terms and conditions of employment which have been negotiated and stated in employee contracts shall have the force of policy. The Board shall hear employee complaints and appeals when such hearings are in accordance with Board policy or negotiated agreements. The Board shall also adopt wage and salary schedules and shall commit budget funds for staff development so that staff members may continue developing their skills.

(cf. 4131 - Staff Development)
(cf. 4141/4241 - Collective Bargaining Agreement)
(cf. 4143/4243 - Negotiations/Consultation)
(cf. 4144/4244/4344 - Complaints)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)
(cf. 9000 - Role of the Board)

The Superintendent has primary responsibility for overseeing the district's personnel system. To support this effort, the Board shall approve a framework for sound hiring practices. The Superintendent shall nominate all personnel for employment, and the Board shall approve only those persons so recommended. Individuals who approach Board members regarding prospective employment shall be referred to the Superintendent or designee.

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4111 - Recruitment and Selection)
(cf. 4211 - Recruitment and Selection)
(cf. 4311 - Recruitment and Selection)

The Superintendent or designee shall assign and supervise the work of all employees and shall evaluate their work in accordance with effective accountability systems approved by the Board. The Superintendent or designee also shall recommend disciplinary action which the Board may take against employees when warranted pursuant to Board policy, administrative regulations and/or state or federal law.

CONCEPTS AND ROLES (continued)

(cf. 4115 - Evaluation/Supervision)

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4215 - Evaluation/Supervision)

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

(cf. 4315 - Evaluation/Supervision)

The Board recognizes that every employee has a stake in the district's successful operation. The Board encourages all district employees to express their ideas, concerns and proposals related to the improvement of working conditions and the total educational program. The Superintendent or designee shall establish procedures whereby he/she will receive and consider employee suggestions and submit them, when appropriate, for consideration by the Board.

Legal Reference:

EDUCATION CODE

35020 Duties of employees fixed by governing board

35035 Powers and duties of superintendent

35160 Powers of governing board

GOVERNMENT CODE

3540-3549.3 Public education employer-employee relations

DRUG AND ALCOHOL-FREE WORKPLACE

The Board of Trustees believes that the maintenance of drug- and alcohol-free workplaces is essential to school and district operations.

No employee shall unlawfully manufacture, distribute, dispense, possess, use or be under the influence of any alcoholic beverage, drug or controlled substance as defined in 21 USC 81 at any school district workplace. These prohibitions apply before, during and after school hours. A school district workplace is any place where school district work is performed, any school-owned or school-approved vehicle used to transport students to and from school or school activities; any off-school sites when accommodating a school-sponsored or school-approved activity or function where students are under district jurisdiction; or during any period of time when an employee is supervising students on behalf of the district or otherwise engaged in district business.

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

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

The Superintendent or designee shall notify employees of these prohibitions. (Government Code 8355; 41 USC 702)

An employee shall abide by the terms of this policy and notify the district, within five days, of any criminal drug or alcohol statute conviction which he/she receives for a violation occurring in the workplace. (41 USC 702)

The Superintendent or designee shall notify the appropriate federal granting or contracting agencies within 10 days after receiving notification, from an employee or otherwise, of any conviction for a violation occurring in the workplace. (41 USC 701)

The Board may not employ or retain in employment persons convicted of a controlled substance offense as defined in Education Code 44011. If any such conviction is reversed and the person acquitted in a new trial or the charges dismissed, his/her employment is no longer prohibited. A plea or verdict of guilty, a finding of guilt by a court in a trial without a jury, or a conviction following a plea of nolo contendere shall be deemed to be a conviction. (Education Code 44836, 45123)

(cf. 4112 - Appointment and Conditions of Employment)

(cf. 4212 - Appointment and Conditions of Employment)

A classified employee may be reemployed after conviction of such an offense if the Board determines, from the evidence presented, that the person has been rehabilitated for at least five years. (Education Code 45123)

The Board may take appropriate disciplinary action, up to and including termination, or require the employee to satisfactorily participate in and complete a drug assistance or rehabilitation program approved by a federal, state or local health, law enforcement or other appropriate agency.

DRUG AND ALCOHOL-FREE WORKPLACE (continued)

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

The Superintendent or designee shall establish a drug- and alcohol-free awareness program to inform employees about: (Government Code 8355)

1. The dangers of drug and alcohol abuse in the workplace
2. The district policy of maintaining drug- and alcohol-free workplaces
3. Any available drug and alcohol counseling, rehabilitation, and employee assistance programs

(cf. 4159/4259/4359 - Employee Assistance Programs)

4. The penalties that may be imposed on employees for drug and alcohol abuse violations

Legal Reference:

EDUCATION CODE

44011 *Controlled substance offense*

44425 *Conviction of controlled substance offenses as grounds for revocation of credential*

44836 *Employment of certificated persons convicted of controlled substance offenses*

44940 *Compulsory leave of absence for certificated persons*

44940.5 *Procedures when employees are placed on compulsory leave of absence*

45123 *Employment after conviction of controlled substance offense*

45304 *Compulsory leave of absence for classified persons*

GOVERNMENT CODE

8350-8357 *Drug-free workplace*

UNITED STATES CODE, TITLE 20

7111-7117 *Safe and Drug Free Schools and Communities Act*

UNITED STATES CODE, TITLE 21

812 *Schedule of controlled substances*

CODE OF FEDERAL REGULATIONS, TITLE 21

1308.01-1308.49 *Schedule of controlled substances*

NONDISCRIMINATION IN EMPLOYMENT

The Board of Trustees prohibits unlawful discrimination against and/or harassment of district employees and job applicants on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation at any district site and/or activity. The Board also prohibits retaliation against any district employee or job applicant who complains, testifies or in any way participates in the district's complaint procedures instituted pursuant to this policy.

(cf. 4031 - Complaints Concerning Discrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

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

(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)

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

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

Any district employee who observes or has knowledge of an incident of unlawful discrimination or harassment shall report the incident to the principal, district administrator or Superintendent as soon as practical after the incident. Failure of a district employee to report discrimination or harassment may result in disciplinary action.

The Superintendent or designee shall regularly publicize, within the district and in the community, the district's nondiscrimination policy and the availability of complaint procedures. Such publication shall be included in each announcement, bulletin or application form that is used in employee recruitment. (34 CFR 100.6, 106.9)

The district's policy and administrative regulation shall be posted in all schools and offices including staff lounges and student government meeting rooms. (5 CCR 4960)

The Board designates the following position as Coordinator for Nondiscrimination in Employment:

Superintendent
32248 Crown Valley Road
Acton, CA 93510
661-269-0750

NONDISCRIMINATION IN EMPLOYMENT (continued)

Other Remedies

An employee may, in addition to filing a discrimination complaint with the district, file a complaint with either the California Department of Fair Employment and Housing (DFEH) or the Equal Employment Opportunity Commission (EEOC). The time limits for filing such complaints are as follows:

1. To file a valid complaint with DFEH, the employee must file his/her complaint within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960. (Government Code 12960)
2. To file a valid complaint directly with EEOC, the employee must file his/her complaint within 180 days of the alleged discriminatory act(s). To file a valid complaint with EEOC after filing a complaint with DFEH, the employee must file the complaint within 300 days of the alleged discriminatory act(s) or within 30 days after the termination of proceedings by DFEH, whichever is earlier. (42 USC 2000e-5)

Employees wishing to file complaints with the DFEH and EEOC should contact the nondiscrimination coordinator for more information.

Legal Reference: (see next page)

NONDISCRIMINATION IN EMPLOYMENT (continued)

Legal Reference:

CIVIL CODE

51.7 *Freedom from violence or intimidation*

GOVERNMENT CODE

11135 *Unlawful discrimination*

12900-12996 *Fair Employment and Housing Act*

PENAL CODE

422.56 *Definitions, hate crimes*

CODE OF REGULATIONS, TITLE 2

7287.6 *Terms, conditions and privileges of employment*

CODE OF REGULATIONS, TITLE 5

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

UNITED STATES CODE, TITLE 20

1681-1688 *Discrimination based on sex or blindness, Title IX*

UNITED STATES CODE, TITLE 29

794 *Section 504 of the Rehabilitation Act of 1973*

UNITED STATES CODE, TITLE 42

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

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

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

12101-12213 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 *Compliance information*

104.8 *Notice*

106.8 *Designation of responsible employee and adoption of grievance procedures*

106.9 *Dissemination of policy*

COURT DECISIONS

Carter v. California Department of Veterans Affairs (2003) 2003 Cal.LEXIS 5694

Shepard v. Loyola Marymount (2002) 102 CalApp.4th 837

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, June 1999

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, March, 1999

U.S. DEPARTMENT OF EDUCATION, OFFICE OF CIVIL RIGHTS

Notice of Non-Discrimination, January, 1999

WEB SITES

EEOC: <http://www.eeoc.gov>

OCR: <http://www.ed.gov/offices/OCR>

DFEH: <http://www.dfeh.ca.gov>

NONDISCRIMINATION IN EMPLOYMENT

Unlawful discrimination or harassment of an individual includes:

1. Slurs, epithets, threats or verbal abuse
2. Derogatory or degrading comments, descriptions, drawings, pictures or gestures
3. Unwelcome jokes, stories, teasing or taunting
4. Any other verbal, written, visual or physical conduct against the individual which:
 - a. Adversely affects his/her employment opportunities, or
 - b. Has the purpose or effect of unreasonably interfering with his/her work performance or creating an intimidating, hostile or offensive work environment

Any employee or job applicant who feels that he/she has been or is being unlawfully discriminated against or harassed should immediately contact his/her supervisor, the nondiscrimination coordinator or the Superintendent in order to obtain procedures for reporting a complaint. Such complaints shall be filed in accordance with AR 4031 - Complaints Concerning Discrimination in Employment. An employee may bypass his/her supervisor when the supervisor is the alleged offender.

(cf. 4031 - Complaints Concerning Discrimination in Employment)
(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)

Any supervisor who receives a discrimination/harassment complaint shall immediately notify the nondiscrimination coordinator or the Superintendent, who shall ensure that the complaint is appropriately investigated in accordance with district policy and regulations.

The Superintendent or designee shall ensure that annual training is provided to all employees regarding the issues of discrimination.

COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT

The following procedures shall be used when a district employee or job applicant has a complaint alleging that a specific action, policy, procedure or practice discriminates against him/her on any basis specified in the district's nondiscrimination policies.

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

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

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

1. The complaint should be initiated promptly after a complainant knew, or should have known, of the alleged discrimination.
2. All parties involved in allegations of discrimination shall be notified when a complaint is filed, when a complaint meeting or hearing is scheduled, and when a decision or ruling is made. The parties also shall be notified of their right to appeal the decision to the next level.
3. When a complaint is brought against the individual responsible for the complaint process at any level, the complainant may address the complaint directly to the next appropriate level.
4. Meetings related to a complaint shall be held at times the district determines appropriate to the circumstances.
5. For the protection of all the parties involved, complaint proceedings shall be kept confidential insofar as appropriate.
6. All documents, communications and records dealing with the investigation of the complaint shall be placed in a confidential district personnel complaint file and not in the employee's individual personnel file.

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

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

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

7. Time limits specified in these procedures may be revised only by written agreement of all parties involved. If the district fails to respond within a specified or adjusted time limit, a complainant may proceed to the next level. If a complainant fails to take the complaint to the next step within the prescribed time, the complaint shall be considered settled at the preceding step.

COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT (continued)

Level I

The complainant shall first meet informally with his/her supervisor or the administrator of the school where the alleged discriminatory act occurred. A complaint regarding discrimination away from the school site should be discussed informally with the complainant's supervisor. If the complainant's concerns are not clear or cannot be resolved through informal discussion, the supervisor or other administrator shall prepare, within 10 working days, a written summary of his/her meeting(s) with the complainant. This report shall be made available to the nondiscrimination coordinator (coordinator) designated by the Board of Trustees in BP 4030 - Nondiscrimination in Employment.

Level II

If a complaint cannot be resolved to the satisfaction of the complainant at Level I, he/she may submit a formal written complaint to the coordinator within 10 working days of his/her attempt to resolve the complaint informally. The written complaint shall include the following:

1. The complainant's name, address and telephone number
2. The name and work location of the district staff member who committed the alleged violation
3. A description of the alleged discriminatory act(s) or omission(s)
4. The discriminatory basis alleged
5. A specific description of the time, place, nature, participants in and witnesses to the alleged violation
6. Other pertinent information which may assist in investigating and resolving the complaint
7. The complainant's signature or that of his/her representative

The coordinator shall assign a staff member to assist the complainant with this writing if such help is needed. The coordinator shall respond to the complaint in writing within 10 working days.

COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT (continued)

The coordinator shall conduct any investigation necessary to respond to the complaint, including discussion with the complainant, person(s) involved, appropriate staff members and students, and review of the Level I report and all other relevant documents. If a response from third parties is necessary, the coordinator may designate up to 10 additional working days for investigation of the complaint.

Level III

If the complaint cannot be resolved at Level II, either party may present the complaint to the Superintendent or designee within 10 working days. The Superintendent or designee shall review the Level II investigation file, including the written complaint and all responses from district staff. The Superintendent or designee shall respond to the complaint in writing within 10 working days.

If the Superintendent or designee finds it necessary to conduct further investigation, he/she may designate up to 10 additional working days for such investigation and shall respond to the complaint in writing within 10 working days of completing the investigation.

Level IV

If the matter is not resolved at Level III, either party may file a written appeal to the Board within 10 working days after receiving the Level III response. The Superintendent or designee shall provide the Board with all information presented at previous levels.

The Board shall grant the hearing request for the next regular Board meeting for which the matter can be placed on the agenda. Any complaint against a district employee shall be addressed in closed session in accordance with law. The Board shall render its decision within 10 working days.

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 9321 - Closed Session Purposes and Agendas)

The Board may appoint a hearing panel to review the complaint and previous decisions and make recommendations to the Board. The panel shall hear the appeal and render its decision within 10 working days.

Other Remedies

Complainants may appeal the Board's action to the California Department of Education. The Superintendent or designee shall ensure that complainants are informed that injunctions, restraining orders and other civil law remedies may also be available to them. This information shall be published with the district's nondiscrimination complaint procedures and included in any related notices. (Education Code 262.3)

Legal Reference: (see next page)

COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT (continued)

Legal Reference:

EDUCATION CODE

200-262.4 *Prohibition of discrimination*

GOVERNMENT CODE

12920-12921 *Nondiscrimination*

12940-12948 *Discrimination prohibited; unlawful practices, generally*

UNITED STATES CODE, TITLE 29

621-634 *Age Discrimination in Employment Act*

794 *Section 504 of the Rehabilitation Act of 1973*

UNITED STATES CODE, TITLE 42

2001d-2001d-7 *Title VI, Civil Rights Act of 1964*

2001e-2001e-17 *Title VII, Civil Rights Act of 1964 as amended*

2001h-2-2001h-6 *Title IX, 1972 Education Act Amendments*

12101-12213 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 *Americans with Disabilities Act*

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, March, 1999

OFFICE OF CIVIL RIGHTS AND NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Protecting Students from Harassment and Hate Crime, January, 1999

WEB SITES

EEOC: <http://www.eeoc.gov>

OCR: <http://www.ed.gov/offices/OCR>

REASONABLE ACCOMMODATION

Definitions

Disability, with respect to an individual, is defined as any of the following: (Government Code 12926; 29 CFR 1630.2)

1. A physical or mental impairment that limits one or more of the major life activities
2. A record of such an impairment
3. Being regarded as having such an impairment

Limits shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (Government Code 12926)

Essential functions are the fundamental job duties of the position the individual with a disability holds or desires. The term does not include the marginal functions of the position. (29 CFR 1630.2)

(cf. 4119.3/4219.3/4319.3 - *Duties of Personnel*)

Reasonable accommodations that an employer may need to provide in connection with modifications to the work environment or adjustments in how and when a job is performed that enable an individual with a disability to enjoy equal employment opportunities include, but are not limited to: (29 CFR 1630.2)

1. Making existing facilities accessible and usable
2. Restructuring the job duties
3. Offering part-time or modified work schedules
4. Acquiring or modifying equipment or devices
5. Changing tests, training materials or policies
6. Providing qualified readers or interpreters
7. Reassigning the employee to a vacant position

Qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position and who, with or without reasonable accommodation, can perform the essential functions of such position. (29 CFR 1630.2)

REASONABLE ACCOMMODATION (continued)

Undue hardship is a determination based on an individualized assessment of current circumstances that shows that a specific reasonable accommodation would cause significant difficulty or expense. A determination of undue hardship should be based on several factors, including: (29 CFR 1630.2)

1. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding
2. The overall financial resources of the facility making the reasonable accommodation, the number of persons employed at this facility, the effect on expenses and resources of the facility, or the impact on the operations of the facility
3. The overall financial resources, size, number of employees, and the number, type and location of facilities of the district
4. The type of operation of the district, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation
5. The impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

Requests for Reasonable Accommodation

The district designates the position specified in BP 4030 - Nondiscrimination in Employment as the coordinator of its efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

When requesting reasonable accommodation, the employee or employee's representative shall inform the employee's supervisor that he/she needs a change at work for a reason related to a medical condition.

When requesting reasonable accommodation during the hiring process, a job applicant shall inform the coordinator that he/she will need a reasonable accommodation for the process.

Employees' requests for reasonable accommodation may first be considered informally by the site administrator. The site administrator shall consult with the coordinator before any decision as to accommodation is made.

REASONABLE ACCOMMODATION (continued)

When the disability and/or the need for accommodation is not obvious, the coordinator may ask the employee to supply reasonable documentation about his/her disability. In requesting this documentation, the coordinator shall specify the types of information that are being sought about the employee's condition, the employee's functional limitations and the need for reasonable accommodation. The employee may be asked to sign a limited release allowing the district to submit a list of specific questions to the health care or vocational professional.

If the documentation submitted by the employee does not specify the existence of a qualifying disability and explain the need for reasonable accommodation, the district may require the employee to submit to an examination by a health care professional selected and paid for by the district.

Upon receiving a request to reasonably accommodate a qualified employee with a disability, the coordinator shall:

1. Determine the essential functions of the job
2. Engage in an informal, interactive process with the employee to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential means for providing accommodation, and assess their effectiveness
3. Develop a plan for reasonable accommodation which is effective and allows the employee to perform the essential functions of the job or to gain equal access to a benefit or privilege of employment and does not impose undue hardship on the district

To qualify for a job, an individual shall not pose a significant risk of substantial harm to himself/herself or others in the workplace which cannot be eliminated or reduced by reasonable accommodation. (29 CFR 1630.2)

The determination of whether an individual poses a significant risk of substantial harm to himself/herself or others shall be made on a case-by-case basis and shall be based on objective, factual evidence, taking into consideration the duration of the risks, the nature and severity of the potential harm, the likelihood that the potential harm will occur and the imminence of potential harm. (29 CFR 1630.2)

The coordinator may confer with the site administrator, the district medical advisor and/or other district staff before making a final decision as to the accommodation.

REASONABLE ACCOMMODATION (continued)

Appeal Process

If the employee or applicant is not satisfied with the decision of the coordinator, he/she may appeal in writing to the Superintendent or designee. This appeal shall be made within 10 working days of receiving the decision and shall include:

1. A clear, concise statement of the reasons for the appeal
2. A statement of the specific remedy sought

The Superintendent or designee shall consult with the coordinator and review the appeal, together with any available supporting documents. The Superintendent or designee shall give the employee or applicant his/her decision within 15 working days of receiving the appeal.

Any further appeal for reasonable accommodation shall be considered a complaint concerning discrimination in employment and may be taken to the Board of Trustees in accordance with the district's procedure for such complaints.

Legal Reference: (see next page)

REASONABLE ACCOMMODATION (continued)

Legal Reference:

CIVIL CODE

51 Unruh Civil Rights Act

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act

UNITED STATES CODE, TITLE 29

701-794e Vocational Rehabilitation Act

UNITED STATES CODE, TITLE 42

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act, especially:

35.107 Designation of employee

36.101-36.608 Nondiscrimination on the basis of disability by public facilities

CODE OF FEDERAL REGULATIONS, TITLE 29

1630.2 Direct threat

COURT DECISIONS

Colmenares v. Braemar Country Club, Inc., 2003 Cal.LEXIS 1131

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

US Airways, Inc. v. Barnett, (2002) 535 U.S., 122 S.Ct. 1516

Management Resources:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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

WEB SITES

EEOC: <http://www.eeoc.gov>

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

EMPLOYEE USE OF TECHNOLOGY

The Board of Trustees recognizes that technological resources can enhance employee performance by improving access to and exchange of information, offering effective tools to assist in providing a quality instructional program, and facilitating district and school operations. The Board expects all employees to learn to use the available technological resources that will assist them in the performance of their job responsibilities. As needed, employees shall receive training in the appropriate use of these resources.

(cf. 0440 - District Technology Plan)
(cf. 1113 - District and School Web Sites)
(cf. 4032 - Reasonable Accommodation)
(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)
(cf. 6162.7 - Use of Technology in Instruction)
(cf. 6163.4 - Student Use of Technology)

Employees shall be responsible for the appropriate use of technology and shall use the district's technological resources only for purposes related to their employment. Such use is a privilege which may be revoked at any time.

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

Employees should be aware that computer files and communications over electronic networks, including e-mail and voice mail, are not private. These technologies shall not be used to transmit confidential information about students, employees or district operations without authority.

The Superintendent or designee shall ensure that all district computers with Internet access have a technology protection measure that prevents access to visual depictions that are obscene or child pornography, and that the operation of such measures is enforced. The Superintendent or designee may disable the technology protection measure during use by an adult to enable access for bona fide research or other lawful purpose. (20 USC 6777; 47 USC 254)

To ensure proper use of the system, the Superintendent or designee may monitor the district's technological resources, including e-mail and voice mail systems, at any time without advance notice or consent. If passwords are used, they must be known to the Superintendent or designee so that he/she may have system access.

The Superintendent or designee shall establish administrative regulations which outline employee obligations and responsibilities related to the use of district technology. He/she also may establish guidelines and limits on the use of technological resources. Inappropriate use shall result in a cancellation of the employee's user privileges, disciplinary action and/or legal action in accordance with law, Board policy and administrative regulations.

EMPLOYEE USE OF TECHNOLOGY (continued)

(cf. 4118 - Suspension/Disciplinary Action)

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

The Superintendent or designee shall provide copies of related policies, regulations and guidelines to all employees who use the district's technological resources. Employees shall be asked to acknowledge in writing that they have read and understood these policies, regulations and guidelines.

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

In the event that the use of an electronic resource affects the working conditions of one or more employees, the Superintendent or designee shall notify the employees' exclusive representative.

(cf. 4143/4243 - Negotiations/Consultation)

Legal Reference:

EDUCATION CODE

51870-51874 Education technology

GOVERNMENT CODE

3543.1 Rights of employee organizations

PENAL CODE

502 Computer crimes, remedies

632 Eavesdropping on or recording confidential communications

UNITED STATES CODE, TITLE 47

254 Universal service discounts (E-rate)

CODE OF FEDERAL REGULATIONS, TITLE 47

54.520 Internet safety policy and technology protection measures, E-rate discounts

UNITED STATES CODE, TITLE 20

6751-6777 Education Through Technology Act, No Child Left Behind Act, Title II, Part D

6777 Internet Safety

Management Resources:

CDE PUBLICATIONS

K-12 Network Technology Planning Guide: Building the Future, 1994

CDE PROGRAM ADVISORIES

1223.94 Acceptable Use of Electronic Information Resources

WEB SITES

CDE: <http://www.cde.ca.gov>

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

Federal Communications Commission: <http://www.fcc.gov>

U.S. Department of Education: <http://www.ed.gov>

American Library Association: <http://www.ala.org>

EMPLOYEE USE OF TECHNOLOGY

On-Line/Internet Services: User Obligations and Responsibilities

Employees are authorized to use district equipment to access the Internet or on-line services in accordance with Board of Trustees policy and the user obligations and responsibilities specified below.

1. The employee in whose name an on-line services account is issued is responsible for its proper use at all times. Employees shall keep account information, home addresses and telephone numbers private. They shall use the system only under their own account number.
2. Employees shall use the system responsibly and primarily for work-related purposes.

(cf. 6162.7 - Use of Technology in Instruction)

3. Employees shall not access, post, submit, publish or display harmful or inappropriate matter that is threatening, obscene, disruptive or sexually explicit, or that could be construed as harassment or disparagement of others based on their race/ethnicity, national origin, gender, sexual orientation, age, disability, religion or political beliefs.

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

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

4. Employees shall not use the system to promote unethical practices or any activity prohibited by law, Board policy or administrative regulations.
5. Copyrighted material shall not be placed on the system without the author's permission. Employees may download copyrighted material only in accordance with applicable copyright laws.

(cf. 6162.6 - Use of Copyrighted Materials)

6. Employees shall not intentionally upload, download or create computer viruses and/or maliciously attempt to harm or destroy district equipment or materials or the data of any other user, including so-called "hacking."
7. Employees shall not read other users' electronic mail or files. They shall not attempt to interfere with other users' ability to send or receive electronic mail, nor shall they attempt to read, delete, copy, modify or forge other users' mail.
8. Users shall report any security problem or misuse of the services to the Superintendent or designee.

EMPLOYEE USE OF TECHNOLOGY (continued)

(cf. 6163.4 - Student Use of Technology)

CERTIFICATED PERSONNEL

The Board of Trustees recognizes that teachers and other certificated personnel work closely with students in carrying out the district's educational goals. The Superintendent or designee shall ensure that the duties, responsibilities, and district's expectations for certificated positions are clearly defined and made known to each member of the certificated staff.

(cf. 4119.3/4219.3/4319.3 - Duties of Personnel)

Each certificated staff member shall be held accountable for duties assigned to him/her and shall undergo regular performance evaluations in accordance with law and negotiated agreements.

(cf. 4115 - Evaluation/Supervision)
(cf. 4141/4241 - Collective Bargaining Agreement)

The Board strongly encourages certificated staff to continually improve their skills and pursue excellence within their profession.

(cf. 4131 - Staff Development)

Policies, rules and regulations related to certificated personnel shall be available to all concerned and shall be administered in a fair and equitable manner.

Interviews

Interviews for all positions of employment within the district shall take place by panel interview. Interview panel for all full time positions must involve at least two administrators and a total of at least five members. Panel interviews are considered confidential. Information provided by the applicants will to be kept in strict confidence and should not be carried out of the room by panel members. Scores given to applicants by panel members are considered confidential and will not be disclosed to applicants for any reason.

Background Checks

A member of the interview panel will call no less than three references for each new employee. Applicants must have clean criminal records. Past felony counts of any kind are considered to disqualify applicants from employment with our district. Prior to hiring in our district, applicants may be asked to submit a drug test.

Legal Reference:

- EDUCATION CODE
- 90 Definition, certificated and certified*
- 44006 Certificated person*
- 44490-44497 Mentor teacher program*
- GOVERNMENT CODE
- 3543.2 Scope of representation*

All Personnel

BP 4111(a)

4211

RECRUITMENT AND SELECTION

4311

The Board of Trustees desires to employ the most highly qualified and appropriate person available for each open position in order to improve student achievement and efficiency in district operations.

(cf. 4000 - Concepts and Roles)

(cf. 4100 - Certificated Personnel)

(cf. 4200 - Classified Personnel)

(cf. 4300 - Management, Supervisory and Confidential Personnel)

The Superintendent or designee shall recruit candidates for open positions based on an assessment of the district's needs for specific skills, knowledge and abilities. He/she shall develop job descriptions that accurately describe all essential and marginal functions and duties of each position, and shall disseminate job announcements to ensure a wide range of candidates.

(cf. 4119.3/4219.3/4319.3 - Duties of Personnel)

The Superintendent or designee shall develop selection procedures that identify the best possible candidate for each position based on screening processes, interviews, observations and recommendations from previous employers. He/she may establish an interview committee, as appropriate, to rank candidates and recommend finalists. All discussions and recommendations shall be confidential in accordance with law.

During job interviews, applicants may be asked to describe or demonstrate how they will be able to perform the duties of the job. No inquiry shall be made with regard to any category of discrimination prohibited by state or federal law.

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

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4031 - Complaints Concerning Discrimination in Employment)

(cf. 4032 - Reasonable Accommodation)

(cf. 4111.2/4211.2/4311.2 - Legal Status Requirement)

For each position, the Superintendent or designee shall present to the Board one candidate who meets all qualifications established by law and the Board for the position. No person shall be employed by the Board without the recommendation or endorsement of the Superintendent or designee.

(cf. 4112 - Appointment and Conditions of Employment)

(cf. 4112.2 - Certification)

(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)

(cf. 4212 - Appointment and Conditions of Employment)

(cf. 4312.1 - Contracts)

RECRUITMENT AND SELECTION (continued)

Recruiting Incentives for Teachers

Contingent upon available funding, the Superintendent or designee may provide incentives to recruit credentialed teachers to teach in any district school ranked in the bottom half of the state Academic Performance Index. Such incentives may include, but are not limited to, signing bonuses, improved work conditions, teacher compensation or housing subsidies. (Education Code 44735)

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex
44066 Limitations on certification requirement
44259 Teaching credential; exception; designated subjects; minimum requirements
44735 Incentive grants for recruiting teachers for low-performing schools
44750-44754.5 Regional teacher recruitment centers
44830-44831 Employment of certificated persons
44858 Age or marital status in certificated positions
44859 Prohibition against certain rules and regulations re residency
45103-45138 Employment (classified employees)
49406 Examination for tuberculosis
52051 Academic Performance Index

GOVERNMENT CODE

12900-12996 Fair Employment and Housing Act, including:
12940-12956 Discrimination prohibited; unlawful practices

UNITED STATES CODE, TITLE 8

1324a Unlawful employment of aliens
1324b Unfair immigration related practices

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964
2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended
2000h-2-2000h-6 Title IX, 1972 Education Act Amendments

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

Management Resources:

CSBA PUBLICATIONS

Maximizing School Board Leadership: Human Resources, 1996

WEB SITES

Equal Employment Opportunity Commission: <http://www.eeoc.gov>
Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>
CalTeach: <http://www.calteach.org>
Education Job Opportunities Information Network: <http://www.edjoin.org>

Policy

adopted: June 23, 2005

ACTON-AGUA DULCE UNIFIED SCHOOL DISTRICT

Acton, California

All Personnel

BP 4111.2

4211.2

LEGAL STATUS REQUIREMENT

4311.2

The district shall hire only citizens and aliens who are lawfully authorized to work in the United States. The Superintendent or designee shall ensure that district employment practices do not unlawfully discriminate on the basis of citizenship status or national origin, including but not limited to, discrimination against any refugees, grantees of asylum, or persons qualified for permanent or temporary residency.

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

(cf. 4030 - Nondiscrimination in Employment)

(cf. 4111 - Recruitment and Selection)

(cf. 4211 - Recruitment and Selection)

(cf. 4311 - Recruitment and Selection)

All new employees shall show appropriate documents which certify that they are legally eligible to work in the United States, as required by law and in accordance with administrative regulation.

Legal Reference:

UNITED STATES CODE, TITLE 8

1324(a)(b) Immigration and Nationality Act, as amended by Immigration Reform and Control Act of 1986 and Immigration Act of 1990

CODE OF FEDERAL REGULATIONS, TITLE 8

274a.1-a.14 Control of Employment of Aliens

Management Resources:

WEB SITES

Immigration and Naturalization Service: <http://www.ins.usdoj.gov>

All Personnel

AR 4111.2
4211.2
4311.2

LEGAL STATUS REQUIREMENT

Within three business days of hire, the Superintendent or designee shall physically examine the documentation presented by the employee establishing his/her identity and employment eligibility as set forth in INS Form I-9. The Superintendent or designee shall (1) ensure that the documents presented appear to be genuine and relate to the individual and (2) complete the "Employer Review and Verification" section of the Form I-9. (8 CFR 274a.2)

Persons employed for three days or less must provide such documentation on their first day. (8 CFR 274a.2)

If unable to provide satisfactory documentation because the document was lost, stolen, or damaged, the employee shall furnish a receipt indicating that a replacement document has been requested. This receipt must be presented within three days of the hire, and the replacement document must be provided within 90 days of the hire. (8 CFR 274a.2)

If an individual's employment authorization expires, the Superintendent or designee must reverify the I-9 form, by noting the document's identification number and expiration date on the form, no later than the date the work authorization expires. The employee shall present a document that either shows continuing employment eligibility or a new grant of work authorization. (8 CFR 274a.2)

After examining the documents presented, the Superintendent or designee shall copy them. Such copies shall be retained with the individual's I-9 form. The documents shall be kept confidential and used only as needed to help justify the district's past decision to accept the documents as valid.

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

The district shall retain the I-9 forms for three years after the date of the hire or for one year after the date the individual's employment is terminated, whichever is later. (8 CFR 274a.2)

APPOINTMENT AND CONDITIONS OF EMPLOYMENT

Upon recommendation from the Superintendent or designee, the Board of Trustees shall approve the appointment of all certificated personnel. The position and the salary classification shall be reported to the Board at a regular meeting.

(cf. 4111 - Recruitment and Selection)
(cf. 4121 - Temporary/Substitute Personnel)

Individuals appointed to the certificated staff shall:

1. Possess the appropriate certification qualifications and register the certification document in accordance with law and Board policy (Education Code 44250-44279, 44330)

(cf. 4112.2 - Certification)
(cf. 4112.21 - Interns)

2. Demonstrate proficiency in basic skills as required by law and Board policy (Education Code 44252.5, 44830)
3. When required by the federal No Child Left Behind Act for teachers of core academic subjects, possess the qualifications of “highly qualified” teachers as defined in law, Board policy and administrative regulations (20 USC 6319)

(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)
(cf. 6171 - Title I Programs)

4. Submit to fingerprinting as required by law (Education Code 44830.1)
5. Not have been convicted of a violent or serious felony as defined in Penal Code 667.5 or 1192.7, unless the individual has received a certificate of rehabilitation and pardon (Education Code 44830.1)

(cf. 4112.5/4312.5 - Criminal Record Check)
(cf. 4118 - Suspension/Disciplinary Action)

6. Not have been convicted of any sex offense as defined in Education Code 44010 (Education Code 44836)
7. Not have been required to register as a sex offender pursuant to Penal Code 290 because of a conviction for a crime where the victim was a minor under the age of 16 (Penal Code 290.95)

(cf. 3515.5 - Sex Offender Notification)

8. Not have been determined to be a sexual psychopath pursuant to Welfare and Institutions Code 6300-6332 (Education Code 44837)

APPOINTMENT AND CONDITIONS OF EMPLOYMENT (continued)

9. Not have been convicted of any controlled substance offense as defined in Education Code 44011 (Education Code 44836)

10. Submit to a physical examination, tuberculosis testing and/or provide a medical certificate as required by law and Board policy (Education Code 44839, 49406)

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

11. Submit to drug and alcohol testing as required by Board policy

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

12. Furnish a statement of military service and, if any was rendered, a copy of the discharge or release from service or, if no such document is available, other suitable evidence of the termination of service (Education Code 44838)

13. File the oath or affirmation of allegiance required by Government Code 3100-3109

(cf. 4112.3/4212.3/4312.3 - Oath or Affirmation)

14. Fulfill any other requirements as specified by law, collective bargaining agreement, Board policy or administrative regulation

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

Legal Reference: (see next page)

APPOINTMENT AND CONDITIONS OF EMPLOYMENT (continued)

Legal Reference:

EDUCATION CODE

35161 Powers and duties

44008 Effect of termination of probation

44009 Conviction of specified crimes; definitions

44010 Sex offense

44011 Controlled substance offense

44066 Limitation on certification requirements

44250-44279 Credential types

44330 Effect of registration of certification document

44830.1 Felons; certificated positions; criminal record summary; fingerprints

44836 Employment of person convicted of sex offenses or controlled substance offenses

44837 Employment of sexual sociopath

44838 Statement of military service

44839 Medical certificate

44839.5 Medical certificate for retirant

49406 Examination for tuberculosis

GOVERNMENT CODE

3100-3109 Oaths or affirmations of allegiance for disaster service workers and public employees

12940-12950 Unlawful employment practices

PENAL CODE

290 Registration of sex offenders

290.95 Disclosure by persons required to register as sex offenders

667.5 Prior prison terms, enhancement of prison terms

1192.7 Plea bargaining limitation

WELFARE AND INSTITUTIONS CODE

6300-6332 Sexual psychopaths

CODE OF REGULATIONS, TITLE 5

6100-6125 Teacher qualifications, No Child Left Behind Act

UNITED STATES CODE, TITLE 20

6319 Highly qualified teachers

7801 Definitions, highly qualified teacher

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 Highly qualified teachers

CONTRACTS

When initially employed, certificated employees shall receive a written statement of their employment status and salary. In the case of temporary employees, this statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. (Education Code 44916)

(cf. 4121 - Temporary/Substitute Personnel)

Length of Contract

Any certificated employee may be offered a continuing contract covering a period longer than one year but not exceeding four years. (Education Code 44929.20)

(cf. 4312.1 - Contracts)

Reemployment Notices

By May 30 of each year, the clerk or secretary of the Board may give, or mail by certified mail with return receipt requested, written notices to probationary and permanent certificated employees requesting that they notify the district of their intent to remain in district service for the next school year. This notice shall include a copy of Education Code 44842. If an employee, without good cause, fails to notify the district before July 1 that he/she will remain in district service, the employee may be deemed to have declined reemployment and the employee's services may be terminated on June 30 of that year. (Education Code 44842)

(cf. 4113 - Assignment)

(cf. 4117.2/4217.2/4317.2 - Resignation)

(cf. 4117.4 - Dismissal)

(cf. 9122 - Secretary)

Employee Notification

By May 15 of each year, each classroom teacher shall notify the Superintendent or designee of his/her intent to return to a teaching position for the next school year. (Education Code 44832)

An employee on leave of absence shall notify the district of his/her intent to remain in service the following year in accordance with law, Board policy and administrative regulation.

(cf. 4161/4261 - Leaves)

Legal Reference: (see next page)

CONTRACTS (continued)

Legal Reference:

EDUCATION CODE

44832 *Teachers; notice of intent to return*

44842 *Failure to provide notice or to report to work*

44843 *Notice of employment (to county superintendent)*

44916 *Time of classification; statement of employment status*

44929.20 *Continuing contract-districts w/less than 250 ADA*

44955 *Reduction in number of employees*

CERTIFICATION

The Superintendent or designee shall ensure that persons employed in positions requiring certification qualifications possess the appropriate credential or permit from the Commission on Teacher Credentialing (CTC) authorizing their employment in such positions.

- (cf. 4111 - Recruitment and Selection)*
- (cf. 4112.21 - Interns)*
- (cf. 4112.22 - Staff Teaching Students of Limited English Proficiency)*
- (cf. 4112.23 - Special Education Staff)*
- (cf. 4113 - Assignment)*
- (cf. 4116 - Probationary/Permanent Status)*
- (cf. 4121 - Temporary/Substitute Personnel)*
- (cf. 5148 - Child Care and Development)*

When fully credentialed teachers are not available, the district may employ persons with intern credentials, emergency permits, pre-intern certificates or credential waivers under the conditions and limitations provided in state and federal law.

As necessary, all teachers of core academic subjects teaching in programs supported by federal Title I funds shall meet the requirements of the No Child Left Behind Act. By the end of the 2005-06 school year, all teachers of core academic subjects shall meet the requirements of the No Child Left Behind Act. (20 USC 6319, 7801; 5 CCR 6100-6125)

- (cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*

National Board for Professional Teaching Standards Certification

The Board encourages district teachers to voluntarily seek, from the National Board for Professional Teaching Standards, additional certification which demonstrates advanced knowledge and teaching skills.

The Superintendent or designee shall inform district teachers and teachers working in charter schools about the program and how to acquire the necessary application and information materials.

- (cf. 0420.4 - Charter Schools)*

The Superintendent or designee may provide release time and support to teachers participating in the program.

Legal Reference: (see next page)

CERTIFICATION (continued)

Legal Reference:

EDUCATION CODE

8360-8370 *Qualifications of child care personnel*
32340-32341 *Unlawful issuance of a credential*
42647 *Drawing of warrants*
44066 *Limitations on certification requirements*
44200-44405 *Teacher credentialing, especially:*
44225.6 *CTC annual report on credentials, internships and emergency permits*
44225.7 *Priorities for recruitment when fully prepared teacher not available*
44251 *Period of credentials*
44252 *Standards and procedures for issuance; proficiency testing of basic skills*
44252.5 *State basic skills assessment required for certificated personnel*
44259 *Minimum requirements for teaching credential*
44259.5 *Standards for teachers of all students, including English language learners*
44270.3-44270.4 *Out-of-state credentials, administrative services*
44274-44274.5 *Out-of-state credentials*
44275.3 *Employment of teachers with out-of-state credentials*
44277 *Requirements for maintaining valid credentials*
44278 *Credential appeal*
44300-44301 *Emergency permits*
44302 *CTC notification re district options when fully qualified teacher not available*
44305-44308 *Pre-internship teaching certificates*
44325-44329 *District interns*
44330-44355 *Certificates and credentials*
44395-44399 *National Board for Professional Teaching Standards*
44464 *Period of validity of internship credential*
44468 *Early completion of internship program*
44500-44508 *Peer Assistance and Review Program for Teachers*
44662 *Performance evaluation; Stull Act review*
44735 *Teaching as a priority block grant*
44751 *Recruitment centers*
44830-44929 *Employment of certificated persons; requirement of proficiency in basic skills*
56060-56063 *Substitute teachers in special education*
90530 *Recruitment Centers*
CODE OF REGULATIONS, TITLE 5
6100-6125 *Teacher qualifications, No Child Left Behind Act*
80001-80674.6 *Commission on Teacher Credentialing*
UNITED STATES CODE, TITLE 20
6311 *Parental notifications*
6312 *District Title I plan*
6319 *Highly qualified teachers*
7801 *Definitions, highly qualified teacher*
CODE OF FEDERAL REGULATIONS, TITLE 34
200.55-200.57 *Highly qualified teachers*
200.61 *Parent notification regarding teacher qualifications*

Legal Reference continued: (see next page)

CERTIFICATION (continued)

Legal Reference: (continued)

COURT DECISIONS

Association of Mexican-American Educators et. al. v. State of California and the Commission on Teacher Credentialing, (1993) 836 F.Supp. 1534

Management Resources:

CSBA PUBLICATIONS

Maximizing School Board Leadership: Human Resources, 1996

CTC PUBLICATIONS

Standards of Quality and Effectiveness for Professional Teacher Induction Programs, March 2002

Standards of Quality and Effectiveness for Professional Teacher Preparation Programs, September 2001

California Standards for the Teaching Profession, July 1997

U.S. DEPARTMENT OF EDUCATION GUIDANCE

Improving Teacher Quality State Grants, December 19, 2002

CSBA ADVISORIES

Teacher Credentialing Commission Eliminates Emergency Permits, August 2003

WEB SITES

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

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

U.S. Department of Education: <http://www.ed.gov>

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

CERTIFICATION

Registration

Each person employed by the district for a position requiring certification qualifications shall, within 60 days after beginning employment, register with the county office of education a valid credential authorizing the person to work in that position. Certificated employees also shall register renewed credentials within 60 days after the renewal. (Education Code 44330, 44857)

Basic Skills Proficiency Test

Prior to being hired by the Board of Trustees, all certificated persons, whether hired on a permanent, temporary or substitute basis, shall demonstrate basic skills proficiency in reading, writing and mathematics, unless specifically exempted from this requirement by Education Code 44830. (Education Code 44830)

Certificated persons who have not held a position requiring certification within 39 months of employment and who have not taken the state basic skills proficiency test may be hired as temporary employees, provided they pass a basic skills proficiency test developed and administered by the district. Such employees shall subsequently take the state test within one year of employment. (Education Code 44830)

(cf. 4121 - Temporary/Substitute Personnel)

Persons holding a designated subjects/special subjects credential or vocational designated subject credential shall not be required to take the state basic skills proficiency test unless their specific credential requires the possession of a baccalaureate degree. Instead, these persons shall be assessed with district proficiency criteria established by the Board for these credentials, which shall be at least equivalent to the district test required for graduation from high school. (Education Code 44252, 44830)

Persons holding a designated subjects/special subjects credential or a vocational designated subject credential may be charged a fee to take the district proficiency test.

Out-of-State Credentials

The district may employ an out-of-state applicant who has met the requirements of Education Code 44274.2, 44275.3, or 44275.4 and obtained a preliminary or professional clear credential from the Commission on Teacher Credentialing (CTC).

(cf. 4112.5/4312.5 - Criminal Record Check)

CERTIFICATION (continued)

A teacher prepared out of the state who has been issued a five-year California preliminary credential shall pass the state basic skills proficiency test described above within one year of the issuance date of the credential in order to be eligible to continue teaching, unless the CTC has determined that the teacher licensing body of the state in which the teacher completed his/her preparation requires an applicant to demonstrate a level of basic skills proficiency that is at least comparable and equivalent to passage of the state basic skills proficiency test. (Education Code 44274, 44275.3)

A teacher prepared in a country other than the United States who has been issued a five-year California preliminary credential shall pass the state basic skills proficiency test described above within one year of the issuance date of the credential in order to be eligible to continue teaching. (Education Code 44275.4)

To be eligible for a professional clear credential, teachers prepared out of state or out of the country must also meet legal requirements for subject matter competence, course completion, and either a fifth-year postsecondary program or an induction program for beginning teachers. (Education Code 44274, 44275.3, 44275.4)

Emergency Substitute Teaching Permits

The district may employ persons with an emergency 30-day substitute permit for 30 school days or less for any one teacher during the school year. Persons with an emergency substitute permit may be employed for 20 school days or less in special education positions requiring certification, unless an extension has been approved by the Superintendent of Public Instruction. (Education Code 56061; 5 CCR 80025, 80025.4)

Before employing such persons, the Superintendent or designee shall prepare and keep on file a signed statement of need. The statement of need shall describe the situation or circumstances that necessitate the use of a 30-day substitute permit holder and state either that a credentialed person is not available or that the available credentialed person does not meet the district's specified employment criteria. (5 CCR 80025)

Emergency Teaching or Specialist Permits

No person with an emergency teaching permit or credential waiver shall be newly hired to teach core academic subjects in programs supported by federal Title I funds. By the end of the 2005-06 school year, such persons shall not be assigned to teach core academic subjects in any classroom. (20 USC 6319, 7801; 5 CCR 6115)

(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)
(cf. 4113 - Assignment)

CERTIFICATION (continued)

Before employing persons with emergency teaching or specialist permits for more than 20 school days in special education positions or for more than 30 school days in other positions, the Board shall document that it has made a diligent search for, but has been unable to recruit, a sufficient number of certificated teachers, including teacher candidates pursuing full certification through internships or other alternative programs. (Education Code 44300; 5 CCR 80026)

The district's diligent search shall include, but is not limited to, distributing job announcements, contacting college and university placement centers, advertising in local newspapers, exploring the incentives included in the Teaching as a Priority block grant pursuant to Education Code 44735, participating in the state and regional recruitment centers established pursuant to Education Code 44751 and 90530, and participating in job fairs in the state. (Education Code 44300)

(cf. 4111 - Recruitment and Selection)

The Board shall certify by an annual resolution that it has made reasonable efforts to recruit a certificated teacher for the position. (Education Code 44225.7)

For any assignment for which a certificated teacher is not available, the district shall make reasonable efforts to recruit an individual in the following priority order: (Education Code 44225.7)

1. A candidate who is scheduled to complete initial preparation requirements within six months
2. A candidate who is qualified to participate in an approved internship program in the region of the district

(cf. 4112.21 - Interns)

If a person who meets these priorities is not available, the district may, as a last resort, request that the CTC approve the assignment of a person who does not meet the above criteria. (Education Code 44225.7)

In the year of need, the district shall submit to the CTC, on a form provided by the commission, a declaration of need for fully qualified educators. The declaration of need shall be made in the form of a motion adopted by the Board during a regularly scheduled public Board meeting. The motion shall not be part of the consent agenda. (Education Code 44300; 5 CCR 80026)

CERTIFICATION (continued)

The Superintendent or designee shall provide an orientation for teachers who are obtaining emergency teaching or specialist permits for the first time. This orientation shall include at least an overview of the curriculum that the teacher is expected to teach and effective techniques of classroom instruction and management at the teacher's assigned level. (Education Code 44300; 5 CCR 80026.5)

Whenever possible, the orientation shall occur before the teacher begins his/her teaching assignment. The Superintendent or designee shall also assign an experienced educator to guide and assist the teacher. This person shall be a certificated district employee or a certificated retiree of a California school district or county office of education and must have completed at least three full years of full-time classroom teaching experience or the equivalent. (Education Code 44300; 5 CCR 80026.5)

The Superintendent or designee shall inform all emergency permit holders that, in accordance with rules established by the CTC, they must complete their work for a credential by June 30, 2006, and will not be able to get an emergency permit renewed after that date.

INTERNS

The Board of Trustees supports the use of interns to fulfill the district's need for additional instructional resources and to enable future teachers to fulfill state credentialing requirements and link teaching theory with practice.

The Superintendent or designee may enter into an agreement with an accredited college or university to jointly provide supervised teaching experiences within the district as part of a teacher preparation program. He/she shall collaborate with the college or university in the selection, placement, support and performance assessment of interns.

Interns shall not be assigned to teach any classes outside the subject area, grade levels or classes authorized by their credential.

(cf. 4112.2 - Certification)

(cf. 4113 - Assignment)

In order to be hired to teach core academic subjects, as defined in law, in a program supported by federal Title I funds, or to teach core academic subjects in any classroom after the end of the 2005-06 school year, an intern shall meet the definition of a "highly qualified" teacher adopted by the State Board of Education. (20 USC 6319, 7801; 5 CCR 6100-6112)

(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)

Terms of employment for interns shall be consistent with law and/or the district's collective bargaining agreement.

Interns shall be provided with ongoing feedback regarding their performance in order to enhance their skills and shall be formally evaluated at least once every year.

(cf. 4115 - Evaluation/Supervision)

Pre-Intern Teaching Program

Pre-interns shall not be hired to teach core academic subjects in programs supported by federal Title I funds. By the end of the 2005-06 school year, pre-interns shall not be assigned to teach core academic subjects in any classroom. (20 USC 6319, 7801; 5 CCR 6115)

Legal Reference: (see next page)

INTERNS (continued)

Legal Reference:

EDUCATION CODE

300-340 English language education for immigrant children
44259 Minimum requirements for teaching credential
44279.1-44279.7 Beginning Teacher Support and Assessment System
44305-44308 Pre-Internship Teaching Program
44314 Diversified or liberal arts program
44321 CTC approval of internship programs
44325-44329 District interns
44450-44468 Teacher Education Internship Act of 1967 (university interns)
44830.3 Employing district interns
44885.5 District interns classified as probationary employees

CODE OF REGULATIONS, TITLE 5

6100-6125 No Child Left Behind teacher requirements
13000-13017 New Careers Program
80055 Internship credential

UNITED STATES CODE, TITLE 20

6319 Highly qualified teachers
7801 Definitions, highly qualified teacher

Management Resources:

CTC PUBLICATIONS

CTC Credential Handbook, revised 1997
California's Future: Highly Qualified Teachers for All Students, November 1997 (contains California Standards for the Teaching Profession)
Standards of Program Quality and Effectiveness for District Intern Programs, revised 1996

CTC CODED CORRESPONDENCE

03-0028 Changes in district intern programs as a result of Senate Bill 187, December 22, 2003
03-0006 Announcement of the availability of Individualized Internship Certificate, March 3, 2003

U.S. DEPARTMENT OF EDUCATION GUIDANCE

Improving Teacher Quality State Grants Title II, Part A Non-Regulatory Draft Guidance, revised January 16, 2004

CSBA ADVISORIES

New Law Amends District Intern Program, September 2003

WEB SITES

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

INTERNS

University Internship Program

The Board of Trustees may employ persons with an appropriate internship credential from the Commission on Teacher Credentialing (CTC) to provide the same service at the same levels as the regular credential authorizes. (Education Code 44454)

(cf. 4112.2 - Certification)

(cf. 4112.22 - Staff Teaching Students of Limited English Proficiency)

(cf. 4112.23 - Special Education Staff)

(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)

The Superintendent or designee shall seek the assistance of the college or university in coordinating the intern's program. (Education Code 44465)

The Superintendent or designee may enter into agreements to employ competent and qualified college and university staff members to supervise and guide interns as they pursue their district responsibilities. (Education Code 44461)

A university intern may choose an early completion option leading to a five-year preliminary credential by demonstrating competence through assessments and observations in accordance with Education Code 44468. (Education Code 44468)

Prior to enrollment in any college or university program to renew the internship credential, the Superintendent or designee shall counsel with the intern and jointly plan a total program for the first and subsequent renewals. The program shall meet the instructional or service needs of the district with the primary objective being to increase the effectiveness of the intern in the district. (Education Code 44457, 44458)

(cf. 4131 - Staff Development)

District Internship Program

The Board may, in consultation with an accredited college or university offering an approved program of teacher preparation, employ individuals with an appropriate credential from the Commission on Teacher Credentialing (CTC) to teach as district interns in any classes in grades K-12, in bilingual education classes or in special education programs for students with mild and moderate disabilities. (Education Code 44830.3)

(cf. 4112.2 - Certification)

(cf. 4112.22 - Staff Teaching Students of Limited English Proficiency)

(cf. 4112.23 - Special Education Staff)

(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)

INTERNS (continued)

Each district intern shall be assisted and guided by one of the following: (Education Code 44326, 44830.3)

1. A certificated employee who possesses valid certification at the same level or of the same type of credential as the district intern he/she serves, and who is selected through a competitive process adopted by the Board after consultation with the exclusive teacher representative unit
2. Personnel employed by the college or university to supervise student teachers

The Superintendent or designee shall, in consultation with the college or university, develop and implement a professional development plan for each district intern. This plan shall include but not necessarily be limited to the components described in Education Code 44830.3, including provisions for mandatory preservice training tailored to the grade level or class to be taught, additional instruction during the first year of service when required, and an annual evaluation of the district intern. (Education Code 44830.3)

(cf. 4115 - Evaluation/Supervision)
(cf. 4131 - Staff Development)

As an alternative to the coursework requirements described in Education Code 44830.3, a district intern may choose an early completion option leading to a five-year preliminary credential by demonstrating competence through assessments and observations in accordance with Education Code 44468. (Education Code 44468)

The Superintendent or designee shall ensure that appropriate records are maintained, showing the credit earned by each district intern. (Education Code 44327)

When a district intern's credential expires, the Superintendent or designee may recommend to the CTC that the intern credential be extended for one year. (Education Code 44325)

When a district intern has successfully completed service sufficient to meet program standards and performance assessments, the Board may recommend to the CTC that the intern be awarded a preliminary credential. The Board may recommend issuance of a professional clear credential if the program includes an approved induction plan or CTC-approved advanced coursework meeting the requirements of Education Code 44259(c) for the professional clear credential. (Education Code 44328, 44468, 44830.3)

INTERNS (continued)

Individualized Internship Certificate

The Superintendent or designee, in cooperation with a postsecondary teacher preparation program, may apply for an individualized internship certificate for an employee teaching in any of grades K-12 or in special education classes who is not currently enrolled in a university or district internship program, has met all the college or university admission requirements for a teacher certification program, and has fulfilled other requirements of the CTC.

Within the first 90 days of the intern's admission into this program, the Superintendent or designee, teacher preparation program advisor and intern candidate shall develop an individualized teacher preparation plan which includes courses, exams and field experiences to be completed; provision and schedule for completing the appropriate teaching performance assessment; and provision for the intern candidate to move into a teacher induction program.

The Superintendent or designee shall identify a support provider to regularly assist and guide the intern with his/her teaching responsibilities.

Pre-Intern Teaching Program

The Superintendent or designee shall ensure that experienced teachers and other appropriate district personnel are involved in the preparation and support of pre-intern teachers. He/she also shall collaborate with college or university personnel to ensure the availability of courses needed by pre-interns.

Preparation for pre-interns shall begin before or during the first semester of the pre-internship and shall include, but not be limited to, lesson planning, classroom management and organization.

No later than the second year of employment, the program for each pre-intern shall reflect the California Standards for the Teaching Profession jointly developed by the CTC and the California Department of Education.

STAFF TEACHING STUDENTS OF LIMITED ENGLISH PROFICIENCY

Definitions

Instruction for English language development means instruction designed specifically for limited-English-proficient students to develop their listening, speaking, reading, and writing skills in English. (Education Code 44253.2)

Specially designed academic instruction in English (SDAIE) means instruction in a subject area, delivered in English, that is specially designed to meet the needs of limited-English-proficient students. (Education Code 44253.2)

Content instruction delivered in the primary language means instruction in a subject area delivered in the primary language of the student. (Education Code 44253.2)

Teacher Qualifications

The Superintendent or designee shall ensure that a teacher providing instruction for English language development, specially designed academic instruction in English (SDAIE), and/or content instruction in any student's primary language possesses the appropriate authorization(s) issued by the Commission on Teacher Credentialing (CTC).

(cf. 4112.2 - Certification)

(cf. 4112.21 - Interns)

(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)

(cf. 4113 - Assignment)

(cf. 4131 - Staff Development)

(cf. 4222 - Teacher Aides/Paraprofessionals)

(cf. 6174 - Education for English Language Learners)

A teacher may be provisionally assigned to provide instruction for English language development or SDAIE during the period that he/she is pursuing training to complete a Certificate of Completion of Staff Development pursuant to Education Code 44253.10.

Legal Reference: (see next page)

STAFF TEACHING STUDENTS OF LIMITED ENGLISH PROFICIENCY
(continued)

Legal Reference:

EDUCATION CODE

10600-10610 California Education Information System
44225 Duties of the Commission on Teacher Credentialing
44253.1-44253.10 Certification for bilingual-crosscultural competence
44258.9 County superintendent review of teacher assignment
44259.5 Standards for teachers of all students, including English language learners
44380-44386 Alternative certification
44760-44763 Teacher supply and demand reporting
52160-52178 Bilingual-Bicultural Act of 1976
52180-52186 Bilingual teacher training assistance program
62001-62005.5 Evaluation and sunseting of programs

CODE OF REGULATIONS, TITLE 5

6100-6125 Teacher qualifications, No Child Left Behind Act
80016 Certificate of completion of staff development to teach English learners

UNITED STATES CODE, TITLE 20

1701-1704 Equal educational opportunities
6319 Highly qualified teachers
6601-6651 Training and recruiting high-quality teachers
6801-7014 Language instruction for English learners and immigrant students
7801 Definitions, highly qualified teacher

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 Highly qualified teachers

COURT DECISIONS

Teresa P. et al v. Berkeley Unified School District et al (1989) 724 F.Supp. 698

Management Resources:

CDE PROGRAM ADVISORIES

0300.97 Programs for English learners

CTC PUBLICATIONS

Languages Other than English Single Subject Matter Standards for the Single Subject Teaching Credential, May 2004

CL-622 Serving English Learners, February 2004

CTC CODED CORRESPONDENCE

04-0001 Clarification of authorizations to teach English learners, January 12, 2004

02-0006 Authorization to teach English learners pursuant to SB 2042, April 24, 2002

U.S. DEPARTMENT OF EDUCATION GUIDANCE

Improving Teacher Quality State Grants Title II, Part A Non-Regulatory Draft Guidance, revised January 16, 2004

WEB SITES

California Association for Bilingual Education: <http://www.bilingualeducation.org>

California Department of Education, English Learners: <http://www.cde.ca.gov/sp/el>

California Teachers of English to Speakers of Other Languages: <http://www.catesol.org>

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

U.S. Department of Education: <http://www.ed.gov>

SPECIAL EDUCATION STAFF

Resource Specialists

The Board of Trustees shall employ certificated resource specialists to provide services, where required by law, for students who have exceptional needs, their parents/guardians, and school staff.

The resource specialist program shall be directed by a resource specialist fully qualified in accordance with law.

Caseloads for special day classes are not set by law and may be determined through certificated collective bargaining agreements. Other special education caseloads are specified in Education Code 56362 and 56363.3. Guidelines regarding caseloads may be included in the SELPA's plan.

- (cf. 0430 - Comprehensive Local Plan for Special Education)*
- (cf. 1312.3 - Uniform Complaint Procedures)*
- (cf. 3541.2 - Transportation for Students with Disabilities)*
- (cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*
- (cf. 6146.4 - Differential Graduation and Competency Standards for Students with Disabilities)*
- (cf. 6159 - Individualized Education Program (IEP))*
- (cf. 6159.1 - Procedural Safeguards and Complaints for Special Education)*
- (cf. 6159.2 - Nonpublic Nonsectarian School and Agency Services for Special Education)*
- (cf. 6159.3 - Appointment of Surrogate Parent for Special Education)*
- (cf. 6164.4 - Identification of Individuals for Special Education)*

Legal Reference:

EDUCATION CODE

- 56195.8 Adoption of policies*
- 56361 Program options*
- 56362 Resource specialist program, contents, direction; resource specialists, case-loads, assignments, instructional aide; pupil enrollment*
- 56362.1 Caseload*
- 56362.5 Resource specialist certificate of competence*
- 56362.7 Bilingual-crosscultural certificate of assessment competence*
- 56363.3 Average caseload limits*
- 56441.7 Maximum caseload (programs for individuals with exceptional needs between the ages of three and five inclusive)*
- 56728.6 Instructional personnel funding*
- 56728.8 Instructional personnel funding; services to infants*
- CODE OF REGULATIONS, TITLE 5
- 3051.1 Language, speech and hearing development and remediation; appropriate credential*

TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT

Recognizing the importance of teacher effectiveness in improving student achievement, the Board of Trustees desires to recruit, hire and train teachers who possess the subject matter knowledge and teaching skills required by the federal No Child Left Behind Act in programs for educationally disadvantaged students and for students in core academic subjects.

(cf. 4112.2 - Certification)

(cf. 4112.21 - Interns)

(cf. 4112.22 - Staff Teaching Students of Limited English Proficiency)

(cf. 4112.23 - Special Education Staff)

All teachers newly hired to teach core academic subjects in a program supported by Title I funds shall be “highly qualified” as defined by federal law and the State Board of Education. (20 USC 6319, 7801; 34 CFR 200.55; 5 CCR 6100-6115)

(cf. 6171 - Title I Programs)

All teachers teaching in core academic subjects shall be “highly qualified” not later than the end of the 2005-06 school year. (20 USC 6319, 7801; 34 CFR 200.55; 5 CCR 6100-6115)

Legal Reference: (see next page)

TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT
(continued)

Legal Reference:

EDUCATION CODE

44500-44508 Peer Assistance and Review Program for Teachers

44662 Performance evaluation; Stull Act review

44664 Teacher evaluation; program to improve performance

CODE OF REGULATIONS, TITLE 5

6100-6125 Teacher qualifications, No Child Left Behind Act

UNITED STATES CODE, TITLE 20

6311 Parental notifications

6312 District Title I plan

6314 Schoolwide programs

6315 Targeted assistance schools

6319 Highly qualified teachers

7801 Definitions, highly qualified teacher

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 Highly qualified teachers

200.61 Parent notification regarding teacher qualifications

Management Resources:

CDE PUBLICATIONS

NCLB Teacher Requirements Resource Guide, March 2004

CTC PUBLICATIONS

Standards of Quality and Effectiveness for Professional Teacher Induction Programs, March 2002

Standards of Quality and Effectiveness for Professional Teacher Preparation Programs, September 2001

California Standards for the Teaching Profession, July 1997

U.S. DEPARTMENT OF EDUCATION GUIDANCE

New No Child Left Behind Flexibility: Highly Qualified Teachers, Fact Sheet, March 15, 2004

Improving Teacher Quality State Grants Title II, Part A Non-Regulatory Draft Guidance, revised January 16, 2004

CSBA ADVISORIES

California's Implementation of the No Child Left Behind Act, July 2003

WEB SITES

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

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

U.S. Department of Education, No Child Left Behind: <http://www.ed.gov/nclb>

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

TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT

Definitions

Core academic subjects include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history and geography. (20 USC 7801)

Teacher new to the profession is a teacher who either graduated from an accredited institution of higher education and received a credential, or began an approved intern program, on or after July 1, 2002. (5 CCR 6100)

Teacher not new to the profession is a teacher who either graduated from an accredited institution of higher education and received a credential, or was enrolled in or had completed an approved intern program, before July 1, 2002. (5 CCR 6100)

Teacher Qualifications

To meet the teacher qualification requirements of the federal No Child Left Behind (NCLB) Act for staff newly hired to teach core academic subjects in Title I programs and all staff teaching core academic subjects by the end of the 2005-06 school year, a teacher shall meet all of the following conditions: (20 USC 6319, 7801; 5 CCR 6101, 6110)

1. Hold at least a bachelor's degree
2. Have a credential or be currently enrolled in an approved intern program for less than three years

(cf. 4112.2 - Certification)

(cf. 4112.21 - Interns)

3. Demonstrate subject matter competency in accordance with the applicable requirements below

(cf. 6171 - Title I Programs)

Subject matter competency shall be demonstrated in accordance with the following requirements based on the grade levels taught and the teacher's length of time in the profession: (5 CCR 6100-6112)

1. An elementary teacher who is *new to the profession* shall pass a validated statewide subject matter examination certified by the Commission on Teacher Credentialing (CTC). (5 CCR 6102)
2. An elementary teacher who is *not new to the profession* shall complete one of the following: (5 CCR 6103-6104)

TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT

(continued)

- a. A validated statewide subject matter examination that the CTC has utilized to determine subject matter competence for credentialing purposes
 - b. A high objective uniform state standard evaluation (HOUSSE), as described below, to determine the teacher's subject matter competence in each of the academic subjects taught by the teacher
3. A middle or high school teacher who is *new to the profession* shall pass or complete one of the following for every core academic subject currently assigned: (5 CCR 6111)
 - a. A validated statewide subject matter examination certified by the CTC
 - b. University subject matter program approved by the CTC
 - c. Undergraduate major in the subject taught
 - d. Graduate degree in the subject taught
 - e. Coursework equivalent to the undergraduate major
4. A middle or high school teacher who is *not new to the profession* shall pass or complete one of the following for every core subject currently assigned: (5 CCR 6112)
 - a. A validated statewide subject matter examination that the CTC has utilized to determine subject matter competence for credentialing purposes
 - b. University subject matter program approved by the CTC
 - c. Undergraduate major in the subject taught
 - d. Graduate degree in the subject taught
 - e. Coursework equivalent to the undergraduate major
 - f. Advanced certification or credential, such as certification from the National Board for Professional Teaching Standards
 - g. A high objective uniform state standard evaluation (HOUSSE), as described below, to determine the teacher's subject matter competence in each of the academic subjects taught by the teacher

TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT
(continued)

To demonstrate fulfillment of the HOUSSE option as described in item #2 or #4 above, a teacher who is *not new to the profession* shall use forms available through the California Department of Education to summarize his/her years of experience in the grade span or subject, core academic coursework in the assigned grade span or subject, standards-aligned professional development, and service to the profession in the relevant core academic content area. If this summation is insufficient to demonstrate competency, the evaluation shall include direct observation and portfolio assessment in the grade span or subject taught to determine whether the teacher meets Standards 3 and 5.1 of the California Standards for the Teaching Profession. If the teacher does not satisfactorily meet Standards 3 and 5.1, subject matter competency shall be demonstrated through completion of the Peer Assistance and Review Program for Teachers pursuant to Education Code 44500-44508 or other individualized professional development plan pursuant to Education Code 44664 aimed at assisting the teacher to meet Standards 3 and 5.1. (5 CCR 6104)

(cf. 4139 - Peer Assistance and Review)

A teacher who has been determined by another school district in California to have met the teacher qualification requirements for the grade level and/or subject taught shall not be required to demonstrate again that he/she meets those requirements. A teacher who has been determined to meet the subject matter competency requirements outside of California shall be considered to have met those subject matter requirements for the particular subject and/or grade span in California. (5 CCR 6120, 6125)

A teacher shall not meet the teacher qualification requirements of the NCLB if he/she is teaching: (5 CCR 6115)

1. With an emergency permit
2. With a supplemental authorization, except where the supplemental authorization is based on a major or a major equivalent in the subject taught, or a local authorization for the subject taught
3. With a state or local waiver for the grade or subject taught
4. As a pre-intern

Certification of Compliance

All teachers teaching core academic subjects shall complete and sign a certificate of compliance and attach appropriate documentation. The Superintendent or designee shall verify the information and retain the signed original copy.

TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT
(continued)

The principal of each school receiving Title I funds shall annually attest in writing as to whether the school is in compliance with federal requirements related to teacher qualifications. Copies of the attestation shall be maintained at the school and at the district office and shall be available to any member of the public upon request. (20 USC 6319)

District Plan for Highly Qualified Teachers

Within the district's Title I plan, the Superintendent or designee shall develop a plan for ensuring that all teachers of core academic subjects will meet NCLB requirements no later than the end of the 2005-06 school year. (20 USC 6312, 6319)

As part of this plan, the Superintendent or designee shall provide high-quality professional development designed to enable teachers to meet the NCLB requirements. (20 USC 6319)

(cf. 4131 - Staff Development)

Parent Notifications

At the beginning of each school year, the Superintendent or designee shall notify the parents/guardians of each student attending a school receiving Title I funds that they may request information regarding the professional qualifications of their child's classroom teachers, including but not limited to: (20 USC 6311)

1. Whether the teacher has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction
2. Whether the teacher is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived
3. The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree
4. Whether the student is provided services by paraprofessionals and, if so, their qualifications

(cf. 4222 - Teacher Aides/Paraprofessionals)
(cf. 5145.6 - Parental Notifications)

In addition, the Superintendent or designee shall provide timely notice to individual parents/guardians of students attending a Title I school whenever their child has been assigned, or has been taught for four or more consecutive weeks by, a teacher of a core academic subject who does not meet NCLB teacher qualification requirements. (20 USC 6311; 34 CFR 200.61)

TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT
(continued)

The notice and information provided to parents/guardians shall be in an understandable and uniform format, and to the extent practicable, be provided in a language that the parents/guardians can understand. (20 USC 6311)

TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT

ATTESTATION REGARDING QUALIFICATIONS OF TITLE I TEACHERS

Instructions: The following certification must be annually completed and signed by each principal in a school that operates a Title I program pursuant to 20 USC 6314 (schoolwide programs) and 20 USC 6315 (targeted assistance schools).

School: _____ Principal: _____

I certify that all teachers hired after the first day of the 2002-03 school year to teach core academic subjects in a program supported by Title I funds meet the following qualifications:

1. Hold at least a bachelor’s degree
2. Have a credential or are currently enrolled in an approved intern program for less than three years
3. Have demonstrated subject matter competence as required by 5 CCR 6100-6115 for the grade level(s) taught and the teacher’s length of time in the profession

Signature of Principal

Date

TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT

PARENTAL NOTIFICATION OF TEACHER QUALIFICATIONS

To Parents/Guardians:

Your child is attending a school receiving Title I federal funds through the No Child Left Behind (NCLB) Act. This federal law requires that parents/guardians be notified when a teacher who has not demonstrated that he/she meets the NCLB teacher requirements has taught their child for four or more consecutive weeks.

Under the NCLB, teachers of core academic subjects are required to hold state certification and demonstrate subject matter competency for the grade span or subject matter taught. Newly hired Title I teachers must meet the NCLB requirements when hired. All other teachers have until the end of the 2005-06 school year to meet the requirements.

These requirements help us to ensure that all our students receive the best education by teachers who are highly skilled and knowledgeable in their subject areas. Our school district is currently working to determine that our teachers meet these requirements and, if necessary, help teachers meet the requirements through additional support and training.

Currently, a teacher who is authorized to teach in California, but who has not yet completed the process for meeting the NCLB requirements, has taught your child for four or more consecutive weeks. Under the law, school districts have until June 2006 to determine if all their teachers meet the federal requirements. Therefore, your child's teacher may meet the requirements and has just not had the opportunity to demonstrate that he/she does.

You may contact _____ [insert school name] _____ to request the qualifications of your child's teacher. If you have any questions, please contact _____ [insert principal name] _____ at _____ [insert telephone number] _____.

All Personnel

AR 4112.3(a)
4212.3
4312.3

OATH OR AFFIRMATION

All district employees are declared by law to be disaster service workers and thus shall take the oath or affirmation required for disaster service workers before beginning employment with the district. In the event of natural, manmade or war-caused emergencies which result in conditions of disaster or extreme peril to life, property and resources, all district employees are subject to disaster service activities as assigned to them by their supervisors or by law. (Government Code 3100-3102)

(cf. 3516 - Emergencies and Disaster Preparedness Plan)
(cf. 9224 - Oath or Affirmation)

Legally employed noncitizens shall be exempt from taking this oath. (Government Code 3101)

At the advice of legal counsel, the Superintendent or designee may exempt an employee from taking the oath if he/she raises a valid religious objection.

The Superintendent, deputy or assistant superintendent, principal or other person authorized in Education Code 60 shall administer the oath or affirmation when a district employee is hired.

In the case of intermittent, temporary, emergency or successive employments, the Superintendent or designee may determine that the oath shall be effective for all successive periods of employment which begin within one calendar year from the date that the oath was subscribed. (Government Code 3102)

(cf. 4121 - Temporary/Substitute Personnel)

The Superintendent or designee shall file the executed oath or affirmation within 30 days of the date on which it is taken and subscribed. An employee's oath or affirmation may be destroyed five years after the termination of employment. (Government Code 3105)

Reimbursement of Expenses for Disaster Service Workers

Whenever an employee seeks compensation or reimbursement of expenses as a disaster service worker, the Superintendent or designee shall ascertain and certify that the employee has taken the oath or affirmation. (Government Code 3107)

Legal Reference: (see next page)

AR 4112.3(b)
4212.3
4313.3

OATH OR AFFIRMATION (continued)

Legal Reference:

EDUCATION CODE

60 Persons authorized to administer and certify oaths

44334 Oath or affirmation required for credential

44354 Administration of oath required for credential

GOVERNMENT CODE

3100-3109 Oath or affirmation of allegiance

CALIFORNIA CONSTITUTION

Article 20, Section 3 Oath of office

COURT DECISIONS

Chilton v. Contra Costa Community College District 55 Cal. App. 3d 544 (1976)

Vogel v. County of Los Angeles (1967) 68 Cal. 2d 18, 22

All Personnel

E 4112.3

4212.3

OATH OR AFFIRMATION

4312.3

I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

I understand that as a public employee I am a disaster service worker pursuant to Government Code 3100 and 3102 and that I am required to take this oath before entering the duties of my employment. In the event of natural, manmade or war-caused emergencies which result in conditions of disaster or extreme peril to life, property and resources, I am subject to disaster services activities assigned to me by my supervisor.

(Signature)

Certified by:

(Person who administers the oath)

All Personnel

BP 4112.4

4212.4

HEALTH EXAMINATIONS

4312.4

New Employees

The Superintendent or designee shall ensure that new district employees comply with all the health examination requirements of California law.

In addition, the Superintendent or designee may require applicants for employment in classified positions to undergo a preemployment physical examination to show that they are physically able to perform the duties of specific jobs. (Education Code 45122)

Continuing Employees

Continuing employees shall undergo periodic tuberculosis tests once every four years in accordance with law. (Education Code 49406)

The Board of Trustees is concerned about the prevalence of tuberculosis in our community and may require continuing employees to undergo tuberculosis tests when warranted upon the recommendation of the local health officer.

Employees may be required to pass a physical and/or psychological examination any time such an examination appears necessary to preserve the health and welfare of district students and employees or to furnish medical proof of physical or mental ability to perform satisfactorily the assigned duties of an individual's position. (Education Code 44839, 45122)

(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)

Legal Reference:

EDUCATION CODE

44839 Medical certificate; periodic medical examination

44839.5 Requirements for employment of retirant

44932 Grounds for dismissal of permanent employee

44942 Suspension or transfer of certificated employee on ground of mental illness, psychiatric examination; mandatory sick leave

45122 Physical examinations

49406 Examination for tuberculosis

CODE OF REGULATIONS, TITLE 5

5502-5503 Physical examination for retirants employed as substitute teacher, etc.

5504 Medical certification procedures

All Personnel

AR 4112.4(a)

4212.4

HEALTH EXAMINATIONS

4312.4

New Employees

1. No person shall be initially employed unless he/she has placed on file with the district a certificate from a physician licensed under the Business and Professions Code indicating that a tuberculosis examination within the past 60 days shows that he/she is free from active tuberculosis. The tuberculosis examination shall consist of an approved intradermal tuberculin test. An x-ray of the lungs shall be required only if the intradermal test is positive. (Education Code 49406)

Persons transferring from another district may fulfill tuberculosis examination requirements in either of the following ways: (Education Code 49406)

- a. By producing a certificate showing that the employee was examined within the last four years and found free of active tuberculosis, or
 - b. By having the last employing school verify that it has on file a current certificate which contains that showing.
2. When a new employee in a position requiring certification has not previously been employed in such a position in California, he/she must have a medical certificate on file with the district. The certificate will state that the employee is free from any disabling disease which would render him/her unfit to instruct or associate with children. The certificate form may be obtained from the personnel services office. It must be filled out by a licensed physician and returned to the personnel services office by the physician. The medical examination referred to in the certificate must have been conducted within six months of the time when the certificate is filed. (Education Code 44839)

The cost of preemployment examinations shall be borne by the applicant. (Education Code 44839, 45122, 49406)

When an employee's religious belief prevents him/her from undergoing a physical examination, the district shall follow provisions of Education Code 49406.

Continuing Employees

Continuing employees who test negative on tuberculin skin tests shall undergo a tuberculosis examination at least once every four years. (Education Code 49406)

Tuberculosis tests and other medical examinations required by the Superintendent or designee shall be administered by a physician licensed under the Business and Professions Code and shall be provided by the district or at district expense. (Education Code 44839, 45122, 49406)

AR 4112.4(b)
4212.4
4312.4

HEALTH EXAMINATIONS (continued)

Food Service Workers

All food service workers who cook, serve or handle food are required to obtain a health certificate before being assigned to work in any district cafeteria or kitchen. If a disease is suspected, a blood test or periodic health examinations may be required.

All Personnel

BP 4112.41
4212.41
4312.41

EMPLOYEE DRUG TESTING

The Board of Trustees maintains a drug and alcohol-free workplace. In accordance with law, all employees shall render service without using, possessing, being impaired by or being under the influence of alcohol or drugs.

(cf. 4020 - Drug and Alcohol-Free Workplace)
(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)

Pre-Employment Drug/Alcohol Testing

Once a conditional offer of employment has been made, prospective employees shall undergo a pre-employment drug and alcohol screening for any substance which could impair their ability to safely and effectively perform their job functions. This screening shall be part of the employee's pre-employment physical examination.

All medical examinations shall be conducted in accordance with state and federal law, and in accordance with Board policy and administrative regulation.

(cf. 4112.4 /4212.4/4312.4 - Health Examinations)
(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

Legal Reference:

EDUCATION CODE

44839 *Medical certificate; periodic medical examination*

45122 *Physical examinations*

GOVERNMENT CODE

8350-8357 *Drug-free workplace*

12940 *Unlawful employment practices*

CODE OF REGULATIONS, TITLE 5

5504 *Medical certification procedures*

UNITED STATES CODE, TITLE 20

7101-7184 *Safe and Drug-Free Schools and Communities Act*

UNITED STATES CODE, TITLE 41

701-707 *Drug-Free Workplace Act*

COURT DECISIONS

Loder v. City of Glendale, (1997) 14 Cal. 4th 846

Vernonia School District 47J v. Acton, (1995) 115 S.Ct. 2386

International Brotherhood of Teamsters v. Department of Transportation, (1991) 932 F.2d 1292

Skinner v. Railway Labor Executives' Assn., (1989) 489 U.S. 602

National Treasury Employees Union v. Von Raab, (1989) 109 S.Ct. 1384

All Personnel

AR 4112.41

4212.41

EMPLOYEE DRUG TESTING

4312.41

Pre-Employment Drug/Alcohol Screening

Final selection of a job applicant for a position shall not be made until the applicant has successfully completed a drug and alcohol screening required as part of the pre-employment physical examination.

Applicants shall sign a form consenting to the drug and alcohol testing. The consent form shall authorize release of the test results to the district.

To ensure the privacy of the drug and alcohol screening of job applicants, the district will not use test results for any purpose other than those stated in Board of Trustees policy and administrative regulation. The district shall maintain the confidentiality of screening records and shall not disclose these records unless the applicant has consented to the disclosure or the Superintendent or designee is presented with a court order requiring the disclosure.

All initial screening tests shall be conducted at the district's expense. If an applicant's initial test is positive, a second test shall be administered as soon as possible to confirm the results. This test also shall be conducted at the district's expense.

Upon obtaining a second positive result, the applicant may seek an independent drug and alcohol screening from a recognized medical laboratory at his/her own expense. Any applicant who fails to provide the district with a negative drug and alcohol screening report within five working days of a confirmed positive result shall be determined to have failed the screening and shall not be employed.

Failure to submit to the process or to complete the process shall preclude the applicant from being hired into the position. Disqualified applicants shall not be prohibited from applying for another job within the district.

All Personnel

BP 4112.42

4212.42

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS

4312.42

The Board of Trustees desires to take all possible steps to ensure transportation safety for district students and staff. The Superintendent or designee shall establish a drug and alcohol testing program for all school bus drivers and any other employees who hold a commercial driver's license which is necessary to perform duties related to their employment with the district. This program shall be designed to fulfill the requirements of federal law and regulations.

(cf. 3542 - School Bus Drivers)

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

Drivers who test positive for alcohol or drugs shall be removed from safety-sensitive functions and subject to disciplinary action up to and including dismissal in accordance with administrative regulations.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

Legal Reference:

EDUCATION CODE

35160 Authority of governing boards

VEHICLE CODE

34500 Applicable vehicles

34501.12 Motor carrier definition

34520 Motor carrier and driver compliance with federal testing requirements

UNITED STATES CODE, TITLE 49

2717 Alcohol and controlled substances testing (Omnibus Transportation Employee Testing Act of 1991)

CODE OF FEDERAL REGULATIONS, TITLE 49

40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs

382 Controlled Substance and Alcohol Use and Testing

395 Hours of Service of Drivers

All Personnel

AR 4112.42(a)
4212.42
4312.42

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS

The district's drug and alcohol testing program shall apply to all employees who operate a commercial motor vehicle, including any vehicle designed to transport 16 or more passengers. This includes casual, intermittent or occasional drivers as well as full-time, regularly employed drivers. (49 CFR 382.107)

The Superintendent or designee shall contract for collection and testing services and shall ensure that testing procedures and facilities used for the tests conform with the requirements of the Code of Federal Regulations, Title 49, Part 40.

Drivers shall inform their supervisors if at any time they are using a controlled substance which their physician has prescribed for therapeutic purposes. Drivers using such a substance may continue to perform safety-sensitive functions only if the physician has advised the driver that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle. (49 CFR 382.213)

Pre-Employment Tests

A pre-employment drug test shall be required of an applicant only after he/she has been offered the position.

Drug tests shall be conducted before the first time a driver performs any safety-sensitive function for the district. (49 CFR 382.301)

Safety-sensitive functions include all on-duty functions performed from the time a driver begins work or is required to be ready to work until he/she is relieved from work and all responsibility for performing work. It includes driving; waiting to be dispatched; inspecting and servicing equipment; supervising, performing or assisting in loading and unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing driver requirements related to accidents; and performing any other work for the district or paid work for any other entity. (49 CFR 382.107, 395.2)

Exceptions may be made for drivers who have participated in the drug testing program required by law within the previous 30 days, provided that the district has been able to make all verifications required by law. (49 CFR 382.301)

Pre-employment testing shall also be required of employees returning to work after a layoff period if the employee was removed from the random testing pool. If the employee remains in the random testing pool, additional testing shall not be necessary. (49 CFR 382.301)

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

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

Post-Accident Tests

Alcohol and controlled substance tests shall be conducted as soon after an accident as practicable on any driver:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved loss of human life (49 CFR 382.303)
2. Who receives a citation under state or local law for a moving traffic violation arising from the accident (49 CFR 382.303)
3. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved a serious medical injury
4. Whose performance cannot be excluded as a contributing factor based on information available at the time of the accident

Drivers shall make themselves readily available for testing, absent the need for immediate medical attention. (49 CFR 382.303)

No such driver shall use alcohol for eight hours after the accident, or until after he/she undergoes a post-accident alcohol test, whichever occurs first. (49 CFR 382.209)

If an alcohol test is not administered within two hours of the accident or if a drug test is not administered within 32 hours, the district shall prepare and maintain records explaining why the test was not conducted. Tests shall not be given if not administered within eight hours after the accident for alcohol or within 32 hours for drugs. (49 CFR 382.303)

Tests conducted by authorized federal, state or local officials shall fulfill post-accident testing requirements provided they conform to applicable legal requirements and are obtained by the district. Breath tests will validate only the alcohol test and cannot be used to fulfill controlled substance testing obligations. (49 CFR 382.303)

Random Tests

Alcohol and drug tests shall be conducted on a random basis at unannounced times throughout the year. The number of random alcohol and drug tests shall be at least equal to those required by federal regulations. Drivers shall be selected by a scientifically valid random process, and each driver shall have an equal chance of being tested each time selections are made. Tests for alcohol shall be conducted just before, during or just after the performance of safety-sensitive functions. (49 CFR 382.305)

AR 4112.42(c)
4212.42
4312.42

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

Employees off work due to leaves, vacation and layoffs shall be informed that they remain subject to random testing. Employees drawn for such testing shall be notified and tested as soon as practicable after they return to duty.

Reasonable Suspicion Tests

An alcohol or drug test shall be conducted if a supervisor or district official trained in accordance with law has reasonable suspicion that a driver has violated the district's alcohol or drug prohibitions. This reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the driver's appearance, behavior, speech or body odors. The observations may include indications of the chronic and withdrawal effects of controlled substances. (49 CFR 382.307)

Alcohol tests are authorized for reasonable suspicion only if the required observations are made during, just before or just after the period of the work day when the driver must comply with alcohol prohibitions. An alcohol test may not be conducted by the person who determines that reasonable suspicion exists to conduct such a test. If an alcohol test is not administered within two hours of a determination of reasonable suspicion, the district shall prepare and maintain a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate after eight hours. (49 CFR 382.307)

A supervisor or district official who makes observations leading to a controlled substance reasonable suspicion test shall make a written record of his/her observations within 24 hours of the observed behavior or before the results of the drug test are released, whichever is earlier. (49 CFR 382.307)

The Superintendent or designee shall ensure that an employee under reasonable suspicion is transported to the designated collection or testing site.

Enforcement

Any driver who refuses to submit to a post-accident, random or reasonable suspicion test, or to a follow-up test as described below, shall not perform or continue to perform safety-sensitive functions. (49 CFR 382.211) Therefore, any driver who so refuses shall be immediately suspended and subject to disciplinary action, up to and including dismissal.

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

A driver who is tested and found to have an alcohol concentration of .02 or greater but less than .04 may not perform or continue to perform safety-sensitive functions including driving a commercial motor vehicle until the start of the driver's next regularly scheduled duty period, but not less than 24 hours after the test was administered. (49 CFR 382.505)

A driver who tests positive for drugs or is found to have an alcohol concentration of .04 or greater shall be subject to disciplinary action up to and including dismissal.

A driver who violates district prohibitions related to drugs and alcohol shall receive from the district the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs available to evaluate and resolve drug and alcohol-related problems. The employee shall be evaluated by a substance abuse professional who shall determine what help, if any, the driver needs in resolving such a problem. Any substance abuse professional who determines that a driver needs assistance shall not refer the driver to a private practice, person or organization in which he/she has a financial interest, except under circumstances allowed by law. (49 CFR 382.605)

An employee identified as needing help in resolving a drug or alcohol problem shall be evaluated by a substance abuse professional to determine that he/she has properly followed the prescribed rehabilitation program. (49 CFR 382.605)

Return-to-Duty Tests

If a driver who has violated the district's drug or alcohol prohibition is returned to performing safety-sensitive duties, a drug or alcohol test shall be conducted. (49 CFR 382.309)

Employees whose conduct involved drugs shall not return to duty in a safety-sensitive function until the return-to-duty drug test produces a verified negative result. Employees whose conduct involved alcohol shall not return to duty in a safety-sensitive function until the return-to-duty alcohol test indicates an alcohol concentration of less than .02. (49 CFR 382.605)

Follow-up Tests

A driver who violates the district's drug or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with law. Follow-up alcohol testing shall be conducted just before, during or just after the time when the driver is performing safety-sensitive functions. (49 CFR 382.311)

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

Follow-up testing shall consist of at least six tests in the first 12 months following the driver's return to duty. The substance abuse professional may terminate the follow-up testing at any time after the first six tests if he/she determines that testing is no longer needed. Testing shall not occur beyond 60 months from the date of the driver's return to duty. (49 CFR 382.605)

Maintenance of Records

Employee drug and alcohol test results and records shall be maintained under strict confidentiality and released only in accordance with law. Upon written request, a driver shall receive copies of any records pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug or alcohol tests. Records shall be made available to a subsequent employer or other identified persons only as expressly requested in writing by the driver. (49 CFR 382.405)

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

Notifications

Each driver shall receive educational materials that explain the requirements of the Code of Federal Regulations, Title 49, Part 382, together with a copy of the district's policy and regulations for meeting these requirements. Representatives of employee organizations shall be notified of the availability of this information. The information shall identify all of the following: (49 CFR 382.601)

1. The person designated by the district to answer drivers' questions about the materials
2. The categories of drivers who are subject to the Code of Federal Regulations, Title 49, Part 382
3. Sufficient information about the safety-sensitive functions performed by drivers to make clear what period of the work day the driver is required to comply with Part 382
4. Specific information concerning driver conduct that is prohibited by Part 382
5. The circumstances under which a driver will be tested for drugs and/or alcohol under Part 382
6. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver and the integrity of the testing processes, safeguard the validity of test results and ensure that test results are attributed to the correct driver

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

7. The requirement that a driver submit to drug and alcohol tests administered in accordance with Part 382
8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant consequences
9. The consequences for drivers found to have violated the drug and alcohol prohibitions of Part 382, including the requirement that the driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation and treatment
10. The consequences for drivers found to have an alcohol concentration of .02 or greater but less than .04
11. The effects of drugs and alcohol on an individual's health, work and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a coworker's); and available methods of intervening when a drug or alcohol problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management

(cf. 4159/4259/4359 - Employee Assistance Programs)

12. Other legal requirements, district policies and disciplinary consequences related to the use of alcohol and drugs.

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

Each driver shall sign a statement certifying that he/she has received a copy of the above materials. (49 CFR 382.601)

(cf. 4112.9 - Employee Notifications)

Before any driver operates a commercial motor vehicle, the district shall provide him/her with post-accident procedures that will make it possible to comply with post-accident testing requirements. (49 CFR 382.303)

Before drug and alcohol tests are performed pursuant 49 CFR 382, the district shall inform drivers that the tests are required by these regulations. (49 CFR 382.113)

The district shall notify a driver of the results of a pre-employment drug test if the driver requests such results within 60 calendar days of being notified of the disposition of his/her employment application. (49 CFR 382.411)

AR 4112.42(g)
4212.42
4312.42

DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS (continued)

The district shall notify a driver of the results of random, reasonable suspicion and post-accident drug tests if the test results are verified positive. The district shall also tell the driver which controlled substance(s) were verified as positive. (49 CFR 382.411)

Certificated Personnel

AR 4112.5(a)
4312.5

CRIMINAL RECORD CHECK

Applicants for Employment

The Superintendent or designee shall ensure that each person to be employed submits fingerprints, either electronically through the Live Scan system or on fingerprint identification cards, for processing by the Department of Justice. If the district is using the Live Scan system, the Superintendent or designee shall also provide the applicant with a Live Scan request form and a list of nearby Live Scan locations.

The Superintendent or designee shall ensure that no person is hired in a position requiring certification qualifications or supervising positions requiring certification qualifications who has been convicted of a violent or serious felony as listed in Penal Code 667.5(c) or 1192.7(c), unless that person has obtained a certificate of rehabilitation and a pardon. (Education Code 44830.1)

(cf. 4112 - Appointment and Conditions of Employment)
(cf. 4112.2 - Certification)

However, a certificated employee may be hired by the district, without obtaining a criminal record summary, if that employee became a permanent employee of another school district as of October 1, 1997. (Education Code 44830.1)

(cf. 4121 - Temporary/Substitute Personnel)

Temporary Certificate of Clearance

Before issuing a temporary certificate of clearance to an applicant whose credential is being processed, the Superintendent or designee shall obtain a criminal record summary from the Department of Justice. The Superintendent or designee shall not issue a temporary certificate of clearance if the applicant has been convicted of a violent or serious felony, unless the applicant has obtained a certificate of rehabilitation and pardon. (Education Code 44332, 44332.5, 44332.6)

The Superintendent or designee may issue a temporary certificate of clearance without obtaining a criminal record summary to an employee currently and continuously employed by a district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential. (Education Code 44332.6)

The Superintendent or designee may issue a temporary certificate of clearance to a person who has been convicted of a serious felony that is not also a violent felony, if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he/she has been rehabilitated for the purposes of school employment for at least one year. (Education Code 44332.6)

CRIMINAL RECORD CHECK (continued)

Subsequent Arrest Notification

The Superintendent or designee shall request subsequent arrest notification from the Department of Justice as provided under Penal Code 11105.2. (Education Code 44830.1)

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

(cf. 4112.62/4212.62/4312.62 - Maintenance of Criminal Offender Records)

Current Employees

The Superintendent or designee shall not retain in employment any current certificated employee who is a temporary employee, substitute employee or probationary employee serving before March 15 of the employee's second probationary year if he/she has been convicted of a violent or serious felony. (Education Code 44830.1)

Upon notification by the Department of Justice of such conviction, the Superintendent or designee shall immediately place that employee on leave without pay. (Education Code 44830.1)

When the district receives written electronic notification of the fact of conviction from the Department of Justice, the Superintendent or designee shall terminate that employee without regard to any other procedure for termination specified in the Education Code or district procedures, unless that employee has received a certificate of rehabilitation and a pardon. (Education Code 44830.1)

If the employee challenges the Department of Justice record and the Department of Justice withdraws in writing its notification, the Superintendent or designee shall immediately reinstate that employee with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement. (Education Code 44830.1)

Legal Reference: (see next page)

CRIMINAL RECORD CHECK (continued)

Legal Reference:

EDUCATION CODE

44010 Sex offense

44332 Temporary certificate

44332.5 Registering certificates by certain districts

44332.6 Criminal record check, county board of education

44346.1 Applicants for credential, conviction of a violent or serious felony

44830.1 Certificated employees, conviction of a violent or serious felony

44830.2 Certificated employees; interagency agreement

44836 Conviction of a sex offense

45122.1 Classified employees, conviction of a violent or serious felony

45125 Use of personal identification cards to ascertain conviction of crime

45125.01 Classified employees; interagency agreements

45125.5 Automated records check

45126 Duty of Department of Justice to furnish information

PENAL CODE

667.5 Prior prison terms, enhancement of prison terms

1192.7 Plea bargaining limitation

11105.2 Subsequent arrest notification

CODE OF REGULATIONS, TITLE 11

703 Release of criminal offender record information

708 Destruction of criminal offender record information

Management Resources:

WEB SITES

Department of Justice/Attorney General's Office: <http://www.caag.state.ca.us/app>

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

All Personnel

AR 4112.6(a)

4212.6

PERSONNEL FILES

4312.6

The Superintendent or designee shall maintain personnel files for all current employees. All personnel files are confidential and shall be available only to the employee, persons authorized by the employee and those authorized by the Superintendent or designee. Official employee files shall be maintained at the district's central office. The Superintendent or designee shall determine the types of information to be included and shall process all material to be placed in a personnel file.

(cf. 4141/4241 - Collective Bargaining Agreement)

The contents of all personnel files shall be kept in strict confidence by any authorized reviewer.

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

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

(cf. 9321 - Closed Session Purposes and Agendas)

(cf. 9321.1 - Closed Session Actions and Reports)

Personnel files shall be reviewed and replaced within the shortest time possible. In no case shall a personnel file be left unattended or left unfiled overnight.

Files for District Police/Security Officers

Personnel files for district police or security officers shall be maintained and accessed in accordance with Board of Trustees policy and Government Code 3305-3306.

(cf. 3515.3 - District Police/Security Department)

Placement of Material in Personnel Files

Any person who places written material or drafts written material for placement in an employee's file shall sign the material and signify the date of placement.

When an employee is asked to sign any material that is to be placed in his/her file, it is with the understanding that his/her signature signifies only that he/she has read the material and does not necessarily indicate agreement with its contents.

Any request by an employee to include materials in his/her personnel file must be approved by the Superintendent or designee.

A certificated employee may initiate a written reaction or response to his/her performance evaluation and that response shall become a permanent attachment to the employee's personnel file. (Education Code 44663)

(cf. 4115 - Evaluation/Supervision)

PERSONNEL FILES (continued)

Derogatory Information

Information of a derogatory nature shall not be entered into an employee's personnel file unless and until the employee is given notice and an opportunity to review and comment on that information. Such a review shall take place during normal business hours. The employee shall be released from duty for this purpose without a salary reduction. The employee may enter his/her own comments and have them attached to the derogatory statement. (Education Code 44031)

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 4117.4 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

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

(cf. 5141.4 - Child Abuse Prevention and Reporting)

File Review by Employee

The contents of personnel records relating to the employee's performance or to any grievance concerning the employee shall be made available to the employee at reasonable intervals and at reasonable times. The Superintendent or designee shall not be required to make such records available at a time when the employee is required to render services to the district, unless the employee is required to view the file where it is stored. (Labor Code 1198.5; Education Code 44031)

The Superintendent or designee shall do one of the following: (Labor Code 1198.5)

1. Keep a copy of each employee's personnel records at the place where the employee reports to work
2. Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request
3. Permit the employee to inspect the personnel records at the location where the district stores the personnel records, with no loss of compensation to the employee

Any employee wishing to inspect his/her personnel record shall contact the Superintendent or designee.

With the exceptions noted below, all personnel records related to the employee's performance or to any grievance concerning the employee shall be made available for inspection by the employee. Noncredentialed employees shall have access to any numerical scores obtained as result of written examinations. (Education Code 44031)

PERSONNEL FILES (continued)

The Superintendent or designee shall not be required to make available to the employee:
(Labor Code 1198.5, Education Code 44031)

1. Records relating to the investigation of a possible criminal offense
2. Letters of reference
3. Ratings, reports or records that were obtained prior to the employee's employment, prepared by identifiable examination committee members, or obtained in connection with a promotional examination

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

(cf. 4112.62/4212.62/4312.62 - Maintenance of Criminal Offender Records)

The employee may be accompanied by a representative of the employee's choice while reviewing the record.

Inspection shall take place in the presence of the Superintendent or designee. All reviews of personnel records shall be recorded, including the date and time the file was reviewed and the name and title of the person(s) present during the review.

In no instance shall any material be removed from the records. Requests for copies of material in a personnel record must be made in writing.

File Review by Management and Board

Management personnel or district legal counsel with a valid "right to know" or "need to know" may, with the Superintendent or designee's authorization, review an employee's personnel file.

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

Board members are not individually allowed to request and access personnel files but the Board may request pertinent information from an employee's file in cases of personnel action.

Legal Reference: (see next page)

AR 4112.6(d)
4212.6
4312.6

PERSONNEL FILES (continued)

Legal Reference:

EDUCATION CODE

35253 Regulations to destroy records

44031 Personnel file contents and inspection

44663 Performance appraisals and related materials

GOVERNMENT CODE

3305-3306 District police officers; personnel files

6254.3 Disclosure of home address and phone number

LABOR CODE

1198.5 Inspection of personnel files

PENAL CODE

11165.14 Report of investigation of child abuse complaint

CODE OF REGULATIONS, TITLE 5

16020-16022 Records, general provisions

16023-16027 Retention of records

ATTORNEY GENERAL OPINIONS

Cal. Atty. Gen., Indexed Letter, no. IL 75-73 (June 6, 1975)