

CSBA Sample

Board Policy

Health And Welfare Benefits

BP 4354 4154, 4254

Personnel

***Note: The following optional policy should be revised to reflect district practice and collective bargaining agreements. Districts that contract with the Board of Administration of the Public Employees' Retirement System to obtain a health benefit plan under the Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code 22750-22944, should revise the following policy and accompanying administrative regulation to reflect the requirements of that program. ***

The Governing Board recognizes that health and welfare benefits are essential to promote employee health and productivity and are an important part of the compensation offered to employees. The district shall provide health and welfare benefits for employees in accordance with state and federal law and subject to negotiated employee agreements.

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

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4151/4251/4351 - Employee Compensation)

***Note: The district should select or revise the appropriate option below to reflect district practice regarding employees who are not in bargaining units. Districts selecting Option 2 should expand this policy or accompanying administrative regulation to specify benefits for unrepresented employees. Also see BP 4121 - Temporary/Substitute Personnel. ***

OPTION 1: Certificated management, administrative, and supervisory employees who are not in bargaining units shall receive the same health and welfare benefits as those specified in the collective bargaining agreement for certificated employees. Classified management, administrative, and supervisory employees who are not in bargaining units shall receive the same health and welfare benefits as those specified in the collective bargaining agreement for classified employees.

(cf. 4300 - Administrative and Supervisory Personnel)

OPTION 2: Employees who are not in bargaining units shall receive health and welfare benefits as specified in Board policy and administrative regulation.

(cf. 4121 - Temporary/Substitute Personnel)

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

domestic partners have the same rights, protections, and benefits as spouses. Therefore, to the extent that the district provides health benefit coverage to spouses of employees pursuant to state law, the same coverage must be provided to registered domestic partners. Pursuant to Health and Safety Code 1374.58, health care service plans and health insurers are required to provide registered domestic partners coverage that is equal to the coverage provided to spouses. ***

For purposes of granting benefits, a registered domestic partner and his/her child shall have the same rights, protections, and benefits as a spouse and spouse's child. (Family Code 297.5, 300)

***Note: The following paragraph is for use by districts that have an average of 50 or more full-time equivalent (FTE) employees over the preceding calendar year. The federal Patient Protection and Affordable Care Act (PPACA) (42 USC 300gg-300gg95; 26 USC 4980H; 26 CFR 54.4980H-1-54.4980H-6) requires such districts to offer FTE employees and their dependents (not including spouses) the opportunity to enroll in an affordable district-sponsored group health plan or health insurance coverage that provides minimum "essential coverage," as defined in Health and Safety Code 1367.005, 26 USC 5000A, and 26 CFR 1.5000A-2 and 54.4980H-1. In addition, the district must ensure that the employee's contribution toward the cost of the coverage does not exceed 9.5 percent of his/her household income; see the accompanying administrative regulation for further information about the calculation of the employee's contribution. ***

***Note: For purposes of determining the applicability of this law, the district must calculate the number of FTE employees in accordance with 26 USC 4980H and 26 CFR 54.4980H-1. An FTE employee is one who works at least 30 hours per week (including actual work hours and hours for which an employee is paid or entitled to be paid due to vacation, holiday, sick leave, disability, jury duty, military leave, or other leave of absence). 26 CFR 54.4980H-3, as amended by 79 Federal Register 29, Feb. 12, 2014, clarifies that districts should not calculate employment breaks of four or more consecutive weeks, such as summer break, in a way that would significantly detract from the calculation of an employee's overall work hours. Thus, an employee who averages 30 hours or more per week for nine months and then no hours for three months would still be considered a full-time employee. In addition, in determining the number of FTE employees, the district must include the hours of service for all part-time employees for a calendar month divided by 120. Although part-time employees are considered in the determination as to whether the PPACA applies to the district, the district is not required under the PPACA to provide health benefits to part-time employees. See BP 4121 - Temporary/Substitute Personnel. The calculation of FTE employees is complex and the district should consult legal counsel as necessary. ***

***Note: Beginning with the 2016 plan year, a district with 50 or more FTE employees will be required to offer health coverage that meets the PPACA requirements to at least 95 percent of its FTE employees. If a district fails to comply with this law and any FTE employee uses a federal tax credit or cost-sharing premium reduction to purchase coverage through a health exchange (i.e., Covered California), the district must pay a financial penalty. ***

The district shall offer full-time employees who work an average of 30 hours or more per week and their dependents up to age 26 years a health insurance plan that includes coverage for essential health benefits, pays at least 60 percent of the medical expenses covered under the terms of the plan, and meets all other requirements of the federal Patient Protection and Affordable Care Act.

***Note: Pursuant to 26 USC 105 and 26 CFR 1.105-11, self-insured medical expense reimbursement plans are prohibited from discriminating in favor of "highly compensated" individuals as to eligibility to participate or level of benefits provided under the plan. As defined in 26 USC 105(h), "highly compensated" individuals are those who are among the highest paid 25 percent of all employees, with specified exceptions. The PPACA (42 USC 300gg-16) extends this requirement to non-self-insured group health plans. Implementation of this provision with respect to group health plans has been delayed until the first plan year after the issuance of federal regulations or other guidance on how to comply with the requirement. As of October 6, 2015, this delay is still in effect. However, it is still recommended that districts begin to review their plans and practices to be prepared to comply with the expected rules. ***

With respect to eligibility to participate in the health benefits plan or the level of health benefits provided, the district shall not discriminate in favor of employees who are among the highest paid 25 percent of all district employees. (26 USC 105; 42 USC 300gg-16)

Continuation of Coverage

***Note: Education Code 7000-7005 provide for continued health and dental care benefits for retired certificated employees and their spouses/domestic partners. In addition, for districts with 20 or more employees, continued health and disability benefits for former classified and certificated employees and their qualified beneficiaries are addressed in the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (26 USC 4980B; 29 USC 1161-1168; 26 CFR 54.4980B-1-54.4980B-10). For districts with 2-19 employees, continued health and disability benefits for former employees and their qualified beneficiaries are addressed in the California Continuation Benefits Replacement Act (Cal-COBRA) (Health and Safety Code 1366.20-1366.29; Insurance Code 10128.50-10128.59). These programs provide continuation coverage for limited time periods and under limited conditions. The following section reflects the general purposes of these programs; see the accompanying administrative regulation for a summary of major program requirements. ***

***Note: Pursuant to Governmental Accounting and Standards Board Statement 45, "other postemployment benefits" (OPEBs) (i.e., medical, dental, vision, hearing, life insurance, long-term care, long-term disability, and other nonpension benefits for retired employees) must be reported by the district as a current expense over the working years of an employee. To the extent that OPEBs are not prefunded in a designated fund or irrevocable trust, they must be reported as a liability on the district's financial statements. See BP 3100 - Budget and AR 3460 - Financial Reports and Accountability. ***

Retired certificated employees, other employees who would otherwise lose coverage due to a qualifying event specified in law and administrative regulation, and their qualified beneficiaries may continue to participate in the district's group health and welfare benefits in accordance with state and federal law.

***Note: The following paragraph may be revised to reflect district practice. Covered employees and their qualified beneficiaries who elect continuation coverage may be required to pay all costs of the insurance plan as provided below (Education Code 7000; Health and Safety Code 1366.26; Insurance Code 10128.56; 26 USC 4980B). Any district contribution to retired employee health

costs is a negotiable item. ***

Unless otherwise provided for in the applicable collective bargaining agreement, covered employees and their qualified beneficiaries may receive continuation coverage by paying the premiums, dues, and other charges, including any increases in premiums, dues, and costs incurred by the district in administering the program.

Confidentiality

***Note: The Health Insurance Portability and Accountability Act (HIPAA) (45 CFR 164.500-164.534) specifies actions that a health plan, health care provider, or health care clearinghouse must take to protect the privacy of an individual's health information. Generally, entities covered by HIPAA may release or receive "protected health information" about an individual only if that individual gives permission or the Act expressly permits its release. ***

***Note: Civil Code 56.20-56.245 address an employer's responsibility to maintain the confidentiality of medical information it receives. ***

The Superintendent or designee shall not use or disclose any employee's medical information the district possesses without the employee's authorization obtained in accordance with Civil Code 56.21, except for the purpose of administering and maintaining employee benefit plans and for other purposes specified in law. (Civil Code 56.20)

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

Legal Reference:

EDUCATION CODE

7000-7008 Health and welfare benefits, retired certificated employees

17566 Self-insurance fund

35208 Liability insurance

35214 Liability insurance (self-insurance)

44041-44042 Payroll deductions for collection of premiums

44986 Leave of absence, state disability benefits

45136 Benefits for classified employees

CIVIL CODE

56.10-56.16 Disclosure of information by medical providers

56.20-56.245 Use and disclosure of medical information by employers

FAMILY CODE

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

300 Definition of marriage

GOVERNMENT CODE

12940 Discrimination in employment

22750-22944 Public Employees' Medical and Hospital Care Act

53200-53210 Group insurance

HEALTH AND SAFETY CODE

1366.20-1366.29 Cal-COBRA program, health insurance

1367.08 Disclosure of fees and commissions paid related to health care service plan

1373 Health services plan, coverage for dependent children who are full-time students
1373.621 Continuation coverage, age 60 or older after five years with district
1374.58 Coverage for registered domestic partners, health service plans and health insurers

INSURANCE CODE

10116.5 Continuation coverage, age 60 or older after five years with district
10128.50-10128.59 Cal-COBRA program, disability insurance
10277-10278 Group and individual health insurance, coverage for dependent children
10604.5 Annual disclosure of fees and commissions paid
12670-12692.5 Conversion coverage

LABOR CODE

2800.2 Notification of conversion and continuation coverage
4856 Health benefits for spouse of peace officer killed in performance of duties

UNEMPLOYMENT INSURANCE CODE

2613 Education program; notice of rights and benefits

UNITED STATES CODE, TITLE 1

7 Definition of marriage, spouse

UNITED STATES CODE, TITLE 26

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

4980B COBRA continuation coverage

4980H Penalty for noncompliance with employer-provided health care requirements

5000A Minimum essential coverage

6056 Report of health coverage provided to employees

UNITED STATES CODE, TITLE 29

1161-1168 COBRA continuation coverage

UNITED STATES CODE, TITLE 42

300gg-300gg95 Patient Protection and Affordable Care Act, especially:

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

1395-1395g Medicare benefits

CODE OF FEDERAL REGULATIONS, TITLE 26

54.4980B-1-54.4980B-10 COBRA continuation coverage

54.4980H-1-54.4980H-6 Patient Protection and Affordable Care Act

1.105-11 Self-insured medical reimbursement plan

CODE OF FEDERAL REGULATIONS, TITLE 45

164.500-164.534 Health Insurance Portability and Accountability Act (HIPAA)

Management Resources:

CALIFORNIA SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Health Policy: Implications of Covered California for School Boards, Districts and Personnel,
Governance Brief, January 2013

INTERNAL REVENUE SERVICE NOTICES

2011-1 Affordable Care Act Nondiscrimination Provisions Applicable to Insured Group Health
Plans

U.S. DEPARTMENT OF TREASURY PUBLICATIONS

Fact Sheet: Final Regulations Implementing Employer Shared Responsibility Under the
Affordable Care Act (ACA) for 2015

WEB SITES

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

California Employment Development Department: <http://www.edd.ca.gov>

Internal Revenue Service: <http://www.irs.gov>

U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services:
<http://www.cms.gov>

U.S. Department of Labor: <http://www.dol.gov>

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CSBA Sample

Administrative Regulation

Evaluation/Supervision

AR 4115

Personnel

Note: Education Code 35171 mandates that the Governing Board adopt reasonable regulations related to evaluating the performance of certificated personnel. The following administrative regulation and accompanying Board policy should be revised to reflect district practice and any applicable provisions of collective bargaining agreements.

Note: The following paragraph may be deleted by any district that has not recognized a bargaining unit of certificated employees.

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

(cf. 4141/4241 - Collective Bargaining Agreement)

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

(cf. 4112.9 - Employee Notifications)

Frequency of Evaluations

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

(cf. 4116 - Probationary/Permanent Status)

(cf. 4117.6 - Decision Not to Rehire)

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

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

Alternatively, a permanent employee who has been employed by the district at least 10 years and who was rated in his/her previous evaluation as meeting or exceeding standards shall be

evaluated at least every five years, if he/she and the evaluator so agree. Either the evaluator or the employee may withdraw consent for the alternative schedule at any time. (Education Code 44664)

Evaluation Results

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

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

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

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

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

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

(cf. 4131 - Staff Development)

(cf. 4131.1 - Teacher Support and Guidance)

Qualifications of Evaluators

Note: The following optional section may be revised to reflect district practice.

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

1. Possesses a valid administrative credential
2. Is competent in the instructional methodologies used by the teachers being evaluated

3. Is skilled in the supervision of instruction and in techniques and procedures related to the evaluation of instruction

4. Is familiar with district curriculum priorities and practices, district standards for student progress, and district policies and procedures related to personnel supervision, performance evaluation, and staff development

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~~CSBA Sample~~

~~Administrative Regulation~~

~~Probationary/Permanent Status~~

AR 4116

~~Certificated Personnel~~

~~Permanent Status (Districts of 250 ADA or More)~~

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

~~***Note: Pursuant to Education Code 44929.21 and 44929.23, districts of 250 ADA or more and districts of less than 250 ADA that grant permanent status (Option 1 below), must notify an employee on or before March 15 of the employee's second complete consecutive school year of employment of the decision to whether to reelect the employee for the next school year. If the district does not provide that notice, the employee is deemed to be reelected for the next school year. See AR 4117.6 Decision Not to Rehire.***~~

~~Permanent Status (Districts with Less than 250 ADA)~~

~~***Note: Option 1 below is for use by districts with less than 250 ADA that grant permanent status after two consecutive years; this option must be used by districts desiring the right to dismiss probationary certificated employees by nonreelection for a subsequent school year without a hearing pursuant to Education Code 44929.21 and 44929.23. Districts making this election also achieve broader rights to dismiss the probationary teacher during the school year pursuant to Education Code 44948.2 and 44948.3. (See AR 4117.6 Decision Not to Rehire and AR 4118 Dismissal/Suspension/Disciplinary Action.) Once the district elects to have this right and give permanent status after two years as described in Option 1, its decision is irreversible and it can no longer delay or deny the granting of permanent status as described in Option 2 or 3.***~~

~~***Note: Options 2 and 3 may be selected by districts with less than 250 ADA that have not elected to dismiss probationary employees pursuant to Education Code 44948.2 and 44948.3. Such districts still have the choice of granting permanent status to certificated employees after they have completed three consecutive years of service (Option 2), or, if the Board does not choose to grant permanent status, employees may be reelected from year to year without becoming permanent employees (Option 3). Because of the ramifications of this decision, districts should seek legal counsel before choosing one of these options.***~~

~~OPTION 1: A probationary teacher who has been employed by the district in a position or positions requiring certification for two complete consecutive school years and is then rehired for the next succeeding school year shall become a permanent employee at the beginning of the third~~

year.—(Education Code 44929.23)

~~OPTION 2:—A probationary teacher who has been employed by the district in a position or positions requiring certification for three complete consecutive school years and is then rehired for the next succeeding school year may become a permanent employee at the beginning of the fourth year.—This grant of permanent status may only be made specifically by and at the discretion of the Board.—(Education Code 44929.23)~~

~~OPTION 3:—Permanent status shall not be granted to certificated district employees.
(Education Code 44929.23)~~

~~(cf. 4115—Evaluation/Supervision)
(cf. 4117.6—Decision Not to Rehire)
(cf. 4118—Dismissal/Suspension/Disciplinary Action)
(cf. 4121—Temporary/Substitute Personnel)~~

Permanency Achieved in Other Districts

~~***Note:—The following paragraph is optional.***~~

~~A person who has achieved permanent status as a certificated employee in another school district may be employed by the Board as a permanent certificated employee.—(Education Code 44929.28)~~

Interns

~~***Note:—AB 552 (Ch. 138, Statutes of 1997) amended Education Code 44466 to make the requirements for the attainment of permanent status by university interns authorized pursuant to Education Code 44450 consistent with the requirements for district interns authorized pursuant to Education Code 44325.***~~

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

~~(cf. 4112.21—Interns)~~

~~***Note: The following paragraph should be used only by districts that grant permanent status to certificated staff.***~~

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

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CSBA Sample

Administrative Regulation

Dismissal/Suspension/Disciplinary Action

AR 4118
Personnel

***Note: The following optional administrative regulation should be revised to reflect provisions applicable to the size of the district as well as any related provisions of collective bargaining agreements. ***

***Note: Pursuant to Government Code 3543.2, the district and certificated employee bargaining unit must, upon request of either party, negotiate causes and procedures for disciplinary action, other than dismissal and suspension beyond 15 days. If the Governing Board has adopted a collective bargaining agreement which includes such procedures, then, pursuant to Education Code 44932, the authorization to suspend an employee for up to 15 days pursuant to the procedures specified in Education Code 44933, 44934, 44934.1, 44935, 44936, 44937, 44943, and 44944 would not apply. The suspension procedures specified in Education Code 44934 and 44939, as amended by AB 215 (Ch. 55, Statutes of 2014), are explicitly for use only by districts that do not have a collective bargaining agreement. ***

***Note: In *Vergara v. State of California*, a California superior court held that the state's current dismissal procedure is unconstitutional because it is so complex, time consuming, and expensive that it effectively prohibits an effective, efficient, and fair dismissal of a grossly ineffective teacher. However, this decision has been stayed until appeals can be settled. ***

***Note: Because Education Code provisions pertaining to employee suspension and dismissal are complex, districts are advised to consult with legal counsel before instituting such proceedings. ***

Causes for Suspension or Dismissal

***Note: Education Code 44932 lists causes for which a certificated employee may be suspended without pay or dismissed. AB 215 (Ch. 55, Statutes of 2014) amended Education Code 44932 to add egregious misconduct, as defined, as a cause for dismissal and to delete membership in the Communist party. ***

***Note: The causes listed in Education Code 44932 have been found to be so broad as to be sometimes difficult to apply. However, the California Supreme Court (*Morrison v. State Board of Education*) has articulated a seven-part test to determine fitness to teach, including (1) likelihood of recurrence of the questioned conduct or performance, (2) extenuating or aggravating circumstances, (3) effect of notoriety and publicity, (4) impairment of teacher-student relationships, (5) disruption of the education process, (6) motive, and (7) proximity or remoteness in time of conduct or performance. The conduct or performance that gives rise to the need to suspend or dismiss need not occur on or involve district property. ***

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

1. Immoral conduct including, but not limited to, egregious misconduct that is the basis for a sex offense or controlled substance offense described in Education Code 44010 or 44011 or child abuse and neglect as described in Penal Code 11165.2-11165.6
2. Unprofessional conduct
3. Commission, aiding, or advocating the commission of acts of criminal syndicalism
4. Dishonesty
5. Unsatisfactory performance
6. Evident unfitness for service
7. Physical or mental condition unfitting the employee to instruct or associate with children
(cf. 4112.4/4212.4/4312.4 - Health Examinations)
8. Persistent violation of or refusal to obey the school laws or regulations of the state or district
9. Conviction of a felony or of any crime involving moral turpitude
10. Violation of Education Code 51530 or Government Code 1028 (advocacy of communism)
11. Alcoholism or other drug abuse that makes the employee unfit to instruct or associate with children

(cf. 4115 - Evaluation/Supervision)

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

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

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

(cf. 5145.2 - Freedom of Speech/Expression)

Suspension/Dismissal of Permanent Employees

***Note: Procedures for the suspension or dismissal of permanent employees are addressed in Education Code 44932-44947. Some of these procedures were amended by AB 215 (Ch. 55, Statutes of 2014), including the establishment of an alternative procedure for charges related solely to egregious misconduct. ***

***Note: See the accompanying Board policy for information about Board responsibilities related to reviewing the statement of charges, providing notice to the employee of the Board's intent to suspend or dismiss him/her, and, when applicable, appointing a member of the Commission on Professional Competence that will conduct a hearing on the matter. ***

When a permanent certificated employee is charged with one or more of the offenses specified in the section "Causes for Suspension or Dismissal" above, the following procedures shall apply:

1. The person preparing a written statement of charges that there is cause to suspend or dismiss an employee shall submit the signed statement to the Governing Board. (Education Code 44934, 44934.1)
2. Upon receiving notice of the Board's intent to suspend or dismiss him/her, the employee may request a hearing on the matter. The hearing shall be conducted by the Commission on Professional Competence, except that any case involving only egregious misconduct shall be heard instead by an administrative law judge and, in any other case, the hearing may be conducted by an administrative law judge when both the district and employee so stipulate. (Education Code 44943, 44944, 44944.05, 44944.1, 44944.3)
3. Except when an employee is charged solely with egregious misconduct, the district may amend the charges less than 90 days before the hearing only upon showing of good cause and upon approval of the administrative law judge. (Education Code 44934)
4. The employee shall be suspended or dismissed when the Commission on Professional Competence or administrative law judge has issued its decision supporting suspension or dismissal or, if the employee did not request a hearing, at the expiration of 30 days after service of the notice of intent to suspend or dismiss. (Education Code 44941, 44943, 44944)

The Superintendent or designee shall notify the Commission on Teacher Credentialing when the employment status of a certificated employee has been changed as a result of alleged misconduct or while an allegation of misconduct is pending. (Education Code 44030.5, 44242.5, 44940; 5 CCR 80303)

(cf. 4117.7/4317.7 - Employment Status Reports)

Suspension/Dismissal of Probationary Employees

***Note: With proper notice, the district may choose not to rehire probationary employees for the following year without giving a statement of reasons; see AR 4117.6 - Decision Not to Rehire. However, during the school year, probationary employees may only be suspended without pay or dismissed for cause and in accordance with the applicable procedures specified in law. ***

The district may choose not to rehire probationary employees for the following school year

without giving a statement of reasons provided that it is done in accordance with AR 4117.6 -Decision Not to Rehire and proper notice is provided by March 15. (Education Code 44929.21, 44929.23)

(cf. 4116 - Probationary/Permanent Status)
(cf. 4117.6 - Decision Not to Rehire)

***Note: Districts with average daily attendance (ADA) of 250 or more may dismiss probationary employees during the school year in accordance with the procedures contained in Education Code 44948.3, in which case the decision whether to dismiss an employee rests with the Board rather than the Commission on Professional Competence (Option 1 below). ***

***Note: Districts with less than 250 ADA should select the appropriate option below depending on how the district grants permanent status to certificated employees in accordance with BP/AR 4116 - Permanent/Probationary Status. Districts with less than 250 ADA that have not adopted a collective bargaining agreement may elect to use the procedures in Education Code 44934 and 44934.1 for dismissal of probationary employees (Option 2 below), as reflected in the section "Suspension/Dismissal of Permanent Employees" above. Alternatively, Education Code 44948.2 authorizes districts with less than 250 ADA to elect to dismiss probationary employees during the school year pursuant to Education Code 44948.3 (Option 1 below). When districts with less than 250 ADA decide to use the procedures in Education Code 44948.3, their employees will become permanent employees if they are not served with a notice of non-reelection before March 15 of their second year. Since Education Code 44948.3 applies only to dismissal of probationary employees in districts with 250 ADA or more or to districts of less than 250 ADA that elect to use Education Code 44948.3, it is not appropriate for use by districts that either grant permanent status after three consecutive years or that reelect employees from year to year without granting permanent status. ***

OPTION 1: (Districts with ADA of 250 or more, or districts with less than 250 ADA that have elected to use the dismissal procedures in Education Code 44948.3)

During the school year, probationary employees in their first or second year of service may be dismissed only for one or more of the causes listed in items #1-11 in the section "Causes for Suspension or Dismissal" above or for unsatisfactory performance determined pursuant to Education Code 44660-44665. (Education Code 44948.2, 44948.3)

Whenever a first- or second-year probationary employee is so charged, the following procedures shall apply for dismissing the employee: (Education Code 44948.3)

1. The Superintendent or designee shall give 30 days' prior written notice of dismissal, not later than March 15 in the case of second-year probationary employees. The notice shall include a statement of the reasons for the dismissal, notice of the opportunity to appeal, and, if the cause is unsatisfactory performance, a copy of the evaluation conducted pursuant to Education Code 44664.

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

***Note: Pursuant to Education Code 44948.3, the probationary employee may request a hearing

as provided below. His/her failure to request a hearing within 15 days from receipt of the dismissal notice constitutes a waiver of the right to a hearing. ***

2. Upon receipt of the notice of dismissal, the employee may be dismissed if no request for a hearing is submitted to the Board within 15 days.

***Note: Education Code 44948.3 authorizes the district to establish procedures for the appointment of an administrative law judge to conduct the hearing and submit his/her recommended decision to the Board. Item #3 may be revised to reflect any such procedures established by the district. ***

3. If a hearing is requested, the district may arrange for the appointment of an administrative law judge to conduct the hearing and to recommend a decision to the Board.

A probationary employee may be suspended without pay for a specified period of time as an alternative to dismissal. (Education Code 44948.3)

OPTION 2: (Districts with less than 250 ADA that do not grant permanent status after two years and do not elect to use the procedures in Education Code 44948.3)

During the school year, probationary employees may be dismissed only for one or more of the causes listed in items #1-11 in the section "Causes for Suspension or Dismissal" above. (Education Code 44948)

Whenever a probationary employee is so charged, dismissal procedures shall be those set forth in Education Code 44934 and 44934.1 as described in the section "Suspension/Dismissal of Permanent Employees" above.

Compulsory Leave of Absence

***Note: Whenever a certificated employee is charged with a "mandatory leave of absence offense" as defined in Education Code 44940, the district is required to place him/her on a compulsory leave of absence. Penal Code 291 requires law enforcement, including the local police, sheriff, or California Highway Patrol, to telephone the Superintendent when a school employee has been arrested for a sex offense and provide written notice to the County Superintendent of Schools and the Commission on Teacher Credentialing (CTC). ***

***Note: AB 215 (Ch. 55, Statutes of 2014) amended Education Code 44940 to add murder or attempted murder to the list of mandatory leave of absence offenses (item #2 below) and to delete exceptions regarding controlled substances (item #3 below). ***

***Note: Pursuant to Education Code 44009 and 44425, the CTC will revoke the credential of an individual who has been convicted of a mandatory leave of absence offense. ***

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

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

(cf. 4117.7/4317.7 - Employment Status Reports)

***Note: Education Code 44940 permits the Board to require compulsory leaves for certain "optional leave of absence offenses" as defined below. AB 215 (Ch. 55, Statutes of 2014) amended Education Code 44940 to move violations or attempted violations of Penal Code 187 from the list of optional leave of absence offenses to the list of mandatory leave of absence offenses. ***

***Note: The following optional paragraph should be revised to reflect offenses which the Board has determined will require a compulsory leave of absence. ***

The Superintendent or designee may place on an immediate compulsory leave of absence a certificated employee who is charged with an "optional leave of absence offense," defined as a controlled substance offense specified in Education Code 44011 and Health and Safety Code 11357-11361, 11363, 11364, and 11370.1 except as it relates to marijuana, mescaline, peyote, or tetrahydrocannabinols. (Education Code 44940)

If an employee is charged with an offense that falls into both the mandatory and optional leave of absence definitions, the offense shall be treated as a mandatory leave of absence offense. (Education Code 44940)

An employee's compulsory leave for a mandatory or optional leave of absence offense may extend for not more than 10 days after the entry of judgment in the criminal proceedings. However, the compulsory leave may be extended if the Board gives notice, within 10 days after the entry of judgment in the proceedings, that the employee will be dismissed within 30 days from the date of service of the notice unless he/she demands a hearing. (Education Code 44940, 44940.5)

***Note: Pursuant to Education Code 44940.5, while on compulsory leave, the employee may receive his/her salary if he/she provides a suitable bond or other acceptable security as a guarantee that he/she will repay the leave-period salary if convicted of the charges or if he/she fails to return to district service. If the employee is acquitted or the charges are dismissed, the district must reimburse him/her for the cost of the bond upon return to service in the district. If an employee who does not furnish a bond or other security is acquitted or the charges are dismissed, the district must pay his/her salary for the time spent on leave upon return to service.

Education Code 44940.5 specifies that, if the charges against an employee are dismissed as a result of the employee's successful completion of a drug diversion program and the employee returns to service, the employee may elect to receive payment for his/her accrued leave and differential pay for the length of the employee's leave of absence. ***

During the period of compulsory leave, the employee shall be compensated in accordance with Education Code 44940.5.

Upon receipt of telephone or electronic notification from the Department of Justice that a current temporary, substitute, or probationary employee serving before March 15 of his/her second probationary year has been convicted of a violent or serious felony, the Superintendent or designee shall immediately place the employee on leave without pay. Upon receipt of electronic notification of the conviction from the Department of Justice, such employee shall be automatically terminated and without regard to any other termination procedure. (Education Code 44830.1)

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

(7/00 11/08) 12/14

CSBA Sample

Administrative Regulation

Health And Welfare Benefits

AR 4154 4254, 4354

Personnel

***Note: The following optional administrative regulation should be revised to reflect district practice and collective bargaining agreements. ***

Affordability of Health Coverage

***Note: The following section is for use by districts that have an average of 50 or more full-time equivalent (FTE) employees over the preceding calendar year. The federal Patient Protection and Affordable Care Act (PPACA) (42 USC 300gg-300gg95; 26 USC 4980H; 26 CFR 54.4980H-1-54.4980H-6) requires such districts to offer FTE employees and their dependents (not including spouses) the opportunity to enroll in an "affordable" district-sponsored group health plan or health insurance coverage. Pursuant to 26 USC 4980H and 26 CFR 54.4980H-4, health coverage will be deemed "affordable" if the employee's contribution for employee-only health coverage does not exceed 9.5 percent of his/her modified adjusted household income, as defined in 26 USC 5000A. Because the district generally will not know the employee's household income, 26 CFR 54.4980H-5 provides that the district can meet its obligation if it meets any of the "safe harbor" standards listed in items #1-3 below. All these methods are optional and the district may choose to use one or more of these methods for all its employees or for any category of employees, provided it does so on a uniform and consistent basis for all employees within the same category. The district may retain or delete any of the items below or specify its own method for ensuring affordability. ***

***Note: See the accompanying Board policy for additional requirements of the PPACA. ***

The Superintendent or designee shall seek written assurance from the district's health insurance carrier(s) that the health plan offered to full-time district employees and their dependents meets all requirements of the federal Patient Protection and Affordable Care Act. (42 USC 300gg-300gg95; 26 USC 4980H; 26 CFR 54.4980H-1-54.4980H-6)

The Superintendent or designee also shall ensure that each employee's contribution to the employee-only health coverage does not exceed 9.5 percent of his/her modified household income, as defined in 26 USC 5000A. The Superintendent or designee shall calculate the affordability of the coverage using one or more of the following methods in a uniform and consistent basis for all employees within the same category: (26 USC 4980H; 26 CFR 54.4980H-4-54.4980H-5)

1. The district shall ensure that the lowest cost employee-only coverage does not exceed 9.5 percent of wages paid to the employee by the district for the calendar year as reported on the employee's W-2 tax form. For an employee not offered coverage for an entire calendar year, the

wages shall be adjusted to reflect the period for which coverage was offered.

2. The district shall ensure that the employee's required monthly contribution for the lowest cost employee-only coverage does not exceed 9.5 percent of an amount equal to 130 hours multiplied by the employee's hourly rate of pay on the first day of the plan year or his/her lowest hourly pay during the calendar month, whichever is lower.

3. The district shall ensure that the employee's contribution does not exceed 9.5 percent of a monthly amount determined as the federal poverty line for a single individual for the applicable calendar year, divided by 12.

Retired Certificated Employees

***Note: Education Code 7000 requires that any district which provides health and welfare benefits or dental care benefits for its certificated employees must make those benefits available to retired certificated employees and their spouses or eligible surviving spouses as provided in the following section. ***

***Note: Pursuant to Education Code 7000, any eligible person who elects to enroll in the benefits program may be required to pay all premiums, dues, and other charges, including any increases in the rate of premiums or dues for these persons, and all costs incurred by the district in administering the program; see the accompanying Board policy. Education Code 7000 allows districts, if appropriate, to require persons eligible for these benefits to pay different rates as a class. Education Code 7000 specifies three classes based on age and Medicare benefits for which the plan must provide separate rates. Government Code 12940 provides that, with respect to retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011, it is not discrimination based on age to provide health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the retirees become eligible for Medicare health benefits. ***

***Note: The following section does not apply to employees who receive health care coverage under the Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code 22750-22944. ***

Any former certificated employee who retired from the district under any public retirement system and his/her spouse/domestic partner shall be permitted to enroll in the health and welfare and/or dental care benefit plan currently provided for certificated employees. The plan also shall be available to any surviving spouse/domestic partner of a former certificated employee who either retired from the district under any public retirement system or was, at the time of death, employed by the district and a member of the State Teachers' Retirement System. (Education Code 7000)

A retired certificated employee or surviving spouse/domestic partner shall be allowed to enroll in the coverage within 30 days of losing active employee coverage. If he/she does not enroll during this initial enrollment period, he/she may be denied further opportunity to do so. (Education Code 7000)

COBRA/Cal-COBRA Continuation Coverage

***Note: The following section reflects requirements for both the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) program (26 USC 4980B; 29 USC 1161-1168; 26 CFR 54.4980B-1-54.4980B-10) and the California Continuation Benefits Replacement Act (Cal-COBRA) program (Health and Safety Code 1366.20-1366.29; Insurance Code 10128.50-10128.59). These programs contain requirements designed to alleviate lapses in coverage due to employee termination, death, separation or divorce, reduction in hours, eligibility for Medicare, or a dependent child of the covered employee ceasing to be a dependent child. COBRA applies to districts with at least 20 employees. Pursuant to Health and Safety Code 1366.21, Cal-COBRA applies to districts with 2-19 employees which have contracted for health care and/or disability coverage through a group benefit plan. If the district has contracted to provide administrative services for the health care service plan as authorized by Health and Safety Code 1366.25, it may expand the following section to reflect additional requirements of plan administrators. ***

***Note: The following section should be revised by districts that offer a group health insurance plan but not a group disability benefits plan. This section also should be revised by districts with employees who receive health care coverage under PEMHCA, Government Code 22750-22944. ***

Covered district employees and their qualified beneficiaries shall be offered the opportunity to continue health and disability insurance coverage when they otherwise would lose coverage due to one of the following qualifying events: (Health and Safety Code 1366.21, 1366.23, 1373; Insurance Code 10128.51, 10128.53, 10277; 26 USC 4980B; 26 CFR 54.4980B-4)

1. Death of the covered employee
2. Termination or reduction in hours of the covered employee's employment, other than termination by reason of the employee's gross misconduct

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

3. Divorce or legal separation of the covered employee
4. The covered employee becoming entitled to Medicare benefits

***Note: For purposes of item #5 below, Health and Safety Code 1373 and Insurance Code 10277 require that the age at which a person ceases to be a dependent child, as specified in the health plan, must be at least 26 years, except that certain specified health plans beginning before January 1, 2014 may exclude adult children younger than age 26 who are eligible to enroll in an employer-sponsored health plan. In addition, Health and Safety Code 1373 and Insurance Code 10277 require a health services plan or insurer to continue coverage for a dependent child who attains the age specified in the plan if he/she is incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition and is chiefly dependent on the subscriber or insured for support and maintenance. Health and Safety Code 1373 and Insurance Code 10277 also require that, if the plan provides coverage for a dependent child who is over age 26 and enrolled at a secondary or postsecondary educational institution, continued

coverage must be provided during any break in the school calendar and during a medical leave of absence as specified. ***

5. A dependent child ceasing to be a dependent child of the covered employee

Continuation health coverage shall be the same as provided to similarly situated individuals under the group benefit plan. (Health and Safety Code 1366.23; Insurance Code 10128.53; 26 USC 4980B)

***Note: Districts should select the appropriate option below based on the number of district employees. ***

OPTION 1: (Districts with 20 or more employees)

***Note: Pursuant to 26 USC 4980B and 29 USC 1163, the 30-day notification period specified below may be revised if a longer time period is specified in the health plan. ***

The Superintendent or designee shall notify the health care service plan administrator of a qualifying event listed in item #1, 2, or 4 above, within 30 days of the event. A covered employee or qualified beneficiary shall notify the service plan administrator of a qualifying event listed in item #3 or 5 above within 60 days of the event or of the date that the beneficiary would lose coverage, whichever is later. (26 USC 4980B; 29 USC 1163, 1166; 26 CFR 54.4980B-6)

Continuation coverage shall be terminated in accordance with the district's insurance plan and federal and state law. (26 USC 4980B; 26 CFR 54.4980B-6; Health and Safety Code 1373.621; Insurance Code 10116.5)

OPTION 2: (Districts with 2-19 employees)

***Note: If the district contracts to perform the administrative services of a health care service plan as authorized by Health and Safety Code 1366.25, the following two paragraphs should be revised to reflect the plan administrator to whom the notifications should be directed. ***

The Superintendent or designee shall provide written notification to the health care service plan administrator of a qualifying event listed in item #2 above, within 30 days of the event.

A covered employee or qualified beneficiary shall provide written notification to the health care service plan administrator regarding any other qualifying event listed above within 60 days of the event or of the date that the covered employee or qualified beneficiary was notified of the ability to continue coverage, whichever is later. (Health and Safety Code 1366.24, 1366.25; Insurance Code 10128.54, 10128.55)

Continuation coverage shall be terminated in accordance with the district's insurance plan and state law. (Health and Safety Code 1366.22, 1366.27, 1373.621; Insurance Code 10116.5, 10128.52, 10128.57)

***Note: The following paragraph applies to all districts. ***

The Superintendent or designee shall notify covered employees and qualified beneficiaries of the availability of conversion and continuation coverage. This notification shall include the statement in Labor Code 2800.2 encouraging individuals to examine their options carefully before declining such coverage. (Labor Code 2800.2)

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

Disability Insurance

***Note: The following notice is provided by the California Employment Development Department. ***

The Superintendent or designee shall give notice of disability insurance rights and benefits to each new employee and each employee leaving work due to pregnancy, nonoccupational illness or injury, the need to provide care for any sick or injured family member, or the need to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption. (Unemployment Insurance Code 2613)

(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)

(cf. 4161/4261/4361 - Leaves)

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

(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

(cf. 4261.1 - Personal Illness and Injury Leave)

***Note: The following paragraph does not apply to employees of districts that have contracted for health care coverage through PEMHCA, Government Code 22750-22944. ***

When disabled by an injury sustained from a violent act while performing duties within the scope of employment and performing creditable employment, a certificated or classified employee may continue in the district health and dental care plans upon meeting criteria specified by law. The employee shall pay all employer and employee premiums and related administrative costs. (Education Code 7008)

CSBA Sample

Administrative Regulation

Health And Welfare Benefits

AR 4254 4154, 4354

Personnel

***Note: The following optional administrative regulation should be revised to reflect district practice and collective bargaining agreements. ***

Affordability of Health Coverage

***Note: The following section is for use by districts that have an average of 50 or more full-time equivalent (FTE) employees over the preceding calendar year. The federal Patient Protection and Affordable Care Act (PPACA) (42 USC 300gg-300gg95; 26 USC 4980H; 26 CFR 54.4980H-1-54.4980H-6) requires such districts to offer FTE employees and their dependents (not including spouses) the opportunity to enroll in an "affordable" district-sponsored group health plan or health insurance coverage. Pursuant to 26 USC 4980H and 26 CFR 54.4980H-4, health coverage will be deemed "affordable" if the employee's contribution for employee-only health coverage does not exceed 9.5 percent of his/her modified adjusted household income, as defined in 26 USC 5000A. Because the district generally will not know the employee's household income, 26 CFR 54.4980H-5 provides that the district can meet its obligation if it meets any of the "safe harbor" standards listed in items #1-3 below. All these methods are optional and the district may choose to use one or more of these methods for all its employees or for any category of employees, provided it does so on a uniform and consistent basis for all employees within the same category. The district may retain or delete any of the items below or specify its own method for ensuring affordability. ***

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The Superintendent or designee also shall ensure that each employee's contribution to the employee-only health coverage does not exceed 9.5 percent of his/her modified household income, as defined in 26 USC 5000A. The Superintendent or designee shall calculate the affordability of the coverage using one or more of the following methods in a uniform and consistent basis for all employees within the same category: (26 USC 4980H; 26 CFR 54.4980H-4-54.4980H-5)

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Retired Certificated Employees

***Note: Education Code 7000 requires that any district which provides health and welfare benefits or dental care benefits for its certificated employees must make those benefits available to retired certificated employees and their spouses or eligible surviving spouses as provided in the following section. ***

***Note: Pursuant to Education Code 7000, any eligible person who elects to enroll in the benefits program may be required to pay all premiums, dues, and other charges, including any increases in the rate of premiums or dues for these persons, and all costs incurred by the district in administering the program; see the accompanying Board policy. Education Code 7000 allows districts, if appropriate, to require persons eligible for these benefits to pay different rates as a class. Education Code 7000 specifies three classes based on age and Medicare benefits for which the plan must provide separate rates. Government Code 12940 provides that, with respect to retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011, it is not discrimination based on age to provide health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the retirees become eligible for Medicare health benefits. ***

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***Note: The following section should be revised by districts that offer a group health insurance plan but not a group disability benefits plan. This section also should be revised by districts with employees who receive health care coverage under PEMHCA, Government Code 22750-22944. ***

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1. Death of the covered employee
2. Termination or reduction in hours of the covered employee's employment, other than termination by reason of the employee's gross misconduct

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

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***Note: For purposes of item #5 below, Health and Safety Code 1373 and Insurance Code 10277 require that the age at which a person ceases to be a dependent child, as specified in the health plan, must be at least 26 years, except that certain specified health plans beginning before January 1, 2014 may exclude adult children younger than age 26 who are eligible to enroll in an employer-sponsored health plan. In addition, Health and Safety Code 1373 and Insurance Code 10277 require a health services plan or insurer to continue coverage for a dependent child who attains the age specified in the plan if he/she is incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition and is chiefly dependent on the subscriber or insured for support and maintenance. Health and Safety Code 1373 and Insurance Code 10277 also require that, if the plan provides coverage for a dependent child who is over age 26 and enrolled at a secondary or postsecondary educational institution, continued

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***Note: Pursuant to 26 USC 4980B and 29 USC 1163, the 30-day notification period specified below may be revised if a longer time period is specified in the health plan. ***

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Continuation coverage shall be terminated in accordance with the district's insurance plan and federal and state law. (26 USC 4980B; 26 CFR 54.4980B-6; Health and Safety Code 1373.621; Insurance Code 10116.5)

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(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)

(cf. 4161/4261/4361 - Leaves)

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

(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

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***Note: The following paragraph does not apply to employees of districts that have contracted for health care coverage through PEMHCA, Government Code 22750-22944. ***

When disabled by an injury sustained from a violent act while performing duties within the scope of employment and performing creditable employment, a certificated or classified employee may continue in the district health and dental care plans upon meeting criteria specified by law. The employee shall pay all employer and employee premiums and related administrative costs. (Education Code 7008)

CSBA Sample

Administrative Regulation

Health And Welfare Benefits

AR 4354 4154, 4254

Personnel

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The Superintendent or designee shall seek written assurance from the district's health insurance carrier(s) that the health plan offered to full-time district employees and their dependents meets all requirements of the federal Patient Protection and Affordable Care Act. (42 USC 300gg-300gg95; 26 USC 4980H; 26 CFR 54.4980H-1-54.4980H-6)

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1. The district shall ensure that the lowest cost employee-only coverage does not exceed 9.5 percent of wages paid to the employee by the district for the calendar year as reported on the employee's W-2 tax form. For an employee not offered coverage for an entire calendar year, the

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***Note: Pursuant to Education Code 7000, any eligible person who elects to enroll in the benefits program may be required to pay all premiums, dues, and other charges, including any increases in the rate of premiums or dues for these persons, and all costs incurred by the district in administering the program; see the accompanying Board policy. Education Code 7000 allows districts, if appropriate, to require persons eligible for these benefits to pay different rates as a class. Education Code 7000 specifies three classes based on age and Medicare benefits for which the plan must provide separate rates. Government Code 12940 provides that, with respect to retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011, it is not discrimination based on age to provide health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the retirees become eligible for Medicare health benefits. ***

***Note: The following section does not apply to employees who receive health care coverage under the Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code 22750-22944. ***

Any former certificated employee who retired from the district under any public retirement system and his/her spouse/domestic partner shall be permitted to enroll in the health and welfare and/or dental care benefit plan currently provided for certificated employees. The plan also shall be available to any surviving spouse/domestic partner of a former certificated employee who either retired from the district under any public retirement system or was, at the time of death, employed by the district and a member of the State Teachers' Retirement System. (Education Code 7000)

A retired certificated employee or surviving spouse/domestic partner shall be allowed to enroll in the coverage within 30 days of losing active employee coverage. If he/she does not enroll during this initial enrollment period, he/she may be denied further opportunity to do so. (Education Code 7000)

COBRA/Cal-COBRA Continuation Coverage

***Note: The following section reflects requirements for both the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) program (26 USC 4980B; 29 USC 1161-1168; 26 CFR 54.4980B-1-54.4980B-10) and the California Continuation Benefits Replacement Act (Cal-COBRA) program (Health and Safety Code 1366.20-1366.29; Insurance Code 10128.50-10128.59). These programs contain requirements designed to alleviate lapses in coverage due to employee termination, death, separation or divorce, reduction in hours, eligibility for Medicare, or a dependent child of the covered employee ceasing to be a dependent child. COBRA applies to districts with at least 20 employees. Pursuant to Health and Safety Code 1366.21, Cal-COBRA applies to districts with 2-19 employees which have contracted for health care and/or disability coverage through a group benefit plan. If the district has contracted to provide administrative services for the health care service plan as authorized by Health and Safety Code 1366.25, it may expand the following section to reflect additional requirements of plan administrators. ***

***Note: The following section should be revised by districts that offer a group health insurance plan but not a group disability benefits plan. This section also should be revised by districts with employees who receive health care coverage under PEMHCA, Government Code 22750-22944. ***

Covered district employees and their qualified beneficiaries shall be offered the opportunity to continue health and disability insurance coverage when they otherwise would lose coverage due to one of the following qualifying events: (Health and Safety Code 1366.21, 1366.23, 1373; Insurance Code 10128.51, 10128.53, 10277; 26 USC 4980B; 26 CFR 54.4980B-4)

1. Death of the covered employee
2. Termination or reduction in hours of the covered employee's employment, other than termination by reason of the employee's gross misconduct

(cf. 4118 - Dismissal/Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

3. Divorce or legal separation of the covered employee
4. The covered employee becoming entitled to Medicare benefits

***Note: For purposes of item #5 below, Health and Safety Code 1373 and Insurance Code 10277 require that the age at which a person ceases to be a dependent child, as specified in the health plan, must be at least 26 years, except that certain specified health plans beginning before January 1, 2014 may exclude adult children younger than age 26 who are eligible to enroll in an employer-sponsored health plan. In addition, Health and Safety Code 1373 and Insurance Code 10277 require a health services plan or insurer to continue coverage for a dependent child who attains the age specified in the plan if he/she is incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition and is chiefly dependent on the subscriber or insured for support and maintenance. Health and Safety Code 1373 and Insurance Code 10277 also require that, if the plan provides coverage for a dependent child who is over age 26 and enrolled at a secondary or postsecondary educational institution, continued

coverage must be provided during any break in the school calendar and during a medical leave of absence as specified. ***

5. A dependent child ceasing to be a dependent child of the covered employee

Continuation health coverage shall be the same as provided to similarly situated individuals under the group benefit plan. (Health and Safety Code 1366.23; Insurance Code 10128.53; 26 USC 4980B)

***Note: Districts should select the appropriate option below based on the number of district employees. ***

OPTION 1: (Districts with 20 or more employees)

***Note: Pursuant to 26 USC 4980B and 29 USC 1163, the 30-day notification period specified below may be revised if a longer time period is specified in the health plan. ***

The Superintendent or designee shall notify the health care service plan administrator of a qualifying event listed in item #1, 2, or 4 above, within 30 days of the event. A covered employee or qualified beneficiary shall notify the service plan administrator of a qualifying event listed in item #3 or 5 above within 60 days of the event or of the date that the beneficiary would lose coverage, whichever is later. (26 USC 4980B; 29 USC 1163, 1166; 26 CFR 54.4980B-6)

Continuation coverage shall be terminated in accordance with the district's insurance plan and federal and state law. (26 USC 4980B; 26 CFR 54.4980B-6; Health and Safety Code 1373.621; Insurance Code 10116.5)

OPTION 2: (Districts with 2-19 employees)

***Note: If the district contracts to perform the administrative services of a health care service plan as authorized by Health and Safety Code 1366.25, the following two paragraphs should be revised to reflect the plan administrator to whom the notifications should be directed. ***

The Superintendent or designee shall provide written notification to the health care service plan administrator of a qualifying event listed in item #2 above, within 30 days of the event.

A covered employee or qualified beneficiary shall provide written notification to the health care service plan administrator regarding any other qualifying event listed above within 60 days of the event or of the date that the covered employee or qualified beneficiary was notified of the ability to continue coverage, whichever is later. (Health and Safety Code 1366.24, 1366.25; Insurance Code 10128.54, 10128.55)

Continuation coverage shall be terminated in accordance with the district's insurance plan and state law. (Health and Safety Code 1366.22, 1366.27, 1373.621; Insurance Code 10116.5, 10128.52, 10128.57)

***Note: The following paragraph applies to all districts. ***

The Superintendent or designee shall notify covered employees and qualified beneficiaries of the availability of conversion and continuation coverage. This notification shall include the statement in Labor Code 2800.2 encouraging individuals to examine their options carefully before declining such coverage. (Labor Code 2800.2)

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

Disability Insurance

***Note: The following notice is provided by the California Employment Development Department. ***

The Superintendent or designee shall give notice of disability insurance rights and benefits to each new employee and each employee leaving work due to pregnancy, nonoccupational illness or injury, the need to provide care for any sick or injured family member, or the need to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption. (Unemployment Insurance Code 2613)

(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)

(cf. 4161/4261/4361 - Leaves)

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

(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

(cf. 4261.1 - Personal Illness and Injury Leave)

***Note: The following paragraph does not apply to employees of districts that have contracted for health care coverage through PEMHCA, Government Code 22750-22944. ***

When disabled by an injury sustained from a violent act while performing duties within the scope of employment and performing creditable employment, a certificated or classified employee may continue in the district health and dental care plans upon meeting criteria specified by law. The employee shall pay all employer and employee premiums and related administrative costs. (Education Code 7008)

CSBA Sample

Board Policy

Evaluation/Supervision

BP 4115

Personnel

Note: Education Code 35171 mandates that the Governing Board adopt reasonable regulations related to evaluating the performance of certificated personnel. The following policy and accompanying administrative regulation should be revised to reflect district practice and any applicable provisions of collective bargaining agreements. Pursuant to Government Code 3543.2, procedures to be used for the evaluation of employees are conditions of employment subject to negotiation.

Note: For policy related to the evaluation of certificated administrators and supervisory personnel, see BP 4315 - Evaluation/Supervision.

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

(cf. 4141/4241 - Collective Bargaining Agreement)
(cf. 4315 - Evaluation/Supervision)

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

(cf. 4117.6 - Decision Not to Rehire)
(cf. 4118 - Dismissal/Suspension/Disciplinary Action)
(cf. 4131 - Staff Development)
(cf. 4131.1 - Teacher Support and Guidance)

***Note: Education Code 44662 requires the Board to establish evaluation criteria which, at a minimum, must include the criteria listed in items #1-4 below. The following list may be expanded to include additional criteria adopted by the Board. ***

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

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

(cf. 6011 - Academic Standards)
(cf. 6162.5 - Student Assessment)
(cf. 6162.51 - State Academic Achievement Tests)

2. The instructional techniques and strategies used by the employee
3. The employee's adherence to curricular objectives
4. The establishment and maintenance of a suitable learning environment within the scope of the employee's responsibilities

***Note: The following optional paragraph may be revised to reflect district practice. Education Code 44661.5 authorizes the Board, with the agreement of the exclusive representative of the certificated staff, to include any objective evaluation standards from the National Board for Professional Teaching Standards and/or the California Standards for the Teaching Profession, as long as the standards are consistent with Education Code 44660-44665. If the certificated staff do not have an exclusive representative, the Board may adopt objective evaluation and assessment guidelines consistent with Education Code 44661.5. Districts in which there is no exclusive representative should modify the following paragraph accordingly. ***

With the agreement of the exclusive representative of the certificated staff when applicable, the Superintendent or designee may incorporate objective standards from the National Board for Professional Teaching Standards and/or the California Standards for the Teaching Profession into district evaluation standards.

(cf. 4119.21/4219.21/4319.21 - Professional Standards)
(cf. 4140/4240/4340 - Bargaining Units)

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

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

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

Legal Reference:

EDUCATION CODE

33039 State guidelines for teacher evaluation procedures

35171 Availability of rules and regulations for evaluation of performance

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

GOVERNMENT CODE

3543.2 Scope of representation

Management Resources:

COMMISSION ON TEACHER CREDENTIALING PUBLICATIONS

California Standards for the Teaching Profession, 2009

WEB SITES

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

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

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

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

(7/00 11/03) 8/14

~~CSBA Sample~~

~~Board Policy~~

~~Probationary/Permanent Status~~

BP 4116

Certificated Personnel

Probationary Status

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

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

(cf. 4115 - Evaluation/Supervision)

(cf. 4131 - Staff Development)

Permanent Status

~~***Note: The following optional paragraph is for use by districts with 250 ADA or more and those districts with less than 250 ADA that grant permanent status.***~~

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

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

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

Legal Reference:

EDUCATION CODE

44466 Status of university interns

44850.1 No tenure in administrative or supervisory position

44885.5 Status of district interns

44908 Complete year for probationary employees

44911-44913 Service not computed in eligibility for permanent status

44915 Classification of probationary employees

44917-44921 Status of substitute or temporary employees
44929.20 Continuing contracts (not to exceed four years - ADA under 250)
44929.21 Districts of 250 ADA or more
44929.23 Districts with less than 250 ADA
44929.28 Employment by another district
44930-44988 Resignations, dismissals and leaves of absence, especially:
44948.2 Election to use provisions of Section 44948.3
44948.3 Dismissal of probationary employees

~~(2/91-10/95) 2/98~~

CSBA Sample

Board Policy

Health And Welfare Benefits

BP 4154 4254, 4354

Personnel

***Note: The following optional policy should be revised to reflect district practice and collective bargaining agreements. Districts that contract with the Board of Administration of the Public Employees' Retirement System to obtain a health benefit plan under the Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code 22750-22944, should revise the following policy and accompanying administrative regulation to reflect the requirements of that program. ***

The Governing Board recognizes that health and welfare benefits are essential to promote employee health and productivity and are an important part of the compensation offered to employees. The district shall provide health and welfare benefits for employees in accordance with state and federal law and subject to negotiated employee agreements.

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

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4151/4251/4351 - Employee Compensation)

***Note: The district should select or revise the appropriate option below to reflect district practice regarding employees who are not in bargaining units. Districts selecting Option 2 should expand this policy or accompanying administrative regulation to specify benefits for unrepresented employees. Also see BP 4121 - Temporary/Substitute Personnel. ***

OPTION 1: Certificated management, administrative, and supervisory employees who are not in bargaining units shall receive the same health and welfare benefits as those specified in the collective bargaining agreement for certificated employees. Classified management, administrative, and supervisory employees who are not in bargaining units shall receive the same health and welfare benefits as those specified in the collective bargaining agreement for classified employees.

(cf. 4300 - Administrative and Supervisory Personnel)

OPTION 2: Employees who are not in bargaining units shall receive health and welfare benefits as specified in Board policy and administrative regulation.

(cf. 4121 - Temporary/Substitute Personnel)

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

domestic partners have the same rights, protections, and benefits as spouses. Therefore, to the extent that the district provides health benefit coverage to spouses of employees pursuant to state law, the same coverage must be provided to registered domestic partners. Pursuant to Health and Safety Code 1374.58, health care service plans and health insurers are required to provide registered domestic partners coverage that is equal to the coverage provided to spouses. ***

For purposes of granting benefits, a registered domestic partner and his/her child shall have the same rights, protections, and benefits as a spouse and spouse's child. (Family Code 297.5, 300)

***Note: The following paragraph is for use by districts that have an average of 50 or more full-time equivalent (FTE) employees over the preceding calendar year. The federal Patient Protection and Affordable Care Act (PPACA) (42 USC 300gg-300gg95; 26 USC 4980H; 26 CFR 54.4980H-1-54.4980H-6) requires such districts to offer FTE employees and their dependents (not including spouses) the opportunity to enroll in an affordable district-sponsored group health plan or health insurance coverage that provides minimum "essential coverage," as defined in Health and Safety Code 1367.005, 26 USC 5000A, and 26 CFR 1.5000A-2 and 54.4980H-1. In addition, the district must ensure that the employee's contribution toward the cost of the coverage does not exceed 9.5 percent of his/her household income; see the accompanying administrative regulation for further information about the calculation of the employee's contribution. ***

***Note: For purposes of determining the applicability of this law, the district must calculate the number of FTE employees in accordance with 26 USC 4980H and 26 CFR 54.4980H-1. An FTE employee is one who works at least 30 hours per week (including actual work hours and hours for which an employee is paid or entitled to be paid due to vacation, holiday, sick leave, disability, jury duty, military leave, or other leave of absence). 26 CFR 54.4980H-3, as amended by 79 Federal Register 29, Feb. 12, 2014, clarifies that districts should not calculate employment breaks of four or more consecutive weeks, such as summer break, in a way that would significantly detract from the calculation of an employee's overall work hours. Thus, an employee who averages 30 hours or more per week for nine months and then no hours for three months would still be considered a full-time employee. In addition, in determining the number of FTE employees, the district must include the hours of service for all part-time employees for a calendar month divided by 120. Although part-time employees are considered in the determination as to whether the PPACA applies to the district, the district is not required under the PPACA to provide health benefits to part-time employees. See BP 4121 - Temporary/Substitute Personnel. The calculation of FTE employees is complex and the district should consult legal counsel as necessary. ***

***Note: Beginning with the 2016 plan year, a district with 50 or more FTE employees will be required to offer health coverage that meets the PPACA requirements to at least 95 percent of its FTE employees. If a district fails to comply with this law and any FTE employee uses a federal tax credit or cost-sharing premium reduction to purchase coverage through a health exchange (i.e., Covered California), the district must pay a financial penalty. ***

The district shall offer full-time employees who work an average of 30 hours or more per week and their dependents up to age 26 years a health insurance plan that includes coverage for essential health benefits, pays at least 60 percent of the medical expenses covered under the terms of the plan, and meets all other requirements of the federal Patient Protection and Affordable Care Act.

***Note: Pursuant to 26 USC 105 and 26 CFR 1.105-11, self-insured medical expense reimbursement plans are prohibited from discriminating in favor of "highly compensated" individuals as to eligibility to participate or level of benefits provided under the plan. As defined in 26 USC 105(h), "highly compensated" individuals are those who are among the highest paid 25 percent of all employees, with specified exceptions. The PPACA (42 USC 300gg-16) extends this requirement to non-self-insured group health plans. Implementation of this provision with respect to group health plans has been delayed until the first plan year after the issuance of federal regulations or other guidance on how to comply with the requirement. As of October 6, 2015, this delay is still in effect. However, it is still recommended that districts begin to review their plans and practices to be prepared to comply with the expected rules. ***

With respect to eligibility to participate in the health benefits plan or the level of health benefits provided, the district shall not discriminate in favor of employees who are among the highest paid 25 percent of all district employees. (26 USC 105; 42 USC 300gg-16)

Continuation of Coverage

***Note: Education Code 7000-7005 provide for continued health and dental care benefits for retired certificated employees and their spouses/domestic partners. In addition, for districts with 20 or more employees, continued health and disability benefits for former classified and certificated employees and their qualified beneficiaries are addressed in the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (26 USC 4980B; 29 USC 1161-1168; 26 CFR 54.4980B-1-54.4980B-10). For districts with 2-19 employees, continued health and disability benefits for former employees and their qualified beneficiaries are addressed in the California Continuation Benefits Replacement Act (Cal-COBRA) (Health and Safety Code 1366.20-1366.29; Insurance Code 10128.50-10128.59). These programs provide continuation coverage for limited time periods and under limited conditions. The following section reflects the general purposes of these programs; see the accompanying administrative regulation for a summary of major program requirements. ***

***Note: Pursuant to Governmental Accounting and Standards Board Statement 45, "other postemployment benefits" (OPEBs) (i.e., medical, dental, vision, hearing, life insurance, long-term care, long-term disability, and other nonpension benefits for retired employees) must be reported by the district as a current expense over the working years of an employee. To the extent that OPEBs are not prefunded in a designated fund or irrevocable trust, they must be reported as a liability on the district's financial statements. See BP 3100 - Budget and AR 3460 - Financial Reports and Accountability. ***

Retired certificated employees, other employees who would otherwise lose coverage due to a qualifying event specified in law and administrative regulation, and their qualified beneficiaries may continue to participate in the district's group health and welfare benefits in accordance with state and federal law.

***Note: The following paragraph may be revised to reflect district practice. Covered employees and their qualified beneficiaries who elect continuation coverage may be required to pay all costs of the insurance plan as provided below (Education Code 7000; Health and Safety Code 1366.26; Insurance Code 10128.56; 26 USC 4980B). Any district contribution to retired employee health

costs is a negotiable item. ***

Unless otherwise provided for in the applicable collective bargaining agreement, covered employees and their qualified beneficiaries may receive continuation coverage by paying the premiums, dues, and other charges, including any increases in premiums, dues, and costs incurred by the district in administering the program.

Confidentiality

***Note: The Health Insurance Portability and Accountability Act (HIPAA) (45 CFR 164.500-164.534) specifies actions that a health plan, health care provider, or health care clearinghouse must take to protect the privacy of an individual's health information. Generally, entities covered by HIPAA may release or receive "protected health information" about an individual only if that individual gives permission or the Act expressly permits its release. ***

***Note: Civil Code 56.20-56.245 address an employer's responsibility to maintain the confidentiality of medical information it receives. ***

The Superintendent or designee shall not use or disclose any employee's medical information the district possesses without the employee's authorization obtained in accordance with Civil Code 56.21, except for the purpose of administering and maintaining employee benefit plans and for other purposes specified in law. (Civil Code 56.20)

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

Legal Reference:

EDUCATION CODE

7000-7008 Health and welfare benefits, retired certificated employees

17566 Self-insurance fund

35208 Liability insurance

35214 Liability insurance (self-insurance)

44041-44042 Payroll deductions for collection of premiums

44986 Leave of absence, state disability benefits

45136 Benefits for classified employees

CIVIL CODE

56.10-56.16 Disclosure of information by medical providers

56.20-56.245 Use and disclosure of medical information by employers

FAMILY CODE

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

300 Definition of marriage

GOVERNMENT CODE

12940 Discrimination in employment

22750-22944 Public Employees' Medical and Hospital Care Act

53200-53210 Group insurance

HEALTH AND SAFETY CODE

1366.20-1366.29 Cal-COBRA program, health insurance

1367.08 Disclosure of fees and commissions paid related to health care service plan

1373 Health services plan, coverage for dependent children who are full-time students
1373.621 Continuation coverage, age 60 or older after five years with district
1374.58 Coverage for registered domestic partners, health service plans and health insurers

INSURANCE CODE

10116.5 Continuation coverage, age 60 or older after five years with district
10128.50-10128.59 Cal-COBRA program, disability insurance
10277-10278 Group and individual health insurance, coverage for dependent children
10604.5 Annual disclosure of fees and commissions paid
12670-12692.5 Conversion coverage

LABOR CODE

2800.2 Notification of conversion and continuation coverage
4856 Health benefits for spouse of peace officer killed in performance of duties

UNEMPLOYMENT INSURANCE CODE

2613 Education program; notice of rights and benefits

UNITED STATES CODE, TITLE 1

7 Definition of marriage, spouse

UNITED STATES CODE, TITLE 26

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

4980B COBRA continuation coverage

4980H Penalty for noncompliance with employer-provided health care requirements

5000A Minimum essential coverage

6056 Report of health coverage provided to employees

UNITED STATES CODE, TITLE 29

1161-1168 COBRA continuation coverage

UNITED STATES CODE, TITLE 42

300gg-300gg95 Patient Protection and Affordable Care Act, especially:

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

1395-1395g Medicare benefits

CODE OF FEDERAL REGULATIONS, TITLE 26

54.4980B-1-54.4980B-10 COBRA continuation coverage

54.4980H-1-54.4980H-6 Patient Protection and Affordable Care Act

1.105-11 Self-insured medical reimbursement plan

CODE OF FEDERAL REGULATIONS, TITLE 45

164.500-164.534 Health Insurance Portability and Accountability Act (HIPAA)

Management Resources:

CALIFORNIA SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Health Policy: Implications of Covered California for School Boards, Districts and Personnel,
Governance Brief, January 2013

INTERNAL REVENUE SERVICE NOTICES

2011-1 Affordable Care Act Nondiscrimination Provisions Applicable to Insured Group Health
Plans

U.S. DEPARTMENT OF TREASURY PUBLICATIONS

Fact Sheet: Final Regulations Implementing Employer Shared Responsibility Under the
Affordable Care Act (ACA) for 2015

WEB SITES

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

California Employment Development Department: <http://www.edd.ca.gov>

Internal Revenue Service: <http://www.irs.gov>

U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services:
<http://www.cms.gov>

U.S. Department of Labor: <http://www.dol.gov>

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CSBA Sample

Board Policy

Evaluation/Supervision

BP 4215

Personnel

The Governing Board recognizes that appropriate supervision and regular, comprehensive evaluations can help employees to continually improve in the performance of their responsibilities. Evaluations shall be made in accordance with procedures specified in negotiated contracts and based on job-specific standards of performance.

(cf. 4141/4241 - Collective Bargaining Agreement)

Note: Pursuant to Government Code 3543.2, procedures to be used for the evaluation of employees are conditions of employment subject to negotiation. Performance standards used as the basis for the evaluations are not mandatory subjects of negotiation. The following optional paragraph may be revised to reflect district practice.

The Board expects supervisors to gauge employees' on-the-job effectiveness and skills in a fair, objective, and consistent manner. Evaluations shall address the competence and care with which the employee executes his/her assigned responsibilities. As appropriate, evaluations also may address the extent to which the employee works cooperatively with others and observes school or district rules and regulations.

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

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

Evaluations shall be used to recognize the exemplary skills and accomplishments of staff and to identify areas needing improvement. When the evaluation indicates areas needing improvement, the Board expects employees to accept responsibility and take initiative to improve their performance. The Superintendent or designee shall assist employees in obtaining needed job skills.

(cf. 4231 - Staff Development)

The evaluation shall be dated and signed by both the employee and the supervisor.

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

***Note: The following optional paragraph may be revised to reflect district practice. For districts incorporating the merit system, Education Code 45262 requires that the rules and procedures of the personnel commission, which include procedures pertaining to performance

evaluations pursuant to Education Code 45261, be made available as specified. AB 1772 (Ch. 547, Statutes of 2005) amended Education Code 45262 to authorize districts to publish and distribute these rules by electronic means.***

The Superintendent or designee shall ensure that classified employees have access to rules and procedures related to performance evaluations.

Legal Reference:

EDUCATION CODE

45113 Rules and regulations for the classified service in districts not incorporating the merit system

45261 Subjects of rules (merit system districts)

45262 Distribution of rules

GOVERNMENT CODE

3543.2 Scope of representation

Management Resources:

WEB SITES

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

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

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CSBA Sample

Board Policy

Health And Welfare Benefits

BP 4254 4154, 4354

Personnel

***Note: The following optional policy should be revised to reflect district practice and collective bargaining agreements. Districts that contract with the Board of Administration of the Public Employees' Retirement System to obtain a health benefit plan under the Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code 22750-22944, should revise the following policy and accompanying administrative regulation to reflect the requirements of that program. ***

The Governing Board recognizes that health and welfare benefits are essential to promote employee health and productivity and are an important part of the compensation offered to employees. The district shall provide health and welfare benefits for employees in accordance with state and federal law and subject to negotiated employee agreements.

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

(cf. 4141/4241 - Collective Bargaining Agreement)

(cf. 4151/4251/4351 - Employee Compensation)

***Note: The district should select or revise the appropriate option below to reflect district practice regarding employees who are not in bargaining units. Districts selecting Option 2 should expand this policy or accompanying administrative regulation to specify benefits for unrepresented employees. Also see BP 4121 - Temporary/Substitute Personnel. ***

OPTION 1: Certificated management, administrative, and supervisory employees who are not in bargaining units shall receive the same health and welfare benefits as those specified in the collective bargaining agreement for certificated employees. Classified management, administrative, and supervisory employees who are not in bargaining units shall receive the same health and welfare benefits as those specified in the collective bargaining agreement for classified employees.

(cf. 4300 - Administrative and Supervisory Personnel)

OPTION 2: Employees who are not in bargaining units shall receive health and welfare benefits as specified in Board policy and administrative regulation.

(cf. 4121 - Temporary/Substitute Personnel)

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

domestic partners have the same rights, protections, and benefits as spouses. Therefore, to the extent that the district provides health benefit coverage to spouses of employees pursuant to state law, the same coverage must be provided to registered domestic partners. Pursuant to Health and Safety Code 1374.58, health care service plans and health insurers are required to provide registered domestic partners coverage that is equal to the coverage provided to spouses. ***

For purposes of granting benefits, a registered domestic partner and his/her child shall have the same rights, protections, and benefits as a spouse and spouse's child. (Family Code 297.5, 300)

***Note: The following paragraph is for use by districts that have an average of 50 or more full-time equivalent (FTE) employees over the preceding calendar year. The federal Patient Protection and Affordable Care Act (PPACA) (42 USC 300gg-300gg95; 26 USC 4980H; 26 CFR 54.4980H-1-54.4980H-6) requires such districts to offer FTE employees and their dependents (not including spouses) the opportunity to enroll in an affordable district-sponsored group health plan or health insurance coverage that provides minimum "essential coverage," as defined in Health and Safety Code 1367.005, 26 USC 5000A, and 26 CFR 1.5000A-2 and 54.4980H-1. In addition, the district must ensure that the employee's contribution toward the cost of the coverage does not exceed 9.5 percent of his/her household income; see the accompanying administrative regulation for further information about the calculation of the employee's contribution. ***

***Note: For purposes of determining the applicability of this law, the district must calculate the number of FTE employees in accordance with 26 USC 4980H and 26 CFR 54.4980H-1. An FTE employee is one who works at least 30 hours per week (including actual work hours and hours for which an employee is paid or entitled to be paid due to vacation, holiday, sick leave, disability, jury duty, military leave, or other leave of absence). 26 CFR 54.4980H-3, as amended by 79 Federal Register 29, Feb. 12, 2014, clarifies that districts should not calculate employment breaks of four or more consecutive weeks, such as summer break, in a way that would significantly detract from the calculation of an employee's overall work hours. Thus, an employee who averages 30 hours or more per week for nine months and then no hours for three months would still be considered a full-time employee. In addition, in determining the number of FTE employees, the district must include the hours of service for all part-time employees for a calendar month divided by 120. Although part-time employees are considered in the determination as to whether the PPACA applies to the district, the district is not required under the PPACA to provide health benefits to part-time employees. See BP 4121 - Temporary/Substitute Personnel. The calculation of FTE employees is complex and the district should consult legal counsel as necessary. ***

***Note: Beginning with the 2016 plan year, a district with 50 or more FTE employees will be required to offer health coverage that meets the PPACA requirements to at least 95 percent of its FTE employees. If a district fails to comply with this law and any FTE employee uses a federal tax credit or cost-sharing premium reduction to purchase coverage through a health exchange (i.e., Covered California), the district must pay a financial penalty. ***

The district shall offer full-time employees who work an average of 30 hours or more per week and their dependents up to age 26 years a health insurance plan that includes coverage for essential health benefits, pays at least 60 percent of the medical expenses covered under the terms of the plan, and meets all other requirements of the federal Patient Protection and Affordable Care Act.

***Note: Pursuant to 26 USC 105 and 26 CFR 1.105-11, self-insured medical expense reimbursement plans are prohibited from discriminating in favor of "highly compensated" individuals as to eligibility to participate or level of benefits provided under the plan. As defined in 26 USC 105(h), "highly compensated" individuals are those who are among the highest paid 25 percent of all employees, with specified exceptions. The PPACA (42 USC 300gg-16) extends this requirement to non-self-insured group health plans. Implementation of this provision with respect to group health plans has been delayed until the first plan year after the issuance of federal regulations or other guidance on how to comply with the requirement. As of October 6, 2015, this delay is still in effect. However, it is still recommended that districts begin to review their plans and practices to be prepared to comply with the expected rules. ***

With respect to eligibility to participate in the health benefits plan or the level of health benefits provided, the district shall not discriminate in favor of employees who are among the highest paid 25 percent of all district employees. (26 USC 105; 42 USC 300gg-16)

Continuation of Coverage

***Note: Education Code 7000-7005 provide for continued health and dental care benefits for retired certificated employees and their spouses/domestic partners. In addition, for districts with 20 or more employees, continued health and disability benefits for former classified and certificated employees and their qualified beneficiaries are addressed in the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (26 USC 4980B; 29 USC 1161-1168; 26 CFR 54.4980B-1-54.4980B-10). For districts with 2-19 employees, continued health and disability benefits for former employees and their qualified beneficiaries are addressed in the California Continuation Benefits Replacement Act (Cal-COBRA) (Health and Safety Code 1366.20-1366.29; Insurance Code 10128.50-10128.59). These programs provide continuation coverage for limited time periods and under limited conditions. The following section reflects the general purposes of these programs; see the accompanying administrative regulation for a summary of major program requirements. ***

***Note: Pursuant to Governmental Accounting and Standards Board Statement 45, "other postemployment benefits" (OPEBs) (i.e., medical, dental, vision, hearing, life insurance, long-term care, long-term disability, and other nonpension benefits for retired employees) must be reported by the district as a current expense over the working years of an employee. To the extent that OPEBs are not prefunded in a designated fund or irrevocable trust, they must be reported as a liability on the district's financial statements. See BP 3100 - Budget and AR 3460 - Financial Reports and Accountability. ***

Retired certificated employees, other employees who would otherwise lose coverage due to a qualifying event specified in law and administrative regulation, and their qualified beneficiaries may continue to participate in the district's group health and welfare benefits in accordance with state and federal law.

***Note: The following paragraph may be revised to reflect district practice. Covered employees and their qualified beneficiaries who elect continuation coverage may be required to pay all costs of the insurance plan as provided below (Education Code 7000; Health and Safety Code 1366.26; Insurance Code 10128.56; 26 USC 4980B). Any district contribution to retired employee health

costs is a negotiable item. ***

Unless otherwise provided for in the applicable collective bargaining agreement, covered employees and their qualified beneficiaries may receive continuation coverage by paying the premiums, dues, and other charges, including any increases in premiums, dues, and costs incurred by the district in administering the program.

Confidentiality

***Note: The Health Insurance Portability and Accountability Act (HIPAA) (45 CFR 164.500-164.534) specifies actions that a health plan, health care provider, or health care clearinghouse must take to protect the privacy of an individual's health information. Generally, entities covered by HIPAA may release or receive "protected health information" about an individual only if that individual gives permission or the Act expressly permits its release. ***

***Note: Civil Code 56.20-56.245 address an employer's responsibility to maintain the confidentiality of medical information it receives. ***

The Superintendent or designee shall not use or disclose any employee's medical information the district possesses without the employee's authorization obtained in accordance with Civil Code 56.21, except for the purpose of administering and maintaining employee benefit plans and for other purposes specified in law. (Civil Code 56.20)

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

Legal Reference:

EDUCATION CODE

7000-7008 Health and welfare benefits, retired certificated employees

17566 Self-insurance fund

35208 Liability insurance

35214 Liability insurance (self-insurance)

44041-44042 Payroll deductions for collection of premiums

44986 Leave of absence, state disability benefits

45136 Benefits for classified employees

CIVIL CODE

56.10-56.16 Disclosure of information by medical providers

56.20-56.245 Use and disclosure of medical information by employers

FAMILY CODE

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

300 Definition of marriage

GOVERNMENT CODE

12940 Discrimination in employment

22750-22944 Public Employees' Medical and Hospital Care Act

53200-53210 Group insurance

HEALTH AND SAFETY CODE

1366.20-1366.29 Cal-COBRA program, health insurance

1367.08 Disclosure of fees and commissions paid related to health care service plan

1373 Health services plan, coverage for dependent children who are full-time students
1373.621 Continuation coverage, age 60 or older after five years with district
1374.58 Coverage for registered domestic partners, health service plans and health insurers

INSURANCE CODE

10116.5 Continuation coverage, age 60 or older after five years with district
10128.50-10128.59 Cal-COBRA program, disability insurance
10277-10278 Group and individual health insurance, coverage for dependent children
10604.5 Annual disclosure of fees and commissions paid
12670-12692.5 Conversion coverage

LABOR CODE

2800.2 Notification of conversion and continuation coverage
4856 Health benefits for spouse of peace officer killed in performance of duties

UNEMPLOYMENT INSURANCE CODE

2613 Education program; notice of rights and benefits

UNITED STATES CODE, TITLE 1

7 Definition of marriage, spouse

UNITED STATES CODE, TITLE 26

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

4980B COBRA continuation coverage

4980H Penalty for noncompliance with employer-provided health care requirements

5000A Minimum essential coverage

6056 Report of health coverage provided to employees

UNITED STATES CODE, TITLE 29

1161-1168 COBRA continuation coverage

UNITED STATES CODE, TITLE 42

300gg-300gg95 Patient Protection and Affordable Care Act, especially:

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

1395-1395g Medicare benefits

CODE OF FEDERAL REGULATIONS, TITLE 26

54.4980B-1-54.4980B-10 COBRA continuation coverage

54.4980H-1-54.4980H-6 Patient Protection and Affordable Care Act

1.105-11 Self-insured medical reimbursement plan

CODE OF FEDERAL REGULATIONS, TITLE 45

164.500-164.534 Health Insurance Portability and Accountability Act (HIPAA)

Management Resources:

CALIFORNIA SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Health Policy: Implications of Covered California for School Boards, Districts and Personnel,
Governance Brief, January 2013

INTERNAL REVENUE SERVICE NOTICES

2011-1 Affordable Care Act Nondiscrimination Provisions Applicable to Insured Group Health
Plans

U.S. DEPARTMENT OF TREASURY PUBLICATIONS

Fact Sheet: Final Regulations Implementing Employer Shared Responsibility Under the
Affordable Care Act (ACA) for 2015

WEB SITES

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

California Employment Development Department: <http://www.edd.ca.gov>

Internal Revenue Service: <http://www.irs.gov>

U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services:
<http://www.cms.gov>

U.S. Department of Labor: <http://www.dol.gov>

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CSBA Sample

Board Policy

Contracts

BP 4312.1

Personnel

***Note: The following optional policy addresses employment contracts for individuals occupying certificated and classified administrative, supervisory, and management positions. For policy language regarding superintendent contracts, see BP 2121 - Superintendent's Contract. ***

The Governing Board recognizes the importance of employing qualified and competent individuals to manage district programs and to assist the Superintendent in coordinating efforts to achieve district goals and objectives. To that end, the Board may fill certificated administrative and supervisory positions and classified senior management positions on a contract basis.

(cf. 0000 - Vision)

(cf. 2121 - Superintendent's Contract)

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

(cf. 4300 - Administrative and Supervisory Personnel)

(cf. 4313.2 - Demotion/Reassignment)

(cf. 4314 - Transfers)

***Note: Education Code 35031 authorizes continuing contracts, as specified below, for any deputy, associate, or assistant superintendent in a position requiring certification qualifications. Pursuant to Education Code 35030, the title of deputy, associate, or assistant superintendent may be assigned to a business management position. ***

The Board may offer a continuing contract of up to four years to any deputy, associate, or assistant superintendent; any certificated employee holding a position requiring a supervision or administration credential; or any senior manager of the classified service. (Education Code 35031, 44929.20)

Prior to entering into any such contract, the Board and Superintendent shall consider the financial impact of the contract on the district. The proposed contract shall also be reviewed by legal counsel to ensure that all legally required provisions are included in the contract and to address any potentially adverse obligations for the district.

(cf. 3460 - Financial Reports and Accountability)

***Note: Pursuant to Government Code 54957, personnel matters related to the appointment or employment of any employee may appropriately be discussed in closed session under the "personnel exception." However, Government Code 54957 prohibits the use of closed session for discussion or action on any proposed change in compensation other than a reduction that results from the imposition of discipline. In *San Diego Union v. City Council*, a California Court of

Appeal held that the "personnel exception" provided in Government Code 54957 does not extend to discussions of salary and compensation. ***

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

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

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

The Board may deliberate in the closed session of a regular meeting about the terms of an employment contract for a deputy, associate, or assistant superintendent; other certificated employee holding a position requiring a supervision or administration credential; or a senior manager of the classified service. Discussions regarding salary, salary schedule, or other compensation may occur in the closed session of a regular meeting only between the Board and its designated representative(s), as permitted under Government Code 54957.6 (the "labor exception") for the purpose of reviewing the Board's position and/or instructing the designated representative(s) prior to or during bona fide negotiations with the employee. Such deliberations shall not be held during a special meeting. (Government Code 54956, 54957, 54957.6)

(cf. 9320 - Meetings and Notices)

(cf. 9321 - Closed Session Purposes and Agendas)

(cf. 9321.1 - Closed Session Actions and Reports)

***Note: Pursuant to Government Code 54953, as amended by SB 1436 (Ch. 175, Statutes of 2016), the Board must orally report, in an open session, a summary of the recommendation for final action on the salary and/or benefits of a "local agency executive," as defined in Government Code 3511.1, including a deputy, associate, or assistant superintendent; a department head; and any other person whose position within the district is established through an employment contract with the district. Thus, Government Code 54953 limits the Board's ability to approve changes to salary or benefits as part of a consent calendar and instead requires such approval to be a separate agenda item. For identical requirements regarding final action on the salary or benefits of the Superintendent, see BP 2121 - Superintendent's Contract. ***

The Board shall take final action on an employment contract during an open session of a regularly scheduled Board meeting, and that action shall be reflected in the Board's minutes. At

that meeting, prior to taking action, the Board shall orally report a summary of the recommendation for the final action on salary or compensation in the form of fringe benefits. (Government Code 3511.1, 53262, 54953)

Copies of any contract and other public records created or received in the process of developing the recommendation related to the salary, benefits, and other compensation shall be available to the public upon request. (Government Code 53262, 54953)

(cf. 1340 - Access to District Records)

(cf. 9322 - Agenda/Meeting Materials)

(cf. 9324 - Minutes and Recordings)

Extension of Contract/Reemployment

***Note: The following optional paragraph provides that any contract extension be based on Board action rather than automatic "rollover" or "evergreen" provisions. Government Code 3511.2 prohibits the automatic renewal of a contract with a provision for automatic increase that exceeds the cost-of-living adjustment. ***

A contract shall be extended only by Board action and subsequent to a satisfactory evaluation of the employee's performance. No employment contract shall include a provision for automatic renewal of the contract.

(cf. 4315 - Evaluation/Supervision)

During the term of the contract and with the consent of the employee involved, the Board may reelect or reemploy the employee starting on the next succeeding first day of July and based on terms and conditions mutually agreed upon by the Board and the employee. (Education Code 35031)

If the Board decides not to reelect or reemploy a deputy, associate, or assistant superintendent or a senior manager of the classified service upon the expiration of his/her term, it shall notify the employee in writing 45 calendar days prior to the expiration of the term of the contract. (Education Code 35031)

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

Termination of Contract

The Board may terminate an employment contract prior to its expiration date in accordance with the conditions and process specified in the contract.

***Note: Pursuant to Government Code 53260-53264, employment contracts must include a provision limiting the maximum cash settlement the employee may receive upon termination of the contract to an amount equal to his/her monthly salary multiplied by the number of months left on the unexpired term of the contract. If the unexpired term is greater than 18 months, this maximum is equal to the monthly salary times 18. Cash settlements may be less than these caps. The cash settlement may not include any noncash items other than health benefits, which may be

continued for the unexpired term up to 18 months or until the employee finds other employment, whichever occurs first. The district must make copies of termination agreements available to the public upon request. For language reflecting these requirements, see AR 4117.5/4217.5/4317.5 - Termination Agreements. ***

Every employment contract shall include a provision specifying the legal maximum cash settlement that the employee may receive in the event that the contract is terminated prior to its expiration date. (Government Code 3511.2, 53260)

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

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

Legal Reference:

EDUCATION CODE

35030 Title of deputy, associate or assistant superintendent for certain positions

35031 Term of employment

44842 Automatic declining of employment

44843 Notice of employment to county superintendent

44929.20 Continuing contract

44951 Continuation in position unless notified

GOVERNMENT CODE

3511.1-3511.2 Local agency executives

53260-53264 Employment contracts

54953 Oral summary of recommended salary and benefits of district executive

54954 Time and place of regular meetings

54956 Brown Act - Open meeting laws; special meetings

54957 Closed session, personnel matters

ATTORNEY GENERAL OPINIONS

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

Management Resources:

ATTORNEY GENERAL PUBLICATIONS

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

WEB SITES

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

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

California Office of the Attorney General: <http://oag.ca.gov>

CSBA Sample

Board Policy

Evaluation/Supervision

BP 4315

Personnel

***Note: Education Code 35171 mandates that the Governing Board adopt reasonable regulations related to evaluating the performance of certificated personnel, including certificated administrative and supervisory personnel. The following policy addresses the evaluation of both certificated and classified administrative and supervisory personnel and should be revised to reflect district practice. ***

***Note: For policy related to the evaluation of the Superintendent, see BP 2140 - Evaluation of the Superintendent. ***

The Governing Board believes that regular, comprehensive evaluations designed to hold administrative and supervisory staff accountable for their performance are key to improving their instructional leadership and management skills. Evaluations shall be linked to the district's vision and goals and school improvement plans.

(cf. 0000 - Vision)

(cf. 0200 - Goals for the School District)

(cf. 0460 - Local Control and Accountability Plan)

(cf. 0500 - Accountability)

(cf. 2140 - Evaluation of the Superintendent)

(cf. 4300 - Administrative and Supervisory Personnel)

Evaluations shall be used to recognize the exemplary skills and accomplishments of administrative and supervisory employees, serve as a criterion for contract renewals, and identify areas needing improvement. When the evaluation indicates areas needing improvement, the Board expects employees to take the initiative to improve their performance and for their supervisors to assist them in obtaining needed job skills.

(cf. 4331 - Staff Development)

***Note: Administrative and supervisory personnel covered by employee contracts (see BP 4312.1 - Contracts) must be evaluated in accordance with any related contract provisions. If the district has recognized a bargaining unit of supervisory employees (see BP 4140/4240/4340 - Bargaining Units), evaluation procedures for those employees are subject to negotiation pursuant to Government Code 3543.2. The following paragraph should be revised to reflect district practice. ***

Administrative and supervisory employees shall be evaluated in accordance with provisions of employee contracts and/or applicable collective bargaining agreements as appropriate.

(cf. 4140/4240/4340 - Bargaining Units)
(cf. 4312.1 - Contracts)

***Note: Education Code 35171 requires the district to make available to certificated employees written regulations related to evaluation; see AR 4115 - Evaluation/Supervision and E 4112.9 - Employee Notifications. The following paragraph extends the distribution of these regulations to all administrative and supervisory employees, including classified personnel, and may be revised to reflect district practice. ***

The Superintendent or designee shall make written evaluation procedures available to all administrative and supervisory employees.

(cf. 4112.9 - Employee Notifications)

***Note: The following optional paragraph, including the frequency of evaluations, should be revised to reflect district practice and any applicable collective bargaining agreement with supervisory employees. Education Code 44670 authorizes the Board to identify an evaluator for each principal, require annual evaluations for the first and second year of employment as a new principal in the district, and establish the frequency of evaluations after the first two years of employment. Education Code 44670 also authorizes the evaluator and principal to agree upon additional evaluations outside of the regular intervals determined by the Board. ***

An employee shall be evaluated annually for the first and second years of employment as an administrator or supervisor in the district, and at least every two years thereafter, unless otherwise provided for in an employee contract or collective bargaining agreement. Evaluations may occur between scheduled periods at the request of the employee, his/her supervisor, or the Superintendent or designee.

The Superintendent or designee shall establish clear, objective criteria for evaluation based on the job responsibilities of each administrative or supervisory position.

***Note: Items #1-9 below are optional and may be revised to reflect district practice. Pursuant to Education Code 44671, criteria for evaluation of principals may be based on the California Professional Standards for Educational Leaders (CPSEL) and the criteria listed below. As adopted by the Commission on Teacher Credentialing in February 2014, the CPSEL describe the knowledge, skills, and abilities needed by school administrators with respect to the development and implementation of a shared vision, instructional leadership, management and learning environment, family and community engagement, ethics and integrity, and external context and policy; see E 4319.21 - Professional Standards. ***

Evaluation criteria for certificated school site administrators may be based on the California Professional Standards for Educational Leaders (CPSEL) and also may include, but not be limited to, evidence of: (Education Code 44671)

1. Academic growth of students, based on multiple measures which may include student work as well as student and school longitudinal data that demonstrate academic growth over time

Assessments used for this purpose shall be valid and reliable and used for the intended purposes and for the appropriate student populations. Local and state academic assessments may include, but are not limited to, state standardized assessments and formative, summative, benchmark, end-of-chapter, end-of-course, Advanced Placement, International Baccalaureate, college entrance, and performance assessments.

(cf. 6162.5 - Student Assessment)

(cf. 6162.51 - State Academic Achievement Tests)

(cf. 6141.5 - Advanced Placement)

2. Effective and comprehensive teacher evaluations, including, but not limited to, curricular and management leadership, ongoing professional development, teacher-principal teamwork, and professional learning communities
3. Culturally responsive instructional strategies to address and eliminate the achievement gap
4. The ability to analyze quality instructional strategies and provide effective feedback that leads to instructional improvement
5. High expectations for all students and leadership to ensure active student engagement and learning
6. Collaborative professional practices for improving instructional strategies
7. Effective school management, including personnel and resource management, organizational leadership, sound fiscal practices, a safe campus environment, and appropriate student behavior
8. Meaningful self-assessment to improve as a professional educator, which may include, but not be limited to, a self-assessment based on the CPSEL and the identification of areas of strengths and areas for professional growth to engage in activities to foster professional growth
9. Consistent and effective relationships with students, parents/guardians, teachers, staff, and other administrators

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

The evaluation shall be dated and signed by the employee and evaluator. The employee may respond in writing to the evaluation within a reasonable time after receiving a copy of the evaluation. The response shall be attached to the evaluation and placed in the employee's personnel file.

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

Legal Reference:
EDUCATION CODE

35171 Availability of rules and regulations for evaluation of performance
44660-44665 Evaluation and assessment of performance of certificated employees
44670-44671 Principal evaluation
45113 Rules and regulations for the classified service in districts not incorporating the merit system

GOVERNMENT CODE

3540.1 Meeting and negotiating in public educational employment, definitions
3543.2 Scope of representation
3545 Determination of bargaining units

Management Resources:

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California Professional Standards for Educational Leaders

WEB SITES

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

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

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

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

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