

# Policy News

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## New state regulations amend California Family Rights Act

Effective July 1, 2015, new state regulations take effect which clarify certain provisions of the California Family Rights Act and align the CFRA more closely with the federal Family and Medical Leave Act. CSBA has updated AR 4161.8/4261.8/4361.8 - Family and Medical Care to reflect the retitled, renumbered and amended regulations (2 CCR 11087-11098).

Both state and federal law require districts and county offices of education that employ 50 or more employees to grant family care and medical leave to eligible employees for specified purposes. However, the CFRA and FMLA do not provide identical rights, and the interplay between the two is often confusing.

Recent amendments that make the CFRA more consistent with the FMLA include, but are not limited to, changes related to:

- » The definitions of "covered employer," "eligible employee," "serious health condition" and "spouse."
- » The timeline for responding to leave requests.
- » Intermittent leave and reduced work or leave schedule.
- » Consequences of an employee's failure to respond to inquiries regarding the leave request or failure to return a required medical certification.
- » Employee reinstatement right and permissible grounds for refusing to reinstate an employee.

Despite the incorporation of some FMLA rules into the CFRA, significant differences remain. For example, pregnancy is included as a "serious health condition" under FMLA but not under CFRA. Under California law, a female employee who is disabled due to pregnancy, childbirth, or a related medical condition is entitled to pregnancy disability leave pursuant to Government Code 12945 and recently updated implementing regulations.

Furthermore, for districts that choose to require an employee to use accrued paid leave (e.g., sick leave, vacation, other personal time off) during an otherwise unpaid family care and medical leave, CFRA differentiates between leave for the employee's own serious health condition and for other reasons. When an employee takes leave for his or her own serious health condition, the district can only require him or her to use accrued sick leave and cannot require the employee to use accrued vacation or personal time off. The FMLA makes no such differentiation.

Where there is a conflict between state and federal law, the law that grants the greatest benefits generally controls. In those situations, legal counsel should be consulted as needed.

Districts/COEs should update their administrative regulations and also ensure that their employee notices are revised as necessary to reflect the changes in CFRA regulations as well as the current FMLA regulations. Information on employee rights and obligations under the CFRA/FMLA must be included in employee handbooks and in a notice that is posted



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in a conspicuous place on district premises and/or is distributed electronically. Samples of notices are available on the websites of the California Department of Fair Employment and Housing ([www.dfeh.ca.gov](http://www.dfeh.ca.gov)) and the U.S. Department of Labor (<http://1.usa.gov/1BR6eYZ>).

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## CSBA updates policies on student and staff technology use

CSBA is continuing to update and streamline sample board policies and administrative regulations related to technology, with the goal of ensuring responsible use of technology without inhibiting its use in educational programs or other district operations. Revisions of BP 4040 - Employee Use of Technology and BP 6163.4 - Student Use of Technology were issued in July. In addition, the related administrative regulations were replaced with exhibits that contain examples of Acceptable Use Agreements for student and employee use of technology.

Recognizing the difficulty of developing policies to respond to rapidly changing technologies, and the confusion that multiplicity of technology-related policies causes, CSBA recommends that districts not attempt to adopt individual policies to address each technological device or resource used in the district. Instead, districts are encouraged to use an outcome-based approach that focuses on the related student and staff behavior rather than the *means* through which students and staff engage in inappropriate or prohibited behavior. For instance, if a student engages in bullying or academic dishonesty, whether the act is conducted via technology or any other means, the student should be subject to the consequences provided in the district's disciplinary policies on such conduct.

The effort to reduce unnecessary "scatter" of technology-related principles throughout the policy manual is consistent with the approach advocated by ON[the]LINE, a statewide initiative designed to provide districts, COEs and other stakeholders with sample policies, guidelines and tools to promote the responsible use of technology. The initiative is led by the Santa Clara County Office of Education and is co-sponsored by CSBA and other education, technology and advocacy groups. Over the past three years, ON[the]LINE has held webinars and added helpful resources to its website at [www.onthelineca.org](http://www.onthelineca.org).

CSBA's policy brief *A New Approach to Technology Policies* (August 2012) provides additional information about the ON[the]LINE initiative and a list of CSBA sample policies and administrative regulations related to technology. The brief includes a Technology Policy Development Worksheet that provides a guide for school boards, superintendents and district/COE staff to develop and review related board policies and administrative regulations. The worksheet includes a series of questions designed to facilitate the board's discussion of the issue, questions related to assessment of existing policies and regulations, and a suggested policy development process. The brief is available at [www.csba.org/pnb.aspx](http://www.csba.org/pnb.aspx).

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## Policies clarify use of UCP for nondiscriminatory bullying

During the Federal Program Monitoring process, California Department of Education staff review districts' uniform complaint procedures adopted pursuant to 5 CCR 4600-4633 for compliance with state and federal law. One issue that has caused some confusion has been the extent to which UCP should be used to resolve complaints of nondiscriminatory bullying.

In its October 2010 *Dear Colleague Letter: Harassment and Bullying*, the U.S. Department of Education's Office for Civil Rights clarified that bullying conduct may trigger responsibilities under one or more federal antidiscrimination laws if the bullying is on the basis of race, color, national origin, sex, sexual orientation, gender identity or expression, age, disability, and/or other legally protected category. In such situations, federal law requires the district/COE to investigate what



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occurred and, if it finds that bullying occurred on any such basis, take prompt and effective steps reasonably calculated to address the conduct, eliminate any hostile environment and its effects, and prevent recurrence. The UCP should be used for investigating and resolving charges of discriminatory bullying.

It is not always easy, or even possible, for school staff to know whether student conduct involved unlawful discrimination before an investigation is carried out. For these reasons, and to ensure consistent implementation by school staff, in the October 2014 update to BP/AR 1312.3 - Uniform Complaint Procedures and BP 5131.2 - Bullying, CSBA recommended that districts use the UCP to investigate and resolve all bullying incidents (discriminatory and nondiscriminatory).

CSBA has updated BP/AR 1312.3 - Uniform Complaint Procedures and BP 5131.2 - Bullying to further clarify the appropriate use of the UCP in cases of nondiscriminatory bullying. CSBA continues to recommend that districts use the UCP to investigate all bullying incidents. Student conduct that is determined during an investigation to be *nondiscriminatory* bullying should be resolved in accordance with the district's student discipline policies and procedures.

In addition, the revised AR 1312.3, along with AR 5145.3 - Nondiscrimination/Harassment and AR 5145.7 - Sexual Harassment, reflect the OCR's Dear Colleague letter issued in July 2015 (<http://1.usa.gov/1DVnKJa>), which reminds districts/COEs of their obligation to designate a Title IX coordinator to coordinate their efforts to comply with federal prohibitions against sex discrimination. This guidance also recommends that nondiscrimination notices, policies and procedures and the Title IX coordinator's contact information be disseminated via Web posting and social media.

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## CSBA Policy Services

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### Reminder: New schedule for Policy Update

With the July edition of CSBA's Policy Update, CSBA is switching to a new schedule that will provide five policy update packets per fiscal year instead of three. Packets will be issued in July, October, December, March and May in order to address legislative changes and other critical issues in a timely manner. Each policy update will continue to include a guide sheet and *Policy News* to provide further information about the policies, administrative regulations and board bylaws being updated in that edition as well as other policy-related resources such as policy briefs and fact sheets, when available.

For further information about CSBA's policy services, see <http://bit.ly/1QUMU3X> or call (800) 266-3382.

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### Sample bylaws for county boards

COEs are subject to many of the laws and governance principles that are applicable to school districts, but COEs also have unique purposes, responsibilities, structures and board-superintendent relationships that influence their policy needs. From time to time, CSBA has issued sample policies on topics that are critical to COE operations, such as the COE version of BP/E 0460 - Local Control and Accountability Plan issued earlier this year. CSBA is now developing an additional set of sample board policies and bylaws specifically tailored to county boards of education. Exhibits may also be developed for county superintendents to consider for use as administrative regulations.

The COE samples are being developed through the same process used to develop district policies, including writing and review by CSBA policy consultants and review by CSBA legal counsel. A committee of county board members will also provide input into the process.

The sample materials for county boards will be available to COEs that are members of CSBA and subscribe to CSBA's policy services. For more information, see <http://bit.ly/1QUMU3X> or contact CSBA's Policy Services at (800) 266-3382.



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## New resources from CSBA

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### Civic learning

Students' understanding of civics has been decreasing in recent years, according to 2010 data from the National Assessment of Educational Progress. Furthermore, on average, African American and Latino students scored lower on the civics assessment than their white and Asian American peers. A new governance brief from CSBA, *Why Civic Learning is Critical* (May 2015), examines the possible reasons for this achievement gap. It considers the implications of a study by political scientist Cathy Cohen (*Democracy Remixed: Black Youth and the Future of American Politics*), which found higher levels of political alienation among African American youth.

Given the importance of civic education, the brief recommends that boards model exemplary civic behavior, empower student voices, make civic learning a priority, and evaluate their program against six proven practices presented by the Campaign for the Civic Mission of Schools ([www.civicmissionofschools.org/educators/six-proven-practices](http://www.civicmissionofschools.org/educators/six-proven-practices)).

The brief is available at [www.csba.org/GovernanceBriefs](http://www.csba.org/GovernanceBriefs). Also see CSBA sample BP 6142.3 - Civic Education and BB 9150 - Student Board Members.

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### Measuring school climate

Issue 3 in CSBA's *Climate for Achievement* series of governance briefs (*Measuring School Climate*, June 2015) examines methods and tools for assessing school climate, one of the state priorities that every school district/COE must address in its Local Control and Accountability Plan. School climate data commonly include data on student discipline (e.g., suspensions, expulsions, truancy) and information about student, parent/guardian and staff perceptions of school climate. Perceptions may be obtained from surveys and/or focus groups and may address topics such as safety, relationships, teaching and learning, and the school's physical/institutional environment.

The brief focuses on criteria to consider in the selection of a school climate survey instrument, including the survey's purpose, validity, reliability, scope, length and cost. A number of published survey instruments are compared.

The governance brief is available at [www.csba.org/GovernanceBriefs](http://www.csba.org/GovernanceBriefs). Issue 1 (*How Research Defines School Climate*) and Issue 2 (*Why School Climate Matters*) are also available on that Web page. The fourth and final issue will review the actions that school boards can take to improve school climate.

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## Education opportunities

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### Back-to-School webcast

CSBA's complimentary Back-to-School webcast will present up-to-date information on the latest education issues including the Local Control Funding Formula, Common Core State Standards, and strategies for closing the achievement gap. CSBA governmental relations experts will provide a comprehensive overview of what the governance team should know going into the school year. Participants will be able to engage via a question-and-answer session.

The webcast is scheduled for September 10 from 11:00 a.m. to 1:00 p.m. To register, go to [www.csba.org/TrainingAndEvents](http://www.csba.org/TrainingAndEvents).



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## CCBE Annual Conference

The California County Boards of Education Annual Conference will be held September 11-13 in Monterey. The conference provides county board members with learning opportunities specifically focused on the unique issues and student populations of COEs. These include the opportunity to network with other county board members, share tips and best practices, and gain new ideas to help board members address the issues that they face.

Registration may be completed online at [www.csba.org/TrainingAndEvents](http://www.csba.org/TrainingAndEvents). A discounted "early bird" registration fee will be offered through July 31.

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## CSBA Annual Education Conference and Trade Show

Registration and conference housing are now open for CSBA's 2015 Annual Education Conference and Trade Show, the association's premier continuing education program. The conference will be held December 3-5 at the San Diego Convention Center.

The conference will feature three general sessions and numerous workshops, critical issue sessions and table talk sessions. Preconference activities include an orientation for new trustees, a workshop for board presidents, and a legal symposium for experienced board members.

District/COE executive assistants are invited to a one-day program on December 4. The one-day registration fee includes a continental breakfast, lunch and materials, a resource room for executive assistants to network and meet, and choice of breakout sessions. Executive assistants are also invited to attend other sessions of the Annual Education Conference that day.

To register or obtain additional information, see <http://aec.csba.org>. A discounted registration fee is available through August 3.



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