



See You At CCSA!

We'll see you March 14-17 in Long Beach, California for the 23rd annual CCSA conference. [Click here](#) for more information about the event. We will be sending out invitations to our annual fun festivities soon!

SB 359 MATH TRANSITION POLICY

On October 5, 2015, Governor Jerry Brown signed into law SB 359, the California Mathematics Placement Act of 2015 (the "Act"). Addressing the belief that student achievement in mathematics is important to prepare pupils for college and their future careers, especially those careers in STEM-related fields, the Act specifically addresses the fact that many students, especially students of color, do not transition successfully into states that "[p]lacement in appropriate mathematics courses is critically important for a pupil during his or her middle and high school years. A pupil's 9th grade math course placement is a crucial crossroads for his or her future educational success. Misplacement in the sequence of mathematics courses creates a number of barriers and results in pupils being less competitive for college admissions, including admissions at the California State University and University of California."

The Act amends section 51244.7 of the California Education Code to mandate that all LEAs, including charter schools, that serve pupils entering grade 9 and that have not adopted a "fair, objective, and transparent mathematics placement policy" as of January 1, 2016 must do so before the beginning of the 2016–17 school year. The policy must be developed and adopted at a regularly scheduled public meeting and must address the following five items:

(1) The policy must take multiple objective academic measures of pupil performance into consideration (such as statewide mathematics assessments, including interim and summative assessments authorized pursuant to Section 60640, placement tests that are aligned to state-adopted content standards in mathematics, classroom assignment and grades, and report cards).

(2) The policy must include at least one placement checkpoint within the first month of the school year to ensure accurate placement and permit reevaluation of individual pupil progress.

(3) The policy must require examination of aggregate pupil placement data annually to ensure that pupils who are qualified to progress in mathematics courses based on their performance on objective academic measures selected for inclusion in the policy pursuant to item (1) are not held back in a disproportionate manner on the basis of their race, ethnicity, gender, or socioeconomic background. The local educational agency shall report the aggregate results of this examination to the governing board or body of the local educational agency. In the case of charter schools, it is unclear whether this reporting requirement means that a charter must simply report to its governing board or to its authorizer.

(4) The policy must offer clear and timely recourse for each pupil and his or her parent or legal guardian who questions the pupil's placement.

(5) And, finally, item 5 only applies to nonunified school districts and requires such districts to address the consistency of mathematics placement policies between elementary and high school districts.

Keep in mind that the policy must be posted on the school's web site.

Optionally, charter schools that serve students who are transitioning between elementary and middle school or elementary and junior high school may develop and implement a mathematics placement policy for these students.

EMPLOYMENT CONTRACTS

It's not too early to start thinking about contract renewals for the 2016-2017 school year. As we do every year, we have created an employment contract template for both classified and certificated employees that can be tailored to

your unique school needs. Please don't hesitate to [contact us](#) for a copy of the templates.

UNION FEES

Recently, ten Southern California teachers who refuse to join the teachers' union asked the Supreme Court to overrule a 1977 Supreme Court ruling, *Abood v. Detroit Board of Education*, which allows unions to exact "agency fees" from public employees who refuse to join. The teachers argued that their First Amendment speech rights were offended by such compelled fees. [Friedrichs v. California Teachers Association \(Case No. 14-915\)](#).

Justice Kennedy opined during oral arguments concerning the teachers' case that "[m]any teachers think that they are devoted to the future of America, to the future of our young people, and that the union is equally devoted to that, but that the union is absolutely wrong in some of its positions. And agency fees ... require that employees and teachers who disagree with those positions must nevertheless subsidize the union on those very points."

Even Justice Scalia, who was considered perhaps one of the unions' best hopes for getting a fifth vote to join the court's four liberals to preserve the 1977 precedent, *Abood v. Detroit Board of Education*, did not give the unions much reason for optimism. Scalia stated: "The problem is that everything that is collectively bargained with the government is within the political sphere, almost by definition. Should the government pay higher wages or lesser wages? Should it promote teachers on the basis of seniority or [some other] basis? All of those questions are necessarily political questions." This line of questioning suggests that Justice Scalia is questioning why public employees should be compelled to pay union fees when the employees disagree with the union's political positions.

While most charter schools are not unionized, some are. But for those charter schools and public schools who are unionized, it may be that many teachers may opt out of paying fees to unions whose political positions the teachers do not support.

GENETIC DISCRIMINATION

An attorney for a student in the Palo Alto Unified School District recently filed a lawsuit alleging genetic discrimination. Yes, genetic discrimination. As the

student's attorney flatly stated regarding the case: "This is the test case." [Here is the appellant's opening brief.](#)

The situation involves a student with genetic markers for cystic fibrosis. Children with cystic fibrosis cannot be near each other because they are vulnerable to contagious infections. Two siblings with cystic fibrosis also attended the student's middle school in Palo Alto, California in 2012, and the School District removed the student from the school even though he allegedly doesn't actually have the disease.

The suit is brought under the American with Disabilities Act, and experts in genetics law have already pointed out that the suit does not rely on the federal Genetic Information Nondiscrimination Act of 2008, which bars genetic discrimination in just two situations - employment or health insurance. The student's case rests instead on the ADA, where its application to genetic discrimination is untested to date.

We will keep you posted as this case works its way through the courts, as the implications for K-12 education could be important.

EVERY STUDENT SUCCEEDS ACT 2015

Obviously, you have no doubt heard that the Every Student Succeeds Act ("ESSA") was signed into law by President Obama on December 10, 2015. ESSA reauthorizes the Elementary and Secondary Education Act of 1965 ("ESEA") and replaces No Child Left Behind, which many educational pundits on both sides of the aisle have long felt is overdue.

For charter schools, ESSA is arguably an important victory. The National Alliance for Public Charter Schools has published a list of [priorities](#) that ESSA does largely include. While it is beyond the scope of this newsletter to cover every aspect of ESSA ([here is the text of the law](#)), we can address some of the most important points below.

Changes to the Charter School Program of the ESSA include:

- The Charter School Program now includes dedicated funding for the replication and expansion of high-performing charter schools. In addition, state grants can also be used for the same purpose.
- The state grant program can now be administered by governors and charter support organizations in addition to state educational agencies.
- The state grant program prioritizes funding to states that provide equitable resources to charter schools and that assist charters in accessing facilities.
- The state grant program provides schools with additional spending flexibility for startup funds. For example, they will be allowed to use Charter School

Program funds to purchase a school bus and make minor facility improvements.

- The state grant program includes new protections to ensure funds go to charter schools with autonomy and flexibility consistent with the definition of a charter school.
- Charter school representatives must be included in Title I negotiated rulemaking and must be included, like other stakeholders at the state and local level, in the implementation of many federal programs.
- Charter School Program recipients will have more flexibility to use a weighted lottery to increase access to charter schools for disadvantaged students. Charter School Program grantees will also be permitted to use feeder patterns to prioritize students that attended earlier grades in the same network of charter schools.

Other ESSA provisions that are important to note include:

- New and expanding charter schools are required to receive timely allocations of Title I allocations and to be “held harmless” in the same manner as other eligible Title I traditional public schools.
- The highly qualified teacher requirement has been repealed. Charters are free to design personnel systems and hire staff that meet the unique needs of their school.
- States are required to administer annual reading and math assessments in reading and math in grades 3-8, and once in high school. Science assessments are required once in each grade span: 3-5, 6-9 and 10-12.
- States must hold all public schools accountable for improving student achievement of all students, as well as all subgroups of students.
- Schools are also accountable for adjusted four year and extended cohort graduation rates.
- LEAs have flexibility to use Title I funds for school improvement to increase the number of high-quality charter schools serving students attending failing schools.
- New provisions to demonstrate compliance with the “supplement not supplant” requirement include additional flexibility in aligning federal program funds with their educational programs.

A New Web Site Coming Soon!

We're looking forward to unveiling a new, more responsive and user-friendly web site in the coming weeks! Check in at www.hkschoollaw.com when you have the time to see the latest.



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SchoolLawTraining.com

Visit www.schoollawtraining.com today to sign up for Brown Act Training for Charter Schools and Sexual Harassment training for charter school administrators. More courses coming soon in 2016!

