

HK School Law Monthly Newsletter



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We look forward to hearing from you soon!

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March 2015 | Issue 19

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[Student Success Act - The End of No Child Left Behind?](#)

On **Wednesday, February 11 at 10:00 a.m.**, the House Committee on Education and the Workforce, chaired by Rep. John Kline (R-MN), marked up the [Student Success Act \(H.R. 5\)](#).

There is broad, bipartisan agreement the current elementary and secondary education law, known as *No Child Left Behind*, is no longer meeting the needs of all students. One of five students do not receive a high school diploma and, of those who do, too few have the knowledge and skills they need to succeed in postsecondary education and compete in the workforce.

To replace *No Child Left Behind* and improve education, Chairman Kline and Subcommittee on Early Childhood, Elementary, and Secondary Education Chairman Todd Rokita (R-IN) introduced the [Student Success Act](#). The legislation promises to reduce the federal footprint and restore local control, while empowering parents and education leaders to hold schools accountable for effectively teaching students.

[CDE Revisits Eligibility for PCSGP Applicants](#)

This week, the California Department of Education essentially reversed a memo it had sent out on October 14, 2014, that would have required all applicants for the Public Charter School Grant Program (start-up and implementation grants) to have an approved charter term prior to July 1, 2015. CDE notified applicants that this reversal was based on additional guidance from the federal Department of Education that had been requested by CCSA. The letter specifies that “the start date of your charter petition is not required to begin prior to July 1, 2015, for PCSGP eligibility.” However, the letter further notes that all of the requirements of the

2014–15 PCSGP RFA still apply, including the approval of a charter petition by May 7, 2015. If you have any questions, please contact Charlene Schmid, Education Programs Consultant, Charter Schools Division, CDE, by phone at 916-323-0482 or by e-mail at cschmid@cde.ca.gov.

Proposed IRS Ruling Regarding Charter School Employee Participation in State Retirement Systems

The Internal Revenue Service (IRS) and Department of Treasury recently issued guidance regarding specific rules they are considering that relate to whether a State retirement system that covers employees of a charter school fall within the meaning of a “governmental plan” under IRS laws. As you may recall, the California Public Employee Retirement System (CalPERS) changed its application process for charter school applications to their retirement program after the IRS released an Advance Notice of Proposed Rulemaking around this issue in November of 2011. Many charter schools were subsequently notified that the staff could not participate in CalPERS as a result.

The newly issued IRS guidance, which we have reviewed, clarifies that charter school employees in California may still participate in public retirement systems, including CalPERS, which is welcome news to charter schools!

They’re At It Again: Two Anti-Charter Bills Introduced

This week two anti-charter bills were introduced—SB 322 (Leno) related to charter school expulsions and suspensions, and AB 709 (Gipson) related to charter school boards and conflict of interest. SB 322 would make charter schools subject to discipline provisions in the Education code, removing a fundamental flexibility offered to charter schools. In addition it reduces the time from 30 days to 10 days in which a charter school has to notify the district that a student has left the school and requires charter schools to collect data regarding teacher turnover.

AB 709 (Gipson) is similar to conflict of interest legislation introduced last year subjecting charter school boards to the Brown Act, Bagley-Keene Open Meeting Act, the Public Records Act and the Political Reform Act of 1974.

Online Training Opportunities – Brown Act and Beyond

Does your board need Brown Act to ensure legal compliance and strengthened governance practices?

For a limited time, please visit www.schoollawtraining.com and take our FREE Brown Act training course. We are pleased to offer this training opportunity to all our charter school clients and contacts.

NEWSLETTER

CDE Issues Guidance Concerning Parent Service Hours

Does your school require parents to perform volunteer “service hours” as a condition of allowing their child(ren) to enroll? In November 2014, Public Advocates released a report calling into question the parent involvement policies of many charter schools across the state, specifically alleging that charter schools were excluding vulnerable students by imposing illegal family work quotas. In response, in January 2015, the California Department of Education released new guidance addressing parent service hour requirements in public schools, making clear that public schools, including charter public schools, **may not** require parent volunteer hours or payment of a fee in lieu of performing volunteer hours as a condition of enrollment or participation in school programs.

Ed. Code section 49011(b)(4) states in part that “[a] school district or school, including a charter school, shall not offer or remove course credit or privileges related to educational activities based on whether or not the school receives money or donations of goods or services from a pupil or a pupil’s parents or guardians.” As such, the Code bars school districts, including charter schools, from requiring “volunteer hours” or payment of a fee in lieu of performing volunteer hours as a condition of admission, enrollment, continued enrollment, sibling preference, attendance, participation in educational activities or receipt of credit or privileges related to educational activities.

Further, a “fee waiver policy” does not make a fee permissible. You cannot ask parents to waive Section 49011(b)(4), in other words. See *Ed. Code* section 49011(b)(2). However, a school district or school, including a charter school, *can* solicit voluntary donations of funds or property, and voluntary participation in fundraising activities. See *Ed. Code* section 49011(c).

WHAT YOU SHOULD DO

In order to avoid the accusation that a school is requiring parents to do work or pay a fee as a condition of allowing their child(ren) enroll or receive educational benefits and services, it is recommended that a policy be adopted which specifically states working at the school is in fact *not* required, in compliance with *Ed. Code* section 49011 as a condition of enrollment or receipt of educational benefits of any kind. Charter Schools, of course, must already have in place Uniform Complaint Policy procedures and forms related to payments of fees.

Changes to Independent Study Ratio Calculations

Senate Bill 858 (SB 858), enacted June 20, 2014, made several changes to Independent Study programs (IS). SB 858 altered how IS ratios are calculated, changing from a school-wide calculation to a required calculation by grade span. The new law provides that the ratio of average daily attendance (ADA) IS pupils to full-time equivalent certificated employees responsible for IS shall be applied by grade span for each of the following grade spans, unless there is a locally bargained alternative:

- Kindergarten and grades 1 to 3
- Grades 4 to 6
- Grades 7 to 8
- Grades 9 to 12

PUPIL TO TEACHER RATIO CALCULATIONS

The state historically required the student-teacher ratio in an IS program to be no greater than the districtwide average (excluding independent study) student-teacher ratio. Beginning 2014-15, SB 858 requires separate calculations by grade span (K-3, 4-6, 7-8, and 9-12, not including the average of special education classes or necessary small schools). Additional legislation allows the ratio requirement to be waived if an alternative ratio is negotiated as part of a local collective bargaining agreement.

In a charter school, the applicable pupils-to-certificated-employee grade span ratios may be calculated by using a fixed pupils-to-certificated-employee ratio of 25-to-1, or the charter may use the ratio for the largest unified district in the county in which the charter operates. All charter school pupils, regardless of age and including special education classes, shall be included in the applicable pupil-to-certificated-employee grade span ratio calculations.

The CDE has reported that due to the late timing of the legislation and late availability of the requisite instructions for making the calculations, for the purposes of calculating the ratios for 2014-15, local education agencies (including charter schools) can choose to calculate ratios by grade span or on an overall local education agency-wide basis. [The CDE has posted instructions and worksheets for calculating ratios for independent study on their website here.](#)

COURSE BASED INDEPENDENT STUDY PROGRAMS

New legislation also reduced administrative requirements by allowing local governing boards to approve entire IS courses (rather than individual assignments) in the 2015-16 school year, as equivalent to a given amount of instructional time. This served to

create a new “course based” independent study option, beginning 2015-16 for pupils in Kindergarten through grade 12. This is an optional alternative to regular Independent Study. Schools may offer this new IS option commencing with the 2015-16 school year. There are a host of required elements in order to offer this new course-based IS option, so please consult appropriate consul before implementing this new option.

While characterized as a reducing administrative requirements, this new IS course option requires the following elements:

- Signed learning agreement completed and on file
- Highly Qualified teachers and employed at the LEA (or MOU)
- Pupils meet residency, enrollment, and age requirements
- Teacher and pupil must communicate twice per calendar month to assess satisfactory progress (in person, by telephone, or other live visual or audio connection)
- A proctor must administer examinations (issues)
-

“Satisfactory educational progress” must be made to stay enrolled

The local governing board is required to certify annually that these courses are of the same quality and rigor as classroom–based courses and meet relevant state and local academic standards. This eliminates the requirement to sign and date each individual assignment. Students enrolled in these courses need to demonstrate "satisfactory educational progress" as determined bi-monthly by an appropriately credentialed teacher.

The determination of “satisfactory educational progress” can include: statewide tests, completion of assignments, examinations or other indicators that evidence the pupil is working, learning, and making progress toward successful completion of course, which is “as determined by certificated employee providing instruction.”

If it is determined that satisfactory progress is not being made, the school must:

- (a) Notify the pupil and parents,
- (b) Conduct an evaluation to determine if alternative placement should be made, and
- (c) Maintain a written record of the unsatisfactory progress evaluation which is considered a mandatory interim record and must be maintained for 3 years

Beginning in 2014-15, IS programs are also allowed to store certain student records electronically and to extend written learning contracts across the entire school year rather than a single semester.

In order to “maintain written or computer-based evidence of satisfactory progress for each pupil and each course”, there must be evidence of such, which shall include:

- A grade book or summary document that lists all assignments, examinations and associated grades.
- Statewide testing results must be disaggregated to compare with pupils enrolled in classroom-based courses
- Pupil cannot be required to enroll in “course-based” independent study
- Independent Study Ratio (EC 47612.5) requirements must be met
- Pupils must be offered the minimum annual total equivalent instructional minutes
- Pupils must meet applicable minimum daily instructional minutes
- Courses for HS graduation, UC/CSU admission cannot be offered exclusively through IS
- Pupils enrolled in these courses may not be assessed any prohibited fees
- Cannot prohibit from participating solely based on not having equipment, or internet

Due to these complicated requirements, several amendments to the new law are being proposed. The amendments include the following suggested changes:

1. Reverse or revise the grade-span calculation (LCFF grade spans) for pupil/teacher ratios for regular IS
2. Clarify that LEAs may “collect/accept” electronic agreements
3. Add/clarify the ability to collect and store the following electronically:
 - Work samples
 - Assignment sheets
 - Supplemental agreements
 - Attendance sheets

WHAT YOU SHOULD DO

It is recommended that charters only employ the new course-based IS, if, and only if, they have implemented policies detailing the above required elements, and in fact meet those requirements. We encourage schools to review and modify all IS policies to comply with the new requirements.

Hansberger & Klein, LLP is a law firm representing public charter schools. This newsletter is not intended to be legal advice. If you are seeking legal advice, please contact us or your attorney for guidance. We look forward to working with you!