



YOUNG, MINNEY & CORR, LLP
EXPERT CHARTER SCHOOL
LEGAL SERVICES

New Laws & Cases **2023**

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YOUNG, MINNEY & CORR, LLP

SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK

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FIRM OVERVIEW

Young, Minney & Corr, LLP (YM&C) has been the leader in charter school law for over two decades, representing well over half of California's charter schools with offices in Sacramento, Los Angeles, San Diego, and Walnut Creek. The firm principals have been working with charter schools since the inception of California's Charter Schools Act in 1992.

We offer superior legal expertise, as well as the technical know-how, to allow you to effectively resolve your problems and meet all of your charter school needs.

The YM&C team of experts can assist charter schools in every aspect of charter school creation, expansion, and operation including:

- **Labor & Employment**
- **Student Rights & Discipline**
- **Special Education**
- **Board Governance**
- **Facilities**
- **Granting Agency Relations**
- **Charter Development & Renewal**
- **Charter Defense**
- **Insurance Defense**
- **Charter Litigation**
- **Independent Study**
- **Corporate Law**
- **Public Law**

We emphasize a preventative approach to the law, helping our clients anticipate legal difficulties, minimize exposure to legal claims and fees, and prevent operational challenges.

With our main office located in Sacramento, YM&C is also uniquely positioned to influence the public policy debate in California – helping shape the future of charter schools.

For more information on our team of expert attorneys and services, please visit www.mycharterlaw.com or call us at **916-646-1400**.

Sacramento Office: 655 University Avenue, Suite 150, Sacramento, CA 95825

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Jerry Simmons has represented charter schools in every aspect of their operations for more than fifteen years. Between his work at the firm and at the Charter Schools Development Center, Jerry has personally assisted in the development of hundreds of California's charter schools through drafting charter petitions, memorandums of understanding for business and special education services, facilities use agreements, private leases, property purchases, and development of school policies covering every facet of charter school operations. Jerry has also assisted charter schools with employment and labor law matters, board governance and training, zoning and building code compliance, defense of audit findings in both annual and extraordinary audits, compliance with the Brown Act, Political Reform Act, Public Records Act, and Family Educational Records Protection Act.

Jerry has presented workshops for the Charter Schools Development Center and frequently presents at California Charter Schools Association conferences. He also presents at Governance Academies jointly sponsored by the firm and the California Charter Schools Association.

His understanding of governance and public agency laws has been enriched by his own prior service as both a member and President of the Sierra Community College District Board of Trustees. He also previously served as a member of the City of San Jose Parks and Recreation Commission, Chair of the City of San Jose's Youth Commission, Chair of the Santa Clara County Youth Commission and Student Body President at San Jose State University.

PRACTICE AREAS

Board Governance
Facilities
Charter Development
Charter Defense
Independent Study
Public Law

EDUCATION

- Pepperdine School of Law (J.D.)
- Harvard University (M.A.)
- San Jose State University (B.A.)

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Lee is an advocate for educational equity and a strong believer that all children should have the opportunity to attend excellent public schools. His practice areas include Charter Development, Charter Defense, and Charter Litigation.

Before joining YM&C, Lee worked for two international law firms focusing on complex litigation on behalf of private and public entities. Lee was recognized as a Rising Star by Super Lawyers Magazine. During his more than seven years as a litigator, Lee developed creative strategies that helped win cases and achieve client objectives, helped clients hone in on and present their best evidence and most compelling themes, used the discovery process and sunshine laws to uncover key information, deposed and cross-examined key witnesses, argued before state and federal courts, and coordinated with media and public relations professionals to advance excellent outcomes in the court of public opinion.

Lee is an alumnus of the Teach for America program. Before attending law school, Lee taught English, math, and social studies at a public middle school in the South Bronx of New York, and developed and taught a visual media curriculum to English language learners and special education students. Lee also previously worked in public policy for a California governor and a United States Secretary of Labor in Washington, D.C.

During law school, Lee studied education law, worked in the legal office of the San Francisco Unified School District, focusing on special education and labor matters, and was a Bay Area fellow in the Education Pioneers program. Lee was also an executive board member of the Hastings Law Journal and graduated from law school magna cum laude.

PRACTICE AREAS

Charter Development

Charter Defense

Charter Litigation

EDUCATION

- University of California, Hastings College of the Law (J.D.)
- Pace University School of Education (M.S.)
- University of California, Berkeley (B.A.)



YOUNG, MINNEY & CORR, LLP



Are You Ready? New Laws and Cases 2023 Edition

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THE CHARTER LAW FIRM

Disclaimer



- This webinar cannot substitute for personalized legal advice.
- Our advice is based upon the latest available guidance which is subject to change in this ever-evolving landscape.
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www.mycharterlaw.com.

YM&C Firm Overview



- Partners have over 150 years of collective experience working with charter schools.
- 33 attorneys working with charter schools throughout the state in all areas of charter school law (e.g. employment/labor, special education, nonprofits, litigation, audits, facilities, etc.)
- Represent more than half of California's charter schools.
- Conduct workshops for charter schools in all areas of legal compliance.

Student Health and Wellness



AB 748 – Mental Health Posters



- Current law requires charter schools to **notify students and parents/guardians at least twice** during the school year on how to **initiate access to available student mental health services** on campus or in the community.
- **Effective in the 2023-24 school year**, each schoolsite serving students in grades 6-12 is required to create and **post a poster** that identifies approaches and shares resources addressing student mental health
- Schools may **partner with students enrolled at that schoolsite**, local, state, or federal agencies, or nonprofit organizations, for purposes of the design and content of the poster.
- The language in the poster must be **age appropriate and culturally relevant**, and the schoolsite may partner with pupils enrolled at that schoolsite, local, state, or federal agencies, or nonprofit organizations, for these purposes.

AB 748 – Mental Health Posters



- The poster must be displayed in **English** and any **primary language spoken by 15 percent or more of the pupils** enrolled at the schoolsite.
- The poster may not be smaller than 8.5 by 11 inches and must use at least 12-point font.

The poster must display, at a minimum, all the following:

- Identification of common behaviors of those struggling with mental health or who are in a mental health crisis, including, but not limited to, anxiety, depression, eating disorders, emotional dysregulation, bipolar episodes, and schizophrenic episodes.
- A list of, and contact information for, schoolsite-specific resources, including, but not limited to, counselors, wellness centers, and peer counselors.
- A list of, and contact information for, community resources, including, but not limited to, suicide prevention, substance abuse, child crisis, nonpolice mental health hotlines, public behavioral health services, and community mental health centers.

AB 748 – Mental Health Posters



- A list of positive coping strategies to use when dealing with mental health, including, but not limited to, meditation, mindfulness, yoga, breathing exercises, grounding skills, journaling, acceptance, and seeking therapy.
- A list of negative coping strategies to avoid, including, but not limited to, substance abuse or self-medication, violence and abuse, self-harm, compulsivity, dissociation, catastrophizing, and isolating.
- The poster must be prominently and conspicuously displayed in appropriate public areas that are accessible to, and commonly frequented by, pupils at each schoolsite.
- Charter schools' governing boards "have full discretion to select additional appropriate public areas that are accessible to, and commonly frequented by, pupils to display the poster at the schoolsite. These areas may include, but are not limited to, bathrooms, locker rooms, classrooms, classroom hallways, gymnasiums, auditoriums, cafeterias, wellness centers, and offices."

AB 748 – Mental Health Posters



- The **poster must be digitized and distributed online to pupils** through social media, internet websites, portals, and learning platforms at the beginning of each school year.
- The **CDE is required to develop and maintain a model poster**, created in collaboration with mental health experts, pupils, and administrators to serve as a guide for school districts, county offices of education, and charter schools.
- SB 748 provides that this law does not create any new civil liability for schools.

AB 58 – Suicide Prevention



- Existing law requires charter schools to adopt a policy on suicide prevention and staff training on suicide awareness and prevention, and **review their policy every five years.**
- As of the 2024-25 school year, charter schools are **encouraged** to provide suicide awareness and prevention training to teachers
- By January 1, 2024, the CDE must develop resources and guidance on how to conduct suicide awareness and prevention training remotely.
- **By January 1, 2025, charter schools must review and update their policies and training materials** to incorporate best practices identified by the CDE in the CDE's model policy.
 - Even if the charter school last reviewed their policy in 2022? Yes.

AB 2072 – Mental Health



- On or before November 1, 2024, county offices of education, must **coordinate agreements between school districts and charter schools within the county** to “develop a system for rapidly deploying qualified mental health professionals and other key school personnel employed by individual school districts and charter schools throughout the county to areas of the county that experienced a **natural disaster or other traumatic event.**”
- In developing agreements for this system of sharing mental health professionals and other key school personnel, county offices of education must consider, at a minimum:
 - The cost of creating and maintaining the system.
 - The criteria required for an LEA to request the use of mental health professionals and other key school personnel employed by another LEA
 - Potential reimbursement between LEAs.
 - Reimbursement for travel expenses incurred by mental health professionals and other key school personnel.

AB 988 – Suicide and Crisis Lifeline



- As of July 16, 2022, 988 has been designated as the three-digit dialing code that will route callers to the National Suicide Prevention & Mental Health Crisis Lifeline.

988 | SUICIDE PREVENTION &
CALIFORNIA | MENTAL HEALTH CRISIS
L I F E L I N E

- SB 988 provides a framework for the 988 system in California to be operated as an emergency suicidal, mental health, and substance use disorder crisis system.
- Intent is to provide an alternative to and coordination with the 911 system, to provides compassionate, appropriate, and easily accessible care to save lives and reduce law enforcement engagement, arrests, hospitalizations, and deaths.
- By June 30, 2024, the California Health and Human Services Agency and the Office of Emergency Services are required to develop a plan for the statewide coordination of 988, 911, and behavioral health crisis services.

AB 2879 – Cyberbullying



- **Existing law requires charter schools to adopt procedures to prevent acts of bullying, including cyberbullying.**
- Existing charter school suspension and expulsion policies and procedures typically address disciplinary action related to bullying and cyberbullying.
- **AB 2879 requires social media platforms to disclose all cyberbullying reporting procedures** in the social media platform's terms of service.
- **AB 2879 requires social media platforms to establish a mechanism to allow individuals, to report cyberbullying** or any content, whether or not that individual has a profile on the internet-based service.
 - How will these reporting procedures play a role in the prevalence of cyberbullying?
 - How will these tools intersect with school discipline policies and procedures?
 - How will schools and parents use these tools?

AB 1810 – Seizure Disorders



- New law provides that if a student diagnosed with seizures, a seizure disorder, or epilepsy has been prescribed an emergency anti-seizure medication by the student’s health care provider, upon request of the student’s parent or guardian, **one or more volunteers at the school may be designated to administer anti-seizure medication.**
- AB 1810 provides a comprehensive, detailed scheme on parent consent requirements, training, volunteer participation, and liability.
- Only the school nurse or trained volunteers may administer anti-seizure medication.
- **Schools must obtain a detailed “seizure action plan” from the student’s parent(s).**
- Parent request is **only effective in the current school year** and must be renewed at least annually.

AB 1810 – Seizure Disorders



- Plan must include detailed information from the student’s health care provider
- Plan must address how and where the medication will be stored at school.
- Plan must include a signed notice that medication may be administered by nonmedical professionals who have only received the training specified under the statute.
- After a parent requests that school staff administer medication, **schools must inform parents that their student potentially qualifies for a 504 Plan or IEP and must assist parents in exploring those options.**
- **If there are no volunteers to administer medication, schools must notify the parent of the student’s rights to be assessed for services and accommodations under Section 504 and the IDEA.**

AB 1810 – Seizure Disorders



- Medication(s) must be provided to the school with the label affixed by the dispensing pharmacy intact.
- After a parent makes a request for school staff to administer anti-seizure medication, the school must provide notice to staff at least once, but no more than two times, identifying the request for volunteers, information about training, and rights to rescind offer to volunteer.
- Volunteers may rescind their offer to assist at any time.
- Schools may not retaliate against any individual who chooses not to volunteer or who rescinds their offer to volunteer, including after being trained.
- **SSPI is required to establish minimum training standards by July 1, 2023.**

AB 1810 – Seizure Disorders



- LEAs must ensure that each employee who volunteers will be provided defense and indemnification by the LEA for any and all civil liability arising from administering medication.
 - This information must be reduced to writing, provided to the volunteer, and retained in the volunteer’s personnel file.
- AB 1810 provides that a person trained as required who administers medication “in good faith and not for compensation” to a student diagnosed with seizures, a seizure disorder, or epilepsy who appears to be experiencing a seizure may not be subject to professional review, liable in a civil action, or be subject to criminal prosecution for the person’s acts or omissions in administering the emergency anti-seizure medication.

AB 1810 – Seizure Disorders



- Liability protection does not apply to:
 - A person’s liability for an act or omission that constitutes gross negligence or willful or wanton misconduct.
 - A person’s culpability for an act that constitutes a crime and is not specifically authorized by the new law.
 - The ability of a licensing board to take disciplinary action against a licensed health care professional for an act not specifically authorized by the new law.

Serving Special Populations



AB 2375 – Homeless Housing Questionnaire



- Under federal law, LEAs, including charter schools, must ensure that they identify all homeless children and youths and unaccompanied youths enrolled in school.
- Per AB 27, as of the 2021-22 school year, charter schools receiving funding from the American Rescue Plan Elementary and Secondary School Emergency Relief - Homeless Children and Youth Fund were required to administer a housing questionnaire for purposes of identifying homeless children and schooldays unaccompanied youths.
 - The CDE has provided guidance and a model form to satisfy this obligation:
<https://www.cde.ca.gov/sp/hs/cy/documents/housingquestionnaire.pdf>

AB 2375 – Homeless Housing Questionnaire



- **Under AB 2375, all charter schools must administer the housing questionnaire regardless of whether they receive American Rescue Plan funding.**
- The housing questionnaire must include an explanation of the rights and protections a student has as a homeless child or youth or as an unaccompanied youth.
- If the parent/unaccompanied youth's primary language is not English, the form must be available in their native language, or appropriate translation must be provided.
- Charter schools must collect completed questionnaires and annually report the CDE the number of homeless and unaccompanied youths enrolled.

AB 408 – Homeless Reporting



- Under existing law, LEAs must designate a “liaison” for homeless children and youths and unaccompanied youths pursuant to federal law.
- Under AB 408, LEAs must specifically establish “homeless education program policies” that are consistent with the State’s laws protecting homeless youth and resources developed by the CDE.
 - LEAs must update these policies at least every three years.
- Liaisons must do both of the following:
 - 1. **Offer training to certificated and classified employees providing services to students experiencing homelessness**, including, but not limited to, teachers, support staff, and other school staff who work with pupils, at least annually relating to both of the following:
 - The school’s homeless education program policies
 - Recognition of signs that pupils are experiencing, or are at risk of experiencing, homelessness.

AB 408 – Homeless Reporting



- Liaisons are encouraged to offer the training described to all certificated and classified employees, including, but not limited to, teachers, support staff, and other school staff who work with students.
 - **2. Liaisons must Inform employees of the availability of training and the services the liaison provides to aid in the identification and provision of services to students who are experiencing, or are at risk of experiencing, homelessness.**
- The CDE is directed to develop and implement a plan for monitoring LEAs' compliance with these requirements.
- The CDE's monitoring plan is required to include **“schools site inspections to ensure that the state is not underestimating the number of youth experiencing homelessness.”**

AB 740 – Involuntary Removal and Suspension



- AB 740 modifies Charter Schools Act provisions on the required content of charter petitions in Element 10/J (suspension, expulsion, and involuntary removal policies and procedures) to **address protections for foster youth**.
- Existing law requires charter petitioners to contain **comprehensive descriptions of procedures by which pupils can be suspended or expelled for disciplinary reasons or otherwise involuntarily removed**, and affirm required notices to parents/guardians, and procedural and substantive protections.

AB 740 – Involuntary Removal and Suspension



- New charter petitions and charter petitions up for renewal or subject to material revision, and associated school suspension, expulsion, and involuntary removal policies and procedures, must provide for the following protections to foster youth:
 - The educational rights holder, attorney, and county social worker and an Indian child’s tribal social worker and, if applicable, county social worker, of foster youth **are entitled to the same rights as a parent or guardian** of a child to receive a suspension notice, expulsion notice, manifestation determination notice, involuntary transfer notice, and other documents and related information

AB 740 – Involuntary Removal and Suspension



- In the event a of foster youth is subject to **involuntary removal**, written notice must be provided to the foster child’s educational rights holder, attorney, and county social worker and, if applicable, the Indian child’s tribal social worker and, if applicable, county social worker.
 - **These same individuals are also empowered to initiate a hearing on an involuntary removal action**, i.e., a “hearing adjudicated by a neutral officer ... at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses, and at which the pupil has the right to bring legal counsel or an advocate.”

SB 532 – Graduation Requirements Exemptions



- Existing law requires LEAs (including charter schools) to exempt the following students who transfer after their second year of high school from all coursework and other requirements adopted by **that are in addition** to the statewide coursework requirements necessary to receive a diploma of graduation from high school:
 - a pupil in foster care
 - a pupil who is a homeless child or youth
 - a former juvenile court school pupil
 - a pupil who is a child of a military family
 - or a pupil who is a migratory child who transfers between schools any time after the completion of the pupil's 2nd year of high school
 - a pupil participating in an English language proficiency program for newly arrived immigrant pupils and who is in their 3rd or 4th year of high school.

SB 532 – Graduation Requirements Exemptions



- LEAs need not exempt these students from coursework requirements if they make a finding that the pupil is reasonably able to complete the local educational agency's graduation requirements in time to graduate from high school by the end of the pupil's 4th year of high school.

Statewide Minimum Coursework Requirements

- Three years of English
- Two years of mathematics (including Algebra I)
- Three years of social science (including U.S. history and geography; world history, culture, and geography; one semester of American government; and one semester of economics)
- Two years of science (including biology and physical science)
- Two years of physical education

SB 532 – Graduation Requirements Exemptions



- One year of foreign language or visual and performing arts or career technical education.
- These requirements are not specifically applicable to charter schools* except to the extent provided under SB 532, i.e., if a student is eligible for an exemption under SB 532, the charter school must allow students to graduate if they have fulfilled the above minimum course requirements.

*Charter Schools must require ethnic studies for students in the graduating class of 2029-30 and thereafter.

SB 532 – Graduation Requirements Exemptions



- If a student in one of the qualifying classifications **is reasonably able to complete the charter school’s graduation requirements within the student’s 5th year of high school**, the LEA shall
 - **“Consult”** with the student and their educational rightsholder regarding the option to remain in school for a fifth year (obligation under existing law was just to “inform” students of the option)
 - **“Consult”** with the student and their educational rights holder on how remaining in school for a fifth year will affect the student’s ability to gain admission to a postsecondary educational institution (obligation under existing law was just to “inform”)
 - **“Consult”** and provide information to the student about transfer opportunities available through California Community Colleges (obligation under existing law was just to “provide”)
 - **Permit the student to stay in school for a fifth year to complete the LEA’s graduation requirement (no change)**

SB 532 – Graduation Requirements Exemptions



- For foster youth or homeless youth, “consult” with the student and their educational rights holder regarding the student’s option to remain in their school of origin.
- To determine whether transferring students are in their third or fourth year of high school, schools have, to date, been required to **make a determination based on the number of credits the student has earned to date or the length of the student’s enrollment**, whichever would qualify the student for the exemption.
- Under SB 532, **for students with significant gaps in school attendance, the student’s age may be used**, as compared with the average age of students in their third or fourth year of high school, to the extent it will qualify the student for the exemption.

SB 532 – Graduation Requirements Exemptions



- **If a qualifying student is exempted from a charter school’s graduation requirements**, in addition to providing notification of the exemption, the charter school must also **consult with the pupil and the person holding the right to make educational decisions on how the exemption will affect the pupil’s ability to gain admission to a postsecondary educational institution**. Schools must
 - provide information about transfer opportunities available through the California Community Colleges:
 - Discuss other options available to the pupil, including, but not limited to, a fifth year of high school

SB 532 – Graduation Requirements Exemptions



- **Charter schools must provide eligible students the option to remain in school for a fifth year to complete the statewide coursework requirements**, if they are not reasonably able to complete the charter school's graduation requirements within the student's fifth year of high school, but is reasonably able to complete the statewide coursework requirements within the student's fifth year of high school.
- Requires charter schools to **reevaluate potentially qualifying students' eligibility within the first 30 calendar days of the next academic year after they were determined to be ineligible**
- Requires charter schools to annually report to the CDE the number of students who graduate with an exemption from graduation requirements that are in addition to the statewide coursework requirements, disaggregated by students graduating in the fourth year and fifth year cohorts, and disaggregated by student category.

Gun Safety and Violence Prevention



AB 452 – Firearm Safety



- Beginning in the 2023-24 school year, annually, at the beginning of the first semester, **Charter schools must distribute a notice to parents/guardians of each student addressing:**
 - **California’s child gun access prevention laws**
 - **laws relating to the safe storage of firearms.**
- Notice shall be “informed by the most updated model language developed” by the CDE.
- **CDE is required to develop the model language by July 1, 2023, and issue updates annually by July 1 thereafter**, as necessary to incorporate any legal changes.
- “A local educational agency, a private school, and the department are immune from civil liability for any damages allegedly caused by, arising out of, or relating to the notice if the entity provided the notice using the model language provided to it by the department.”
 - What if an LEA does not distribute the notice?

SB 906 – Homicide Threats



- SB 906 provides that a school official who is alerted to or observes any **threat or perceived threat** shall immediately report the threat or perceived threat to **law** enforcement.
 - The report shall include copies of any documentary or other evidence associated with the threat or perceived threat.
- “School official” means any certificated or classified employee of a local educational agency or member of the governing body of a charter school whose official duties bring the individual in contact with **pupils in any of grades 6 to 12**, inclusive, as part of a middle school or high school, on a regular basis.
- “Local educational agency” includes charter schools serving pupils in any of **grades 6 to 12**, inclusive, as part of a middle school or high school.

SB 906 – Homicide Threats



- “Threat or perceived threat” means any **writing or action** of a pupil that **creates a reasonable suspicion** that the pupil is **preparing to commit a homicidal act** related to school or a school activity.
 - This may include possession, use, or **depictions** of firearms, ammunition, shootings, or targets in association with infliction of physical harm, destruction, or death **in a social media post, journal, class note, or other media associated with the pupil.**
 - It may also **include a warning** by a parent, pupil, or other individual.
- “Reasonable suspicion” means **articulable facts**, together with rational inferences from those facts, warranting an objective suspicion.

SB 906 – Homicide Threats



- When two or more school officials jointly have an obligation to report, and when there is agreement among them, the report required under SB 906 may be made by any of them in a single report.
- A school official who has knowledge that the designated reporting school official has failed to make the single report shall make the report themselves.
- The investigation and threat assessment must include a search conducted at the schoolsite, only if the search is justified by a reasonable suspicion that it would produce evidence related to the threat or perceived threat.
- SB 906 states that **LEAs are immune** from civil liability for damages allegedly caused by, arising out of, or relating to the requirements of this law.

SB 906 – Homicide Threats



- Law enforcement are required keep a record of any report received pursuant to SB 906.
- **Upon receiving a notification of a threat, the local law enforcement agency must immediately conduct an investigation and assessment of any threat or perceived threat.**

COVID-19



SB 1479 – COVID-19 Testing Plans



- Law designates the California Department of Public Health to “coordinate COVID-19 testing programs in local educational agencies,” and provide technical assistance, guidance, monitoring, and testing education to LEAs, among other support.
- Each LEA (including charter schools) must either:
 - **create a COVID-19 testing** plan after consulting with its local health department regarding any local guidance or best practices from the Safe Schools for All Hub, shall create a COVID-19 testing plan, or
 - **adopt the May 27, 2022 “Preliminary Testing Framework for K-12 Schools for the 2022-2023 School Year”** issued by CDPH (as updated)
- **LEAs must publish their testing plan on their website**
- LEAs “may” designate one staff member to report information on its COVID-19 testing program to the State Department of Public Health.

SB 1479 – COVID-19 Testing Plans



- All COVID-19 testing data reported per LEAs plans must be in a format that “facilitates a simple process by which parents and local educational agencies may report data to [CDPH], or to a local health department, consistent with the framework.”
- Testing plans are **not** required to include the provision of onsite testing or programs.
- CDPH is not required to review or approve testing plans that are consistent with the framework before the testing plan is published or implemented.
- CDPH is required to determine which COVID-19 tests are appropriate for use for testing programs.
- **“Implementation of the provisions of this section are contingent upon an appropriation in the annual Budget Act or another statute for this purpose.”**
- Law remains in effect until January 1, 2026.

Employment



SB 931 Deterring Union Membership



SB 931 Penalties for Deterring Union Membership

- Authorizes employee organization to bring a claim before PERB that public employer was deterring or discouraging public employees or applicants to be public employees from becoming or remaining members of an employee organization, authorizing representation by an employee organization, or authorizing dues or fee deductions to an employee organization.
- Authorizes PERB to fine the public employer up to \$1,000 per each affected employee, up to \$100,000.

SB 931 Deterring Union Membership



- Requires PERB to consider annual budget, severity of the violation and any prior history of violations by the public employer in assessing the civil penalty.
- PERB shall award attorney's fees and costs to a prevailing employee organization unless the board finds the claim was frivolous, unreasonable, or groundless when brought, or the organization continued to litigate after it clearly became so.

AB 1949 Bereavement Leave



AB 1949 Bereavement Leave – pending def of employer

- Requires employers to give 5 days leave for qualifying family members (child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law).
- Employees must work 30 days to be eligible
- Leave may be unpaid except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

AB 1949 Bereavement Leave



- If an existing leave policy provides for less than five days of paid bereavement leave, the employee shall be entitled to no less than a total of five days of bereavement leave, consisting of the number of days of paid leave under the existing policy, and the remainder of days of leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

AB 1041 Employment Leave



AB 1041 Employment Leave

- Expands the categories of individuals for whom an employee may take leave under the California Family Rights Act and paid sick leave.
- Includes “any individual related by blood or whose association with the employee is the equivalent of a family relationship,” and includes domestic partners.
- An employer may limit an employee to one designated person per 12-month period.

AB 2188 Off Duty Marijuana Use



AB 2188 Off Duty Marijuana Use

- Takes effect **January 1, 2024**
- Prohibits adverse action based on an employee's use of cannabis off the job and away from the workplace or if a pre-employment drug test finds non-psychoactive cannabis metabolites in the applicant's hair, blood, urine, or other bodily fluids.

AB 2188 Off Duty Marijuana Use



- The law exempts employers in the building and construction industry and applicants and employees in positions requiring a federal background investigation or clearance. (e.g., school bus drivers likely treated different due to federal regulation)
- The law also does not preempt state or federal laws applicable to companies receiving federal funding or federal licensing-related benefits, or that have federal contracts.

SB 1044



SB 1044

- Allows employees to leave work or refuse to report to work during an “emergency condition,” defined as disaster or extreme peril to the safety at the workplace caused by natural forces or a crime, or an evacuation order due to a natural disaster or crime at the workplace, an employee’s home, or their child’s school. The law specifically excludes health pandemics from the definition of emergency condition.
- The law also prohibits employers from taking adverse action against an employee for refusing to report to or leaving work during an emergency condition.

SB 1044



- The law does not apply to first responders; disaster or emergency service workers; health care workers who provide direct patient care or emergency support services; employees who work on nuclear reactors, in the defense industry, or on a military base; and an “employee required by law to render aid or remain on the premises in case of an emergency.”

Minimum Wage and Exempt Employees



Minimum Wage and Exempt Employees

- The state minimum wage rises from \$15.00 to \$15.50 as of January 1, 2023.
- The minimum salary for exempt employees is tied to the state minimum wage, so this impacts exempt employee salaries in addition to hourly employee compensation.
- The new exempt minimum salary requirement will be \$5,373.33/month in 2023.
- Charter schools should carefully review exempt employee salaries.

AB 185 – Trailer Bill Recoupment of Overpayments to Employees



- New law provides specific protocols for addressing and recouping overpayments to school employees.
- When a charter school determines a wage overpayment has been made to an employees, it must notify the employee of the overpayment and give the employee an opportunity to respond before commencing recoupment actions.

AB 185 – Trailer Bill

Recoupment of Overpayments to Employees



- Reimbursement must be made through one of the following methods mutually agreed to by the employee and the school:
 - Cash payment or cash installment payments.
 - Installment payments through payroll deduction covering at least the same number of pay periods in which the error occurred.
 - When overpayments from the employer have occurred for more than one year, the employer may require full repayment from the employee through payroll deductions over the period of one year.
 - The adjustment of leave credits or compensating time off, so long as the overpayment involves the accrual or crediting of leave credits such as vacation, annual leave, holiday leave, or compensating time off. Any errors in sick leave balances may only be adjusted with sick leave credits.

AB 185 – Trailer Bill

Recoupment of Overpayments to Employees



- Installment payment deducted from an employee's salary or wages may not exceed 25 percent of the school employee's net disposable earnings for each payroll amount.
- Absent mutual agreement on a method of reimbursement, schools must proceed with recoupment through installment payments via payroll deductions.
- Recoupment from employees separating from employment:
 - Employees shall have an amount sufficient to provide full repayment withheld from any money owed to the employee upon separation.
 - If the amount of money owed to the employee upon separation is insufficient to provide full reimbursement to the school employer, the school employer shall have the right to exercise any other legal means to recover the additional amount owed.

AB 185 – Trailer Bill

Recoupment of Overpayments to Employees



- “Administrative action” may not be taken by the school employer to recover an overpayment unless the action is initiated within three years from the date of overpayment.
- If an overpayment involves leave credits, the date of overpayment is the date that the school employee receives compensation in exchange for leave erroneously credited to the employee.
 - Leave hours are considered exchanged for compensation in the order they were credited.
- If these recoupment procedures are in conflict with the provisions of a memorandum of understanding with a collective bargaining unit governing the same, that MOU shall be controlling.

Transitional Kindergarten



AB 185 – Trailer Bill

Class Size Cap Calculation



- Under existing law, charter schools offering TK are required to “[m]aintain an average transitional kindergarten class enrollment of not more than 24 pupils for each schoolsite.”
- Trailer bill provides clarifying definitions/formulas for calculating this average
- Law now specifically defines the word “class” to mean a group of pupils **scheduled to report regularly at a particular time to a particular teacher during the regular “school day,”** as defined by the school’s board.
 - Excludes special education special day classes, evening, and summer school classes.
 - Appears to exclude nonclassroom-based transitional kindergarten programs.

AB 185 – Trailer Bill

Class Size Cap Calculation



- “Average transitional kindergarten class enrollment” means the sum of the “average number of student enrolled per class” at a given schoolsite divided by the total number of classes at the schoolsite serving TK students, then rounded to the nearest half or whole integer.
- “Average number of pupils enrolled per class” means the sum of the “active enrollment counts,” divided by the total number of “active counts” for each class at the schoolsite.
- Result should be 24 or below to remain in compliance.
- **Beware of fiscal penalties for noncompliance!**

AB 185 – Trailer Bill

Class Size Cap Calculation



- An “active enrollment count” is defined as “the count of all pupils enrolled in a class with transitional kindergarten pupils on the first day of the school year . . . plus all later enrollees, minus all withdrawals since the first day.”
 - **Students continually enrolled in independent study for more than 14 schooldays during the regular 175-day school year are excluded from this count.**
 - Classrooms with kindergarten and TK students combined should be counted together.
- **Active enrollment is counted on the last teaching day of each school month** that ends before April 15 of each year, e.g., in alignment with ADA calculation based on “full school months”

AB 185 – Trailer Bill Adult to Student Ratio



- Existing law requires that TK classes be staffed at an average of at least **one adult for every 12 students** for transitional kindergarten classrooms (with at least one credentialed teacher per classroom)
- Trailer bill provides clarifying definitions/formulas for calculating this ratio
- “Number of adults” is defined as means “a count of the employees . . . assigned to each class at the schoolsite that includes transitional kindergarten pupils”
 - **Count must be conducted each school month** (like for the calculation of average class enrollment) and divided by the total number of counts
- “Adult-to-pupil ratio” means the total TK enrollment divided by the total number of adults, rounded to the nearest half or whole integer.
- **Beware of fiscal penalties for noncompliance!**

AB 185 – Trailer Bill Credentialing Requirements



- Existing law requires that **“teachers who are first assigned to a transitional kindergarten classroom after July 1, 2015, have, by August 1, 2023”** one of the following:
 - At least **24 units in early childhood education**, or childhood development, or both.
 - As determined by the LEA employing the teacher, **professional experience in a classroom setting with preschool age children that is comparable to 24 units** of early childhood education, or childhood development.
 - A **child development teacher permit**, or an early childhood education specialist credential, issued by the Commission on Teacher Credentialing.
- Trailer bill deletes **recent additions that the training must come from “regionally-accredited” two- and four-year institutions of higher education, that the units be nonremedial, be credit bearing, and not be professional development units.**
- Units need only be semester units, or their quarterly equivalent, as per degree programs at state colleges/universities or independent institutions of higher education.

AB 185 – Trailer Bill Credentialing Requirements



Caution for Nonclassroom-Based Charter Schools

- During Summer 2022, the CDE's posted guidance was that heightened TK credentialing requirements were “**best practices**” for independent study teachers assigned to TK students, but not explicitly required.
- **The CDE's latest guidance deletes the “best practices” language** and now indicates that independent study teachers of TK students must meet the heightened credentialing requirements:



Transitional Kindergarten Requirements

Presented by: The School Fiscal Services Division and the Early Education Division

CALIFORNIA DEPARTMENT OF EDUCATION
Tony Thurmond, State Superintendent of Public Instruction

Teacher Qualification Requirements

- EC 48000(g)(4)
- Beginning in 2023-24, credentialed teachers assigned to a TK class (including independent study) after July 1, 2015 must have **one** of the following by August 24, 2023:
 - At least 24 units in early childhood education, or childhood development, or both.
 - As determined and documented by the LEA employing the teacher, professional experience in a classroom setting with preschool age children meeting the criteria established by the governing board or body of the LEA that is comparable to the 24 units of education.
 - A child development teacher permit, or an early childhood education specialist credential, issued by the Commission on Teacher Credentialing.

AB 185 – Trailer Bill

Pre-Kindergarten Planning Grants



- Under prior law, deadline to adopt a prekindergarten plan was June 30, 2022; **deadline has been extended to March 30, 2023.**
- Funding formulas have been revised, based on 2021-22 kindergarten enrollment (was previously based on 2020-21 kindergarten enrollment)
- 2022-23 grant recipients must offer TK to all eligible students “**within their attendance area**” by the 2025-26 school year.
 - What does this mean for charter schools?
- Grant funds must be expended by June 30, 2026.
- Authorizes the CDE to initiate collection proceedings for unexpended funds and against LEAs that fail to submit required data reports

General Operations



SB 1397 – Emergency Teaching Permits



- **Until July 1, 2024, the CTC is required to waive the basic skills proficiency requirement for the issuance of an emergency 30-day substitute teaching permit.**
- **Basic skills requirement:**
 - Pass the CBEST
 - Pass the CSET
 - Pass the CSU Early Assessment Program/CSU Placement Exam
 - Achieve Qualifying Score on the SAT/ACT
 - AP Exam (3 or higher on AP English + AP Calculus or AP Stat)
 - Pass a basic skills exam from another state
 - College coursework, B or higher, in a reading course, writing course, and math course
- **Such a waiver may not be used to satisfy an applicable basic skills proficiency requirement for any other teaching credential, permit, or certificate.**
- **Credential applicants must continue to possess at least a bachelor's degree** from a regionally accredited institution of higher education and fulfill minimum subject-matter requirements.

AB 2355 – School Cybersecurity



- LEAs (including charter schools) are **now required report any cyberattack impacting more than 500 pupils or personnel to the California Cybersecurity Integration Center.**
- “Cyberattack” means either of the following:
 - 1) Any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by unauthorized access.
 - 2) The unauthorized denial of access to legitimate users of a computer system, computer network, computer program, or data.
- The California Cybersecurity Integration Center is required to establish a database that tracks reports of cyberattacks submitted by LEAs.
- Law is in effect until January 1, 2027

SB 955 – Excused Absences for Civic/Political Events



- Under existing law, students are entitled to be excused from school (and thus, daily compulsory school attendance) for a variety of reasons, such as illness, religious activities, cultural events, and the like.
- **Under SB 955, middle school and high school students must be excused from school for one school day long absence per school year for participating in a “civic or political event.”**
- A “civic or political event” includes, but is not limited to, voting, poll working, strikes, public commenting, candidate speeches, political or civic forums, and town halls.
- To be excused from attendance, **the student must notify the school ahead of the absence**
- School administration, in its discretion, may authorize additional excused absences for participation in civil/political events

SB 490 – Buy American Food Act



- LEAs, including charter schools, that receive **\$1 million or more per year in federal meal reimbursements** must purchase agricultural products grown, packed, or processed domestically beginning January 1, 2024, or when a current contract with a food supplier is renewed.
- “Agricultural food product” means a fresh or processed product, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, grains, livestock meats, poultry meats, and fish, including shellfish.
- “Domestic” means inside of the United States.
- The following purchases are exempt:
 - 1) The bid or price of the nondomestic agricultural food product is more than 25 percent lower than the bid or price of the domestic agricultural food product.
 - 2) The quality of the domestic agricultural food product is inferior to the quality of the agricultural food product grown, packed, or produced non-domestically.
 - 3) The agricultural food product is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality to meet the needs of the public institution.
- If a vendor substitutes an agricultural food product without notice or because a product is not available, the public institution shall not be in violation of this law

AB 185 – Trailer Bill LCFF Boost



- Trailer bill provides a 0.42 percent increase to LCFF in 2022-23, providing an effective LCFF funding increase of 13.26 percent over 2021-22.



AB 185 – Trailer Bill Learning Recovery Emergency Block Grant



- Legislature previously created the Learning Recovery Emergency Fund, a \$7.9 billion appropriation to support LEA and student needs as a consequence of the pandemic, including, e.g., through learning support, tutoring, literacy intervention, mental health and social and emotional well-being, stabilizing staff-to-student ratios.
- LEAs are required to report interim expenditures by December 1, 2024, and December 1, 2027, and a final report on expenditures no later than December 1, 2029.
- **Trailer bill now requires LEAs to make those reports using a template to be developed by the CDE.**
- **Trailer bill also requires LEAs to make these reports publicly available on their websites.**

AB 185 – Trailer Bill Kitchen Infrastructure Expenditure Reporting



- Legislature previously authorized grants for allocation to local educational agencies to expend on kitchen infrastructure upgrades that will increase pupil access to, or improve the quality of, fresh and nutritious school meals.
- Existing law required recipients to report their expenditures to the CDE by June 30, 2023.
- **Trailer bill delays reporting to June 30, 2024.**

AB 1664 – Nonprofit Security Grant Program



- Establishes the California State Nonprofit Security Grant Program to provide **grants of up to \$500,000 to improve the physical security of nonprofit organizations, including schools, that are at a high risk for violent attacks or hate crimes due to ideology, beliefs, or mission.**
- Grant money may be distributed to applicants for all of the following security enhancements:
 - Security guards.
 - Reinforced doors and gates.
 - High-intensity lighting and alarms.
 - Security training.
 - Any other security enhancement consistent with the purpose of the California State Nonprofit Security Grant Program.

AB 1664 – Nonprofit Security Grant Program



- Up to 5% of grant funds may be used to pay staff or third-party contractors or consultant to assist with the management and administration of grant funds
- Up to \$100,000 may be used on construction and revocation activities, e.g., installing additional emergency exist
- **Director of the Office of Emergency Services is responsible for developing and administering an application process**
- Operation of the program is contingent on an annual budget appropriation

Special Student Programs



AB 185 – Trailer Bill ELO-P Tweaks



- Provides clarification to Expanded Learning Opportunities Program operating conditions:
 - Now **allows days of instruction above 175 school days to count toward the ELO-P requirement to offer 30 additional days of extended school-year days.**
 - Thus, if a charter school operates on a 185-day calendar, they need only provide 20 additional extended-learning days to ELO-P participants.
 - Provides a **guarantee of three years of ELO-P funding for charter schools serving 75% or more unduplicated students**
 - We understand this to mean that if the unduplicated student population falls below 75% in year two or three that the funding rate of \$2,750 per student will remain constant

AB 102 – College and Career Access Pathways



- **Existing law authorizes community colleges to enter into partnerships with charter schools** through July 1, 2027, to develop “seamless pathways from high school to community college for career technical education or preparation for transfer, improving high school graduation rates, or helping high school pupils achieve college and career readiness.”
- New law extends period for entering into these partnerships **indefinitely**.
- Law also eliminates prior 10% cap on statewide “special admits” to community colleges

AB 2669 – Youth Services Organizations



- AB 506 took effect January 1, 2022 **requiring administrators, employees, and regular volunteers of a “youth service organization” to undergo criminal background checks to identify and exclude any persons with a history of child abuse.**
 - “Youth services organization” is a “private youth center, youth recreation program, or youth organization”
 - “Regular volunteer” means “a volunteer with the youth service organization who is 18 years of age or older and who has direct contact with, or supervision of, children for more than 16 hours per month or 32 hours per year.”
- Under AB 2669, **until January 1, 2024, the new background check requirement does not apply to youth service organizations that, prior to January 1, 2022, did not require administrators, employees, or regular volunteers to undergo background checks.**
- Urgency statute

AB 2669 – Youth Services Organizations



- Under AB 506, youth service organizations are required to develop and implement child abuse prevention policies and procedures, including policies requiring, to the greatest extent possible, **the presence of at least 2 mandated reporters whenever administrators, employees, or volunteers are in contact with, or supervising, children**
 - AB 2669 **excludes organizations from the “presence of two mandated reports” requirement where the organization provides one-to-one mentoring to youth** and the organization has developed and implemented policies to ensure
 - reporting of suspected incidents of child abuse to persons or entities outside of the organization,
 - comprehensive screening of volunteers,
 - training of volunteers and parents or guardians, and
 - regular contact with volunteers and parents or guardians

SB 941 – Instruction Collaboration Agreements



- SB 941 responds to class availability shortages created by a record shortage of teachers, exacerbated by the impact of the COVID-19 pandemic.
- **SB 941 allows LEAs (including charter schools) to enter into collaboration agreements whereby another LEA with classroom space or excess capacity shares facilities and opportunities with pupils from neighboring LEAs, in person or online.**
- Specifically, LEAs may enter into an agreement with one or more LEAs to offer the same or similar corresponding individual courses and coursework to a pupil from another LEA subject to the agreement who has been impacted by any of the following:
 - Disruptions or cancellations in STEM classes.
 - Disruptions or cancellations in dual language immersion programs.
 - Teacher shortages in STEM classes or dual language immersion programs.

SB 941 – Instruction Collaboration Agreements



- If the governing board of an LEA elects to accept pupils under this kind of arrangement, it must determine the number of pupils it is willing to offer the same or similar corresponding individual courses or coursework and must accept pupils who apply for the same or similar corresponding individual courses or coursework until the LEA is at maximum capacity.
- **The LEA accepting pupils must ensure that the pupils admitted are selected through an “unbiased process”** that prohibits an inquiry into, or evaluation or consideration of, whether or not a pupil should be authorized to participate in the course or coursework based upon the pupil’s academic or athletic performance, proficiency in English, physical condition, any of the individual characteristics set forth in Section 200, or family income.
- **If the number of pupils seeking a classroom opportunity exceeds the number of seats available in a classroom of the LEA offering to serve pupils from another LEA, the approval for study must be determined by a random drawing** held in public at a regularly scheduled meeting of the governing board of the LEA offering to serve pupils from another LEA.

SB 941 – Instruction Collaboration Agreements



- LEAs that enter into a collaborative agreement shall publicly post information to ensure that pupils and their families are aware of the opportunities to participate under the agreement. This publicly available information shall include, at a minimum, any applicable forms and the timelines for submissions pursuant to the agreement.
- **ADA attributable to a pupil authorized to participate in the course or coursework by an LEA pursuant remains with the LEA that the pupil originated from for purposes of state apportionment.**
- **Collaboration agreements must include an appropriate shared cost structure negotiated by the collaborating LEAs.**

Other Bills of Note



AB 1703 – California Indian Education Act



- **Encourages LEAs (including charter schools) to form California Indian Education Task Forces with California Indian tribes local to their region or tribes historically located in the region.** Participants in these meetings are encouraged to discuss issues of mutual concern and to work to do all the following:
 - Develop a thorough, shared understanding of accurate, high-quality curricular materials about the history, culture, and government of local tribes, and develop curricular materials for use within local educational agencies that include tribal experiences and perspectives and teach about the history, culture, and government of local tribes.
 - Develop a shared understanding of proper or improper instructional material when these materials use depictions of Native Americans.
 - Encourage local educational agencies to adopt curriculum developed by the California Indian Education Task Forces, in order to ensure that all pupils learn about the history, culture, government, and experiences of their Indian peers and neighbors, and to ensure that Indian pupils are more engaged and learn more successfully.

AB 1703 – California Indian Education Act



- Identify the extent and nature of the achievement gap between Indian pupils and other pupils and identify the strategies necessary to close it.
- Within one year of receiving task force reports,, and annually thereafter, the CDE is required to submit a report to the Senate Education Committee and the Assembly Committee on Education regarding
 - the progress made in the narrowing of the achievement gap for Indian pupils
 - the identification and adoption of curriculum regarding tribal history, culture, and government.
- **Does not impose specific obligations on charter schools but may spark greater focus on all LEAs' service to meeting the needs of Indian students and academic outcomes of Indian students.**

SB 692 – Least Restrictive Environment Reporting



- On or before November 30, 2023, **the CDE is required to publish data related to federal measures of least restrictive environment for pupils with disabilities on its website and as a “resource” on the Dashboard.**
- Rationale, according to the author:
 - **“California’s current rate of inclusion is 10 points lower the national average (53% versus 63% of SWDs are included in general education). In the last decade California has made almost no progress toward greater inclusion of students with disabilities in general education classes.**
 - **“Inclusion rates in California are among the lowest in the nation.”**
 - **“The inclusion of students with disabilities in general education classroom settings is an important predictor of positive outcomes.”**
- **Does not impose specific obligations on charter schools but may create new pressures with respect to placement decisions.**

AB 2598 – Restorative Justice Practices



- **By June 1, 2024, the CDE must develop evidence-based best practices for restorative justice practice implementation on school campuses** and make these best practices available on its website for LEAs as part of efforts to improve campus culture and climate.
- The CDE must consult with various stakeholder to develop and identify best practices for effective, evidence-based restorative justice practices in elementary and secondary schools.
- The CDE is encouraged to take into account resources and best practices that have been identified or developed as part of aligned efforts, including, but not limited to, the Scaling Up MTSS Statewide (SUMS) Initiative, the California Community Schools Partnership Program, and resources developed by the CDE in support of social-emotional learning.
- **Does not impose specific obligations on charter schools but may create standards against which charter schools are judged.**

SB 1487 – Teacher Resignation Surveys



- **CTC and CDE are required to create a survey, by July 1, 2023, to collect data from teachers of LEAs (including charter schools) resigning their positions or electing not to accept a teaching assignment for the upcoming school year, including data on whether or not they are exiting the profession.**
- LEAs are encouraged to administer the survey within 15 days of a teacher resigning or electing not to accept a teaching position for the upcoming school year.
- LEAs are encouraged to report survey results to the CTC annually
- Stated legislative intent is that the data from the surveys will be used to examine future statewide investments on teacher recruitment and retention efforts.
- **Does not impose specific obligations on charter schools but may be helpful for charter school data to be accounted for in these reports.**



Litigation and Cases



AB 2777 – Revival of Sexual Assault Claims



- **Existing law sets the time to file a lawsuit to recover damages suffered as a result of sexual assault**, as the later of within 10 years from the date of the last act, attempted act, or assault with the intent to commit an act of sexual assault against the plaintiff or within 3 years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from those acts.
 - Under existing law, this provision applies to any action that is commenced on or after January 1, 2019.
- Pursuant to AB 2777, until December 31, 2026, **claims to recover damages suffered as a result of a sexual assault that occurred on or after January 1, 2009 are revived**, to the extent they would otherwise be barred solely because the statute of limitations has or had expired.

AB 2777 – Revival of Sexual Assault Claims



- AB 2777 also **revives claims to recover damages as a result of a sexual assault that occurred on or after the plaintiff's 18th birthday when one or more entities are legally responsible for damages and the entity or their agents engaged in a cover up**, and any related claims, that would otherwise be barred prior to January 1, 2023, solely because the statute of limitations has or had expired,
 - Authorizes such a cause of action to proceed if already pending in court on the effective date of the bill or, if not filed by the effective date of the bill, to be commenced between January 1, 2023, and December 31, 2023.
- AB 2777 does not revive claims that have been litigated to finality before January 1, 2023, and claims that have been compromised by written settlement agreements entered into before January 1, 2023.
- **Possible that schools may see increased claims from former students and employees**

Peltier v. Charter Day School



- **North Carolina case on appeal to the U.S. Supreme Court raises issues of whether a charter school is a “state actor” or not for purposes of student claims.**
 - If a charter school is a “state actor,” charter schools can be sued for violations of students' rights under the U.S. Constitution and other federal laws.
 - If a charter school is not a “state actor,” charter schools cannot be sued for violations of students' rights under the U.S. Constitution.
- Charter school was sued by the ACLU, on behalf of students alleging that the school’s uniform policy violated federal law.
 - The uniform policy required boys to wear pants or shorts and required girls to wear skirts, skorts or dresses. Girls were allowed to wear leggings or pants under their skirts, skorts or dresses if the weather so required.
 - The school explained the uniform policy intended to treat boys and girls differently because girls are “fragile vessels” and boys would be taught to protect them and act chivalrously towards them if they dressed differently.

Peltier v. Charter Day School



- Students argued that the charter school was a “state actor” because it was a public school, and that therefore, students had viable equal protection claims against their school.
- School argued that the charter school was not a “state actor” because it was operated by a private non-profit corporation (i.e., like many charter schools in California) and therefore students could not maintain an equal protection claim against the school
- 4th Circuit Court of Appeal held that charters schools, as public schools, are “state actors” for purposes of student claims alleging violations under the U.S. Constitution
- Outcome is seemingly inconsistent with 9th Circuit authority (California)

What would the potential outcomes before the U.S. Supreme Court mean for California charter schools?

Kennedy v. Bremerton School District



- **School district disciplined high school football coach for praying on the football field post-game.**
- **School district argued that it had to shut down this activity to avoid violation of the Establishment Clause under the U.S. Constitution**
- Court ruled that prayers were protected by the First Amendment's free speech and free exercise of religion clauses.
- The Court held that the Constitution neither requires nor permits school districts to suppress such religious expression by employees, and that employee was entitled to pray on the football field.
- Court appeared to distinguish between religious expression on campus while the employee performed in their "official duties" versus religious expression while there was a "lull" in the employee's official duties
 - What does this mean for charter schools?
 - Can employees engage in religious activities while "on the job"?

Employment Cases



- We have seen an uptick in claims from aggrieved employees asserting:
 - Wrongful termination
 - Retaliation
 - Defamation
 - Contractual breaches
- Key takeaways
 - Take care in documenting the basis for termination, but be careful in communicating the reason for termination to the employee – best to consult with legal counsel
 - Investigate employee complaints by the book
 - Avoid public statements and maintain confidentiality
 - Utilize correct Brown Act procedures for addressing employee discipline
 - Know the school's contractual obligations and rights



Governance



AB 2449 – New Teleconferencing Option



New Teleconferencing Option

- Signed by the Governor on September 13, 2022; effective on January 1, 2023
- Amends the Brown Act teleconferencing rules to allow relaxed teleconferencing requirements for members' personal **emergencies** and for **just cause**
- Allows teleconferencing without any obligation to
 - Identify the teleconferencing location on the agenda
 - Allow public access to the teleconferencing location
- Member must participate through both audio and visual technology

AB 2449 – New Teleconferencing Option



Teleconferencing is available under these rules where one of the following circumstances applies:

- The member notifies the governing board at the earliest opportunity possible, up to the start of a regular meeting, for **just cause** up to twice per calendar year
- The member requests to participate in the meeting remotely due to **emergency circumstances** and the governing board takes action to approve the request.
 - A general description of an item generally need not exceed 20 words (no need to disclose medical diagnosis or disability, or any personal medical information that is already exempt under existing law)

AB 2449 – New Teleconferencing Option



“Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person.

“Just cause” means any of the following:

- A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely.
- A contagious illness that prevents a member from attending in person.
- A need related to a physical or mental disability as defined in law and not otherwise accommodated
- Travel while on official business of the governing board or another state or local agency.

AB 2449 – New Teleconferencing Option



Teleconferencing based on an **emergency** requires that:

- The member shall make a request to participate remotely as soon as possible.
- The member must make a separate request for each meeting in which they seek to participate remotely.
- If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting.

AB 2449 – New Teleconferencing Option



- Under no circumstances can a member participate in meetings solely by teleconference from a remote location for a period of more than:
 - three consecutive months;
 - 20 percent of the regular meetings within a calendar year;
or
 - more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

AB 2449 – New Teleconferencing Option



Other requirements:

- At least a quorum of members must participate in person from a singular physical location clearly identified on the agenda and which is open to the public and situated within the local agency's jurisdiction.
- Members of the public must be provided a means to “remotely hear and visually observe the meeting, and remotely address” the governing board, ” i.e., a two-way audiovisual platform or a two-way telephonic service and a live webcasting of the meeting.
- Agenda must provide notice of how members of the public can access the meeting and provide public comment. Cannot require public comments to be submitted in advance.

AB 2449 – New Teleconferencing Option



- If the broadcast is disrupted, the board may not take action until remote access to the meeting is restored.
- Board cannot require public comments to be submitted in advance.
- The member shall publicly disclose before any action is taken, if any individuals 18 years of age or older are present in the room at the remote location, and the general nature of the member's relationship with any such individuals.

AB 2647 – Board Meeting Writings



New Option to Provide Agenda-Related Documents to the Public

- Effective January 1, 2023
- Currently, the Brown Act requires writings related to an agenda item that are distributed to a majority of the members of a legislative body less than 72 hours before the meeting be made available for public inspection at the time the writing was distributed.
- Currently, a local agency must make the writing available for public inspection at a public office or location designated for such purpose, and the agenda must list the address of the office or location.
- AB 2647 provides an alternative to making writings available for public inspection at a public office or location within the 72-hour timeframe.

AB 2647 – Board Meeting Writings



- Under AB 2647, an agency may post materials on the agency's website, but the agency must meet all of the following requirements:
 - 1) An initial staff report or similar document containing an executive summary and the staff recommendation, **if any**, relating to that agenda item is made available for public inspection at the designated office or location at least 72 hours before the meeting;
 - 2) The agency immediately posts the writing on its website in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting;

AB 2647 – Board Meeting Writings



- 3) The agency lists the web address of the agency's internet website on the agendas for all meetings of the legislative body of that agency; and
- 4) The agency makes physical copies available for public inspection, beginning the next regular business hours for the local agency, at the designated office or location.

This requirement is satisfied only if the next regular business hours of the local agency commence at least 24 hours before that meeting.

AB 2647 – Board Meeting Writings



- AB 2647 does not change the Brown Act's requirement that writings distributed during a public meeting must be available for public inspection at the public meeting if prepared by the agency or a member of its legislative body, or after the meeting if prepared by some other person.
- The writings must be made available in appropriate alternative formats upon request by a person with a disability

SB 1100 – Disruptive Members of the Public



Addressing Disruptive Members of the Public

- Signed by the Governor on August 22, 2022; effective on January 1, 2023
- Adds a new section to the Brown Act authorizing the presiding member of the governing board conducting a meeting or their designee to **remove, or cause the removal of, an individual for disrupting the meeting.**

SB 1100 – Disruptive Members of the Public



- “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:
 - a) A failure to comply with reasonable and lawful regulations or policies adopted by a legislative body related to public comment, or any other law.
 - b) Engaging in behavior that constitutes use of force or a true threat of force.

SB 1100 – Disruptive Members of the Public



- A “**true threat of force**” means “a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.”

SB 1100 – Disruptive Members of the Public



- Before removing an individual, the presiding member or their designee **must warn the individual** that their behavior is
 - 1) disrupting the meeting and
 - 2) that their failure to cease their behavior may result in their removal.
- The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior.
- The warning requirement does not apply to behavior constituting a “**true threat of force.**”

AB 2158 – Ethics Training



- Signed by the Governor on September 13, 2022, effective January 1, 2023; subject to a ramp up period for full compliance by January 1, 2026
- Existing law has required members and certain employees of cities and counties to engage in **two hours** of ethics training “revenue” to their public service” **every two years**
- AB 2158 adds charter schools to the list of **local agencies** subject to the biennial training requirement and extends the training obligation to members of charter school boards

AB 2158 – Ethics Training



“Ethics laws” include, but are not limited to, the following:

- 1) Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.
- 2) Laws relating to claiming perquisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.

AB 2158 – Ethics Training



- 3) Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.
- 4) Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.

AB 2158 – Ethics Training



Requirements

- The Fair Political Practices Committee and the Attorney General must be “consulted” in connection with the development of course materials
- Charter schools must provide their officials with information on how they can meet the training requirements at least once annually
- Charter schools must maintain records for at least five years after the training was provided indicating
 - The dates that officials satisfied the training requirements
 - The entit(ies) that provided the training

AB 2158 – Ethics Training



Applicability and Timing

- Not applicable to board members whose terms will expire before January 1, 2026
- All other board members seated as of January 1, 2025 must receive the required training by January 1, 2026 and retrain at least once every two years thereafter
- What about charter school employees?
- Does this training count towards the new “ethics training” requirement?
- Would a training on January 1, 2023 count?

AB 2158 – Ethics Training



Applicability

- Not applicable to board members whose terms will expire before January 1, 2026
- All other board members seated as of January 1, 2025, must receive the required training by January 1, 2026, and retrain at least once every two years thereafter

AB 2158 – Ethics Training



Applicability

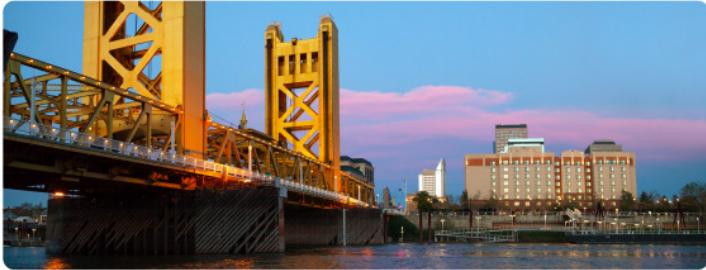
- What about charter school employees?
- What about training requirements in charters and MOUs?



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Questions?

THANKS FOR ATTENDING TODAY!

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