



What's New in 2014? Select Student Laws and Trends for Discussion

**ACSA Every Child Counts Symposium
January 16, 2014**

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Presented by:

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AB No. 133: Mandates Digital Copies of Instruction Materials

- Assembly Bill No. 133 (Hagman) requires any publisher or manufacturer submitting printed instructional material for adoption by the State Board of Education (SBE), or for adoption or use by the governing board of a school district, to ensure the materials are also available in an equivalent digital format during the entire term of the adoption.
- The act also requires that materials meet accessibility standards for students with disabilities and web content guidelines.

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SB No. 185: Prohibits Bundling of Instructional Materials by Publishers and Allows Creation of a Digital Database

- Senate Bill No. 185 (Walters) requires publishers to offer instructional materials as unbundled elements and specifies that school districts, county offices of education, or charter schools may negotiate the price of standards-aligned instructional materials and supplemental instructional materials in a printed or digital format.
- This act also authorizes a school district to use instructional materials it purchased in digital format to create a district-wide online digital database for classroom use.

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AB No. 484: Establishes MAPP in Place of STAR Program

- Assembly Bill No. 484 (Bonilla) repeals the Education Code provisions establishing the Standardized Testing and Reporting (STAR) Program.
- In lieu of STAR, it establishes the Measurement of Academic Performance and Progress (MAPP), commencing with the 2013-14 school year, to be developed and implemented by the Superintendent of Public Instruction (SPI), Tom Torlakson.

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AB No. 484: Establishes MAPP in Place of STAR Program (cont'd)

- The MAPP is to be composed of:
 - A consortium summative assessment in English language arts and mathematics for grades 3 to 8, inclusive, and grade 11;
 - Science grade level assessments in grades 5, 8, and 10, measuring specified content standards;
 - The California Alternate Performance Assessment in grades 2 to 11, inclusive, in English language arts and mathematics and science in grades 5, 8, and 10; and,
 - The Early Assessment Program.

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AB No. 484: Establishes MAPP in Place of STAR Program (cont'd)

- Starting in 2014-2015, for purposes of the Early Assessment Program, the California Standards Test and the augmented California Standards Tests in English language arts and mathematics may be replaced with the grade 11 consortium computer-adaptive assessments in English language arts and mathematics.
- Suspends API scores for the 2013-14 and 2014-15 school years, upon approval of the state board, due to a determination by the SPI that a transition to new standards-based assessments would compromise comparability of results across schools or school districts.

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SB No. 247: Authorizes Diagnostic Testing of 2nd Graders In Lieu of STAR

- Senate Bill No. 247 (Liu), a companion bill to AB 484, suspends STAR testing requirements for 2nd grade students and requires the California Department of Education (CDE), by November 1, 2014, to identify and make available to school districts information regarding existing assessments in language arts and mathematics aligned to the adopted common core academic content standards for pupils in grade 2 for diagnostic use by classroom teachers.

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AB 484 & SB 247: Impact

- Full suspension of STAR testing in mathematics and English-language arts.
- Still in place:
 - Science tests;
 - Voluntary primary language assessments; and,
 - Specialized Assessments for students with severe disabilities.

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AB 484 & SB 247: *Impact* (cont'd)

- SPI, Tom Torlakson: "It's time for a clean break from assessments that are out of date and out of sync with the work our schools are doing to shift to the Common Core and help students meet the challenges of a changing world." (CDE News Release, #13-81)
- "rote memorization of facts" v. actual measure of "how students apply knowledge and solve complex problems." (CDE News Release, #13-81)

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AB 484 & SB 247: *Impact* (cont'd)

- Field tests set for spring of 2014.
 - "Tests of the tests"
 - To help refine MAPP testing.
 - Restricts use of data from field tests to test development purposes *only*.
- Suspension will free up instructional space.
 - Not forcing teachers to incorporate common core standards and new assessments while still preparing students for STAR testing.

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AB 484 & SB 247: *Concerns*

- Conflict with Federal law
 - California's initial proposal for administration of MAPP field tests along with suspension of STAR testing put California at risk for being out of compliance with Federal Testing Mandates.
 - California recently proposed testing 95% of students in both Math and ELA field tests.
 - State applying for "double testing" waiver from the Federal government
 - "Allow students to avoid wasting valuable learning time by taking both the field test and a separate end-of-year state test." (November 21, 2013 CDE News Release, #13-116)

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AB No. 256: Bullying Definition of *Electronic Acts for Which a Pupil May Be Disciplined Includes Messages Created and Transmitted off Campus*

- Assembly Bill No. 256 (Garcia) amends the definition of "electronic act" in the context of disciplining a pupil for bullying, to include electronic communications created and/or transmitted both on and off campus.

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AB No. 256: *Impact*

- Does AB 256 expand traditional notions of school district jurisdiction involving student discipline?
 - "... related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following:
 - (1) While on school grounds.
 - (2) While going to or coming from school.
 - (3) During the lunch period whether on or off campus.
 - (4) During, or while going to or coming from, a school-sponsored activity." (Education Code 48900(s).)

Wynar v. Douglas County School District (2013)

- California Court of Appeal affirmed student discipline arising out of off-campus speech posted on MySpace.
- Court applied *Tinker v. Des Moines Independent Community School District* (1969) 393 U.S. 503.



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Wynar v. Douglas County School District (cont'd)

- Under *Tinker*, schools may discipline students for speech that
 - Might result in substantial disruption of or material interference with school activities; or
 - Collides with the rights of other students to be secure and let alone.
- Caution: *Tinker* may not apply to all off-campus speech, but it does apply to identifiable threats of school violence

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Wynar v. Douglas County School District (cont'd)

- Substantial Disruption or Material Interference with School Activities
 - Do not have to wait for an actual disruption before taking action
 - Courts will evaluate all of the circumstances confronting school officials
 - Catastrophic harm – school shootings – explicitly invoked the deadliest shooting ever
 - Explicitly named the school, a date, classmates
 - Indicated access to weapons and ability to carry out the threat

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Wynar v. Douglas County School District (cont'd)

- Invasion of the Rights of Others
 - Not enough that speech is offensive to some listener
 - Threatening student body as a whole and targeting specific students by name is enough

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AB No. 1068: Grants Access to Pupil Records to Pupils 14 and Older

- Permits access to records to a pupil who is 14 years of age or older, if the pupil is both a homeless child or youth and an unaccompanied youth.
- Permits access to pupil records to an individual who has completed and signed a Caregiver's Authorization Affidavit for purposes of enrolling a minor in school.

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CALIFORNIA'S THOUGHT LEADERS
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AB No. 1068: Grants Access to Pupil Records to Pupils 14 and Older

- Companion Bill AB 643: Permits access to specified pupil records by caseworker or other representative from child welfare agency.
- Prohibits the release of directory information concerning homeless youth unless the parent, or a pupil meeting the requirements of the act, has given written consent for release of that information.

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CALIFORNIA'S THOUGHT LEADERS
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AB No. 1068: Impact

- Will help close achievement gap between children in foster care and their peers by providing youth with additional support to avoid issues such as inappropriate course placement and lost credits due to changing schools.
- Allows homeless and unaccompanied youth to access their own records or give consent to disclose their own records to advocates, community agencies, health care providers, etc.
- Protects the privacy of homeless and unaccompanied youth.

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AB No. 1266: Requires School Districts to Permit Pupils to Access Programs and Facilities Consistent with Their Gender Identity

- Assembly Bill No. 1266 (Ammiano) amends Education Code section 221.5 to add subsection (f) which requires that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records.

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AB 1266: Current Law

- California law defines **gender** to mean sex, and includes a person's gender identity and gender expression, meaning the person's gender related appearance and behavior, whether or not stereotypically associated with the person's assigned sex at birth.
- Gender also includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics. (Ed. Code, §§ 210.2 and 210.7; Cal. Code Regs., title 5, § 4910(k).)

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AB 1266: *Current Law* (cont'd)

- Public schools are prohibited from discriminating in any program or activity on the basis of gender, gender identity, or gender expression. (See Ed. Code, § 220.)
- "Gender expression" includes "a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth." (See Ed. Code, § 210.7.)
- Moreover, if participation in a particular physical education activity or sport is required by students of one gender, it must be available to both genders. (See Ed. Code, § 221.5(e).)

AB 1266: *Current Law* (cont'd)

- Education Code section 220 imposes an **affirmative obligation** on schools to combat sexism, harassment and bullying, and other forms of unlawful bias and behavior based on it. (See Ed. Code, § 220.)
- Education Code section 200 requires school districts to provide all pupils **equal rights and opportunities** in the educational institutions of the state. (See Ed. Code, § 200.)
- Education Code section 234.1 requires school district's anti-bullying policies to include a requirement that, if school staff witness an act of discrimination, harassment, intimidation or bullying, they take **immediate steps to intervene** when safe to do so. (See Ed. Code, § 234.1.)

AB 1266: *Impact* (cont'd)

- AB 1266 (new Section 221.5(f)) seeks to implement these policies by further delineating anti-discrimination requirements to ensure equal access to school educational programs and activities.
- Overall goals are:
 - To promote a safe and accepting learning environment where bullying, harassment, and discrimination are not tolerated; and,
 - To eliminate hostile learning environments that undermine students' ability to feel safe at school and focus on their education.

AB 1266: *Impact* (cont'd)

- Section 221.5(f) provides, in full:

“A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.”
- This provision requires public schools to ensure transgender students are afforded an **equal educational opportunity** through access to the facilities, programs and activities that correspond with their gender identity.

AB 1266: *Impact* (cont'd)

SUMMARY OF RIGHTS

- **Names/Pronouns:** Students should be addressed by a name and pronoun that corresponds to their self-chosen gender identity, regardless of assigned sex.
- **Dress Codes:** Students must have the right to dress in accordance with their gender identity, within the constraints of the dress code adopted at their school site.

AB 1266: *Impact* (cont'd)

- **Accessibility of Single-Sex Facilities, Programs and Classes (e.g. Restroom, Locker Room, Sports Teams, Gym Classes):** Students must be allowed equal access to all facilities, programs and activities that correspond to their gender identity. Transgender students who desire increased privacy should be provided with alternative accommodations, but in *no case* may the student be required to use a particular facility or facility that is different than that which is provided to students generally as the accommodation.

AB 1266: *Impact* (cont'd)

- **Gender Segregation in Other Areas:** As a general rule, in any other circumstances where students are separated by gender in school activities, students shall be permitted to participate in accordance with their gender identity.
- **Discipline:** Staff who discriminate against a student based on his or her gender identity are subject to progressive discipline.
- **Official Records:** The District should change a student's records to reflect a change in legal name or gender upon receipt of documentation of a legal change in status. Can records be changed upon parent or student request without a court order? (Cal.Ed.Code §49070.)

AB 1266: *Best Practices*

- School staff and administrators should treat a transgender (or gender non-conforming) student as the gender with which he or she identifies - *just* as they would any other student of that gender.
- Designate a school site and District administrator to handle parent, student, and staff questions or concerns.



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Cuff v. Grossmont Union High School District (2013)

- District and its employees are not absolutely immune from liability when acting as a mandated reporter under the Child Abuse and Neglect Reporting Act (CANRA).
- The school district and its employees may be held liable for disclosing a child abuse report to any person or entity other than those specified in CANRA.

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Cuff (cont'd)

Even though the school counselor was a mandated reporter, the appellate court held she was obligated to report only to statutorily-identified agencies and no others. Thus, any immunity the school counselor would have enjoyed as a mandated reporter was eradicated because she shared the report with the children's father and parents are not included in the list of entities specified in CANRA with whom such reports may be shared.

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Cuff (cont'd)

- Court rejected the district's argument that it was immune from liability for furnishing a copy of the suspected child abuse report to Godfrey pursuant to the pupil records provision, Education Code section 49076.
- The court held that the asserted provision referred to "pupil records" and that a suspected child abuse report was not a "pupil record." If it were, it would render such confidential reports disclosable to a number of unintended persons.

Cuff (cont'd)

Impact

- Mandated reporters remain bound by the limitations set forth in CANRA.
- Suspected child abuse reports must be kept confidential and can only be disclosed to the agencies specifically identified in CANRA.
- Public employees are prohibited from sharing suspected child abuse reports with a person or agency not named in the statute, including parents and other caretakers of the subject minor.

Mandated Reporting Pop Quiz

1. Sixth grade student, Jimmy, informs his middle school principal: "My dad spanked me for forgetting to do my homework." Duty to report?
2. Floyd has a bruise on his arm. Teacher sends Floyd to the nurse. Teacher knows Floyd plays lacrosse. Duty to report?

Mandated Reporting Pop Quiz

3. Teacher sees eighth grade student, Reed, looking at his cell phone intently. Teacher looks over Reed's shoulder and sees a picture of another student, who appears to be nude. Teacher confiscates the cell phone, and questions student about the picture. Reed explains convincingly: "That picture isn't real – it's photoshopped." The picture does look a bit odd. Duty to report?

Mandated Reporting Pop Quiz

4. Teacher shows the picture to the Educational Technology teacher, Brooke Haynes. Ms. Haynes tells Teacher: "I think the picture might be legit. You should call the police." Teacher reports to law enforcement. All good?

Mandated Reporting

- School administrators and employees are mandated child abuse reporters under Penal Code section 11165.7, subdivision (a), and thus could potentially be subjected to liability for their failure to report suspected child abuse or neglect.

(Pen. Code, § 11166, subd. (c).)

Mandated Reporting

- Penal Code section 11165.9 requires mandated reporters to report suspected child abuse or neglect "to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department."

Mandated Reporting: Child Abuse or Neglect

- "Child abuse or neglect" includes
 - physical injury or death inflicted by other than accidental means upon a child by another person,
 - sexual abuse as defined in Section 11165.1,
 - neglect as defined in Section 11165.2,
 - the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and
 - unlawful corporal punishment or injury as defined in Section 11165.4.

(Pen. Code, § 11165.6.)

Mandated Reporting: Child Abuse or Neglect

- Not:
 - An amount of force that is reasonable and necessary
 - For a person employed by or engaged in a public school to quell a disturbance threatening physical injury to person or damage to property;
 - For purposes of self-defense,
 - To obtain possession of weapons or other dangerous objects within the control of the pupil, as authorized by Section 49001 of the Education Code.
 - The exercise of the degree of physical control authorized by Section 44807 of the Education Code.
 - An injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.
(Pen. Code, § 11165.6.)

Mandated Reporting: Child Abuse or Neglect

- "Unlawful corporal punishment or injury" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.
(Pen. Code, § 11165.4.)



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Mandated Reporting: Lawful Corporal Punishment?

- Is a spanking a “cruel or inhuman corporal punishment or injury resulting in a traumatic condition”?
- If a student reports having received a spanking from a parent, must an educator make a report ?

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Mandated Reporting: Child Abuse or Neglect Education Code section 44807

“A teacher, vice principal, principal, or any other certificated employee of a school district, shall not be subject to criminal prosecution or criminal penalties for the exercise, during the performance of his duties, of the same degree of physical control over a pupil that a parent would be legally privileged to exercise but which in no event shall exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning.”

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Mandated Reporting: Sexual Abuse

- "Sexual abuse" includes "sexual assault" and "sexual exploitation." Both terms are defined by Penal Code section 11165.1.
- "Sexual exploitation" refers to any of the following:

"(1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).

Mandated Reporting: Sexual Abuse

"(2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct. For the purpose of this section, 'person responsible for a child's welfare' means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.



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Mandated Reporting: Sexual Abuse

“(3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.”

(Pen. Code, § 11165.1(c).)

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Mandated Reporting: Lawful Corporal Punishment?

- Does a “sext” trigger the duty to report?

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Mandated Reporting "Reasonable Suspicion"

- Reasonable suspicion "means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect.
- "'Reasonable suspicion' does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any 'reasonable suspicion' is sufficient."
- Pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(Pen. Code, § 11166, subd. (a)(1).)

Mandated Reporters: No Substitute for Reporting

- Providing the information of suspected child abuse or neglect to "an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9."

(Pen. Code, § 11166, subd. (i)(3).)



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Mandated Reporting Pop Quiz

- If two educators have reasonable suspicion of abuse or neglect, does the report by one discharge the other's duty?

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AB No. 86: *Overhauls Hughes Bill*

- Assembly Bill No. 86 (Committee on Budget) is the education finance trailer bill containing a variety of unrelated statutory amendments affecting schools.
- Effective July 1, 2013, among other items, AB No. 86 overhauls the Hughes Bill (Education Code sections 56520-56525) to eliminate state law requirements regarding behavioral intervention plans and functional analysis assessments (FAAs) and to align California law on assessing and addressing special education students behavior to federal law, which requires the use of positive supports and interventions and plans for the same.

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AB 86: *Impact*

- AB 86 amended, among other statutes, California Education Code section 56520 to make clear:

"[t]hat assessments and positive behavioral interventions and supports [will now] be developed and implemented in a manner informed by guidance from the United States Department of Education and technical assistance centers sponsored by the Office of Special Education Programs of the United States Department of Education." (subd. (b)(2).)

AB 86: *Impact* (cont'd)

Immediate practical effects:

- California Code of Regulations Section 3052 is **repealed entirely**. (per Ed. Code, § 56523(a).)

– Section 3052 meticulously dictated the need for, process to develop, and content requirements of Functional Analysis Assessments ("FAA") and Behavior Intervention Plans ("BIP").

AB 86: *Impact* (cont'd)

- California Code of Regulations section 3001 **definitions repealed**: (Ed. Code, § 56523(a).)
 - Subdivision (d) [“behavioral emergency”],
 - Subdivision (e) [“behavioral intervention”],
 - Subdivision (f) [“behavioral intervention case manager”],
 - Subdivision (g) [“behavior intervention plan”], and
 - Subdivision (ab) [“serious behavior problems”].

AB 86: *Impact* (cont'd)

- Involvement of a behavior intervention case manager (BICM) no longer required by law. (Ed. Code, § 56525.)
 - BICMs – like FAAs – are the creations of California special education regulations. Because AB 86 conforms California behavior intervention laws with federal laws, legal requirements of BICM involvement in assessment, formulation of BIPs, or attendance at IEP team meetings have been eliminated.

AB 86: *Impact* (cont'd)

- School districts no longer obligated to conduct FAAs pursuant to former section 3052(b)
 - Individualized education program (IEP) teams must determine whether a functional behavioral assessment (FBA) should be conducted when a behavioral emergency report is issued for a student who does *not* have a behavior intervention plan (BIP). (See Ed. Code, § 56523(a), and newly added § 56521.1(g).)

AB 86: *Impact* *FBAs*

- Unlike FAAs, which were heavily regulated by state law, FBAs are only briefly referenced in the IDEA and its implementing regulations in the context of discipline. (20 U.S.C. § 1415(k)(1)(B)(i); 34 C.F.R. § 300.530(d)(1)(ii), (f)(1)(i).)
- FBAs are explicitly required in two circumstances, and are not otherwise defined by federal or state laws or regulations.

AB 86: Impact FBAs (cont'd)

A student with a disability who has been, or will be, removed for more than 10 school days within a school year for violation of school rules, or one who is subject to a disciplinary removal that constitutes a change in placement, must receive, "as appropriate, a FBA, and behavioral intervention services and modifications ... designed to address the behavior violation so it does not recur." (34 C.F.R. § 300.530(d)(1)(ii).)

AB 86: Impact FBAs (cont'd)

If the school district, parent, and relevant members of the IEP team determine that the conduct which violated school rules was a manifestation of the student's disability, the IEP team must either:

- Conduct a FBA and implement a BIP (unless FBA had been conducted prior to behavior that resulted in change of placement); or
- If BIP already developed, review and modify it as necessary to address the behavior.

(34 C.F.R. § 300.530(f)(1).)

AB 86: Impact FBAs (cont'd)

- But FBAs are NOT limited to these circumstances!
- FBAs are an assessment tool – which require written consent of the parent (*Letter to Christiansen* (OSEP 2007) 48 IDELR 161) – to identify the function of a behavior that impedes learning and develop strategies to replace it.

AB 86: Impact FBAs (cont'd)

When to conduct an FBA:

- When student exhibits patterns of challenging behavior;
- When a change in placement is made as a result of a school discipline procedure;
- When current behavioral intervention plan is not changing the pattern and/or outcome of behavior.

(See *generally* OSEP Center on Positive Behavioral Interventions and Supports, pbis.org.)

AB 86: *Impact Emergency Interventions*

- Newly added section 56521.1 requires the following procedure:
 - Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the student or others;
 - If an emergency intervention is used, the District must notify the student's parent/guardian within one school day;

AB 86: *Impact Emergency Interventions (cont'd)*

- District must complete a behavioral emergency report to be maintained in the student's file and sent to the designated administrator.
- The report shall include (i) the name and age of the student, (ii) the setting and location of the incident, (iii) the name of the staff or other persons involved, (iv) a description of the incident and the emergency interventions used, and whether there is a current BIP, and (v) details of any injuries.

AB 86: *Impact* *Emergency Interventions* (cont'd)

- For a student who does not have a BIP, District must schedule an IEP team meeting within two days for the team to determine whether an FBA should be conducted or an interim plan is necessary.
- For a student who does have a BIP, if a new behavior is seen or an intervention is ineffective, the IEP must meet to determine whether the BIP should be modified.

AB 86: *Impact* (cont'd)

In general, the IEP team must still consider the use of positive behavioral interventions and supports, along with other strategies to address a child's behavior that impedes the learning of that child or others, in accordance with Section 1414(d)(3)(B)(i) and (d)(4) of Title 20 of the United States Code and associated federal regulations.

AB 86: *Impact* (cont'd)

- Section 1414(d)(3)(B)(i) provides:

“(B) Consideration of special factors

The IEP Team shall—

(i) in the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior...”

AB 86: *Impact* (cont'd)

- AB 86 does **not** alleviate school districts’ obligations to address student’s behavior.
- Rather, it eliminates the rigid state law requirements and aligns state law with federal law, primarily the Individuals with Disabilities Education Act (“IDEA”).
- Indeed, Ed. Code, § 56520 provides: “It is the intent of the Legislature: (1) That children exhibiting serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions” in accordance with the IDEA.



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AB 86: *Impact* (cont'd)

- Positive supports and interventions should be developed and/or enhanced if the student's behavior is impeding his learning, or the learning of other students.
- Should an emergency intervention occur, the procedure detailed in newly added Ed. Code section 56521.1 – including, if appropriate, an IEP team meeting to determine whether a FBA should be conducted and/or an interim plan is necessary.
- The emergency interventions prohibited by the Hughes Bill (e.g., locked seclusion, immobilization, etc.) are still **prohibited**. (See Ed. Code, § 56521.2(a).)

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Mr. Pearl counsels and represents public school and community college district clients in employment matters related to best practices for hiring, remediation, progressive discipline, harassment/discrimination prevention, accommodation issues, technology-in-the-workplace concerns and board policy/procedure development. He is a well-known trainer on sexual harassment prevention, documentation, employee remediation and discipline. Mr. Pearl also serves education clients in all aspects of labor relations including certificated and classified labor contract negotiations and contract administration. He represents clients in arbitrations and PERB proceedings and has trained governing boards, district bargaining teams and union bargaining teams on negotiations techniques including Interest Based Bargaining. Mr. Pearl is also a member of the firm's Students and Special Education Group, and represents school districts in student matters involving discipline, constitutional issues, pupil records, residency and technology issues. He is a frequent presenter at Dannis Woliver Kelley workshops and state and regional CSBA, CASBO and ACSA conferences on topics including "Principled Ethical Negotiations," "Collective Bargaining 101," "New Negotiations for the New Decade," "Bargaining Benefits," "HR Adventures in Cyberspace," "Students' Constitutional Rights in Cyberspace," and "Student Discipline Hearings, How Much Due Process is Due." Having worked closely with governing boards, superintendents and administrators, Mr. Pearl believes that ongoing and interactive training greatly enhances educators' abilities to effectively address the dynamic legal issues that impact schools each day. Before joining Dannis Woliver Kelley in 2001, Mr. Pearl practiced education, labor and employment law for public and private sector clients in Chicago.

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About Our Firm

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We were one of the first law firms in California to dedicate its practice to serving public schools. We advise school districts, community college districts and county offices of education with passionate conviction and insight. We find our work enormously rewarding. Since 1978, we have stood shoulder-to-shoulder with our clients, working together for the betterment of California education.

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- Personnel Management & Human Resources
- Business, Property & Construction
- Special Education & Student Services
- Counsel to Governing Boards
- Charter Schools
- Litigation

Because we have clients throughout the state, we are aware of trends that enable us to represent you better. Our team approach to client service means that while specific attorneys represent your district, several others will remain informed of the district's issues so that they may assist if needed. We pride ourselves on the breadth and depth of experience within the firm and on the promptness with which we respond to clients' inquiries. We regard ourselves as members of your team at all levels of our service.