

■ 2023 EDITION



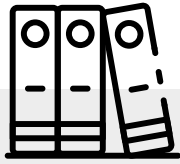
LEGISLATION AND CASE LAW HIGHLIGHTS

Legal Developments of Interest for K-12 School Districts



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LEGISLATION AND CASE LAW HIGHLIGHTS

2023 EDITION



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BY GREGORY J. DANNIS

DANNIS WOLIVER KELLEY PRESIDENT

Do you know how many bills were introduced this year?
The total is just stunning, even for so large a state.
It's more than in a decade, so I'm told and what I hear,
And here's the final number: It's three thousand twenty-eight!

Thankfully our Governor did veto quite a few,
Rejecting many more than we have seen in recent times.
But now, let's take a moment to conduct a brief review
Of those that made it to his desk, which he then chose to sign.

Of cannabis, employers must be wary and take heed:
Refrain from asking applicants if they smoked in the past.
And if employees are at home when they imbibe the weed,
You cannot then discriminate for this use of the grass.

Curriculum for science must address the climate change
And money is available to shade kids from the heat.
Cursive writing's back in class! Well that seems kind of strange,
And students can now miss a day to go to a retreat.

CalSTRS will be posting rules so all can calculate.
When employers overpay, at least they will have read it.
Student trustees can be paid, and I think it's just great
That only non-electeds can receive elective credit!

Districts can hire LVNs; school nurses supervise.
The coach will train on AEDs and cardiac arrests.
So many laws on opioids – a crisis oversized!
And now employees can conduct the sight and hearing tests.

There can be no more discipline for kids who are defiant
Still, teachers may remove them from the classroom for two days.
But if they seek some other means to bring about compliance
Banning students from the recess is not a legal way.

Adult ed prob instructors can now transform to perms.
Anyone transporting kids must meet new safety laws.
For 44909ers, you must spell out all the terms:
The program and the funding source and maybe one more clause.

It's nothing short of shocking that our world is still a place
Where legislation's needed to protect the who that's you.
More laws against the kind of hate that still is based on race
And for shaming someone's body and for LGBTQ.

All the schools must have a plan and train up employees
To ward off workplace violence that's invasive and persistent.
The time and pay have been increased for hiring retirees.
For pupil meals, more wholesome grains (and salt and fat resistance!).

Finally a bright line rule that SBE must use!
When districts and the COEs deny charter petitions,
The State Board can't just disagree, they have to find abuse;
If not, they must restrict their role to one of just submission.

County Boards have 60 days to hear appeals of transfers
Meetings for the 504s can be recorded now.
Questions on Prop 28 will finally have some answers.
The TK ratio twelve to one for next year is allowed.

Provide at least one restroom that all can choose to use
And specify when any can be temporarily closed.
Define what surplus land's exempt - this would be breaking news,
Except the Surplus Land Act will clarify "disposed"

Students now have five days for absences to grieve.
Explain delays in building and file reports on time
For loss of future parenthood, there is a special leave
More years of no new charters; for many that's just fine!

There's near two billion dollars for the Act named Leroy Green
For G.O bond elections, there's a clearer rate of tax
And give a shout to DWK for a parcel tax pristine!
Still, there may be questions on a lease that leases back.

All buses are emission free by twenty thirty-five
Unless you are the "frontier," then you can push it back.
But if you make the deadline and vehicles arrive,
You can post a "zero sign" on every buses' back!

To close, there are so many bills, it causes me to wince.
And I hope we see far fewer for just a little time.
Still we all should party (with apologies to Prince),
Let's celebrate the fact that there's no 1699!

Enjoy the summaries.



BOARD ETHICS, TRANSPARENCY & ACCOUNTABILITY LEGISLATION

AB No. 275

Allows Pupil Board Members to Receive Compensation

Assembly Bill No. 275 (Ward) allows county boards of education, governing boards of school districts, and governing bodies of charter schools to compensate pupil members with either elective course credit or monthly financial compensation, or both. (Stats. 2023, ch. 321, effective January 1, 2024.)

AB No. 557

Extends and Modifies Remote Meeting Brown Act Provisions

Assembly Bill No. 557 (Hart) extends the sunset date to 2026 for provisions allowing bodies to meet remotely during a state of emergency, but no longer allows such meetings solely because social distancing is recommended. (Stats. 2023, ch. 534, effective January 1, 2024.)

AB No. 721

Modifies Posting Requirements for School District Budgets

Assembly Bill No. 721 (Valencia) shifts the required public posting for school district budgets from newspapers of general circulation to school district websites beginning January 1, 2027. (Stats. 2023, ch. 811, effective January 1, 2024.)

AB No. 764

Imposes New Requirements on Creation and Revisions to Trustee Areas

Assembly Bill No. 764 (Bryan) adds requirements to the process for creating trustee area boundaries for board elections and redistricting at the time of the decennial census. Requirements depend on the size of the district, but include prioritized criteria for boundary drawing, a prohibition on maps which favor incumbents, requirements for workshops and public hearings, and translation of materials. It applies to any trustee area boundary maps adopted after January 1, 2024. (Stats. 2023, ch. 343, effective January 1, 2024.)

[More information about this legislation is available on the News & Resources page at DWKesq.com]

SB No. 494

Timing Restrictions on Release of Superintendent or Assistant Superintendent

Senate Bill No. 494 (Newman) prohibits the governing board of a school district from terminating, without cause, the employment of the superintendent or assistant superintendent within 30 days following a board first convening after an election or recall. A board is also prohibited from taking such action at a special meeting or an emergency meeting but may schedule a regular meeting in a month in which no regular meeting is scheduled, for this purpose. (Stats. 2023, ch. 875, effective January 1, 2024.)

SB No. 609

Requires Districts to Post LCAP on Dashboard

Senate Bill No. 609 (Caballero) alters requirements for online posting of local control and accountability plans ("LCAP"). Districts are now required to post the LCAP on the performance overview portion of the California School Dashboard. (Stats. 2023, ch. 494, effective January 1, 2024.)

BOARD ETHICS, TRANSPARENCY & ACCOUNTABILITY CASES

At-Large Elections Remain Subject to Challenge Under Supreme Court Ruling

In *Pico Neighborhood Association v. City of Santa Monica* (2023) 15 Cal.5th 292, the first California Voting Rights Act ("CVRA") lawsuit to reach the California Supreme Court, the Court refused to narrow the scope of its application. The Court opined that a CVRA violation may be established where a challenger shows proof (1) that racially polarized voting exists; and (2) that under an alternative voting system (i.e., "by-trustee area elections") a protected class would have the potential to elect a candidate of its choice on its own or with the help of crossover voters. The Court rejected the earlier opinion of the Court of Appeal which would have significantly narrowed the scope of the CVRA.

[More information about this legislation is available on the News & Resources page at DWKesq.com]

LABOR, EMPLOYMENT & PERSONNEL LEGISLATION



AB No. 245

Requires High School Coaching Training to Include Cardiac Arrest Response and Use of an Automated External Defibrillator

Assembly Bill No. 245 (McKinnor) amends the training requirements of the California High School Coaching Education and Training Program to include certification in the use of an automated external defibrillator and training in recognizing and responding to the signs of cardiac arrest by July 1, 2024. The bill also requires the written emergency action plans of school districts and charter schools offering interscholastic athletics to include a description of the manner and frequency in which the procedures for responding to cardiac arrests and other medical emergencies will be rehearsed by July 1, 2024. (Stats. 2023, ch. 422, effective January 1, 2024.)

AB No. 472

Requires Compensation to Employees Placed on Involuntary Unpaid Leave of Absence Upon Conclusion of Proceedings in Employee's Favor

Assembly Bill No. 472 (Wicks) requires non-merit school and community college districts to pay classified employees their full compensation upon returning to service for the district from a period of "involuntary leave of absence" following a finding in favor of the employee for charges of a criminal offense, a criminal investigation or job-related administrative determinations. "Involuntary leave of absence" is defined to include, but is not limited to, a compulsory leave of absence or suspension. (Stats. 2023, ch. 331, effective January 1, 2024.)

AB No. 897

Allows Adult Education Teachers to Attain Permanent Status Similar to General Education Teachers and Requires Additional Notice Requirements for Categorically Funded Employees

Assembly Bill No. 897 (McCarty) provides that a probationary adult education teacher who has served for at least 75% of the hours constituting a full-time equivalent position for the adult education program in the school district shall be deemed to have served a complete school year. If this new calculation conflicts with a collective bargaining agreement entered into prior to July 1, 2024, the provisions of the bill do not apply until the expiration or renewal of the collective bargaining agreement. The bill also requires that employees who are hired using categorical funds must be notified in their written agreement at the time of hire regarding the expected end date of employment, source of funding, and the nature of the categorically funded program or project, commencing July 1, 2024. The bill further provides that the provisions in Education Code section 44909 do not apply to adult education teachers. (Stats. 2023, ch. 548, effective January 1, 2024.)

AB No. 1722

Permits LEAs to Hire Licensed Vocational Nurses to Work Under the Supervision of Credentialed School Nurses

Assembly Bill No. 1722 (Dahle) allows a school district, county office of education, or charter school to hire a licensed vocational nurse ("LVN") to work under the supervision of a credentialed school nurse ("CSN") who is employed by the same local educational agency ("LEA") or by another LEA, provided that a diligent but unsuccessful effort to recruit a CSN was made and the LVN is necessary to fulfill a critical need. The LEA must obtain approval from its governing board before hiring an LVN, certify to the California Department of Education ("CDE") that a diligent recruiting effort was made, and report the LVN hiring to the CDE. If the LVN is supervised by a CSN who is employed by another LEA, then the two LEAs must enter into a written agreement specifying the CSN's and LVN's duties, policy delineating how the LVN and the CSN are to communicate, indemnification requirements, financial arrangement between the LEAs, and additional compensation for the CSN to serve as a supervisor. This bill also authorizes sight and hearing testing to be given by certificated employees, registered nurses, or LVNs under the supervision of a CSN, and for vision appraisal to now include tests for far vision. (Stats. 2023, ch. 853, effective January 1, 2024.)

AB No. 2188**Prohibits Discrimination in Employment Based on Off-the-Job Cannabis Use**

Assembly Bill No. 2188 (Quirk) provides that, with certain exceptions, an employer may not discriminate against a person in hiring, firing, or any term and condition of employment based on the person's off-the-job use of cannabis or based on an employer-required drug test finding the presence of non-psychoactive cannabis metabolites in the person's system. This bill does not apply to individuals working in the building and construction trades or those requiring a federal background investigation or clearance. This bill does not preempt laws requiring individuals to be tested for controlled substances as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract. AB No. 2188 was enacted in the 2022-2023 legislative year with a delayed operative date of January 1, 2024. (Stats. 2022, ch. 392, effective January 1, 2024.)

**SB No. 223****Expands Which Entities May Offer the Child Welfare and Attendance Authorization**

Senate Bill No. 223 (Menjivar) expands the pathway for an individual to earn their services credential with a specialization in pupil personnel services in the area of child welfare and attendance ("CWA") services. Specifically, this bill allows pupil personnel services credential holders to obtain their CWA authorization with the completion of either a college- or university-sponsored supervised field experience requirement as specified, or a Commission on Teacher Credentialing approved program of professional preparation offered by a local educational agency. (Stats. 2023, ch. 175, effective January 1, 2024.)

SB No. 432**Clarifies Recovery Provisions Relating to CalSTRS Pension Overpayments Due to Erroneous Compensation Reporting**

Senate Bill No. 432 (Cortese) requires CalSTRS to annually post on their website resources that interpret and clarify creditable compensation and creditable service laws and related regulations, and such resources shall be relied upon by employers for reporting compensation to CalSTRS for retirement purposes until revoked or superseded by CalSTRS. This bill also requires CalSTRS to provide in writing its determination of any overpayment amount to the party responsible for the overpayment. This bill modifies the definition of a CalSTRS "advisory letter" to be in reference to specific compensation language that is or proposed to be included in a written agreement for CalSTRS to provide a formal written guidance for proper reporting of such compensation for employees. Only the employer identified in the advisory letter may rely upon the letter as a defense from a CalSTRS determination of a compensation reported error. If an employer reports compensation to CalSTRS in error based upon its reliance on CalSTRS materials or advisory letter, any resulting overpayment shall be deemed CalSTRS error and CalSTRS shall recover 85% of the overpayment from the General Fund and 15 percent from the employers. (Stats. 2023, ch. 215, effective January 1, 2024.)

SB No. 553**Requires Employers to Create a Workplace Violence Prevention Plan; Expands Rights of Employers and Union Representatives to Seek Restraining Orders on Behalf of Employees**

Senate Bill No. 553 (Cortese) requires nearly all employers, beginning July 1, 2024, to establish and implement a written workplace violence prevention plan, provide training to employees about the plan at least annually, create and maintain a detailed log of all incidents of workplace violence, and retain various workplace violence hazard records for specified periods of time. These requirements will be enforced by CalOSHA.

Additionally, beginning July 1, 2025, this bill (along with Senate Bill 428) expands the reasons for an employer to seek a restraining order on behalf of its employees. While employers are currently allowed to petition a court to obtain restraining orders against individuals who have engaged in workplace violence or made credible threats of violence, this bill allows employers to seek such orders against persons engaging in "harassment," which is "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys or harasses the person, and serves no legitimate purpose," and which must "cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress." Additionally, this bill allows collective bargaining representatives to seek restraining orders on behalf of employees for these same reasons. This bill also allows the victim to decline to be publicly identified in the restraining order petition should they desire anonymity. (Stats. 2023, ch. 289, effective January 1, 2024.)

**SB No. 616****Increases Paid Sick Days for Employees Who Work for the Same Employer for 30 or More Days**

Senate Bill No. 616 (Gonzalez) increases the paid sick leave entitlements for employees under the Healthy Workplaces, Healthy Families Act of 2014. Employees accrue one hour of sick leave for every 30 hours worked. Rather than providing one hour of sick leave for every 30 hours worked, the employer may use a different accrual method for employees as long as employees accrue 24 hours of sick leave by the 120th calendar day of employment and no less than 40 hours of accrued sick leave or paid time off by the 200th day of employment or each calendar year, or in each 12-month period. This bill increases the number of sick days that an employee can use annually from 3 days/24 hours to 5 days/40 hours. An employer can cap an employee's total amount of accrued paid sick leave to 10 days/80 hours. If an employer provides 5 days/40 hours of sick leave at the beginning of the year, no accrual or carryover is required. Employees covered by valid collective bargaining agreements that expressly provide for paid sick days as specified are exempt from this bill, except that this bill's procedural and anti-retaliation provisions are extended to apply to employees covered by a valid collective bargaining agreement. (Stats. 2023, ch. 309, effective January 1, 2024.)

SB No. 700**Prohibits Employers from Requesting Information About Past Cannabis Use**

Senate Bill No. 700 (Bradford) prohibits employers from requesting information from an applicant for employment regarding the applicant's prior use of cannabis. However, any information about a person's prior cannabis use obtained from the person's criminal history would be exempt from the foregoing prohibition if the employer is permitted to consider or inquire about such information under a specified provision of the California Fair Employment and Housing Act or other state or federal law. (Stats. 2023, ch. 408, effective January 1, 2024.)

SB No. 765**Changes Requirements and Increases Compensation Limits for Hiring Retired Teachers**

Senate Bill No. 765 (Portantino) allows LEAs to hire retired teachers in their first 180 days post-retirement under an alternative process that includes sending an exemption request from the LEA top official to STRS expressing the need and signed under penalty of perjury. This bill also temporarily increases the postretirement compensation earnings limit from 50% to 70% of the median final compensation of members who retired during a specified period. These temporary changes are effective from July 1, 2024 to June 30, 2026. (Stats. 2023, ch. 885, effective January 1, 2024.)

SB No. 848**Provides Employees with Reproductive Loss Leave**

Senate Bill No. 848 (Rubio) provides employees with up to five days of leave following a reproductive loss event, as defined, if the employee has been employed for at least 30 days prior to the commencement of the leave. The reproductive loss leave may be taken over non-consecutive days and must be taken within three months of the event, with an exception. If prior to or immediately following a reproductive loss event, an employee is on another leave entitlement allowed by state or federal law, the employee must complete their reproductive loss leave within three months of the end date of the other leave. The reproductive loss leave must be taken pursuant to any existing applicable leave policy of the employer. In the absence of an existing applicable leave policy, the reproductive loss leave may be unpaid, except that the employee may use their vacation, personal leave, accrued and available sick leave, or other paid time off that is available to the employee. If an employee experiences more than one reproductive loss event within a 12-month period, the employer is not required to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period. The employer must maintain the confidentiality of any employee taking reproductive loss leave. (Stats. 2023, ch. 724, effective January 1, 2024.)



STUDENTS AND SPECIAL EDUCATION LEGISLATION

AB No. 10

Requires CDE to Develop Model Policy and Resources about Body Shaming

Assembly Bill No. 10 (Lowenthal) requires CDE to develop a model policy and resources about body shaming that is appropriate for K-12 schools to use to educate staff and students. "Body shaming" is defined as "the action or practice of mocking or stigmatizing a person by making critical comments or observations about the shape, size, or appearance of the person's body." LEAs are encouraged to inform teachers, staff, parents, and students about the resources, including by providing information in pupil and employee handbooks and on their websites. (Stats. 2023, ch. 791, effective January 1, 2024.)

AB No. 87

Authorizes Recording of 504 Meetings

Assembly Bill No. 87 (Quirk-Silva) authorizes a parent, guardian or LEA to audio record Section 504 meetings. A party wishing to record the meeting must provide notice of intent to record at least 24 hours before the meeting. If the LEA notices its intent to record the meeting, but the parent or guardian objects or refuses to attend as a result, the parties may not record the meeting. (Stats. 2023, ch. 81, effective January 1, 2024.)

AB No. 95

Permit Schools to Sell Additional Meals to Students

Assembly Bill No. 95 (Hoover) clarifies that a school may sell an additional meal to a pupil after the pupil has already received a nutritiously adequate meal that qualifies for federal reimbursement. (Stats. 2023, ch. 318, effective January 1, 2024.)

AB No. 230

Requires Provision of Menstrual Products for Grades 3 through 5

Assembly Bill No. 230 (Reyes) expands the Menstrual Equity for All Act of 2021 to schools serving grades 3-5, in addition to schools serving grades 6-12. The Act requires schools to stock restrooms with an adequate and accessible supply of free menstrual products in all women's and all-gender restrooms, and in at least one men's restroom, at all times. (Stats. 2023, ch. 421, effective January 1, 2024.)



AB No. 370

Updates Criteria for Pupils to be Awarded State Seal of Biliteracy

Assembly Bill No. 370 (Addis) updates the requirements for pupils to be awarded the State Seal of Biliteracy. All pupils must demonstrate proficiency in English by meeting one of four specified requirements and must also demonstrate proficiency in one or more languages other than English by achieving one of three specified requirements. Pupils who are English learners must also achieve an Oral Language composite score of 4 on the English Language Proficiency Assessments for California to be awarded the State Seal of Biliteracy. (Stats. 2023, ch. 326, effective January 1, 2024.)

AB No. 373

Grants to Homeless and Foster Youth Priority Access to Intersession Programs

Assembly Bill No. 373 (Gipson) requires LEAs operating intersession programs to grant priority access to homeless and foster children and youth. Prior law required state and federal afterschool programs, including summer school, to prioritize foster and homeless youth for enrollment. This bill extends those requirements to any other intersession programs offered by an LEA. (Stats. 2023, ch. 327, effective January 1, 2024.)

AB No. 446

Requires Handwriting Instruction in Cursive or Joined Italics and Updates Science Curriculum to Include Climate Change

Assembly Bill No. 446 (Quirk-Silva) updates the required course of study for students in grades 1-6 to include handwriting instruction in cursive or joined italics and, beginning in the 2024-25 school year, will update science instruction to include the causes and effects of climate change and methods to mitigate and adapt to climate change. (Stats. 2023, ch. 804, effective January 1, 2024.)

**AB No. 452 & SB No. 558****Eliminates Statute of Limitations for Childhood Sexual Assault Claims**

Assembly Bill No. 452 (Addis) and Senate Bill No. 558 (Rubio) alter the statute of limitations for civil claims based on childhood sexual assault. For most claims based on assaults occurring before January 1, 2024, these bills impose a statute of limitations of 22 years after the plaintiff turns 18, or five years after the plaintiff would reasonably have discovered harm from the childhood sexual assault. For claims based on assaults occurring on or after that date, the bills eliminate the statute of limitation. (Stats. 2023, chs. 655 and 877, effective January 1, 2024.)

AB No. 611**Requires Notice to Parents Upon Change in NPS or NPA Certification Status**

Assembly Bill No. 611 (Weber) requires LEAs to notify parents within 14 days of becoming aware of a change in certification status of a nonpublic school or agency that their child attends. The notice is to be by regular mail or email and include a copy of procedural safeguards. LEAs must maintain these notifications and make them available for inspection upon CDE's request. (Stats. 2023, ch. 64, effective January 1, 2024.)

**AB No. 659****Requires Notice to Parents Recommending Vaccine Against HPV**

Assembly Bill No. 659 (Aguiar-Curry) requires LEAs to include in their annual notice to parents of 6th grade students a recommendation that students receive the human papillomavirus vaccine before 8th grade. (Stats 2023, ch. 809, effective January 1, 2024.)

AB No. 714**Requires CDE to Provide Resources for Serving Newcomer Students**

Assembly Bill No. 714 (McCarthy) requires CDE to update its CalNEW website to include requirements, best practices, available programs for, and enrollment information about newcomer pupils, including those who are English language learners. It also broadens the curricular exemptions for students who are participating in a program designed to meet the academic and transitional needs of newly arrived immigrant pupils to include "newcomer pupils" instead of just pupils enrolled in newcomer programs. AB 714 also directs the commission developing the English Language Arts ("ELA") and English Language Development ("ELD") curriculum framework to consider the unique needs of newcomer pupils and include resources for K-8 teachers of newcomer students. CalNEW defines "newcomer pupils" as individuals 3 to 21 years old who were not born in any state and have not attended school in any state for more than three full academic years. (Stats. 2023, ch. 342, effective January 1, 2024.)

AB No. 723**Updates School of Origin Designation for Foster Youth**

Assembly Bill No. 723 (Quirk-Silva) updates the definition of "school of origin" for foster youth with exceptional needs to include placement in a certified nonpublic, nonsectarian school ("NPS"). The bill also requires an NPS to agree in writing for any foster child it serves, to be designated as the school of origin and to allow the child to continue their education in the school, beginning with the 2024-2025 school year. (Stats. 2023, ch. 812, effective January 1, 2024.)

AB No. 873**Requires Consideration of Inclusion of Media Literacy Content into State Curriculum**

Assembly Bill No. 873 (Berman) requires the Instructional Quality Commission, when it next revises its English Language Arts / English Language Development, Mathematics, Science, and History – Social Science curriculum frameworks, to consider incorporating media literacy content within those frameworks. AB No. 874 also requires the Commission to consider incorporating the Model Library Standards when it next revises its ELA / ELD curriculum framework. (Stats. 2023, ch. 815 effective January 1, 2024.)

AB No. 1165**Encourages Interventions for Race-Based Bullying, Harassment and Intimidation**

Assembly Bill No. 1165 (McCarthy) encourages LEAs to take additional action when students engage in “racist bullying, harassment or intimidation” and have been suspended or have undergone other means of correction. LEAs are encouraged to engage the perpetrator and the victim in a restorative justice practice that meets both students’ needs, regularly check on victims to make sure they are not in danger of suffering long-lasting mental health challenges, and to have the perpetrator engage in “culturally sensitive programs that promote racial justice and equity and combat racism and ignorance.” (Stats. 2023, ch. 22, effective January 1, 2024.)

AB No. 1283**Authorizes Emergency Use of Albuterol Inhalers**

Assembly Bill No. 1283 (Chen, Rubio) authorizes, but does not require, LEAs to provide schools with an emergency supply of albuterol inhalers for school nurses and/or trained personnel to administer as an emergency aid to people experiencing respiratory distress. The bill protects LEAs and employee volunteers from civil liability. The bill requires CDE to publish online the minimum training standards for albuterol inhaler administration and review those standards every five years. (Stats. 2023, ch. 574, effective January 1, 2024.)

**AB No. 1327****Requires LEAs to Post a Standardized Incident Form to Track Racial Discrimination, Harassment, and Hazing at High School Sporting Events**

Assembly Bill No. 1327 (Weber) requires CDE to develop a standardized incident form to track racial discrimination, harassment, or hazing that occurs at high school sporting games or sporting events, and annually report statewide totals on its website. The bill also requires LEAs participating in the California Interscholastic Federation (“CIF”) to post the incident form on their website and include information on how to submit the form to the LEA. Completed incident forms are public records, subject to any applicable exemptions from public disclosure to protect the confidentiality of pupil and school personnel records and information. (Stats. 2023, ch. 366, effective January 1, 2024.)

AB No. 1466**Requires Posting on District Website of Annual Reports on the Use of Behavioral Restraints and Seclusion**

Assembly Bill No. 1466 (Weber) requires districts to post on their websites each year information reported to CDE regarding the use behavioral restraints and seclusion. (Stats. 2023, ch. 582, effective January 1, 2024.)

AB 1605**Extends to Charter Schools and County Offices of Education High School On-Campus Access to Military Services**

Assembly Bill No. 1605 (Gallagher) extends to charter schools and county offices of education the requirement that any school offering instruction in grades 9 to 12 that provides on-campus access to employers must also allow access to “military services.” It also adds the United States Space Force to the definition of “military services.” In addition, the bill adds the Space Force to the definition of “Uniformed Services” in the Interstate Compact on Educational Opportunity for Military Children, which facilitates the enrollment, placement, advancement, and transfer of the academic records of children of military families. (Stats. 2023, ch. 142, effective January 1, 2024.)

AB No. 1651**Expands Individuals Authorized to Administer Emergency Epinephrine**

Assembly Bill No. 1651 (Sanchez) requires LEAs to store emergency epinephrine auto-injectors in a location accessible to school nurses or trained volunteer personnel and extends the definition of volunteer or trained volunteer personnel to include the holder of an Activity Supervisor Clearance Certificate – i.e., a non-certificated individual cleared to work with students in a student activity program. Notice to staff of the location of the auto-injectors must be given once a year. (Stats. 2023, ch. 588, effective January 1, 2024.)

**AB No. 1653****Requires Emergency Action Plans to Include Procedures for Concussions and Heat Illness In Written Emergency Action Plans**

Assembly Bill No. 1653 (Sanchez) requires that district and charter schools' written emergency action plans for interscholastic athletic programs include the location of emergency medical equipment and the procedures for concussions and heat illness. By July 1, 2024, the plans must describe how and how often the procedures will be rehearsed. The bill also requires CIF to develop guidelines, procedures and safety standards to prevent and manage exertional heat illness. (Stats. 2023, ch. 589, effective January 1, 2024.)

SB No. 10**Mandates LEAs to Address Opioid Overdose Treatment in School Safety Plans**

Senate Bill No. 10 (Cortese), known as "Melanie's Law," requires that schools serving grades 7 to 12 include in their comprehensive safety plans a protocol for students experiencing an opioid overdose. The protocol is to include training for school employees on opioid overdose prevention and life-saving responses. The bill recommends that schools use alternatives like a multi-tiered system of supports, restorative justice, trauma-informed practices, social-emotional learning, and schoolwide positive behavior interventions and supports, instead of referring students to law enforcement for opioid use. Finally, the bill requires CDE to publish materials on its website regarding how to prevent an opioid overdose. (Stats. 2023, ch. 856, effective January 1, 2024.)

SB No. 115**Sets Funding Implementation Requirements for Arts and Music in Schools**

Senate Bill No. 115 (Committee on Budget and Fiscal Review) is a budget implementation trailer bill for the first year of funding Proposition 28 - The Arts and Music in Schools - Funding Guarantee and Accountability Act - established to provide a minimum source of annual funding for arts education in public schools. This bill clarifies key aspects of funding implementation such as

defining a "preschool pupil" for the purposes of calculating funds for preschool programs and outlining a funding allocation scheme based on pupil enrollment. The bill requires LEAs to report by October 1 the amount of unexpended funds they have after the three-year expenditure period and requires unexpended funds to revert to the State. This bill was enacted on an urgency basis. (Stats. 2023, ch. 49, effective July 10, 2023.)

SB No. 274**Prohibits Districts from Suspending or Expelling any Student for Disrupting School Activities, Willful Defiance, and Being Absent from School Activities**

Senate Bill No. 274 (Skinner) extends the prohibition on suspending or expelling students for disrupting school activities or willful defiance to all students in grades K-12, thereby making Education Code section 48900 subdivision (k) inoperative (including for grades 9-12, as of July 1, 2024). Teachers retain their authority to suspend a student in any grade from class for the day of the suspension and the day following. Staff may also refer students who disrupt school activities or willfully defy authority to school administrators for appropriate and timely other means of correction, and school administrators must then document the actions taken in the student's record and inform school staff of what actions were taken or the rationale for not using other means of correction. The Education Code now also explicitly prohibits districts from suspending or expelling students based solely on the fact they are truant, tardy, or absent from a school activity. (Stats. 2023, ch. 597, effective January 1, 2024.)

SB No. 291**Prohibits Teachers from Restricting Recess for Disciplinary Purposes and Sets Minimum Recess Standards**

Senate Bill No. 291 (Newman) prohibits teachers from restricting a student from recess for disciplinary purposes unless the student's participation poses an immediate threat to the physical safety of the student or the student's peers. The bill also requires schools to provide at least 30 minutes of recess on regular instructional days and at least 15 minutes on early release days, which may be provided in one or more periods. These minimum time periods must be provided beginning in the 2024-2025 school year, but do not apply on days with field trips or educational programs, as defined. Recess must be outside when weather and air quality permit, unless outdoor space is not sufficient, and must also comply with a student's IEP or Section 504 plan. (Stats. 2023, ch. 863, effective January 1, 2024.)

SB No. 293**Sets October 15 Deadline for CDE to Make Statewide Summative CAASPP Results Publicly Available**

Senate Bill No. 293 (Grove) requires CDE to make publicly available on or before October 15 of each year, summative assessment results from the California Assessment of Student Performance and Progress (a.k.a. CAASPP) at the pupil, school, grade, district, county, and state levels. (Stats. 2023, ch. 177, effective January 1, 2024.)

**SB No. 321****Establishes Local Public Library Partnership Program**

Senate Bill No. 321 (Ashby) requires the State Librarian to offer resources to, and coordinate with, each local public library to ensure that, by January 1, 2026, every public school student is issued a “student success card” providing them with access to library services from the closest public library by third grade. (Stats. 2023, ch. 598, effective January 1, 2024.)

SB No. 857**Establishes Advisory Task Force to Identify the Needs of LGBTQ+ Students**

Senate Bill No. 857 (Laird) requires the State Superintendent of Public Instruction to convene an advisory task force to identify the needs of LGBTQ+ students. The task force will recommend policies and initiatives to address LGBTQ+ students’ education and well-being, including in mental health, inclusion, and bullying and harassment. The task force must include LGBTQ+ students, an administrator, teachers, mental health professionals, a LGBTQ+ community advocate, and a representative from the Office of Health Equity. (Stats. 2023, ch. 228 effective January 1, 2024.)

SB No. 350**Includes Time Off for Bereavement as an Excused Absence**

Senate Bill No. 350 (Ashby) in conjunction with AB 1503 (Lee) provides students with an excused absence for up to five days to attend the funeral or grieve the death of an immediate family member or a person determined by the student’s parent to be in such close association with the student to be considered immediate family. It also provides an excused absence for up to three days for the student to access services from a victim services agency, including grief support services, or to participate in safety planning, or to take other actions to increase the safety of the student or their family. Finally, it extends the excused time a student may take to attend a religious retreat from four hours to one school day per semester. (Stats. 2023, ch. 601 and ch. 846, effective January 1, 2024.)

SB No. 413**Gives County Boards Extra Time to Respond to Interdistrict Transfer Appeals**

Senate Bill No. 413 (Bradford) authorizes county boards of educations in class 1 and 2 counties to take up to 60 days to decide an interdistrict transfer appeal

if: (1) there is a delay in response from the parent, guardian, education rights holder, or school district; (2) there is a delay due to incompatible availability for a factfinding hearing; (3) the board receives a request to delay a factfinding or board hearing from a parent, guardian, or education rights holder, or if the parent, guardian, or education rights holder is unable to attend the hearing; or (4) the district closed its transfer application window and is no longer accepting permit applications. (Stats. 2023, ch. 606, effective January 1, 2024.)

**SB No. 348****Implements New Requirements for Pupil Meals**

Senate Bill No. 348 (Skinner) implements new federal school nutrition standards aimed at reducing sugars, salts, and fat, and increasing whole grains in school meals. This bill requires each LEA to make nutritionally adequate breakfasts and lunches available free of charge during each school day for each pupil regardless of their eligibility for a federally funded free or reduced-price meal. The bill requires the State to define an adequate time to eat school meals, and to maximize newly available federal funds to help prevent childhood hunger during summer months. It requires charter authorizers to provide technical assistance to their charter schools to meet the meal requirements. (Stats. 2023, ch. 600, effective January 1, 2024.)

STUDENTS AND SPECIAL EDUCATION CASES

Students Need Not Exhaust Administrative Remedies When Seeking Only Damages Under the ADA

In *Perez v. Sturgis Public Schools*, 598 U.S. 142 (2023), the Supreme Court held that the IDEA’s exhaustion requirements do not apply when a student’s lawsuit seeks only damages under the Americans with Disabilities Act (“ADA”) or other federal laws protecting the rights of children with disabilities, since damages are not available under the IDEA.

[More information about this legislation is available on the News & Resources page at DWKesq.com]

CHARTER SCHOOL LEGISLATION

SB No. 114

Requires State Board of Education to Give Deference to Decisions of School District and County of Board of Education to Deny Charter Petition; Extends Existing Charter School Terms by One Additional Year; Extends Moratorium on Establishment of New Charter Schools by One Year

Senate Bill No. 114 (Committee on Budget and Fiscal Review) requires the State Board of Education, when hearing an appeal from the denial of a charter petition, to find an abuse of discretion by both the governing board of the school district and the county board of education. The bill also clarifies the abuse of discretion standard as the most deferential standard of review. Importantly, this bill also extends by one additional year the terms of existing charter schools set to expire between January 1, 2024 and June 30, 2027. The bill requires charter schools to report all available midyear outcome data for its LCAP and all available midyear expenditure and implementation data for its LCFF at a regular governing board meeting each year before February 28. Finally, the bill extends the existing moratorium on the establishment of new non-classroom-based charter schools by an additional year. This extension to the existing moratorium was initially made to allow the Legislature additional time to work on legislation to address the loopholes that lead to the misappropriation. The moratorium began on January 1, 2020 and now extends until January 1, 2026. (Stats. 2023, ch. 48, effective July 10, 2023.)

Other New Laws Applicable to Charter Schools

One of the challenges that charter authorizers face is determining exactly which code sections do and do not apply to charter schools, in light of the Education Code waiver. This legislative session, many new laws were enacted outside of the Charter Schools Act that apply to charter schools as well as to districts and other agencies and LEAs. *Please see summaries elsewhere in this bulletin for a complete description of the following bills that apply in whole or in part to charter schools:*

Assembly Bill Nos. [10](#), [87](#), [95](#), [230](#), [245](#), [275](#), [370](#), [373](#), [446](#), [452](#), [557](#), [579](#), [611](#), [659](#), [1165](#), [1283](#), [1327](#), [1466](#), [1605](#), [1651](#), [1653](#), [1722](#) and [2188](#);

Senate Bill Nos. [2](#), [10](#), [88](#), [115](#), [291](#), [321](#), [348](#), [350](#), [531](#), [609](#), [700](#), [760](#), [775](#), and [848](#).



BUSINESS, PROPERTY, & CONSTRUCTION LEGISLATION

AB No. 334

Allows Public Entities to Enter into Subsequent Contracts with Independent Contractors

Assembly Bill No. 334 (Blanca Rubio) allows a public entity that has entered into a contract with an independent contractor to enter into a subsequent contract with that same independent contractor for a later phase of the same project provided that the independent contractor did not engage in or advise the public entity on, the subsequent contract, unless the participation was preliminary, and all bidders of the subsequent contract have access to the same information. Under such circumstances, the independent contractor is not considered an "officer" under Government Code section 1090 et seq. (Stats. 2023, ch. 263, effective January 1, 2024.)

AB No. 516

Expands the Annual Reporting and Audit Requirements for Districts Collecting Developer Fees

Assembly Bill No. 516 (Ramos) amends the Mitigation Fee Act by expanding the information required to be included in a school district's annual report on developer fees. Agencies collecting developer fees, including school districts, are currently required to publish a report within 180 days of the end of the fiscal year containing information about the collected and expended developer fees. This bill requires the annual report to contain additional information identifying whether construction of public improvements listed in prior annual reports commenced as predicted, the reason for any delay, and a revised date of commencement. This bill further requires agencies to inform persons paying developer fees of their right to request an audit of developer fees collected by the agency and requires additional information to be included in any such audit, including information about when the revenue generated by a fee or charge is scheduled to be expended and when the project is scheduled to be completed. (Stats. 2023, ch. 741, effective January 1, 2024.)

AB No. 579**Requires Zero-Emissions School Buses for LEAs**

Assembly Bill No. 579 (Ting) requires 100% of all newly purchased or contracted school buses by LEAs to be zero-emission vehicles, where feasible, commencing January 1, 2035. LEAs include school districts, county offices of education and charter schools. The bill allows for a one-time compliance extension, not to exceed five years, if it is not feasible to purchase or contract for zero-emissions school buses due to both terrain and route constraints. Further, "frontier local agencies" (those with an average daily attendance of fewer than 600 or located in a county with a total population density fewer than 10 persons per square mile), may seek annual extensions through January 1, 2045, commencing January 1, 2040, to purchase or contract zero-emissions school buses due to both terrain and route constraints. This bill furthers Governor Gavin Newsom's Executive Order No. N-79-20, dated September 23, 2020, requiring all medium and heavy-duty vehicles such as trucks and buses to be 100% zero-emissions by 2045. (Stats. 2023, ch. 445, effective January 1, 2024.)

AB No. 1121**Requires Awarding Authorities to Submit List of Ineligible Contractors**

Assembly Bill No. 1121 (Haney) requires public works contract awarding authorities to annually submit to the Department of Industrial Relations' electronic project registration database a list of contractors that are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project, pursuant to local debarment or suspension processes. The electronic database list must be available to the public. (Stats. 2023, ch. 465, effective January 1, 2024.)

SB No. 2**Further Restricts Possession of Firearms in School Zones, Preschool Facilities, Community College Facilities, and other Sensitive Places**

Senate Bill No. 2 (Portantino) amends the Gun Free School Zone Act of 1995, which generally makes it a crime to possess a firearm within a "school zone," defined as the area in, on or the grounds of, a public or private school providing instruction in grades K-12, or within 1,000 feet of those school grounds. The bill requires that any firearm within a school zone must be unloaded and within a locked container in a motor vehicle, or within the locked trunk of a motor vehicle at all times. Concealed carry license holders who are otherwise lawfully carrying a firearm may be within 1,000 feet of the school zone, so long as they are not within any building, real property or parking area under control of the school, or on any immediately adjacent street or sidewalk. Additionally, SB 2 prohibits a concealed carry license holder from carrying a firearm on or into various public locations considered "sensitive places," including, among other places: preschool or childcare facilities; local government buildings or related parking areas;

public (school) buses and other modes of transportation; permitted special events open to the public; playgrounds, parks and athletic facilities and immediately adjacent streets and sidewalks; polling places; and buildings, classrooms, fields, stadiums, parking areas, and other areas under the control of a community college or university. (Stats. 2023, ch. 249, effective January 1, 2024.)

**SB No. 69****Requires Local Agencies to File CEQA Notices of Determination or Exemption with State Clearinghouse**

Senate Bill No. 69 (Cortese) expands the obligation of local agencies to file Notices of Determination and Notices of Exemption, prepared pursuant to the California Environmental Quality Act ("CEQA"), with both the county clerk of each county where the project is located, as currently required under existing law, and now with the State Clearinghouse in the Office of Planning and Research. Any such notice filed with the State Clearinghouse must be posted on the State Clearinghouse website and be available for public inspection. (Stats. 2023, ch. 860, effective January 1, 2024.)

SB No. 88**Requires Drivers Who Transport Students to Meet Many of the Safety Standards Required of School Bus Drivers**

Senate Bill No. 88 (Skinner) requires drivers who transport students to meet certain safety standards regardless of whether they are employed directly by an LEA or employed by an entity contracted by an LEA, including app-based companies. Specifically, they must: hold a valid California driver's license for the class of vehicle, pass a criminal background check, have a satisfactory driving record, not have demonstrated irrational behavior that may indicate the driver's ability to perform their duties may be impaired, not have been convicted of certain vehicle code offenses, provide a report showing current public driving record, be subject to drug and alcohol testing consistent with cannabis discrimination limitations, complete a medical examination, submit a clear tuberculosis risk assessment, complete first aid

training, and not drive more than 19 hours within a work period. Additionally, these drivers are subject to training, log sheets and vehicle maintenance similar to that required of school bus drivers. The bill provides exceptions to these requirements for current staff, family members, and employees of some government agencies, among others. LEAs that contract with private entities for these services must obtain written attestation that they are compliant with these requirements. Additional requirements related to vehicle inspection apply. If an LEA entered a contract with a private entity prior to January 1, 2024 that conflicts with the bill's requirements, the new requirements will not apply until the expiration or renewal of the contract. Most requirements become effective on July 1, 2025. (Stats. 2023, ch. 380, effective January 1, 2024.)



SB No. 114

Amends Existing Law to Implement Certain Provisions of the 2023-24 State Budget

Senate Bill No. 114 (Committee on Budget and Fiscal Review) is the Education Omnibus Budget Trailer Bill implementing various aspects of the 2023-24 State Budget.

Enacted on an urgency basis, SB 114 implements the following noteworthy changes in the law:

- Extends the time for encumbrance or expenditure of funds appropriated under the California Preschool, transitional Kindergarten, and Full-Day Kindergarten Facilities Grant Program.
- Establishes an equity multiplier for the LCFF and appropriates \$300,000,000 annually.
- Specifies licensing requirements for Expanded Learning Opportunities Programs depending upon whether the ELOP is operated by a school district or a third party.
- Requires 12.5% of the difference between a school district's LCFF entitlement in fiscal year 2019-20 and 2022-23 to be allocated to such school district in fiscal year 2022-23.

- Delays the requirement of a 10:1 adult to pupil ratio in transitional kindergarten until fiscal year 2025-26 and authorizes school districts to admit children who turn five years old after the applicable cut-off date but during the school year to a transitional kindergarten program.
- Appropriates \$3,500,000 for county offices of education to purchase and maintain opioid antagonists for school districts and charter schools in their jurisdiction.
- Requires superintendents to present a report on the annual update to the LCAP and the LCFF budget overview for parents on or before February 28th at a regular board meeting.
- Appropriates \$1,960,500,00 from the General Fund to the State Allocation Board under the Leroy F. Green School Facilities Act of 1998 for new construction and modernization projects. (Stats. 2023, ch. 48, effective July 10, 2023.)

Amendments to charter school laws implemented with SB. No 114 are described in the [Charter Schools](#) section of this news bulletin.

SB No. 123

Requires Electric Vehicle Charging Stations to Accept Certain Types of Payment

Senate Bill No. 123 (Committee on Budget and Fiscal Review) amends existing law regarding payment methods at electric vehicle charging stations open to the public. Existing law requires charging stations to accept credit card or mobile payment. Charging stations are now required to also accept "contactless payment," payment by toll-free phone number, and "SMS" message payment. The law allows the State Energy Resources Conservation and Development Commission to change payment requirements, as technologies evolve. This bill was enacted as urgency legislation. (Stats. 2023, ch. 52, effective July 10, 2023.)





SB No. 515

Incentivizes Construction of Shade Structures

Senate Bill No. 515 (Stern) limits the cost of constructing accessible path of travel upgrades, including free-standing, open-sided shade structures, to 20% of the adjusted construction cost of the shade structure project as an incentive to LEAs to construct shade structures to protect students from extreme heat due to high temperature heat waves that occur across the state of California. (Stats. 2023, ch. 489, effective January 1, 2024.)



SB No. 747

Limits the Applicability of the Surplus Land Act in District Surplus Property Disposition Process

Senate Bill No. 747 (Caballero) limits the applicability of the Surplus Land Act during the surplus property disposition process by establishing a narrower definition of “dispose” and refining the existing definition of “exempt surplus land.” Existing law requires local agencies to send, prior to disposing surplus property, written notices of availability to certain housing authorities, school districts, and park or recreation agencies, and sets forth a required negotiation period with interested public entities that received the notice of availability. SB No. 747 establishes a definition of “dispose” to mean either the sale of surplus land or the lease of surplus land for a term that begins on or after January 1, 2024, and exceeds 15 years, inclusive of any extension or renewal options included in the written lease. Therefore, the Surplus Lands Act will not apply to a district’s surplus property lease for a term of 15 years or less, inclusive of extension or renewal options in the written lease, or a lease under which no development or demolition will occur, regardless of the term’s length.

SB No. 747 also expands the list of properties that qualify as “exempt surplus land” to now include, among others, surplus land that is one-half acre or less and that is not contiguous to land owned by a state or local agency that is used for open-space or low- or moderate-income housing purposes. This exemption allows school districts to more efficiently dispose of small parcels without the applicability of the Surplus Land Act, while encouraging expansion of existing open-space or low- or moderate-income housing. (Stats. 2023, ch. 786, effective January 1, 2024.)



SB No. 531

Clarifies Criminal Background Check Requirements for Work Experience and Independent Study Providers

Senate Bill No. 531 (Ochoa Bogh) exempts from standard background check requirements the employees of an entity that contracts with an LEA to provide student work experience, if certain conditions are met. Additionally, if a student participates in an independent study program provided by a contractor while under the immediate supervision and control of a parent or guardian, the LEA must either verify the contractor has valid criminal records summaries of its employees or obtain consent from the student’s parent or guardian to allow the student to interact with the contractor. This bill was enacted as an urgency measure and was effective immediately on its date of adoption. (Stats. 2023, ch. 616, effective October 8, 2023.)



SB No. 760

Requires the Creation and Maintenance of All-Gender Restrooms for Voluntary Pupil Use

Senate Bill No. 760 (Newman) requires, on or before July 1, 2026, each school district, county office of education, and charter school maintaining any classes from grades 1 to 12, that has more than one female restroom and more than one male restroom at a school site, to provide and maintain at least one all-gender restroom for voluntary pupil use. The all-gender restroom must include signage that it is open to all genders and it must be easily accessible by any pupil. The bill requires the local education agency to designate a staff person as a point of contact for these purposes and to post a notice regarding the requirements. Additionally, the governing board of a school district, county board of education, or charter school that applies on or after July 1, 2026, for state funding pursuant to the Leroy F. Greene School Facilities Act of 1998, must include an all-gender restroom at each school site, if one has not already been established, as part of the modernization project. Existing law authorizes a school site to temporarily close a restroom as necessary for pupil safety or as necessary to repair the facility. This bill revises the conditions under which a restroom is authorized to be temporarily closed to instead be as necessary (1) for a documented pupil safety concern, (2) for an immediate threat to pupil safety, or (3) to repair the facility. (Stats. 2023, ch. 227, effective January 1, 2024.)



SB No. 775

Allows Signage Identifying School Bus as Zero-Emissions

Senate Bill No. 775 (Padilla) allows local educational agencies to place a sign on the back of a low or zero-emissions school bus used to transport TK-12 students to identify it as a clean air zero-emissions school bus according to guidelines issued by the Department of the California Highway Patrol. The signage may also include the fuel type of the zero-emission school bus. (Stats. 2023, ch. 413, effective January 1, 2024.)

SB No. 798

Amends Expression of Tax Rate for Bond Measure Tax Rate Statements

Senate Bill No. 798 (Glazer) modifies and clarifies how a tax rate must be expressed in a tax rate statement accompanying a general obligation bond ballot measure. Under prior law, the tax rate was required to be expressed as a rate per each \$100 of assessed value of a property subject to the tax. This bill changes the tax rate expression to an amount per each \$100,000 of assessed value, which according to the author provides a more "relatable" dollar amount for voters when deciding to approve or reject a bond measure. (Stats. 2023, ch. 720, effective January 1, 2024.)



BUSINESS, PROPERTY & CONSTRUCTION CASES



A Draft Public Contract Without Payment Amount is Not Subject to Validation

In *Westlands Water District v. All Persons Interested* (Cal. Ct. App. 2023) 313 Cal.Rptr.3d 1, as modified (Sept. 1, 2023), the Court of Appeal ruled that a water district could not validate its anticipated contract concerning repayment terms for a federal water reclamation project because the draft contract it presented to the trial court lacked essential terms including the amount to be paid by the water district. Although the case dealt with a type of contract unique to water districts, the Court's reasoning could also apply to the financing terms for a lease-leaseback contract. Accordingly, financing terms may be fixed and stated in the contract for contract validation to apply and the time period for validation to commence.

[More information about this case is available on the News & Resources page at [DWKesq.com](https://www.dwk.esq.com)]

Refund of Developer Fees Required Where Agency Failed to Make Timely Five-Year Findings

In *Hamilton and High, LLC v. City of Palo Alto* (2023) 89 Cal.App.5th 528, the Sixth District Court of Appeal held that a city's failure to make timely five-year findings in support of unexpended developer fees required the city to issue a refund of such funds. Under the Mitigation Fee Act, agencies collecting developer fees, including school districts, are required to make certain findings every five years pertaining to the unexpended portion of collected developer fees. The court determined that five-year findings must report all unexpended fees in the account or fund, irrespective of the date at which the fees were deposited, as long as the account or fund during the five-year period contained a positive balance of unexpended fees. The city's failure to timely issue such findings resulted in an obligation by the city to refund the unexpended portion of the funds. Although the case concerned developer fees collected into a city fund, the Court's reasoning could also apply to the five-year findings school districts must make under the Mitigation Fee Act with respect to Fund 25.

[More information about this case is available on the News & Resources page at [DWKesq.com](https://www.dwk.esq.com)]

District Parcel Taxes Based on Square Footage with a Cap Are Legal

In *Traiman v. Alameda Unified School District* (2023) 94 Cal.App.5th 89, the Court of Appeal held that a school district's parcel tax "applied uniformly" as required by law where it levied a square-footage-based tax with a maximum amount of tax. The Court held the parcel tax applied uniformly to all parcels because it applied one formula to each applicable parcel, thus rejecting arguments that the square-foot-tax with a cap created improper taxing classifications.

[More information about this case is available on the News & Resources page at [DWKesq.com](https://www.dwk.esq.com)]

Construction Contractors Are Responsible for Performance-Based Specifications Despite Public Contract Code Requirements

In *Suffolk Construction Company, Inc. v. Los Angeles Unified School District* (2023) 90 Cal.App.5th 849, the Court of Appeal held that a contractor was responsible for its means and methods of construction, even where the plans and specifications gave the contractor flexibility through use of performance specifications. The Court held that while California law prevents a public entity from shifting responsibility for design errors to a contractor through a construction contract, no law prevents the public entity from using performance specifications and holding the contractor responsible for defects based on the contractor’s means and methods of construction.

[More information about this case is available on the News & Resources page at [DWKesq.com](https://www.dwk.esq.com)]

Lease-Leaseback Contracts Require a Financing Component

In *Davis v. Fresno Unified School District* (2023) 14 Cal.5th 671 (“Davis II”), the California Supreme Court held that lease-leaseback construction contracts that do not contain a “financing” component are not protected by the legal validation procedures. This means that lease-leaseback construction contracts that do not extend the term of the facilities lease beyond the completion of construction, with lease payments due during that extended period, may be challenged in court more than 60 days after entering into the agreement. A long-awaited decision, Davis II did not resolve all open issues regarding lease-leaseback agreements; however, it nevertheless provides critical guidance with respect to such arrangements as they relate to construction contracting and general obligation bonds.

[More information about this case is available on the News & Resources page at [DWKesq.com](https://www.dwk.esq.com)]

GLOSSARY OF TERMS

CalSTRS/STRS: California State Teachers Retirement System

CDE: California Department of Education

CIF: California Interscholastic Federation

CVRA: California Voting Rights Act

ELA/ELD: English Language Arts/English Language Development

IEP: Individualized Education Program

LCAP: Local Control and Accountability Plan

LCFF: Local Control Funding Formula

LEA: Local Educational Agency

NPS/NPA: Nonpublic School/Nonpublic Agency









ABOUT THE FIRM

Dannis Woliver Kelley (DWK) is a full-service education law firm focused on serving the needs of California public school districts, county offices of education, community colleges and other educational organizations. Established in 1976, DWK was one of the first California law firms to devote its practice to governing boards, public schools and education. With more than 50 attorneys and multiple offices across the state, DWK is one of the largest women-owned law firms in the country. From board ethics to students' rights, collective bargaining to charter oversight, litigation to construction, bond finance to business and technology, DWK provides outstanding legal representation and preventive and practical counsel on key issues surrounding your core mission—the education of students.

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