ESSA PPE Update

The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), establishes requirements for state educational agencies and local educational agencies (LEAs) to prepare and disseminate report cards that provide information on state, LEA, and school performance and progress in an understandable and uniform format.

Within the ESEA, Section 1111(h)(2)(C) requires that State and LEA report cards include per-pupil expenditures of federal, state, and local funds, including actual personnel and actual nonpersonnel expenditures, disaggregated by source of funds for each LEA and each school served by the LEA. Please refer to the letter issued by the California Department of Education (CDE) dated August 1, 2018, that provides more detailed information and guidance to assist LEAs with the per-pupil expenditure reporting requirement.

The CDE has developed a web application for LEAs to submit school and LEA-level per-pupil expenditure data. The application is anticipated to be available in the coming weeks, and LEAs are expected to submit data to the CDE no later than February 29, 2020.

Login information for the application will be sent to each LEA Superintendent and Administrators of direct-funded charter schools listed in the California School Directory.

To further assist LEAs with using the application, the CDE will hold monthly webinars to discuss the process of submitting the data to the CDE. Participation in the webinar is strictly optional. Instructions are provided within the application to help assist LEAs with the data submission process.

The webinar dates are: November 14, 2019; December 19, 2019; January 16, 2020; February 13, 2020. Each webinar will be held from 10 to 11 a.m. To register, please send an email to essappe@cde.ca.gov. Login instructions will be sent a few days prior to the webinar.

Special Education Early Intervention Preschool Grant

Special Education Early Intervention Preschool Grant allocations, apportionments, and letters detailing information for fiscal year 2019–20 have been posted on CDE’s web page at https://www.cde.ca.gov/fg/fo/r14/seeipg1qresult.asp Entitlements were calculated at a rate of $9,010 per total eligible pupils, as certified in the December 2018 California Special Education Management Information System data collection. Attached is the schedule for Sonoma County.

Funding is provided to ensure preschool pupils receive appropriate interventions and services as needed before the pupil falls behind academically. Early intervention services and supports provided to children who are at risk of falling significantly behind, including children with disabilities, can reduce the need for additional services in future years.

Funding will be distributed directly to the District of Residence; 50% in November and 50% in April.
**AB 1505 and AB 1507 signed into law**

AB 1505, effective 7/1/2020: Provides reforms to charter school law
- charter teachers are subject to CTC requirements as part of the minimum requirement for creditable service at charter schools (current charter teachers have until 7/1/2025 to obtain the proper credential)
- prohibits the approval of new online charter schools from 1/1/2020 to 7/1/22
- gives school boards the power to reject a charter school application based on duplication and saturation of charter schools
- narrows appeal grounds for denials

AB 1507, effective 7/1/2020:
- Eliminates the authorization for a charter school to be located outside the boundaries of its authorizer (upon renewal)

**Print shop services**
The SCOE Print Shop provides printing and duplicating services for schools and non-profit agencies. It is a full-service shop with the lowest pricing in the county. Other non-printing jobs such as document scanning are also provided: for example, for only $92 per box of letter size documents LEAs can have searchable through Adobe Acrobat documents after scanning is complete. See the attached flyer for more information.

**FCMAT Fiscal Alert – Bonds**
The Fiscal Crisis & Management Assistance Team posted a Fiscal Alert in October 2019 regarding Interfund Borrowing Using Bond Proceeds. The full document is attached and can be found on the FCMAT web page at https://www.fcmat.org/fiscal-documents. The document provides background and potential issues and is a good reference tool for learning about acceptable interfund borrowing practices.

**FAQ for taxpayers – Bonds**
Each fall the Sonoma County Tax Collectors Office asks Districts with School Bonds on the tax rolls to provide a contact telephone number that is printed on property tax bills. Tax payers with questions about school Bonds or parcel taxes need to have easy access to Districts for questions. To better help you answer those questions we have prepared a frequently asked questions sheet (attached). Please share this information with the contact who answers the phone number printed on the tax bills. It is the time of year for those questions to come your way.

**SB 328 School Start Time Impact**
In October, SB 328 was signed into law. It is now required the school day for middle and high schools, including charter schools, to begin no earlier than 8:00 am and 8:30 am. See the attached School Services of California Fiscal Report for more information. This change needs to be implemented by July 1, 2022 or the date in which a district’s collective bargaining agreement that is operative on January 1, 2020, expires, whichever is later.

**Requisition account code restrictions for object 9110**
LEAs should never use object code 9110 on a requisition. Proper accounting practices dictate that all entries are two sided. The code on the requisition should be the proper expenditure code for the expense and cash (object 9110) is the hit automatically. Did you know that you can restrict your requisitions to specific object code ranges, and exclude specific ranges to prevent errors? Depending on your LEA system set ups in ESCAPE, you may be able to change these settings at the fiscal level. If you need assistance you can send a help desk ticket to helpdesk@scoe.org.
J-13A Waivers
It is important to remember that districts will need to complete a Form J-13A, Request for Allowance of Attendance Because of Emergency Conditions. Waivers will cover instructional minutes and material decreases in addition to closed days. If an LEA has unused Emergency days built into the 2019-20 school calendars, those days must be used (see FAQ #23) and a waiver should not be filed. After the exhaustion of built in Emergency days, the LEA should file a waiver for any additional days.

CDE has updated and posted Wildfire Recovery Frequently Asked Questions at https://www.cde.ca.gov/ls/ep/wildfirerecoveryfaqs.asp Questions about campus cleaning, ADA loss, funding impacts, air quality, filing the J13a waiver are answered and additional links to forms necessary are embedded in the answers.
In addition, and Frequently Asked Questions document specific to the J-13a can be found at https://www.cde.ca.gov/fg/aa/pa/formj13afaq.asp Please explore these questions and answers.

Summer Assistance Program grant – continues for an additional year
The Classified School Employee Summer Assistance Program (CSESAP) provides up to a dollar for dollar match on amounts withheld from a participating local educational agency’s (LEA’s) classified school employees’ monthly paychecks during the 2020-21 school year. The classified employees’ pay withheld and the state match funds will be paid by LEAs to the LEA’s eligible employees in the summer months following the 2020-21 school year.
School districts and county offices of education that elect to participate must notify their classified school employees by January 1, 2020, and the California Department of Education (CDE) by April 1, 2020.
If you participated on the CSESAP program in year 1 you may opt to offer for a second year, but are not required to do so. In addition, if you did not participate in year 1 you may opt to participate in year 2. Participating LEAs for year 1, must report to the CDE by July 31, 2020, amounts withheld from participating classified school employees’ paychecks. CDE will apportion funds in August 2020.

REMINdERS:
Audit extension requests due by November 30
A written request for an audit report filing extension is due to SCOE before November 30, 2019.
Districts: Please include the reason for the extension request and the expected date of audit submission on District letterhead or via email. Subsequently, SCOE will submit the extension request to the State Controller’s Office (SCO) by December 15, 2019. The SCO and CDE will review the request and accompanying justification and provide notification as to whether the extension will be granted. SCOE will notify you when approved. The guidelines state that extensions will be granted only under extraordinary circumstances.
Independent Charters: There is no provision in the law for an extension of a charter school audit (E.C. 47605(m)). For extraordinary circumstances, please notify your Sponsoring District and SCOE of a potential delay. Please include the reason for the extension request and the expected date of audit submission on Charter letterhead or via email.

Developer Fee reporting reminder
Developer fees are required to be deposited in a separate capital facilities account/fund so that their collection and use is accounted for separately away from the rest of the district’s activities. Interest earned must be credited to the same fund and must be used for the same purpose as the fees. Government Code section 66006 requires that within 180 days of the end of the fiscal year, each district that levies developer fees should make the accounting available to the public by December 26, 2019, which is within 180 days after the last day of the fiscal year as required by statute. The governing board must review the information at its next regularly scheduled meeting held no earlier than 15 days after the information becomes available to the public.
Additionally, Government Code section 66001 requires each district that collects developer fees to make further findings every five years about any fund in which those fees remained unexpended at the end of the fiscal year. It is recommended that the five-year accounting be made in conjunction with the annual accounting for each fund or account. Failing to comply with the statute, results in a refund of fees in question.

For more detail information, please see School & College Legal Services of California’s Legal Update Annual Development Fee Accounting attached

**LCAP workshops and template changes**

**Leveraging the LCAP #2:** Analyzing Dashboard Data and Dollars, Prioritizing Goals, Understanding Our Local Context is scheduled for two identical sessions. Choose either January 14 or January 21. This Leveraging the LCAP workshop will cover analyzing dashboard data and dollars, prioritizing goals, and information on understanding our local context.

**Leveraging the LCAP #3:** Incorporating Stakeholder Feedback, Tying It All Together, Planning to Monitor for Success is scheduled for two identical sessions to choose from, Either February 4 or 6. This Leveraging the LCAP workshop will cover incorporating stakeholder feedback, tying it all together, planning to monitor for success.

**Professional Development Opportunities at SCOE**

- SCOE hosted workshops presented by CASBO – Flyer attached with registration details.
- February 12, 2020: Pupil Attendance for Business Office Personnel ***Revised date
- March 9, 2020: Leaves of Absence
- March 20, 2020: Payroll Concepts
- April 16, 2020 : Budget Basics
- April 17, 2020: Advanced Budgeting
- TBD: Legal Requirements for HR/Payroll

**Dates to Remember:**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>12/03/2019</td>
<td>ESCAPE 1099 Workshop</td>
</tr>
<tr>
<td>12/11/2019</td>
<td>Assignment Monitoring/CalSAAS Phase 2 meeting</td>
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<td>12/13/2019</td>
<td>ESCAPE W-2 Workshop</td>
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<tr>
<td>12/13/2019</td>
<td>ESCAPE ACA Workshop</td>
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<td>12/16/2019</td>
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<td>01/03/2020</td>
<td>P-1 Attendance DUE to SCOE</td>
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<td>01/06/2020</td>
<td>W-2 Correction Pay DUE</td>
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<td>01/08/2020</td>
<td>1099s and W2s DUE to SCOE</td>
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<td>01/08/2020</td>
<td>Illuminate User Group Meeting</td>
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<td>01/09/2020</td>
<td>Aeries User Group Meeting</td>
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<td>01/10/2020</td>
<td>School Wise User Group Meeting</td>
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<td>01/21/2020</td>
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<td>01/23/2020</td>
<td>DBUG (combined with Improvement Collaborative)</td>
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<tr>
<td>01/24/2020</td>
<td>Capitol Advisors Governors Budget Perspective Workshop</td>
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**NOTE:**

- Want to add something to a DBUG Agenda? Want a topic added to SCOE Biz? Contract DBUG Chair Christina Menicucci
- Workshop manuals and Fiscal Services/IT forms may be found at [http://www.scoe.org/escape](http://www.scoe.org/escape) under the heading of Resources on the left side of the page. We will be migrating all forms and materials to a shared Google based folder soon. A link will be provided when this occurs.
Special Education Early Intervention Preschool Grant Entitlements
Fiscal Year 2019–20

Entitlements were calculated at a rate of $9,010 per total eligible pupils, as certified in the December 2018 California Special Education Management Information System data collection.

<table>
<thead>
<tr>
<th>County</th>
<th>County Code</th>
<th>District Code</th>
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SCOIE PRINT SHOP

The SCOIE Print Shop provides printing and duplicating services for schools and non-profit agencies. It is a full-service shop, with the lowest pricing in the county.

From color brochures to black-and-white business forms, your printing jobs can be completed quickly and efficiently at SCOIE.

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Menu of Services

Color Printing
- Posters
- Brochures
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- Binder Covers

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- Graduation Programs
- Event Programs
- School News Letters
- Yearbooks

Finishing Options
- Collating
- Folding
- 3-Hole Punch
- Spiral Binding
- Staple Stitching

Office Supplies
- Carbonless Forms
- Business Cards
- Stationary
- Envelopes
- Notepads
- Postcards
- Tickets

School Documents
- Back-to-School Packets
- Report Cards
- Certificates
- Parental Annual Notices
- Planners
- Dibels

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Contact:
Scott Straub
(707) 524-2660 or sstraub@coes.org
Interfund Borrowing Using Bond Proceeds

This Fiscal Alert addresses the practice of interfund borrowing using voter-approved and restricted general obligation bond proceeds. This guidance is provided in response to questions from county offices and school districts throughout California, and was recently addressed by the California Debt and Investment Advisory Commission (CDIAC) in an article titled “California School Finance: The Practice of Borrowing from Bond Proceeds.” What follows is a summation of the guidance provided by CDIAC. This Fiscal Alert should be considered as analysis and not legal advice.

Background

Borrowing from other funds to satisfy temporary shortfalls in operating cash is common among California school districts. Education Code Section 42603 allows the governing board of a school district to temporarily transfer monies held in a fund of the school district to pay obligations in another fund. The provision does not limit this authority to particular funds, and includes no specific exclusions for funds holding restricted dollars.

Traditionally, the purpose of interfund borrowing has been to finance temporary cash shortfalls that occur before property taxes are received. The most common reason for interfund borrowing is the disharmony between the timing of revenues and expenditures. With the receipt of property taxes occurring at two main intervals during the fiscal year, the use of interfund borrowing has allowed districts to mitigate the associated cash flow implications and meet current financial obligations, including expenses related to personnel. Moreover, following the Great Recession, state-apportionment deferrals greatly increased the need to use available cash in other funds to temporarily support the general fund.

Districts that have funds available often prefer to borrow internally rather than from a financial institution since the practice is generally faster and less costly. To accomplish this, a district must prepare an annual resolution for governing board approval before moving the cash between district funds.

School districts must use borrowed funds to pay off existing obligations and cannot appropriate the funds for other uses. Section 42603 limits districts from transferring between funds if the receiving account will not accumulate sufficient income in the current fiscal year to repay the borrowed funds. Generally, transferred funds must be repaid within the same fiscal year, or in the following fiscal year if borrowed within the last 120 days of the current fiscal year.
Relevant Issues
The benefit of these borrowings may be overshadowed by the risks a district assumes when it transfers voter-approved and restricted general obligation bond proceeds to satisfy temporary shortfalls in operating funds. Any district seeking to use bond proceeds for temporary borrowing should carefully consider these risks.

1. Loss of Tax-Exempt Status for Bonds
   Bonds that have been issued as tax-exempt investments may lose the preferable tax status if the proceeds are not spent in accordance with U.S. Treasury regulations, which include restrictions on tax-exempt general obligation proceeds for short-term “working capital” purposes. A loss of tax-exempt status can affect both the price and marketability of the bonds, can have an adverse impact to investors who purchased bonds expecting to shelter their interest income from taxes, and may require an issuer to pay more for future tax-exempt borrowings.

2. Loss of Direct Subsidy
   In the case of Qualified School Construction Bonds (QSCBs) and Build America Bonds (BABs), interfund borrowing may result in the loss of the direct subsidy payments. The provisions governing the use of these proceeds require them to be used for a designated project, such as “construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed.” Loss of the subsidy can affect the underlying value and credit quality of the bonds and require the issuer to meet debt service obligations using other funds.

3. Legal Considerations
   The use of bond proceeds outside of their intended capital purpose may violate state law. School districts may issue general obligation bonds under the authority of Proposition 39, which requires that an issuer specify the purposes of general obligation bond proceeds and may not spend the proceeds “for any other purpose, including teacher and administrator salaries and other school operating expenses.” Districts issuing bonds pursuant to Proposition 46 are required to use the proceeds for “real property and improvements.” In both cases, using the funds as working capital, even temporarily, fails to fulfill these obligations. As well, Education Code Section 15100 establishes permitted purposes for proceeds including construction, repair, restoration, furnishment, and equipment. Section 15146 prohibits the use of proceeds for purposes other than those specified at the bond’s issuance. Therefore, interfund borrowing involving a transfer of general obligation bond proceeds to funds with expenditures outside of the designated capital project for which the bonds were issued may violate these sections of the Education Code.

While Education Code Section 42603 broadly allows for the temporary transfer of funds in any fund or account for payment of obligations, this section may be contradicted by the restrictions imposed by sections 15100 and 15146. Section 42603 may also be in conflict with the California Constitution, Article XIII A, if an interfund borrowing involves general obligation bond proceeds transferred to
a general operating account that pays teacher and administrator salaries or other operating expenses. Based on principles of statutory construction, which include specific language that overrides potentially contradictory general language in the same or a different statute, the authority provided districts by Section 42603 to conduct interfund borrowing may be preempted and inapplicable to the extent that it conflicts with federal law or the California Constitution.

4. Disclosure Violations

Federal regulations impose specific disclosure and anti-fraud requirements on certain municipal market participants. Failure to annually disclose operating information and audited financial statements violates Securities and Exchange Commission (SEC) Rule 15c2-12. Additionally, if a municipal entity does not disclose the full amount or effect of material information, such as a transfer of bond proceeds, in bond offering documents it may also constitute a material misrepresentation or omission. If the SEC deems these omissions to be a failure to disclose material facts, it may initiate an enforcement action against the district.

Defending against such actions may cause substantial financial and organizational risk. Apart from legal and regulatory requirements, interfund borrowing may hinder a district’s access to the capital markets and the community’s support of its educational and facility goals. In various ratings reports, the rating agencies cited significant or increased reliance on interfund borrowing as an indicator of the issuer’s weakened financial position and used this fact, in part, to justify a ratings downgrade.

FCMAT also considers interfund borrowing when analyzing a district’s fiscal condition since this may be an indicator of existing or emerging financial problems. Poorly timed transfers from bond funds can cause delays to projects funded by bond proceeds and may ultimately result in additional costs either from project financing or penalties for failing to meet project deadlines.

Borrowing from a bond fund may also erode the public’s trust in the school district, and could affect the district’s ability to seek voter approval for future issuances. Despite the temporary nature of the loan, the public may question the district’s use of the proceeds and its ability to repay the loan fully and timely.

Districts have several alternatives that are preferable to borrowing from bond proceeds.

1. Tax Revenue Anticipation Note (TRAN)

The most common method to mitigate a cash shortfall is a TRAN, a short-term note that may be issued by the district or the county board of supervisors, on its behalf, and secured by anticipated tax revenues to be collected in the same fiscal year. TRAN funds, typically held in a “proceeds” account, may be used for any purpose, including current expenses, capital expenditures, repayment of indebtedness, and investment.
2. The County Superintendent of Schools
   A district may borrow from the county superintendent of schools, with the approval of the county board of education. Funds are issued at the county office’s discretion and are subject to availability. Funds must be repaid within the same fiscal year.

3. The County Treasurer
   School districts may also seek to borrow against future payments to carry out facilities repairs. To do so, the district must submit a resolution to the county board of supervisors requesting a loan. Following the board’s approval, the county treasurer’s office disburses the funds to the district. The amount disbursed is limited to 85% of what the district accrues in the current fiscal year. Districts may also address cash shortfalls by undertaking a constitutional advance of property tax revenues. The governing board of a school district may submit a resolution to the county treasurer requesting an advance on tax revenues. Repayment of the advance is made from tax revenues accruing to the district later in the fiscal year. The advance may not exceed 85% of the district’s anticipated property tax revenues for the forthcoming fiscal year.

Conclusion
While recognizing that interfund borrowing can be useful for school districts to remedy cash flow shortfalls, borrowing from bond proceeds poses a substantial risk to issuers and districts alike. With other options available to mitigate a temporary cash shortage, districts should use alternative means to meet general obligations and avoid using bond proceeds for temporary borrowing.
1. Voter approval authorizes the sale of General Obligation bonds. Usually the school districts sell blocks of bonds (issue) instead of the total authorized amount. That is why each issue is numbered, also because each issue has a different maturity date and debt service schedule.

2. No one is excluded or waived from paying GOB taxes, including senior citizens. Debt service is a rate $\times$ value and does not take into account the owner. If a senior citizen states they are waived from other taxes; they are referring to Direct Charges / Parcel taxes. These taxes are different from General Obligation bonds. Seniors are exempt for those direct charges only if that clause was part of the creation of the resolution for ballot. Each district must respond to those questions if their direct charges allow for a senior exemption.

3. If a senior citizen states they did not pay school taxes in Marin, they are referring to direct charges. Marin County has confirmed that for GO bonds their county treats it the same as Sonoma County; no one is waived from paying these taxes.

4. CCPI: California Consumer Price Index – determined by the State

5. Questions on how the money is spent should be answered by the School district.

6. The Auditor’s Office sets the tax rates, creates the bills, and apportions to the debt service fund to pay the principal and interest on the bond. The school receives the bond money at the time of sale. They are the ones who allocate the funds for school improvements or new construction. The taxpayers pay the principal and interest to the bondholders through BNY as paying agent by paying their debt service property taxes. The rate is determined by the value of the district, the principal and interest owed for 18 months, and how much reserves are in the fund. Debt service amounts on the tax bills are calculated by the value of property times the rate. All taxpayers within that district have the same rate. Any questions related to tax rate calculations or tax bill errors should be forwarded to the Auditor’s office at 565-2635.

7. Questions on School vs. County boundaries refer to the Office of Education at 524-2631 Mary Downey, Deputy Superintendent’s office. Tax boundaries are sometimes different from school boundaries. Some taxpayers will pay taxes for one school but their children attend another school. You may receive questions on what school should a child attend based on the parcel number. Refer to the Office of Education. The school district determines which school a parcel belongs in. They are the ones to initiate any changes to the state chart.

8. Do not answer any questions about direct charges or other districts; refer to phone numbers on tax bills.

9. Questions regarding Assessment Appeals should be referred to the County Assessor’s Office.
Late School Start Time Bill (SB 328) FAQs

Governor Gavin Newsom officially signed Senate Bill (SB) 328 (Chapter 868/2019) into law on Sunday, October 13, 2019. SB 328 requires the school day for middle schools and high schools, including those operated as charter schools, to begin no earlier than 8:00 a.m. and 8:30 a.m., respectively, by July 1, 2022, or the date in which a district’s collective bargaining agreement that is operative on January 1, 2020, expires, whichever is later. The bill exempts rural school districts from the start time restrictions.

Since Governor Newsom signed this bill into law, we have received several questions from the field about the provisions of the law and how this bill will affect school agencies moving forward. We answer many of those questions below:

Q1. Can school agencies apply for a waiver from the bill’s provisions to the State Board of Education (SBE)?

A1. No. While the SBE has some power to grant waivers to school agencies for a number of Education Code sections, this new law is not one of them. The California Department of Education explicitly states on their website that since this statute is not waivable by the SBE, the CDE will return any requests to waive Education Code § 46148 back to the school agency (you can find more information here).

Q2. How does SB 328 define “school day”?

A2. The measure specifies that “school day” has the same meaning as defined by the school district or charter school for purposes of calculating average daily attendance (ADA) in order to compute any apportionments of state funding.

Q3. The bill exempts rural school districts from the start time restrictions; how are rural school districts defined in the measure?

A3. While SB 328 exempts rural school districts from its provisions, the bill does not define what districts would qualify as rural. The author’s office has indicated that this definition will likely get worked out via legislative clean-up language during the 2020 legislative year.

A4. What about zero period?

Q4. The bill does not prohibit a school or charter school from offering classes before the start of the school day to a limited number of pupils who do not generate ADA.
Legal Update

November 7, 2019

To: Superintendents, Member School Districts (K-12)

From: Erin E. Stagg, Associate General Counsel

Subject: Annual Development Fee Accounting

Memo No. 39-2019

Reminder: Development Fee Accounting requirements must be met prior to December 27, 2019. The following information and documents are provided to assist school districts maintain statutory compliance.

Government Code Section 66006 requires that an annual accounting of development fees must be made available to the public no later than December 27, 2019. The governing board - at its next regularly scheduled meeting at least 15 days after the accounting has been made available to the public – must review the annual accounting.

Every five years, additional findings must be made for any fund in which development fees remained unexpended at the end of a fiscal year.

I. Annual Accounting: Government Code Section 66006

School districts collecting development fees (e.g., statutory school facilities fees and other impact mitigation payments) must provide a separate accounting for each separate account or fund into which such fees or payments were deposited.

Section 66006(b)(1) requires the annual accounting for each fund include the following information:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance of the account or fund.

(D) The amount of the fees collected and the interest earned.
(E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement; include the total percentage of the cost of the public improvement that was funded with fees.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.¹

Each fee-collecting district must make the accounting available to the public by December 27, 2019, which is within 180 days after the last day of the fiscal year as required by statute. In addition, the governing board must review the information at its next regularly scheduled board meeting held no earlier than 15 days after the information becomes available to the public. Notice of the time and place of this meeting, including the address at which the information may be reviewed, must be mailed at least 15 days prior to the meeting to anyone who has filed a written request with the district for such notice.

II. Every Fifth Fiscal Year: Government Code Section 66001

Government Code section 66001(d)(1) requires that for the fifth fiscal year following the first deposit into each account or fund, and every five years thereafter, the local agency must make certain findings. These findings must also be made available to the public by December 27, 2019. When a local agency fails to make the required five-year findings, the agency is required to refund the unexpended portion of the fee, and any interest accrued thereon. Walker v. City of San Clemente, 239 Cal. App. 4th 1350, 1371 (2015)(emphasis in original).

In Walker, the city was ordered to refund approximately $10.5 million in unexpended fees for failing to make the required five-year findings. Specifically, the city failed to discuss the relationship between the nearly $10 million balance in the Beach Parking Impact Fee account and the purpose for which the fee was established, nor did it demonstrate a reasonable relationship between the unexpended fees and their purpose. The city’s purported findings identifying the sources and funds anticipated to complete financing for incomplete beach parking improvements and designating the approximate dates when it anticipated receiving that funding were also insufficient.

¹ Government Code section 66001(e) requires districts to refund developer fees that are not appropriated within a five-year period from date of collection. Government Code section 66001(f) provides a method for allocating such non-appropriated fees if the administrative costs of refunding exceed the amount to be refunded.
The Walker decision affirms that Section 66001 imposes a duty on the local agency to reexamine the need for the unexpended fees. Specifically, the Walker court explained, “[t]he City may not rely on findings it made 20 years earlier to justify the original establishment of the Beach Parking Impact Fee, or the findings it made 13 years earlier to justify reducing the amount of the fee. Instead, the Act required the City to make new findings demonstrating a continuing need for beach parking improvements caused by the new development in the noncoastal zone.”

To comply with section 66001(d)(1), a district must make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

(A) Identify the purpose to which the fee is to be put.

(B) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged. The Walker decision interpreted this to include an assessment of the impact of the development on the local agency, the current status of the need for the fund, the status of any improvements identified when the fee was established, what has been done since the fee was imposed, and future plans.

(C) Identify all sources and amounts of funding anticipated to complete financing and incomplete improvements identified in Government Code section 66001(a)(2), which states if the use is financing public facilities, the facilities shall be identified. It is optional, but identification can be made by reference to a capital improvement plan as specified in Government Code sections 65403 or 66002, or in other public documents that identify the public facilities for which the fee is charged.

(D) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

In sum, the local agency must affirmatively demonstrate that it still needs the unexpended fee to achieve the purpose for which it was originally imposed and that the agency has a plan on how to use the unexpended balance to achieve that purpose.

The findings required by this subdivision need only be made for moneys in possession of the local agency and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. As noted above, if the findings are not made as required by this subdivision, the local agency must refund the unexpended moneys in the account or fund plus interest as provided in Government Code section 66001(e).

III. Additional Information and Suggestions

Enclosed with this letter are three forms to assist with Government Code sections 66001 and 66006 compliance. The attachments include:
A sample resolution related to statutory fees collected under Education Code section 17620. (For districts which still have fees collected under “SB 201” — Government Code section 65970, et seq.—a separate resolution is available upon request.)

- A sample Exhibit 1, to be completed and attached to the resolution addressing the information required by Government Code section 66006 (Annual Accounting).
- A sample Exhibit 2, to be completed and attached to the resolution addressing the information required by Government Code section 66001 (Fifth-Year Accounting).

Instructions to complete Exhibit 1 and Exhibit 2.

Copies of relevant Code provisions.

These three documents assume that there are funds remaining in the account(s) or fund(s) in question for which a report under Government Code section 66001 is necessary. If that is not the case, please contact our office and we can provide a modified form of resolution. Finally, a reminder that even if funds remaining at the end of the fiscal year have been spent prior to the date of the accounting, it remains necessary to comply with Government Code section 66001 and complete the Fifth-Year Accounting. Although, the fact that the funds remaining have been spent will be reflected on both Exhibit 1 (reference (F)) and Exhibit 2 (references (C) and (D)).

Please contact our office with questions regarding this Legal Update or any other legal matter.
The recent fires and weather conditions have prompted many questions about when schools are required to close due to the loss of utility services such as water and electricity, including loss of the fire alarm system.

We begin by noting that no specific provision of the Education Code or any other provision of state law directly addresses the issue of when schools must close due to loss of necessary utilities. There are, however, several provisions of law that establish health and safety standards that must be maintained.

As to Employees

Labor Code Section 6400 provides that “every employer shall furnish employment and a place of employment which are safe and healthful for the employees therein.”

Labor Code Section 6401 provides, in part, that “every employer shall do every other thing reasonably necessary to protect the life, safety and health of employees.”

Labor Code Section 6402 provides that “no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.”

Labor Code Section 6404 provides that “no employer shall occupy or maintain any place of employment that is not safe and healthful.”

Although these provisions may appear redundant, it is prudent to assume that the very redundancy underscores the significance of the legislative mandates. This significance is further underscored by reference to Labor Code Section 6423-
6436, which create criminal and civil penalties for those managers and employers who are found to have violated the provisions of the Labor Code sections referred to above.

Finally, Labor Code Section 6401.7 requires every employer to adopt procedures under which, among many other duties, the “employer shall correct unsafe and unhealthy conditions…in a timely manner based on the severity of the hazard.”


Recommendations as to Employees

Based on the law referred to above, it is our opinion that the loss of water and other utilities should be reviewed on a case-by-case basis to determine whether the loss results in an unsafe or unhealthy work environment that will require that the condition be corrected, the employees transferred to a different work location, or that the employee be “sent home.”

We recommend that each district adopt standing procedures under which the administrator in charge of each facility will determine “in a timely manner” whether an unsafe or unhealthy condition exists and, if so, what must be done to correct the situation. Districts should also be familiar with any collective bargaining language concerning employee safety and ensure compliance with those additional requirements.

In determining whether to close a school, circumstances to consider include: (1) whether the facility has enough natural light to permit employees to remain without undue risk; (2) whether the fire alarm systems are operational without electricity and if they are not, whether a fire watch is permissible, as discussed below; (3) whether overhead sprinklers and toilet facilities are operational without water; and (4) whether the outside temperatures are extreme enough to render the workplace too cold or too hot to work.

As to Students

We begin with the obvious: if circumstances require that employees be excused from work, then students also must be excused. This conclusion is derived more from common sense than from any particular law. In addition to common sense, we have identified several provisions of law that address the issue of health and safety of students. These provisions provide as follows:

Title 5 of the California Code of Regulations Section 630 provides “governing boards, superintendents, principals, and teachers are responsible for the sanitary, neat, and clean condition of the school premises and freedom of the premises from conditions that would create a fire or life hazard.”

Title 5 of the California Code of Regulations Section 631 provides “adequate separate toilet facilities shall be maintained for each sex, and all buildings and grounds shall be maintained according to the regulations of the Board of Health having jurisdiction over the school district.”
Education Code Section 17573 provides “the governing board of every school district shall provide a warm, healthful place in which children who bring their own lunches to school may eat the lunches.” Additionally, Education Code Section 38086 and Title 42 of the United States Code Section 1758 requires school districts to provide students with free drinking water during meal times.

Education Code Section 17576 provides in part “the governing board of every school district shall provide, as an integral part of each school building, or as part of at least one building of a group of separate buildings, sufficient patent flush water closets for the use of the pupils. In school districts where the water supply is inadequate, chemical water closets may be substituted for patent flush water closets by the board.”

Education Code Section 17577 provides “In addition to the other powers granted the governing board of each school district may provide sewers and drains adequate to treat and/or dispose of sewage and drainage on or away from each school property. For this purpose it may construct adequate systems or acquire adequate disposal rights in systems constructed or to be constructed by others for these purposes without regard to their proximity. The cost thereof may be paid from the building fund, including any bond moneys therein.”

Education Code Sections 32000 et seq., require each school to maintain a “dependable and operative fire warning system.” However, Title 24 of the California Code of Regulations, Section 901.7 provides as follows:

Where a required fire protection system is out of service, the fire department and the fire code official shall be notified immediately and, where required by the fire code official, the building shall be either evacuated or an approved fire watch shall be provided for all occupants left unprotected by the shutdown until the fire protection system has been returned to service.

Where utilized, fire watch shall be provided with not less than one approved means for notification of the fire department and their only duty shall be to perform constant patrols of the protected premises and keep watch for fires.

Title 24 of the California Code of Regulations sections 901.7.1- 901.7.6, sets forth the specific emergency action requirements that must be taken if the fire protection system becomes inoperable. If the fire code official permits the district to conduct a fire watch in lieu of evacuation, these requirements must be followed.

Pursuant to Title 24 of the California Code of Regulations section 202, the following definitions are provided:

"Fire Code Official" - The fire chief or other designated authority charged with the administration and enforcement of the code, or a duly authorized representative.
"Fire Watch" - A temporary measure intended to ensure continuous and systematic surveillance of a building or portion thereof by one or more qualified individuals for the purposes of identifying and controlling fire hazards, detecting early signs of unwanted fire, raising an alarm of fire and notifying the fire department.

As such, a district would be permitted to conduct a fire watch in lieu of evacuation provided approval is obtained from the fire code official and the district complies with the required fire watch procedures.

Lastly, pursuant to Education Code Section 32282, school districts are required to have emergency procedures in their school safety plans, which should include plans for notifying parents of school closures. Most school districts likely have Board Policy and Administrative Regulation 3516 already in place which requires the district to ensure that the school safety plan’s emergency procedures include a plan for determining when closing a school is appropriate.

Recommendations as to Students

Based on our review of all applicable law, it is our opinion that the decision to close schools and send students home must be made on a case-by-case basis with due consideration given to both the health and safety of students. By way of example, the loss of water may not generate an immediate safety issue if the fire sprinkler system is operational using water stored in-site and that water is not contaminated. We recommend that districts contact our office to assist with making these case-by-case decisions.

Please contact our office with questions regarding this Legal Update or any other legal matter.
WORKSHOPS HOSTED BY SCOE BUSINESS SERVICES

If a Sonoma County school district employee attends one of the eligible workshops listed below their district will be reimbursed for the cost of registration (at the early bird rate). This will be valid for one person per district unless other agreements have been made with SCOE. Districts will be responsible for registering their staff with CASBO. Districts will only be reimbursed if the staff member attends the workshop.

Eligible Workshops  Register directly with CASBO

February 12, 2020: Pupil Attendance for Business Office Personnel ***Revised date
March 9, 2020: Leaves of Absence
March 20, 2020: Payroll Concepts
April 16, 2020: Budget Basics
April 17, 2020: Advanced Budgeting
TBD: Legal Requirements for HR/Payroll

Other Workshops

For more information contact Bonnie Tanner at btanner@scoe.org