NOVEMBER 2021 NO. 21-03

2021 Legislative Actions: Practical Tips and Take-Aways

What You Need to Know and What You Need to Do

As is usually the case, the 2021 legislative work year produced a number of bills with special relevance to school agencies, including six urgency measures. To assist with the task of figuring out what these all mean from a practical/operational sense for school administrators, we have briefly summarized them with our best thoughts concerning implementation as well as impacts on operations that should be considered.

Students and Instruction

SB 14: Student Absences (Urgency Legislation)

With an intense focus on the impacts of the pandemic on student well-being, the state has, through this bill, added to the list of excused absences for school reporting purposes those related to student mental and/or behavioral health. Subject to an appropriation in the State Budget, this bill also requires the CDE to recommend best practices and evidence-informed training programs for schools serving grades 7-12, for addressing youth behavioral health by January 1, 2023.

Practice Pointers:

The addition of mental/behavioral health as an excused absence does not necessarily require parents/guardians to identify this reason or give any additional explanation when reporting their student's absence to the school. It may be implemented through an online absence reporting system as a separate drop-down excused absence category option; however, school agencies should strongly consider the need for additional training, as well as reconsidering the use of students and/or adult volunteers, for staff fielding and/or processing parent/guardian telephone calls/voice mail messages so as to ensure the confidentiality of such sensitive information.

AB 27: Homeless Students (Urgency Legislation)

SB 400: Homeless Students

The legislature enacted a few bills addressing homeless students in our schools. Effective immediately as urgency legislation, AB 27 requires local educational agencies to administer a specific housing questionnaire, available in the student and parent/guardian's primary language if not English, to identify students who are homeless, and annually report the data to the CDE. Under SB 400, homeless education liaisons must also continue to ensure the identification of homeless children and youth through outreach, coordination activities, and referrals for health and other services. To this end, CDE has been tasked to develop and implement systems to verify that LEAs are meeting the requirements of the law and to remind each LEA to update outdated policies regarding federal requirements for services to homeless students.

Practice Pointers:

The questionnaire required by AB 27 is intended as an additional tool for local educational agencies to use in identifying homeless children and youths. It does not eliminate the existing requirement that LEAs work to identify homeless students through outreach and other coordination activities with other entities and agencies. With regard to policy updates, the legislation does not establish any specific deadlines; the requirement that local educational agencies have policies reflective of existing law simply remains in effect. As such, local educational agencies should ensure that the need for any updates to existing policies is considered in conjunction with established schedules for policy review.

AB 101: Ethnic Studies

Beginning with the 2025-26 school year, LEAs serving grades 9-12 will be required to offer at least a semester-long course in ethnic studies and commencing with the 2029-30 school year, a semester-long course in ethnic studies will be added to the list of statewide graduation requirements.

Practice Pointers:

Local educational agencies will need to update existing policies and related materials to reflect this new state graduation requirement in order to ensure that students graduating in the 2029-2030 school year and beyond will have timely and sufficient information necessary to meet this mandate. Course planning, staffing, and curriculum adoption will all need to be considered in the lead up to the 2025-26 mandate year.

AB 167: Independent Study (Urgency Legislation)

Signed in July, the TK-12 omnibus Budget Trailer Bill made significant and permanent changes to independent study programs, which include a requirement that all school districts and non-seat-based charter schools offer students a long-term independent study option for the 2021-22 school year should parents/guardians determine that in-person instruction would put their student's health at risk.

Practice Pointers:

Although school agency implementation of this new mandate for the 21-22 school year is well underway, questions remain regarding application to students with disabilities as well as school agency ability to create procedures for entry into a long-term independent study program. However, since the changes to independent study program requirements for purposes of claiming state apportionment are permanent in nature, even though many programs were crafted in relatively short order given the limited time available between bill passage and the start of the school year, school agencies are well-advised to review policies and take stock of their program design(s), staffing, and curriculum needs to ensure ongoing compliance for any existing and/or new programs generating apportionment through the independent study model.

SB 224: Mental Health Instruction

Requires all local educational agencies, charter schools and the State Special Schools for the Blind and Deaf that offer one or more health education classes to students in middle and/or high schools to include in their courses age appropriate and evidence-based mental health instruction.

Practice Pointers:

The recently adopted health framework includes additional instructional strategies relating to mental health. However, this bill appears to go beyond that framework, mandating specific additional topic areas for instruction. As such, school agencies should review and carefully consider necessary professional development and support for teachers tasked with providing this instruction to the extent the required mental health instruction goes beyond the training and authorization received by those with current health education teaching credentials. School agencies are also strongly encouraged to carefully review the Administrator's Assignment Manual and work closely with their local county offices of education to ensure that the staff assigned to teach these health classes are appropriately credentialed to provide the required instruction in mental health.

AB 516: Student Absences

Adds attendance in a cultural ceremony or event to the list of student excused absences for reporting purposes.

Practice Pointers:

Cultural ceremonies and events are specifically defined as those relating to the "habits, practices, beliefs, and traditions of a certain group of people." Of note, the bill was originally introduced in response to documented concerns of absenteeism among Native American pupils as a result of their participation in sacred ceremonies and those relating to deaths in the family. Given that the language of the bill is somewhat vague, it is unknown how this may be utilized in other contexts. However, similar to the issues presented with regard to absences due to mental and/or behavioral issues, additional training and/or support is recommended to ensure that staff receiving and/or processing reported absences are equipped to do so with appropriate sensitivity.

Labor and Employment

AB 237: Health Care Coverage During Strikes

Requires public employers to continue to provide health care coverage for employees who during the duration of a strike, fall below the minimum hours worked to qualify for employee health care coverage.

Practice Pointers:

This bill adds to the existing list of unfair practices an employer's termination of "health care coverage" for striking workers and their dependents, which is defined to include medical, behavioral health, dental, vision, disability, accidental death and dismemberment, life and supplemental health insurance. To the extent striking employees are responsible for additional premium contributions and as an employee's applicable monthly check may be insufficient to cover that cost, employers are also required to continue to collect and remit those contributions during any period of an authorized strike. As the legislation is framed, however, the employer's obligation to maintain health care coverage does not exist during unauthorized/unlawful strikes. Given the complexities of public sector labor law regarding strikes and other concerted activities, employers are thus strongly advised to proceed with caution and seek the advice of counsel should any questions regarding termination of health care coverage be contemplated in strike situations.

SB 270: Provision of Info to Bargaining Rep

Certain labor representatives are now authorized by this bill to file an unfair labor practice charge with the Public Employment Relations Board (PERB) if the employer fails to provide certain employee information in a timely and accurate manner and subjects the employer to certain penalties.

Practice Pointers:

As a follow up to AB 119 passed in 2017, this bill provides unions with the teeth to enforce their existing right to receive certain information regarding new and existing agency employees in a timely manner. Effective July 1, 2022, an exclusive representative (union) is now authorized to file an unfair practice charge with PERB if the employer does not provide the required information within twenty (20) calendar days after receipt of specific written notice of the alleged violation. This bill also imposes a monetary penalty, not to exceed $10,000, payable to PERB, on employers for violations, as well as awards of attorney's fees and costs for prevailing parties.

Agencies should thus carefully review their ongoing record of compliance with the information disclosure provisions of AB 119, including any negotiated disclosure schedules set forth in side letters of agreement or comprehensive collective bargaining agreements, and bring practices into compliance as necessary to avoid potential claims before the PERB.

AB 275: Classified Probationary Period (Community Colleges)

This bill reduces the probationary period for classified community college employees in non-merit districts from one year to 6 months or 130 days of paid service, in alignment with the statutory probationary period applicable to classified employees in K-12 school districts and county offices of education.

SB 278: CalPERS retiree compensation

Establishes requirements relating to the reporting of disallowed compensation by the state, school employer, or a contracting agency and retirement benefits paid to CalPERS retirees and their survivors or beneficiaries. The bill outlines the process for active members and retired members, including reimbursement protocols.

Practice Pointers:

This bill shifts the entire financial burden/repayment of retiree benefits paid based on disallowed compensation reported to CalPERS to local agency employers. Although the bill does specifically require CalPERS to respond to employer inquiries regarding whether proposed additional compensation to be included in a memorandum of understanding or collective bargaining agreement is pensionable, employers are recommended to carefully review their existing payroll/benefits staff reporting practices for proper internal controls, and ensure strict coordination/consultation with county office of education and CalPERS representatives to ensure that all additional compensation is reviewed and coded correctly for retirement system reporting purposes.

SB 331: Nondisclosure Agreements

This bill clarifies existing law which prohibits nondisclosure agreements in settlements of workplace harassment or discrimination cases based on sex and, effective January 1, 2022, expands this prohibition to settlement agreements related to *any* claims of workplace harassment or discrimination.

Practice Pointers:

This bill essentially makes unlawful the inclusion of a nondisclosure clause in any settlement or other resignation agreement where the claims/complaints involve allegations of workplace harassment or discrimination, not simply those relating to sexual assault or harassment. Specifically, agencies cannot prohibit through settlement terms, a claimant from disclosing factual information related to their claims.

Given this change, care should be taken to immediately review any existing forms or other template agreements currently in use to ensure that any and all unlawful provisions are removed/revised in accordance with the law. It is also suggested that officers, agents, and other employees of the agency connected to the allegations, investigation, and/or resolution of such claims and complaints be advised of the rights of claimants to speak out regarding their claims, even post-settlement, to avoid unnecessary upset and/or surprise and consider development of appropriate statements/responses which could be used in response to related inquiries.

SB 411: CalPERS Retiree status

This bill removes the statutory mandate that CalPERS reinstate a retiree to active membership if they work more than the 960-hour-per-fiscal-year limit and allows CalPERS discretion in addressing violations of this rule in a manner that does not impose harsh financial penalties on retirees.

Practice Pointers:

As a practical matter, this bill softens the potential consequences for CalPERS retirees who exceed the post-retirement employment limitation of 960 hours per fiscal year in that such individuals will no longer be subject to mandatory reinstatement and all of the associated fiscal implications imposed on both the employee and the employer. Specifically, unless the retiree is subject to a reinstatement order issued by CalPERS, the employer will not be liable for required employer contributions that would otherwise have been required to be paid.

That said, this bill should not be read as relieving employers of the obligation to closely monitor the earnings and hours of employees retired under the system and make all required reports to CalPERS so as to ensure legal compliance. Employer obligations set forth in Government Code section 21220 to enroll and report retiree pay rate(s) and number of hours worked remain unchanged and noncompliance still subjects employers to potential fiscal penalties.

AB 438: Classified Layoffs

An effort to align school district, county office of education, and community college classified layoffs with the procedures applicable to certificated layoffs, this bill recasts classified layoffs to require issuance of preliminary layoff notices to permanent classified employees on or before March 15 of each year and afford affected classified employees with hearing rights. Exempt from the new requirement, however, are layoffs of probationary classified employees and those due to the expiration of specially funded programs.

Practice Pointers:

Previously, districts, COEs and community college districts could pursue classified layoffs for lack of work or lack of funds at any time of the year on sixty days' notice to the affected employee(s). Given that classified layoffs for lack of work/lack of funds are now limited to a once annual basis for permanent classified employees similar to certificated layoffs (probationary classified employees are not subject to this new process), school agencies should

ensure that budget planning and related classified staffing analyses be brought into alignment with existing planning schedules for annual certificated staffing needs. Further, school agencies are strongly advised to carefully review and confirm the accuracy of all existing seniority lists by classification as well as clarify any bumping rights established through collective bargaining to ensure that any necessary classified layoff notices are served on all potentially affected by the proposed reductions.

The new notice and hearing procedures notably do not apply to layoffs resulting from the expiration of specially funded programs. As such, agencies are strongly encouraged to document all existing as well as newly created positions supported by categorical/one-time funding sources within position control or such other human resources/financial system processes to ensure that future layoff of such positions can proceed on the reserved sixty-day notice process. Additional recommendations include review and revision to union contracts and personnel commission rules necessary to ensure consistency with AB 438 as well as careful analysis of existing agency practices related to the hiring of regular classified staff, the evaluation and release of probationary classified employees, and the use of short-term staff as authorized by law.

AB 1383: Employee Discipline

Specifies that a community college employer should complete its investigation of an employee's accused misconduct within 90 *working* days of placing the employee on involuntary paid administrative leave.

Practice Pointers:

This bill simply clarified that the 90-day period is calculated as "working days" as opposed to "calendar days" for purposes of compliance and that the involuntary paid leave period while the investigation in ongoing may be extended by no more than thirty (30) days and only by mutual agreement.

Governance, Operations and Facilities

SB 254: Sept. 11 Remembrance Day

September 11th is now formally designated as "September 11th Remembrance Day" under state law. This legislation encourages but does not require public elementary and secondary schools to observe a moment of silence when September 11th falls on a school day.

SB 274: Transmittal of Agendas and Agenda Packets via Email

This bill updates the Brown Act to require local agencies with internet websites to email a copy of or a website link to the agenda and a copy of all documents in the agenda packet to those requesting such item(s) to be delivered by email. If the local agency does not have internet technology or emailing such item(s) would not be feasible, the agenda or website link to the agenda shall be sent by mail, along with a full copy of the agenda.

Practice Pointers:

As a practical matter, this bill simply bring existing requirements related to agenda subscriptions and individual requests for agendas and agenda packets into the 21st century by explicitly requiring email transmittal of requested documents unless the agency does not operate an internet website. As a reminder, transmittal of agendas and agenda packets to subscribers and in response to individual requests are to occur at the time the agenda is posted, or upon distribution to all or a majority of the members of the governing body.

AB 361: Brown Act – Teleconference Meetings (Urgency Legislation)

As a practical response to the logistical concerns associated with holding public meetings in the midst of declared states of emergency, the legislature has provided local public agencies with the ability to forgo adherence to certain existing requirements of the Brown Act (California's Open Meeting law) applicable to teleconferencing. Through December 31, 2023, local legislative bodies may accordingly utilize electronic means for meeting under specific conditions.

Practice Pointers:

The flexibility is not limited to pandemic-related health and safety concerns. Boards should be aware that during declared states of emergency, they may invoke the teleconferencing flexibility through the expiration date should things like wildfires, earthquakes, flooding, etc. make such action necessary.

It is worthy of note that the provisions of AB 361 only apply when governing members will be participating remotely under its terms due to health and safety risks associated with in-person meetings. Agencies that simply

wish to expand public participation through the use of webinars, YouTube, or other electronic means may do so without the need to comply with the new provisions set forth in AB 361, as long as the regular requirements of the Brown Act are followed.

AB 367: Menstrual Products

Effective July 1, 2022, the Menstrual Equity for All Act of 2021 requires all public schools maintaining any combination of classes from grades 6-12, to stock the school's restrooms at all times with an adequate supply of menstrual products in all women's and gender-neutral restrooms and in at least one men's restroom. Requires CSU and community college districts, and encourages UC, independent institutions and private postsecondary educational institutions to stock an adequate supply of menstrual products at no fewer than one designated and accessible central location on campus.

Practice Pointers:

Current law which requires free access to menstrual products (menstrual pads and tampons) in schools that meet the 40% pupil poverty threshold in at least 50% of the school's restrooms remains in effect through June 30, 2022 at which point the new mandate goes into effect.

SB 442: Governing Board Trustee Areas

Authorizes a county committee on school district organization to approve a proposal to establish trustee areas for the governing board of a community college district or a school district, including a district whose governing board is provided for in a city's charter, without a vote of the district's electorate.

Practice Pointers:

Ordinarily, after a school district goes through the transition process spelled out in the Elections Code and after the county committee approves the proposal, the county orders that the electorate vote on the transition unless an election waiver is granted. This bill simply allows the county committee's order approving the proposal to implement the new system to be final, eliminating the election waiver application process. It also allows this change to happen for districts whose elections are governed by a city charter without having to change the charter.

AB 602: Developer Fees

Adds new requirements to impact (developer) fee nexus studies prepared by cities, counties, and special districts.

Practice Pointers:

Schools adopting a developer fee will need to follow additional procedures and requirements, including adoption of a fee study that identifies an existing level of service and a proposed new level of service, with an explanation of why the new level of service is appropriate. For studies that propose to increase existing fees, schools must carefully review the assumptions of the original study and evaluate the amount of fees previously collected. All studies must also be adopted at a public hearing with at least 30 days' notice, and must be updated at least every eight years. The legislation also requires the state to create a study template by January 1, 2024 that districts will have the option to use and which may influence other fee study content.

SB 722: Swimming Pools – CPR Requirement

Requires school districts and charter schools that elect to host or sponsor events that are held in or around a swimming pool to have at least one adult with a valid CPR training to be present throughout the duration of the event.

Practice Pointers:

School agencies should review existing policies and related use agreements with both existing and potential future users of facilities to ensure that groups and organizations certify compliance with this new requirement.

AB 846: Job Order Contracting

The January 1, 2022 sunset of the authorization for job order contracting has been extended by this bill for five additional years to January 1, 2027, with additional conditions, including a requirement for advance preparation of a plan for modernization projects.

Practice Pointer:
This bill puts an additional burden on contractors with a job order contract in excess of $25,000 to provide enforceable commitments to the district that it and all its subcontractors will use a skilled and trained workforce to perform all work unless an existing project labor agreement already includes this assurance.

If you have any questions regarding this summary and how it affects your agency, please call one of our six offices.

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