2014 Back to School Client News Brief

Welcome to the Back to School edition of our Client News Briefs! As schools open across the state, our attorneys have identified new or recent changes in the law to keep in mind for the 2014-2015 school year. Click on any of the links below to read more:

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CLIENT NEWS BRIEF

Reminder: The "Personal Belief" Exemption from Immunization Now Has New Requirements

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The California School Immunization Law (Health and Safety Code, sections 120325-120375) requires that children receive vaccinations against certain illnesses in order to enroll in school. However, the law allows parents to opt out of the vaccination requirement by filing a letter or affidavit indicating that immunizations are contrary to their personal beliefs. This "personal belief" exemption was modified in 2014.

Effective January 1, 2014, parents claiming a personal belief exemption will now be required to submit an accompanying form, signed by a healthcare practitioner, indicating the parent has been informed about the risks and benefits of vaccinations. The personal belief exemption form must be signed by the student's parent and health practitioner no more than six months before entry into school. However, parents will not be required to obtain a healthcare practitioner's signature if they indicate on the form that they are a member of a religion that prohibits "seeking medical advice or treatment."

Despite the new requirements, parents are only required to submit a new exemption form when the child enters kindergarten or middle school, or moves to California from another state. Otherwise, exemptions filed prior to the new law remain effective.

If you have any questions regarding this issue, please contact one of our eight offices located statewide. You can also visit our website, follow us on Facebook or Twitter, or download our Client News Brief App.

Edward J. Sklar
Partner and Charter School
Practice Group Co-Chair
Walnut Creek Office
esklar@lozanosmith.com

Amanda E. Ruiz
Associate
Fresno Office
aruiz@lozanosmith.com

Lozano Smith
ATTORNEYS AT LAW

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Changes to the Laws Regarding Independent Study Go Into Effect Immediately

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Number 50

The laws regarding independent study, which are already complex, have been amended. These amendments have come through the recently passed education trailer bill, so many, but not all, go into effect immediately. Other amendments will become effective for the 2015-2016 school year.

Some of the immediate changes are to rules regarding calculation of maximum student-to-teacher ratios, allowing districts to collectively bargain alternative student-to-teacher ratios, and requirements regarding documenting time value of pupil work. Changes for the 2015-2016 school year will include a requirement that students and teachers communicate at least twice per month in-person, by telephone, or by any other live visual or audio connection to assess the student's educational progress.

Participating school districts should be aware of their responsibility to ensure their independent study programs are in compliance with the law, as compliance is essential for receiving and retaining funding.

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Edward J. Sklar
Partner and Charter School
Practice Group Co-Chair
Walnut Creek Office
esklar@lozanosmith.com

Amanda E. Ruiz
Associate
Fresno Office
aruiz@lozanosmith.com

Lozano Smith
ATTORNEYS AT LAW

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Annual Notice Requirements Modified for 2014-2015

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Number 51

California Education Code section 48980 requires school districts to annually notify parents of their rights and responsibilities with respect to a number of topics, such as prohibited discrimination, sexual harassment policies, uniform complaint procedures, and disciplinary rules. Additionally, Education Code section 48982 requires that parents or guardians sign and submit to the district an acknowledgement of receipt of the notice.

For the 2014-2015 school year, the Legislature has made changes to existing annual notifications and has added new notification requirements. The changes to existing requirements include providing information about religious exercises and instruction absences, immunizations, and uniform complaint procedures. Among the additional notice requirements, there are new topics such as release of directory information of homeless students and concussion and head injury notices for schools electing to offer athletic programs. Districts should ensure that they are meeting all of the current notification requirements.

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Jenell Van Bindsbergen
Senior Counsel
Fresno Office
jvanbindsbergen@lozanosmith.com

Amanda E. Ruiz
Associate
Fresno Office
aruiz@lozanosmith.com

Lozano Smith
ATTORNEYS AT LAW

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Reminder: Minimum Wage in California Increased in 2014

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Number 52

Effective July 1, 2014, the minimum wage increased from $8.00 an hour to $9.00 an hour. The minimum wage will increase a second time on January 1, 2016 to $10.00 an hour. (Labor Code § 1182.12.) Due to this change in the law, local educational agencies should review their pay practices and ensure they are in compliance with all wage and hour laws.

Most California employees must be paid at least the state minimum wage. Accordingly, employers should examine their current pay practices and policies to evaluate if changes need to be made due to the minimum wage increase. The new law not only affects the base salaries of employees but will also affect overtime pay, meal and lodging credits, and exempt/nonexempt classifications. For example, the increase in the minimum wage impacts whether employees qualify for overtime exemptions for executive, administrative or professional employees (i.e. teachers or department heads). One requirement of the overtime exemption is that an employee receives a salary that is not less than two times the California minimum wage for full-time employment of 40 hours per week. Therefore, effective July 1, 2014, the minimum salary to qualify for an overtime exemption is $3,120 per month, or $37,440 annually.

Violations of the minimum wage law carry serious penalties for employers. Labor Code section 1199 provides that an employer that violates a minimum wage law order is guilty of a misdemeanor, which is punishable by a fine of at least $100 or by imprisonment for 30 days, or by both. The employer could also be exposed to additional civil penalties. For example, nonexempt employees who are paid less than the minimum wage can file a wage claim with the Labor Commissioner's Office or can file a civil lawsuit to collect the difference between what they were paid and what they should have been paid at the new minimum wage.

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Jenell Van Bindsbergen
Senior Counsel
Fresno Office
jvanbindsbergen@lozanosmith.com

Amanda E. Ruiz
Associate
Fresno Office
aruiz@lozanosmith.com

Lozano Smith
ATTORNEYS AT LAW

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Courts Intervene to Keep Charter Schools Operating Pending Appeals of Revocation Cases

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Several charter schools have recently succeeded in convincing courts to intervene in the charter renewal and revocation process despite the fact that these charter schools have not exhausted their administrative appeals through county boards of education and the State Board of Education before seeking such court action. This trend could severely hamper a school district's ability to oversee and revoke charter petitions when necessary.

For example, as reported in CNB No. 34, during the 2013-2014 school year three charter schools operating under the American Indian Model Schools (AIMS) charter organization had their charters revoked by the Oakland Unified School District for the alleged fiscal mismanagement of millions of dollars. While the district's decision to revoke the charters was pending in the administrative appeals process, AIMS went to court and obtained a restraining order prohibiting the closure of the schools. AIMS ultimately convinced the court to overturn the district's decision to revoke the charters because the district did not make the required findings of fact regarding academic achievement. All three AIMS schools currently remain open.

Similarly, the Los Angeles Unified School District decided not to renew the charters of two schools operated under the Magnolia Educational and Research Foundation (Magnolia) because Magnolia was alleged to be in financial dire straits. Magnolia sought, and obtained, a court's temporary restraining order that has kept these schools open because the district's decision not to renew was allegedly made improperly. This matter is still pending before the court. Like the situation with AIMS, the court inserted itself into the administrative appeals process before that process could run its course.

Lozano Smith is monitoring this trend and will continue to provide updates on the status of the law on charter petition revocation and renewal.

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Edward J. Sklar
Partner and Charter School
Practice Group Co-Chair
Walnut Creek Office
esklar@lozanosmith.com

Manuel F. Martinez
Associate and Technology and
Innovation Practice Area Co-Chair
Walnut Creek Office
mmartinez@lozanosmith.com

Lozano Smith
ATTORNEYS AT LAW

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State Board of Education Amends Special Education Regulations Effective July 1, 2014

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Number 54

On July 1, 2014, amendments to the state special education regulations went into effect, found in title 5, sections 300-3088 of the California Code of Regulations. Many of the regulations had not been updated since December 1987. Since then, other sources of special education law, including the California Education Code, the Individuals with Disabilities Education Act (IDEA) and the federal regulations to the IDEA, have been changed. The State Board of Education (SBE) amended the California regulations in an effort to better align them with statutes and regulations, remove redundant references contained elsewhere in the law, and to make the language more consistent.

For example, the SBE amended the regulations relevant to behavior interventions to account for the repeal of the Hughes Bill in 2013. The amended regulations remove the definitions of terms such as "behavioral emergency," "behavioral intervention case manager," "behavioral intervention plan" and "serious behavior problem." The regulations also add a new section, section 3051.23, to set forth the necessary qualifications of personnel who may design, plan or implement behavioral interventions.

The updated regulations also now use the term "related services," consistent with federal law, instead of "designated instruction and services," and have updated requirements for the qualifications of service providers. For example, the regulations now specifically state that language and speech development and remediation may be provided by a speech-language pathology assistant under direct supervision of a speech-language pathologist (SLP), if it is specified in the IEP and if the SLP does not supervise more than two assistants. Additionally, the use of assistants may not be used to increase the applicable SLP caseload limits. The regulations also now provide a specific definition for "music therapy" services.

The SBE also revised the regulations defining special education eligibility criteria to align with the federal standards. For example, the definition for Specific Learning Disability (SLD) provides that in determining whether a child has an SLD, the school district *may consider* whether there is a severe discrepancy between ability and achievement, or may also find SLD if a child does not achieve adequately under the "response to intervention" or "pattern of strengths and weaknesses" models. School districts are not prohibited from using a "severe discrepancy" model. Rather, the state regulations now track the federal IDEA regulations, which provide that a state may not *mandate* the use of a severe discrepancy model, but must allow for a "response to intervention" process, and may allow the use of other methods in determining the existence of a SLD.

These are some of the key changes to the regulations. The SBE's notice regarding the amended regulations, and more information about the changes to the regulations, are available here.

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Sarah L. Garcia
Partner and Special Education
Practice Group Co-Chair
Walnut Creek Office
sgarcia@lozanosmith.com

Karin M. Anderson
Associate
San Diego Office
kanderson@lozanosmith.com

Lozano Smith
ATTORNEYS AT LAW