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LEGAL UPDATE

October 14, 2014

~~for information~~
Susanne K. Reed
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To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin, General Counsel *CDC*

Subject: New Legislation Regarding Homeless Child/Youth and Student Discipline
Memo No. 29-2014

Assembly Bill ("AB") 1806¹ was signed by the Governor on September 29, 2014, which effective January 1, 2015, provides additional requirements associated with the discipline of homeless² children/youth.

- Expulsion Hearing for Non-Mandatory Expellable Acts: Existing law, Education Code section 48915, provides three classes of student acts that allow for student expulsion: Class I acts³, which the superintendent/designee "may recommend" expulsion; Class II acts⁴, which the superintendent/designee "shall recommend" expulsion unless the superintendent/designee determines that expulsion is inappropriate due to the particular circumstances; and Class III acts⁵, which the superintendent/designee "shall recommend" expulsion. The Class III acts that a superintendent/designee must recommend expulsion consist of: possessing, selling, or otherwise furnishing a firearm; brandishing a knife at another person; unlawfully selling a controlled substance; committing or attempting to

¹ Available at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1806.

² Definition of "homeless" is in accordance with 42 USC § 11434. Also see Education Code section 48850(d).

³ Education Code section 48915(b).

⁴ Education Code section 48915(a).

⁵ Education Code section 48915(c).

commit a sexual assault or battery; and possession of an explosive. AB 1806 modified Education Code section 48918.1 to require the school district to provide notice of at least 10 calendar days before the date of the expulsion hearing to the district's liaison for homeless children/youth for Class I and Class II acts. For Class III acts, the school district may, but is not required to, provide notice of at least 10 calendar days before the date of the expulsion hearing to the district's liaison for homeless children/youth. Notice may be made by the most cost-effective method, which may include electronic mail or a telephone call.

- Manifestation Determination for Homeless Child/Youth receiving Special Education: Existing law, Education Code section 48915.5 and IDEA federal law, requires a school district to convene an IEP meeting within 10 school days of the decision to change the placement of a special education student as a result of student discipline for the purpose of determining whether or not the act subject to discipline was a manifestation of the student's disability. AB 1806 now requires that for Class I and Class II acts the school district shall invite to the manifestation determination IEP meeting the district's liaison for homeless children/youth. Notice may be made by the most cost-effective method, which may include electronic mail or a telephone call.

As a closing matter, often within a school district the internal department responsible for addressing special education for students and the internal department responsible for addressing discipline for students do not always share information in the most effective manner. This new legislation affecting homeless children/youth will now require three departments of the school district to cooperate closely when there is a discipline issue regarding a homeless child/youth who also receives special education services. We strongly encourage school districts to review their internal systems to ensure the responsible departments are effectively communicating with each other.

We strongly encourage local educational agencies to update their discipline forms and policies to comply with these changes in the law regarding foster student discipline.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. Therefore, we recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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