



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and
college districts
throughout the state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Monica D. Batanero
Nancy L. Klein
Jennifer E. Nix
Steven P. Reiner
Mia N. Robertshaw
Loren W. Soukup
Patrick C. Wilson
Frank Zotter, Jr.

Of Counsel
Robert J. Henry
Janna L. Lambert
Virginia A. Riegel

LEGAL UPDATE

August 11, 2015

To: Superintendents, Member School Districts (K-12)
From: Monica D. Batanero, Associate General Counsel *MDB*
**Subject: Students Who Turn Five After December 2nd May Now Begin
Transitional Kindergarten at Any Time During the School Year
Memo No. 18-2015**

Pursuant to Education Code section 48000(c), a child is eligible for transitional kindergarten (“TK”) if the child will have his or her fifth birthday between September 2 and December 2. On June 25, 2015, Governor Jerry Brown signed into law Assembly Bill 104, which effective immediately, made an important change to the admittance criteria for TK. This change in the law does not affect the admittance criteria for “regular” kindergarten.

Effective for the 2015-2016 school year and each school year thereafter, local education agencies (“LEA”) may, at any time during the school year on a case-by-case basis, enroll a child in TK who will have his or her fifth birthday after December 2 but during that same school year if:

1. The governing board determines the admittance is in the best interests of the child; and
2. The parent or guardian is given information regarding the advantages and disadvantages, and any other explanatory information about the effect of this early admittance.

Prior to this recent change in the law, children who turned five after December 2, were forbidden to enroll in TK prior to turning five. Children who are enrolled outside of the TK cohort dates of September 2 through December 2 need to have a signed Kindergarten Continuance Form verifying that the parent/guardian agrees to have his/her child continue in kindergarten for one additional year.¹

¹ The Kindergarten Continuance Form may be found on CDE’s website at <http://www.cde.ca.gov/ci/gs/em/documents/parentagreeform.pdf>



It is important to note that Average Daily Attendance (“ADA”) can only be claimed for these students once they attain the age of five. However, for students who turn age five between September 2 and December 2, ADA may be claimed from the beginning of the school year.

Our office requested clarification from the California Department of Education (“CDE”) if an LEA can charge parents a fee for those students whose 5th birthday falls after December 2, but attend TK prior to turning five. CDE was unable to provide our office any clarification and only referred us to their Frequently Asked Questions which does not address this issue.² As we learn of any guidance or receive any clarification on the funding issue, we will promptly notify you.

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. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

© 2015 School and College Legal Services of California

All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client’s own non-commercial purposes.

² CDE’s FAQs may be found at <http://www.cde.ca.gov/ci/gs/em/kinderfaq.asp>.