



# CALIFORNIA STATE BOARD OF EDUCATION

## JULY 2004 AGENDA

<b>SUBJECT</b> Special Education: Adopt Title 5 Regulations (Sections 3088.1 and 3088.2) regarding withholding funds to enforce special education compliance	<input checked="" type="checkbox"/> <b>Action</b> <input checked="" type="checkbox"/> <b>Information</b> <input type="checkbox"/> <b>Public Hearing</b>
---	---

### **RECOMMENDATION**

Consider the report of comments received during the 45-day public comment period and at the public hearing for the proposed Title 5 Regulations (Sections 3088.1 and 3088.2). Take action to adopt the regulations.

### **SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION**

The State Board of Education at the January 2004 meeting approved the commencement of the rule making process for the proposed regulation. Staff was directed to conduct a public hearing on March 8, 2004, at 8:00 a.m. Substantial changes were made to the regulations as a result of the public comments received. The state Board of Education at the May 2004 meeting directed staff to begin the rulemaking process for the revised regulations. Staff was directed to provide a 45-day public comment period and conduct a public hearing on July 6, 2004, at 8:00 a.m.

### **SUMMARY OF KEY ISSUES**

20 USC Section 1413 requires, among other things, that state education agencies monitor local education agencies to assure compliance with special education laws. 34 CFR 300.197 and *Education Code* Section 56845(a) and (b) authorize the Superintendent to withhold state and federal funds from a local education agency after reasonable notice and opportunity for a hearing if the superintendent finds the agency out of compliance with special education laws.

This proposed regulation is developed in response to the U.S. Department of Education Office of Special Education Policy (OSEP) expectation that state education agencies have a full continuum of enforcement options to compel compliance with special education laws.

Section 3088.1 specifies the required contents of a hearing notice and the timelines for conducting the hearing prior to making a decision whether to withhold funds. Section 3088.2 specifies when funds shall be withheld if the hearing officer concludes that the

### **SUMMARY OF KEY ISSUES (continued)**

---

local educational agency has not presented sufficient proof of compliance or mitigating circumstances precluding compliance. This section also stipulates that the superintendent may apportion state and federal funds previously withheld from the local education agency when it is determined that substantial progress toward compliance with special education laws has been made.

### **FISCAL ANALYSIS (AS APPROPRIATE)**

---

The Economic and Fiscal Impact Analysis completed by the Fiscal and Administrative Services Division pertaining to these regulations indicates that adoption of the regulations does not impose a local cost mandate or costs upon the state. The regulations do not impact local business or individuals. The analysis was included in information submitted to the State Board for the agenda item on the proposed regulations at the May 2004 State Board meeting.

### **ATTACHMENT(S)**

---

[Attachment 1](#): Proposed Title 5 Regulations, Sections 3088.1, 3088.2 (3 Pages)

A summary of the comments received from the public shall be prepared by staff for the Final Statement of Reasons and submitted as a Last Minute Memorandum to the Board.

1 Title 5. EDUCATION

2 Division 1. State Department of Education

3 Chapter 3. Handicapped Children

4 Subchapter 1. Special Education

5 Article 7. Procedural Safeguards

6

7 *Add §§ 3088.1 and 3088.2 to read:*

8 **§ 3088.1. Sanctions: Withholding Funds to Enforce Special Education Compliance.**

9 (a) When a district, special education local plan area, or county office of education fails to  
10 comply substantially with a provision of law regarding special education and related services,

11 the superintendent may withhold funds allocated to such local agency under Chapter 7.2

12 (commencing with Section 56836) of Part 30 of the Education Code and the Individuals with  
13 Disabilities Education Act (20 U.S.C. 1400 et seq.). Such noncompliance may result from

14 failure of the local agency to substantially comply with corrective action orders issued by the  
15 Department of Education in monitoring findings or complaint investigation reports.

16 “Substantial noncompliance” means an incident of significant failure to provide a child with a  
17 disability with a free appropriate public education, a history of chronic noncompliance in a  
18 particular area, or a systemic agency-wide problem of noncompliance.

19 (b) Prior to withholding funds, the department shall provide written notice to the local  
20 educational agency, by certified mail, of the noncompliance findings that are the basis of the

21 Department’s intent to withhold funds. The notice shall also inform the local agency of the  
22 opportunity to request a hearing to contest the findings and the proposed withholding of  
23 funds.

24 (c) The notice shall include the following information:

25 (1) The specific past and existing noncompliance that is the basis of the withholding of

1 funds.

2 (2) The efforts that have been made by the Department to verify that all required  
3 corrective actions have been taken.

4 (3) The specific actions that must be taken by the local educational agency to bring it into  
5 compliance by an exact date to avoid the withholding of funds.

6 (d) The local educational agency shall have 30 calendar days from the date of the notice  
7 to make a written request for a hearing. The department shall schedule a hearing within 30  
8 days of receipt of a request for hearing, and notify the local agency of the time and place for  
9 hearing. A hearing officer with experience in special education and with administrative  
10 hearing procedures shall be assigned by the department to conduct the hearing and make an  
11 audio recording of the proceeding. The hearing officer may grant continuances of the date for  
12 hearing for good cause.

13 (e) The local education agency shall have the opportunity, prior to the hearing, to obtain  
14 all documentary evidence maintained by the Department's Special Education Division that  
15 supports the findings of noncompliance at issue in the notice of intent to withhold funds.

16 (f) Technical rules of evidence shall not apply to the hearing, but relevant written  
17 evidence or oral testimony may be submitted, as appropriate. Local education agencies may  
18 be represented by counsel and the hearings will be open to the public.

19 (g) If a hearing is not requested, the Department shall withhold funds as stated in the  
20 notice. If a hearing is held, a written decision shall be rendered within 30 calendar days from  
21 the date the hearing is held.

22 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 56845(a),  
23 Education Code.

24

25 **§ 3088.2. Enforcement and Withholding of Funds.**

1       (a) The hearing officer shall determine, based on the totality of the evidence, whether a  
2 preponderance of the evidence supports the Department’s findings of noncompliance and  
3 the determination that withholding of funds is appropriate in the particular circumstances of  
4 the case. The hearing officer’s decision shall be the final decision of the Department of  
5 Education.

6       (b) If the Superintendent of Public Instruction determines, subsequent to withholding  
7 funds, that a local educational agency has made substantial progress toward compliance  
8 with the state law, federal law, or regulations governing the provision of special education  
9 and related services to individuals with exceptional needs, the superintendent may apportion  
10 the state or federal funds previously withheld to the local educational agency.

11 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 56845(b),  
12 Education Code.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25 5-11-04