

**DRUG AND ALCOHOL-FREE WORKPLACE**

The Santa Clara County Office of Education believes that the maintenance of a drug and alcohol-free workplace is essential to staff and student safety and to help ensure a productive and safe work and learning environment.

*(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)*

*(cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)*

An employee shall not unlawfully manufacture, distribute, dispense, possess, or use any controlled substance while on duty, on SCCOE property, or at a school-related activity or event. (Government Code 8355; 41 USC 701)

In addition, an employee shall not use or be under the influence of any alcoholic beverage or controlled substance, as defined in 21 USC 812, while on duty, on SCCOE property, or at a SCCOE-related activity or event.

The Santa Clara County Superintendent of Schools or designee shall notify employees of the SCCOE's prohibition against drug use and the actions that will be taken for violation of such prohibition. (Government Code 8355; 41 USC 701)

An employee shall abide by the terms of this policy and shall notify the SCCOE, within five days, of his/her conviction for violation in the workplace of any criminal drug statute. (Government Code 8355; 41 USC 701)

The County Superintendent or designee shall notify the appropriate federal granting or contracting agency within 10 days after receiving notification, from an employee or otherwise, of any conviction for a violation occurring in the workplace. (41 USC 701)

In accordance with law and the SCCOE's collective bargaining agreements, the County Superintendent or designee shall take appropriate disciplinary action, up to and including termination, against an employee for violating the terms of this policy and/or shall require the employee to satisfactorily participate in and complete a drug assistance or rehabilitation program approved by a federal, state, or local health or law enforcement agency or other appropriate agency.

*(cf. 4112 - Appointment and Conditions of Employment)*

*(cf. 4117.4 - Dismissal)*

*(cf. 4118 - Suspension/Disciplinary Action)*

*(cf. 4212 - Appointment and Conditions of Employment)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

The County Superintendent or designee shall establish a drug-free awareness program to inform employees about: (Government Code 8355; 41 USC 701)

1. The dangers of drug abuse in the workplace
2. The SCCOE's policy of maintaining a drug-free workplace

**DRUG AND ALCOHOL-FREE WORKPLACE** (continued)

3. Available drug counseling, rehabilitation, and employee assistance programs

*(cf. 4159/4259/4359 - Employee Assistance Programs)*

4. The penalties that may be imposed on employees for drug abuse violations occurring in the workplace

*Legal Reference:*

EDUCATION CODE

44011 *Controlled substance offense*

44425 *Conviction of controlled substance offenses as grounds for revocation of credential*

44836 *Employment of certificated persons convicted of controlled substance offenses*

44940 *Compulsory leave of absence for certificated persons*

44940.5 *Procedures when employees are placed on compulsory leave of absence*

45123 *Employment after conviction of controlled substance offense*

45304 *Compulsory leave of absence for classified persons*

GOVERNMENT CODE

8350-8357 *Drug-free workplace*

UNITED STATES CODE, TITLE 20

7111-7117 *Safe and Drug Free Schools and Communities Act*

UNITED STATES CODE, TITLE 21

812 *Schedule of controlled substances*

UNITED STATES CODE, TITLE 41

701-707 *Drug-Free Workplace Act*

CODE OF FEDERAL REGULATIONS, TITLE 21

1308.01-1308.49 *Schedule of controlled substances*

COURT DECISIONS

*Cahoon v. Governing Board of Ventura USD, (2009) 171 Cal.App.4th 381*

*Ross v. RagingWire Telecommunications, Inc., (2008) 42 Cal.4th 920*

**NONDISCRIMINATION IN EMPLOYMENT**

The Santa Clara County Office of Education prohibits discrimination against and/or harassment of SCCOE employees and job applicants at any SCCOE site or activity on the basis of actual or perceived race, religion, color, national origin, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran status, gender, sex, or sexual orientation.

*(cf. 0410 - Nondiscrimination in SCCOE Programs and Activities)*

*(cf. 4032 - Reasonable Accommodation)*

*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*

*(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)*

*(cf. 4154/4254/4354 - Health and Welfare Benefits)*

*(cf. 5145.7 - Sexual Harassment)*

Prohibited discrimination or harassment consists of unwelcome conduct, whether verbal, physical, or visual, based on any of the prohibited categories of discrimination listed above that it is so severe and pervasive that it adversely affects an individual's employment opportunities or has the purpose or effect of unreasonably interfering with his/her work performance or creating an intimidating, hostile, or offensive work environment.

SCCOE also prohibits retaliation against any SCCOE employee or job applicant, who complains, testifies, assists, or in any way participates in the SCCOE's complaint procedures instituted pursuant to this policy.

Any SCCOE employee who engages or participates in prohibited discrimination or harassment, or who aids, abets, incites, compels, or coerces another to engage or attempt to engage in such behavior, shall be in violation of this policy and shall be subject to disciplinary action, up to and including dismissal.

*(cf. 4117.4 - Dismissal)*

*(cf. 4118 - Suspension/Disciplinary Action)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

Any employee or job applicant who believes that he/she has been or is being discriminated against or harassed in violation of policy or regulation should immediately contact his/her supervisor or the Santa Clara County Superintendent of Schools who shall advise the employee or applicant about the SCCOE's procedures for filing, investigating, and resolving any such complaints.

Complaints regarding employment discrimination or harassment shall immediately be investigated.

*(cf. 4031 - Complaints Concerning Discrimination in Employment)*

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

Any supervisory or management employee who observes or has knowledge of an incident of prohibited discrimination or harassment shall report the incident to his/her supervisor or County Superintendent as soon as practical after the incident. All other employees are encouraged to report such incidents to their supervisor immediately.

**Training and Notifications**

The County Superintendent or designee shall provide training to supervisors about how to recognize harassment and discrimination, how to respond appropriately, and components of the SCCOE's policies and regulations regarding discrimination.

*(cf. 4131- Staff Development)*

*(cf. 4231- Staff Development)*

*(cf. 4331- Staff Development)*

The County Superintendent or designee shall regularly publicize, within the SCCOE and in the community, the SCCOE's nondiscrimination policy and the availability of complaint procedures. Such publication shall be included in each announcement, bulletin, or application form that is used in employee recruitment. (34 CFR 100.6, 106.9)

The SCCOE's policy shall be posted in all schools and offices including staff lounges and student government meeting rooms. (5 CCR 4960)

*Legal Reference:*

EDUCATION CODE

200-262.4 Prohibition of discrimination

CIVIL CODE

51.7 Freedom from violence or intimidation

GOVERNMENT CODE

11135 Unlawful discrimination

12900-12996 Fair Employment and Housing Act

*Legal Reference continued: (see next page)*

**NONDISCRIMINATION IN EMPLOYMENT** (continued)

*Legal Reference: (continued)*

PENAL CODE

422.56 *Definitions, hate crimes*

CODE OF REGULATIONS, TITLE 2

7287.6 *Terms, conditions and privileges of employment*

CODE OF REGULATIONS, TITLE 5

4900-4965 *Nondiscrimination in elementary and secondary education*

UNITED STATES CODE, TITLE 20

1681-1688 *Title IX of the Education Amendments of 1972*

UNITED STATES CODE, TITLE 29

621-634 *Age Discrimination in Employment Act*

794 *Section 504 of the Rehabilitation Act of 1973*

UNITED STATES CODE, TITLE 42

2000d-2000d-7 *Title VI, Civil Rights Act of 1964, as amended*

2000e-2000e-17 *Title VII, Civil Rights Act of 1964, as amended*

2000ff-2000ff-11 *Genetic Information Nondiscrimination Act of 2008*

2000h-2-2000h-6 *Title IX of the Civil Rights Act of 1964*

12101-12213 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 34

100.6 *Compliance information*

104.7 *Designation of responsible employee for Section 504*

104.8 *Notice*

106.8 *Designation of responsible employee and adoption of grievance procedures*

106.9 *Dissemination of policy*

COURT DECISIONS

*Shephard v. Loyola Marymount, (2002) 102 CalApp.4th 837*

## COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT

### Complaint Procedure

Any complaint by an employee or job applicant alleging discrimination or harassment shall be addressed in accordance with the following procedures:

1. **Notice and Receipt of Complaint:** Any employee or job applicant (the "complainant") who believes he/she has been subjected to prohibited discrimination or harassment shall promptly inform his/her supervisor or the County Superintendent.

The complainant may file a written complaint in accordance with this procedure, or if he/she is an employee, may first attempt to resolve the situation informally with his/her supervisor.

A supervisor or manager who has received information about an incident of discrimination or harassment, or has observed such an incident, shall report it to the County Superintendent or designee, whether or not the complainant files a written complaint.

The written complaint should contain the complainant's name, the name of the individual who allegedly committed the act, a description of the incident, the date and location where the incident occurred, any witnesses who may have relevant information, other evidence of the discrimination or harassment, and any other pertinent information which may assist in investigating and resolving the complaint.

*(cf. 0410 - Nondiscrimination in SCCOE Programs and Activities)*

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4032 - Reasonable Accommodation)*

*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*

2. **Investigation Process:** The County Superintendent or designee shall initiate an impartial investigation of an allegation of discrimination or harassment within five days of receiving notice of the behavior, regardless of whether a written complaint has been filed or whether the written complaint is complete.

The County Superintendent or designee shall meet with the complainant to describe the SCCOE's complaint procedure and discuss the actions being sought by the complainant in response to the allegation. The County Superintendent or designee shall inform the complainant that the allegations will be kept confidential to the extent possible, but that some information may be revealed as necessary to conduct an effective investigation.

*(cf. 3580 - SCCOE Records)*

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*

**COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT** (continued)

If the County Superintendent or designee determines that a detailed fact-finding investigation is necessary, he/she shall begin the investigation immediately. As part of this investigation a Human Resources personnel administrator will coordinate the interviews of the complainant, the person accused, and other persons who could be expected to have relevant information.

When necessary to carry out his/her investigation or to protect employee or student safety, the Human Resources Administrator may discuss the complaint with the County Superintendent or designee, SCCOE's legal counsel, or risk manager.

The County Superintendent or designee also shall determine whether interim measures, such as scheduling changes, transfers, or leaves, need to be taken before the investigation is completed to ensure that further incidents do not occur. The County Superintendent or designee shall ensure that such interim measures do not constitute retaliation.

3. **Written Report on Findings and Corrective Action:** No more than 30 days after receiving the complaint, the County Superintendent or designee shall conclude the investigation and prepare a written report of his/her findings. This timeline may be extended for good cause. If an extension is needed, the County Superintendent or designee shall notify the complainant and explain the reasons for the extension.

The report shall include the decision and the reasons for the decision and shall summarize the steps taken during the investigation.

The report will be provided to the Human Resources Director or designee who will respond to the complainant and the accused regarding the outcome of the investigation.

**Other Remedies**

In addition to filing a discrimination or harassment complaint with the SCCOE, a person may also file a complaint with either the California Department of Fair Employment and Housing (DFEH). The time limits for filing such complaints are as follows:

1. To file a valid complaint with DFEH, within one year of the alleged discriminatory act(s), unless an exception exists pursuant to Government Code 12960 (Government Code 12960)

**COMPLAINTS CONCERNING DISCRIMINATION IN EMPLOYMENT** (continued)

*Legal Reference:*

EDUCATION CODE

200-262.4 *Prohibition of discrimination*

GOVERNMENT CODE

12920-12921 *Nondiscrimination*

12940-12948 *Discrimination prohibited; unlawful practices, generally*

UNITED STATES CODE, TITLE 20

1681-1688 *Title IX of the Education Amendments of 1972*

UNITED STATES CODE, TITLE 29

621-634 *Age Discrimination in Employment Act*

794 *Section 504 of the Rehabilitation Act of 1973*

UNITED STATES CODE, TITLE 42

2001d-2001d-7 *Title VI, Civil Rights Act of 1964*

2001e-2001e-17 *Title VII, Civil Rights Act of 1964, as amended*

2000ff-2000ff-11 *Genetic Information Nondiscrimination Act of 2008*

2001h-2-2001h-6 *Title IX of the Civil Rights Act of 1964*

12101-12213 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 34

106.8 *Designation of responsible employee for Title IX*



## REASONABLE ACCOMMODATION

Except when undue hardship would result to the Santa Clara County Office of Education, the Santa Clara County Superintendent of Schools or designee shall provide reasonable accommodation:

1. In the job application process, to any qualified job applicant with a disability.
2. To enable any qualified employee with a disability to perform the essential functions of the position he/she holds or desires to hold or to enjoy equal benefits or other terms, conditions, and privileges of employment as other similarly situated employees without disabilities.

The County Superintendent or designee shall serve as the coordinator of efforts to comply with the Americans with Disabilities Act (ADA) and to investigate any and all related complaints.

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4031 - Complaints Concerning Discrimination in Employment)*

### Definitions

*Disability*, with respect to an individual, is defined as any of the following: (Government Code 12926; 20 CFR 1630.2)

1. A physical or mental impairment that limits one or more of the major life activities.
2. A record of such impairment.
3. Being regarded as having such impairment.

*Limits* shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics or reasonable accommodations, unless the mitigating measure itself limits a major life activity. (Government Code 12926)

*Essential functions* are the fundamental job duties of the position the individual with a disability holds or desires. The term does not include the marginal functions of the position. (Government Code 12926; 29 CFR 1630.2)

*Reasonable accommodation* means: (Government Code 12926; 29 CFR 1630.2)

1. For a qualified job applicant with a disability, modifications or adjustments to the job application process that enable him/her to be considered for the position he/she desires.

**REASONABLE ACCOMMODATION** (continued)

2. For a qualified employee with a disability, modifications or adjustments to the work environment, or to the manner or circumstances under which the position the employee holds or desires is customarily performed, that enable him/her to perform the essential functions of that position or to enjoy equal benefits and privileges of employment as are enjoyed by the SCCOE's other similarly situated employees without disabilities.

*Qualified individual with a disability* means a job applicant or employee with a disability who: (29 CFR 1630.15, 1630.2)

1. Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position he/she holds or desires.
2. Can perform the essential functions of the position with or without reasonable accommodation.
3. Would not pose a significant risk of substantial harm, which cannot be eliminated or reduced by reasonable accommodation, to him/her or others in the job he/she holds or desires.

*Undue hardship* is a determination based on an individualized assessment of current circumstances that shows that the provision of a specific accommodation would cause significant difficulty or expense to the SCCOE. (29 CFR 1630.2)

**Request for Reasonable Accommodation**

When requesting reasonable accommodation, an employee or his/her representative shall inform the employee's supervisor that he/she needs a change at work for a reason related to a medical condition. The supervisor shall inform the coordinator of the employee's request as soon as practicable.

When requesting reasonable accommodation for the hiring process, a job applicant shall inform the Human Resources Administrator that he/she will need a reasonable accommodation during the process.

When the disability or the need for accommodation is not obvious, the Human Resources Administrator may ask the employee to supply reasonable documentation about his/her disability. In requesting this documentation, the Human Resources Administrator shall specify the types of information that are being sought about the employee's condition, the employee's functional limitations, and the need for reasonable accommodation.

**REASONABLE ACCOMMODATION** (continued)

If the documentation submitted by the employee does not indicate the existence of a qualifying disability or explain the need for reasonable accommodation, the Human Resources Administrator shall request additional documentation that specifies the missing information. If the employee does not submit such additional documentation in a timely manner, the Human Resources Administrator may require him/her to submit to an examination by a health care professional selected and paid for by the SCCOE.

The SCCOE may make a medical or psychological inquiry of a job applicant or require him/her to submit to a medical or psychological examination after he/she has been given a conditional offer of employment but before the commencement of his/her job duties, provided the inquiry or examination is job-related, consistent with business necessity, and required for all incoming employees in the same job classification. (Government Code 12940)

The Human Resources Administrator shall not request any job applicant's or employee's genetic information except as authorized by law. (42 USC 2000ff-1, 2000ff-5)

*(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)*

In accordance with law, the Human Resources Administrator shall take steps to ensure the confidentiality of information related to medical conditions or history. As applicable, he/she shall notify the supervisor or manager of the qualified individual of any reasonable accommodation granted the individual and may notify first aid and safety personnel when the disability of the qualified individual may require emergency treatment. (42 USC 12112)

*(cf. 4112.6/4212.6/4312.6 - Personnel Records)*

**Granting Reasonable Accommodation**

Upon receiving a request for reasonable accommodation from a qualified individual with a disability, the Human Resources Administrator shall:

1. Determine the essential functions of the job involved.
2. Engage in an informal, interactive process with the individual to review the request for accommodation, identify the precise limitations resulting from the disability, identify potential accommodations, and assess their effectiveness.
3. Develop a plan for reasonable accommodation which will enable the individual to perform the essential functions of the job or gain equal access to a benefit or privilege of employment without imposing undue hardship on the SCCOE.

**REASONABLE ACCOMMODATION** (continued)

A determination of undue hardship should be based on several factors, including: (29 CFR 1630.2)

- a. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding.
- b. The overall financial resources of the facility making the accommodation, the number of persons employed at this facility, and the effect on expenses and resources of the facility.
- c. The overall financial resources, number of employees, and the number, type, and location of facilities of the SCCOE.
- d. The type of operation of the SCCOE, including the composition, structure, and functions of the workforce and the geographic separateness and administrative or fiscal relationship of the facility making the accommodation to other SCCOE facilities.
- e. The impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

The Human Resources Administrator may confer with the site administrator, any medical advisor chosen by the SCCOE, and/or other staff before making a final decision as to the accommodation.

**Reasonable Accommodation Committee**

The Human Resources Administrator may appoint a committee to review or assist in the development of appropriate plans to reasonably accommodate qualified individuals who request modifications or adjustments in their work duties or environment because of known physical or mental disabilities.

Committee members shall be selected on the basis of their knowledge of the specific functions and duties required in the position, the physical work environment, available accommodations, and other relevant issues. The committee may include a SCCOE administrator, site administrator, medical advisor or rehabilitation specialist, and as necessary, a certificated and/or classified employee. Membership may change on a case-by-case basis.

**REASONABLE ACCOMMODATION** (continued)

The committee may include:

1. A SCCOE administrator.
2. A site administrator.
3. A medical advisor or rehabilitation specialist.
4. Right to Work coordinator.
5. Human Resources Administrator.

Committee members shall be selected on the basis of their knowledge of the relevant issues, including:

1. The specific functions and duties required in the position.
2. The physical work environment.
3. Available accommodations.

At the coordinator's discretion, the employee or applicant requesting accommodation may participate in the committee's meetings. If the employee or applicant is excluded from the committee's meetings, the coordinator shall communicate with him/her so that he/she has the opportunity to interact and contribute to planning the reasonable accommodation.

**Appeal Process**

Any qualified individual with a disability who is not satisfied with the decision may appeal in writing to the County Superintendent or designee. This appeal shall be made within 10 working days of receiving the decision and shall include:

1. A clear, concise statement of the reasons for the appeal.
2. A statement of the specific remedy sought.

The County Superintendent or designee shall consult with the committee and review the appeal, together with any available supporting documents. The County Superintendent or designee shall give the individual his/her decision within 15 working days of receiving the appeal.

**REASONABLE ACCOMMODATION** (continued)

*Legal Reference:*

CIVIL CODE

51 *Unruh Civil Rights Act*

GOVERNMENT CODE

12900-12996 *Fair Employment and Housing Act*

UNITED STATES CODE, TITLE 29

701-794e *Vocational Rehabilitation Act*

UNITED STATES CODE, TITLE 42

2000ff-1-2000ff-11 *Genetic Information Nondiscrimination Act of 2008*

12101-12213 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 *Americans with Disabilities Act, especially:*

35.107 *Designation of employee*

36.101-36.608 *Nondiscrimination on the basis of disability by public facilities*

CODE OF FEDERAL REGULATIONS, TITLE 29

1630.2 *Definitions*

COURT DECISIONS

*A.M. v. Albertsons, LLC*, (2009) Cal.App.4th 455

*Colmenares v. Braemar Country Club, Inc.*, (2003) 29 Cal.4th 1019

*Chevron USA v. Echazabal*, (2002) 536 U.S. 73, 122 S.Ct. 2045

*US Airways, Inc. v. Barnett*, (2002) 535 U.S. 391, 122 S.Ct. 1516

**EMPLOYEE USE OF TECHNOLOGY**

The Santa Clara County Superintendent of Schools recognizes that technological resources can enhance employee performance by offering effective tools to assist in providing a quality instructional program, facilitating communications with parents/guardians, students, and the community, supporting Santa Clara County Office of Education and school operations, and improving access to and exchange of information. The SCCOE expects all employees to learn to use the available technological resources that will assist them in the performance of their job responsibilities. As needed, employees shall receive professional development in the appropriate use of these resources.

*(cf. 0440 - SCCOE Technology Plan)*  
*(cf. 1113 - SCCOE and School Web Sites)*  
*(cf. 4032 - Reasonable Accommodation)*  
*(cf. 4131 - Staff Development)*  
*(cf. 4231 - Staff Development)*  
*(cf. 4331 - Staff Development)*  
*(cf. 6163.4 - Student Use of Technology)*

Employees shall be responsible for the appropriate use of technology and shall use the SCCOE's technological resources primarily for purposes related to their employment.

*(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)*

Employees shall be notified that computer files and electronic communications, including email and voice mail, are not private. Technological resources shall not be used to transmit confidential information about students, employees, or SCCOE operations without authority.

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*  
*(cf. 5125 - Student Records)*  
*(cf. 5125.1 - Release of Directory Information)*

**Online/Internet Services**

The County Superintendent or designee shall ensure that all SCCOE computers with Internet access have a technology protection measure that prevents access to visual depictions that are obscene or child pornography and that the operation of such measures is enforced. The County Superintendent or designee may disable the technology protection measure during use by an adult to enable access for bona fide research or other lawful purpose. (20 USC 6777; 47 USC 254)

To ensure proper use, the County Superintendent or designee may monitor employee usage of technological resources, including the accessing of email and stored files. Monitoring may occur at any time without advance notice or consent. When passwords are used, they must be known to the County Superintendent or designee so that he/she may have system access.

**EMPLOYEE USE OF TECHNOLOGY** (continued)

The County Superintendent or designee shall establish administrative regulations and an Acceptable Use Agreement which outline employee obligations and responsibilities related to the use of SCCOE technology. He/she also may establish guidelines and limits on the use of technological resources. Inappropriate use may result in a cancellation of the employee's user privileges, disciplinary action, and/or legal action in accordance with law, and administrative regulation.

(cf. 4118 - *Suspension/Disciplinary Action*)  
 (cf. 4218 - *Dismissal/Suspension/Disciplinary Action*)

The County Superintendent or designee shall provide copies of related policies, regulations, and guidelines to all employees who use the SCCOE's technological resources. Employees shall be required to acknowledge in writing that they have read and understood the SCCOE's Acceptable Use Agreement.

(cf. 4112.9/4212.9/4312.9 - *Employee Notifications*)

*Legal Reference:*EDUCATION CODE

51870-51874 *Education technology*

52270-52272 *Education technology and professional development grants*

52295.10-52295.55 *Implementation of Enhancing Education Through Technology grant program*

GOVERNMENT CODE

3543.1 *Rights of employee organizations*

PENAL CODE

502 *Computer crimes, remedies*

632 *Eavesdropping on or recording confidential communications*

VEHICLE CODE

23123 *Wireless telephones in vehicles*

23123.5 *Mobile communication devices; text messaging while driving*

23125 *Wireless telephones in school buses*

UNITED STATES CODE, TITLE 20

6751-6777 *Enhancing Education Through Technology Act, Title II, Part D, especially:*

6777 *Internet safety*

UNITED STATES CODE, TITLE 47

254 *Universal service discounts (E-rate)*

CODE OF FEDERAL REGULATIONS, TITLE 47

54.520 *Internet safety policy and technology protection measures, E-rate discounts*



## EMPLOYEE USE OF TECHNOLOGY

### Online/Internet Services: User Obligations and Responsibilities

Employees are authorized to use Santa Clara County Office of Education equipment to access the Internet or other online services in accordance with SCCOE policy, the SCCOE's Acceptable Use Agreement, and the user obligations and responsibilities specified below.

1. The employee in whose name an online services account is issued is responsible for its proper use at all times. Employees shall keep account information, home addresses, and telephone numbers private. They shall use the system only under the account number to which they have been assigned.
2. Employees shall use the system safely, responsibly, and primarily for work-related purposes.
3. Employees shall not access, post, submit, publish, or display harmful or inappropriate matter that is threatening, obscene, disruptive, or sexually explicit, or that could be construed as harassment or disparagement of others based on their race, ethnicity, national origin, sex, gender, sexual orientation, age, disability, religion, or political beliefs.

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4031 - Complaints Concerning Discrimination in Employment)*

*(cf. 4119.11/4219.11/4319.11 - Sexual Harassment)*

4. Employees shall not use the system to promote unethical practices or any activity prohibited by law, SCCOE policy, or administrative regulations.

*(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)*

5. Employees shall not use the system to engage in commercial or other for-profit activities without permission of the Santa Clara County Superintendent of Schools or designee.
6. Copyrighted material shall be posted online only in accordance with applicable copyright laws.

*(cf. 6162.6 - Use of Copyrighted Materials)*

7. Employees shall not attempt to interfere with other users' ability to send or receive email, nor shall they attempt to read, delete, copy, modify, or forge other users' email.
8. Employees shall not develop any classroom or work-related web sites, blogs, forums, or similar online communications representing SCCOE or using SCCOE equipment or resources without permission of the County Superintendent or designee. Such sites

**EMPLOYEE USE OF TECHNOLOGY** (continued)

shall be subject to rules and guidelines established for SCCOE online publishing activities including, but not limited to, copyright laws, privacy rights, and prohibitions against obscene, libelous, and slanderous content. Because of the unfiltered nature of blogs, any such site shall include a disclaimer that the SCCOE is not responsible for the content of the messages. The SCCOE retains the right to delete material on any such online communications.

*(cf. 1113 - SCCOE and School Web Sites)*

9. Users shall report any security problem or misuse of the services to the County Superintendent or designee.

## **All Personnel**

SP 4111(a)

4211

## **RECRUITMENT AND SELECTION**

4311

The Santa Clara County Office of Education desires to employ the most highly qualified and appropriate person available for each open position in order to improve student achievement and efficiency in SCCOE operations.

*(cf. 4000 - Concepts and Roles)*

*(cf. 4100 - Certificated Personnel)*

*(cf. 4200 - Classified Personnel)*

*(cf. 4300 - Administrative and Supervisory Personnel)*

The Santa Clara County Superintendent of Schools or designee shall recruit candidates for open positions based on an assessment of the SCCOE's needs for specific skills, knowledge and abilities. He/she shall develop job descriptions that accurately describe all essential and marginal functions and duties of each position, and shall disseminate job announcements to ensure a wide range of candidates.

The County Superintendent or designee shall develop selection procedures that identify the best possible candidate for each position based on screening processes, interviews, observations and recommendations from previous employers. He/she may establish an interview committee, as appropriate, to rank candidates and recommend finalists. All discussions and recommendations shall be confidential in accordance with law.

During job interviews, applicants may be asked to describe or demonstrate how they will be able to perform the duties of the job. No inquiry shall be made with regard to any category of discrimination prohibited by state or federal law.

*(cf. 0410 - Nondiscrimination in SCCOE Programs and Activities)*

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4031 - Complaints Concerning Discrimination in Employment)*

*(cf. 4032 - Reasonable Accommodation)*

*(cf. 4111.2/4211.2/4311.2 - Legal Status Requirement)*

### **Recruiting Incentives for Teachers**

Contingent upon available funding, the County Superintendent or designee may provide incentives to recruit credentialed teachers to teach in any SCCOE school ranked in the bottom half of the state Academic Performance Index. Such incentives may include, but are not limited to, signing bonuses, improved work conditions, teacher compensation or housing subsidies. (Education Code 44735)

*Legal Reference: (see next page)*

**RECRUITMENT AND SELECTION (continued)**

*Legal Reference:*

EDUCATION CODE

200-262.4 *Prohibition of discrimination on the basis of sex*  
44066 *Limitations on certification requirement*  
44259 *Teaching credential; exception; designated subjects; minimum requirements*  
44735 *Incentive grants for recruiting teachers for low-performing schools*  
44740-44741 *Personnel Management Assistance Teams*  
44750-44754.5 *Regional teacher recruitment centers*  
44830-44831 *Employment of certificated persons*  
44858 *Age or marital status in certificated positions*  
44859 *Prohibition against certain rules and regulations re residency*  
45103-45138 *Employment (classified employees)*  
49406 *Examination for tuberculosis*  
52051 *Academic Performance Index*

GOVERNMENT CODE

12900-12996 *Fair Employment and Housing Act, including:*  
12940-12956 *Discrimination prohibited; unlawful practices*

UNITED STATES CODE, TITLE 8

1324a *Unlawful employment of aliens*  
1324b *Unfair immigration related practices*

UNITED STATES CODE, TITLE 42

2000d-2000d-7 *Title VI, Civil Rights Act of 1964*  
2000e-2000e-17 *Title VII, Civil Rights Act of 1964 as amended*  
2000h-2-2000h-6 *Title IX, 1972 Education Act Amendments*

12101-12213 *Americans with Disabilities Act*

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 *Americans with Disabilities Act*

**SPONSORING EMPLOYEES FOR VISAS AND PERMANENT RESIDENCY**

**Purpose and Scope**

The purpose of the following regulation is to establish guidelines for visa sponsorship and the certification for permanent employment of aliens pursuant to 20 CFR 656 - Labor Certification for the Permanent Employment of Aliens in the United States.

**Sponsorship of Non-Immigrant Aliens for Employment**

Santa Clara County Office of Education may sponsor non-immigrant aliens who can fill critical shortage positions. Critical shortage, for purposes of this guideline, means that sufficient, qualified, fully-credentialed staff cannot be found to fill the position despite extensive U.S. recruitment efforts. Such efforts may include, but are limited to, attending multi-state recruitment fairs, posting on-line, and advertising in various print media.

Sponsorship of non-immigrant aliens for either visa renewal or permanent residency will be initiated only with the approval of the hiring department and branch Chief. The hiring department will be responsible for legal and other costs incurred by the office for this sponsorship.

**County Office Responsibilities (Sponsor)**

The office will assume responsibility to:

- Retain counsel for the purpose of pursuing visa application, renewal or certification for permanent employment of aliens.
- Contact counsel on behalf of the employee after the employee has contacted the Director of Human Resources and expressed his/her desire to pursue visa renewal or certification for permanent employment.
- Pursuant to U.S. Immigration Law, provide reasonable cost of transportation for the alien to return home in the event of a layoff or termination prior to expiration of H-1B visa status.

The office will assume responsibility to pay all legal fees and costs associated with:

- All filing and legal fees associated with the application, renewal, or transfer of an H1B visa.
- All filing, legal and recruitment fees associated with the certification for permanent employment (green card) These fees include, but are not limited to:

## **SPONSORING EMPLOYEES FOR VISAS AND PERMANENT RESIDENCY**

(continued)

- The application for Labor Certification and associated recruiting costs
- The immigrant visa petition
- The application for permanent residency based on the approved immigrant visa petition
- The necessary employment authorization documented (EAD card) if it is necessary and no other options exist to maintain employment
- The advanced Parole application (if needed for SCCOE purposes)
- Maintaining the legal non-immigrant work authorization for qualified certificated staff during the Permanent Residency process
- The Adjustment of Status (AOS) Permanent Residency application.

### **Candidate Responsibilities**

The candidate will take responsibility to ensure that:

1. They contact the Director of Human Resources at least six months prior to the expiration of their visa to request it be renewed or that the office sponsor an application for permanent residence (green card).
2. All applications and request for information are properly completed and returned to the attorney promptly.
3. Appropriate U.S. Visas and California Teaching Credentials are maintained at all times.

Candidates must use the SCCOE's Corporate Immigration Attorneys for all applications and filings. The candidate must agree to work for SCCOE for a minimum of three years after being granted permanent residency. If, after employed by the office, the candidate seeks employment elsewhere before the end of this three year period, the candidate agrees to reimburse the office for all fees and legal expenses (except those prohibited by law) incurred during his/her application process.

### **Expense Reimbursement**

The Santa Clara County Office of Education will reimburse the candidate for the following expenses:

- Employee's physical exam

AR 4111.1(c)

## **SPONSORING EMPLOYEES FOR VISAS AND PERMANENT RESIDENCY**

(continued)

- Fingerprints
- Photographs

The SCCOE will not reimburse the candidate for the following expenses:

- Employee's vaccinations
- Any expenses and or fees associated with family members.
- Employee's EAD card if non-immigrant extensions are available
- Employee's Advance Parole for non-business related international travel
- Travel/lodging expenses for filing through Consular Processing

### **Sponsorship for Renewal of H1B VISA**

In order for SCCOE to sponsor renewal of an H1B visa, the candidate must have qualified for a Preliminary or Clear California Teaching Credential in the subject for which the candidate teaches and recommendation of the principal and director of special education or AED as applicable. Candidates should have worked for SCCOE for at least two years prior to renewal. Exceptions based on staffing needs may be granted with the approval of the department director, branch Chief, and the County Superintendent or designee.

### **Sponsorship for Permanent Residency**

In order for SCCOE to sponsor permanent residency status, the candidate must have qualified for a Clear California Teaching Credential, as well as be CLAD and NCLB Highly Qualified in the subject for which the candidate teaches and receives the recommendation of his/her principal and director of Special Education or Alternative Education Department as applicable. Candidates should have worked for SCCOE for at least four years prior to sponsorship. Exceptions based on staffing needs may be granted with the approval of the department director, branch Chief, and the County Superintendent or designee.

**All Personnel**

SP 4111.2

4211.2

**LEGAL STATUS REQUIREMENT**

4311.2

The Santa Clara County Office of Education shall ensure that the SCCOE employs only those individuals who are lawfully authorized to work in the United States.

The Santa Clara County Superintendent of Schools or designee shall verify the employment eligibility of all persons hired by completing the U.S. Citizenship and Immigration Services Form I-9, Employment Eligibility Verification, for each individual hired and ensure that the SCCOE does not knowingly hire or continue to employ any person not authorized to work in the United States. (8 USC 1324a)

In accordance with law, the County Superintendent or designee shall ensure that SCCOE employment practices do not unlawfully discriminate on the basis of citizenship status or national origin, including, but not limited to, discrimination against any refugees, grantees of asylum, or persons qualified for permanent or temporary residency.

*(cf. 0410 - Nondiscrimination in SCCOE Programs and Activities)*

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4111 - Recruitment and Selection)*

*(cf. 4211 - Recruitment and Selection)*

*(cf. 4311 - Recruitment and Selection)*

*Legal Reference:*

UNITED STATES CODE, TITLE 8

*1324a Unlawful employment of aliens*

*1324b Unfair immigrant-related employment practices*

CODE OF FEDERAL REGULATIONS, TITLE 8

*274a.1-274a.14 Control of Employment of Aliens*



**All Personnel**

AR 4111.2

4211.2

**LEGAL STATUS REQUIREMENT**

4311.2

Within three business days of hire, the Santa Clara County Superintendent of Schools or designee shall physically examine the documentation presented by the employee establishing his/her identity and employment authorization as set forth in U.S. Citizenship and Immigration Services Form I-9. The employee may present either an original document which establishes both employment authorization and identity or two separate original documents which establish authorization and identity. Only unexpired documents are acceptable. (8 CFR 274a.2)

*(cf. 4030 - Nondiscrimination in Employment)*

*(cf. 4032 - Reasonable Accommodation)*

The County Superintendent or designee shall: (8 CFR 274a.2)

1. Ensure that the documents presented appear to be genuine and relate to the individual
2. Complete the "Employer Review and Verification" section and sign the attestation with a handwritten signature or electronic signature on Form I-9

Persons employed for three business days or less must provide such documentation on their first day. (8 CFR 274a.2)

If unable to provide satisfactory documentation because the document was lost, stolen, or damaged, the employee shall furnish a receipt indicating that a replacement document has been requested. This receipt must be presented within three business days of the hire, and the replacement document must be provided within 90 days of the hire. (8 CFR 274a.2)

If an individual's employment authorization expires, the County Superintendent or designee must recertify Form I-9, by noting the document's identification number and expiration date on the form, no later than the date the work authorization expires. The employee shall present a document that shows either continuing employment authorization or a new grant of work authorization. (8 CFR 274a.2)

The Santa Clara County Office of Education shall retain an individual's Form I-9 for three years after the date of the hire or for one year after the date his/her employment is terminated, whichever is later. (8 CFR 274a.2)

*(cf. 3580 - SCCOE Records)*

The County Superintendent or designee shall copy documents presented by an individual for verification and shall retain them with the individual's Form I-9. The documents shall be kept confidential and used only as needed to help justify the SCCOE's past decision to accept the documents as valid.

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*

**APPOINTMENT AND CONDITIONS OF EMPLOYMENT**

The Santa Clara County Superintendent of Schools or designee shall approve the appointment of all certificated personnel.

*(cf. 4111 - Recruitment and Selection)*

*(cf. 4121 - Temporary/Substitute Personnel)*

Individuals appointed to the certificated staff shall:

1. Possess the appropriate certification qualifications and register the certification document in accordance with law (Education Code 44250-44279, 44330)

*(cf. 4112.2 - Certification)*

*(cf. 4112.21 - Interns)*

2. Demonstrate proficiency in basic skills as required by law and (Education Code 44252.5, 44830)

3. When required by the federal No Child Left Behind Act for teachers of core academic subjects, possess the qualifications of "highly qualified" teachers as defined in law, SCCOE policy and administrative regulations (20 USC 6319)

*(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*

*(cf. 6171 - Title I Programs)*

4. Submit to fingerprinting as required by law (Education Code 44830.1)

5. Not have been convicted of a violent or serious felony as defined in Penal Code 667.5 or 1192.7, unless the individual has received a certificate of rehabilitation and pardon (Education Code 44830.1)

*(cf. 4112.5/4312.5 - Criminal Record Check)*

*(cf. 4118 - Suspension/Disciplinary Action)*

6. Not have been convicted of any sex offense as defined in Education Code 44010 (Education Code 44836)

7. Not have been required to register as a sex offender pursuant to Penal Code 290 because of a conviction for a crime where the victim was a minor under the age of 16 (Penal Code 290.95)

*(cf. 3515.5 - Sex Offender Notification)*

8. Not have been determined to be a sexual psychopath pursuant to Welfare and Institutions Code 6300-6332 (Education Code 44837)

**APPOINTMENT AND CONDITIONS OF EMPLOYMENT** (continued)

9. Not have been convicted of any controlled substance offense as defined in Education Code 44011 (Education Code 44836)
10. Submit to a physical examination, tuberculosis testing and/or provide a medical certificate as required by law and SCCOE policy (Education Code 44839, 49406)

*(cf. 4112.4/4212.4/4312.4 - Health Examinations)*

11. Furnish a statement of military service and, if any was rendered, a copy of the discharge or release from service or, if no such document is available, other suitable evidence of the termination of service (Education Code 44838)
12. File the oath or affirmation of allegiance required by Government Code 3100-3109

*(cf. 4112.3/4212.3/4312.3 - Oath or Affirmation)*

13. Fulfill any other requirements as specified by law, collective bargaining agreement, SCCOE policy or administrative regulation

*(cf. 4112.8/4212.8/4312.8 - Employment of Relatives)*

*Legal Reference: (see next page)*

**APPOINTMENT AND CONDITIONS OF EMPLOYMENT** (continued)

*Legal Reference:*

EDUCATION CODE

- 35161 Powers and duties
- 44008 Effect of termination of probation
- 44009 Conviction of specified crimes; definitions
- 44010 Sex offense
- 44011 Controlled substance offense
- 44066 Limitation on certification requirements
- 44250-44277 Credential types
- 44330 Effect of registration of certification document
- 44830.1 Felons; certificated positions; criminal record summary; fingerprints
- 44836 Employment of person convicted of sex offenses or controlled substance offenses
- 44837 Employment of sexual sociopath
- 44838 Statement of military service
- 44839 Medical certificate
- 44839.5 Medical certificate for retirant
- 49406 Examination for tuberculosis

GOVERNMENT CODE

- 3100-3109 Oaths or affirmations of allegiance for disaster service workers and public employees
- 12940-12950 Unlawful employment practices

PENAL CODE

- 290 Registration of sex offenders
- 290.95 Disclosure by persons required to register as sex offenders
- 667.5 Prior prison terms, enhancement of prison terms
- 1192.7 Plea bargaining limitation

WELFARE AND INSTITUTIONS CODE

- 6300-6332 Sexual psychopaths

CODE OF REGULATIONS, TITLE 5

- 6100-6125 Teacher qualifications, No Child Left Behind Act

UNITED STATES CODE, TITLE 20

- 6319 Highly qualified teachers
  - 7801 Definitions, highly qualified teacher
- CODE OF FEDERAL REGULATIONS, TITLE 34
- 200.55-200.57 Highly qualified teachers

**CONTRACTS**

When initially employed, certificated employees shall receive a written statement of their employment status and salary. In the case of temporary employees, this statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. (Education Code 44916)

*(cf. 4121 - Temporary/Substitute Personnel)*

*Legal Reference:*

EDUCATION CODE

*44916 Time of classification; statement of employment status*

**CERTIFICATION**

The Santa Clara County Office of Education recognizes that the ability to provide a high-quality educational program is dependent upon the employment of certificated staff that are adequately prepared and have demonstrated proficiency in basic skills and in the subject matter to be taught. The Santa Clara County Superintendent of Schools or designee shall ensure that persons employed in positions requiring certification qualifications possess the appropriate credential or permit from the Commission on Teacher Credentialing (CTC) authorizing their employment in such positions.

*(cf. 4111/4211/4311 - Recruitment and Selection)*

*(cf. 4112.21 - Interns)*

*(cf. 4112.22 - Staff Teaching Students of Limited English Proficiency)*

*(cf. 4112.23 - Special Education Staff)*

*(cf. 4112.5/4312.5 - Criminal Record Check)*

*(cf. 4113 - Assignment)*

*(cf. 4121 - Temporary/Substitute Personnel)*

*(cf. 5148 - Child Care and Development)*

*(cf. 6178 - Career Technical Education)*

*(cf. 6178.2 - Regional Occupational Center/Program)*

*(cf. 6200 - Adult Education)*

All teachers of core academic subjects shall meet the requirements of the No Child Left Behind Act. (20 USC 6319, 7801; 5 CCR 6100-6125)

*(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*

When a credentialed teacher or intern is not available, the SCCOE may request that the CTC issue a Short-Term Staff Permit, Provisional Internship Permit (PIP), or credential waiver under the conditions and limitations provided in state or federal law.

When requesting a PIP, the County Superintendent or designee shall approve, prior to employment, a notice of intent to employ the applicant which should be posted as public notice 72 hours prior to employment. (5 CCR 80021.1)

**CERTIFICATION** (continued)

The County Superintendent or designee shall provide support and guidance to noncredentialed teachers in accordance with law to ensure the quality of the instructional program. He/she also may provide assistance and support to staff holding preliminary credentials to help them meet the qualifications required for the professional clear credential.

(cf. 4131 - Staff Development)

(cf. 4131.1 - Beginning Teacher Support/Induction)

(cf. 4138 - Mentor Teachers)

*Legal Reference:*EDUCATION CODE

8360-8370 Qualifications of child care personnel

32340-32341 Unlawful issuance of a credential

35186 Complaints regarding teacher vacancy or misassignment

41520-41522 Teacher Credentialing Block Grant

42647 Eligibility to issue warrants

44066 Limitations on certification requirements

44200-44399 Teacher credentialing, especially:

44250-44277 Credential types; minimum requirements

44279.1-44279.7 Beginning Teacher Support and Assessment Program

44300-44302 Emergency permits and visiting faculty permits

44320.2 Teachers' performance assessment

44325-44328 District interns

44330-44355 Certificates and credentials

44380-44387 Alternative certification program

44395-44399 National Board for Professional Teaching Standards

44420-44440 Revocation and suspension of credentials

44450-44468 University internship program

44560-44562 Certificated Staff Mentoring Program

44735 Teaching as a Priority Block Grant

44830-44929 Employment of certificated persons; requirement of proficiency in basic skills

56060-56063 Substitute teachers in special education

CODE OF REGULATIONS, TITLE 5

6100-6125 Teacher qualifications, No Child Left Behind Act

80001-80674.6 Commission on Teacher Credentialing

UNITED STATES CODE, TITLE 20

6311 Parental notifications

6312 Title I local educational agency plan

6319 Highly qualified teachers

7801 Definitions, highly qualified teacher

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 Highly qualified teachers

200.61 Parent notification regarding teacher qualifications

COURT DECISIONS

Association of Mexican-American Educators et al. v. State of California and the Commission on Teacher Credentialing, (1993) 836 F.Supp. 1534

**CERTIFICATION**

**Registration**

Each person employed by the Santa Clara County Office of Education for a position requiring certification qualifications shall, within 60 days after beginning employment, register with the SCCOE a valid credential issued by the Commission on Teacher Credentialing (CTC) authorizing the person to work in that position. Certificated employees also shall register renewed credentials within 60 days after the renewal. (Education Code 44330, 44857)

**Basic Skills Proficiency Test**

The SCCOE shall not initially hire on a permanent, temporary, or substitute basis a certificated person seeking employment in the capacity designated in his/her credential unless that person has passed the Basic Skills Requirement in reading, writing, and mathematics or is specifically exempted from the requirement by law. (Education Code 44252, 44252.6, 44830)

*(cf. 4112.22 - Staff Teaching Students of Limited English Proficiency)*

*(cf. 4112.23 - Special Education Staff)*

*(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*

*(cf. 4121 - Temporary/Substitute Personnel)*

*(cf. 5148 - Child Care and Development)*

*(cf. 6178 - Career Technical Education)*

*(cf. 6178.2 - Regional Occupational Center/Program)*

*(cf. 6200 - Adult Education)*

The SCCOE may hire a certificated teacher who has not taken the CBEST if he/she has not yet been afforded the opportunity to take the test. The employee shall take the test at the earliest opportunity and may remain employed by the SCCOE pending the receipt of his/her test results. (Education Code 44830)

An out-of-state prepared teacher shall complete the CBEST requirement within one year of being issued a California preliminary credential by the CTC unless he/she has completed a basic skills proficiency test in another state or is otherwise exempted by law. An out-of-state prepared teacher applying to the CTC for a one-year nonrenewable credential pending completion of the CBEST requirement shall pass the SCCOE's basic skills proficiency test. (Education Code 44252, 44274.2)

*(cf. 6146.1 - High School Graduation Requirements)*

*(cf. 6146.2 - Certificate of Proficiency)*

*(cf. 6162.5 - High School Exit Examination)*



**CERTIFICATION** (continued)

A person holding or applying for a designated subjects special subjects credential which does not require possession of a bachelor's degree shall pass the SCCOE proficiency test in lieu of the CBEST. (Education Code 44252, 44830)

The SCCOE shall charge a fee to cover the costs of developing, administering, and grading the SCCOE proficiency test.

**Short-Term Staff Permit**

The SCCOE may request that the CTC issue a Short-Term Staff Permit (STSP) to an applicant who meets the qualifications specified in 5 CCR 80021 whenever there is a need to immediately fill a classroom based on an acute staffing need, including, but not limited to, the following circumstances: (5 CCR 80021)

1. Enrollment adjustments require the addition of another teacher.
2. The teacher of record is unable to finish the school year due to approved leave or illness.
3. The applicant needs additional time to complete preservice requirements for enrollment into an approved internship program.

*(cf. 4112.21 - Interns)*

4. The applicant is unable to enroll in an approved internship program due to timelines or lack of space in the program.
5. A third-year extension of an internship program is unavailable or the applicant has withdrawn from an internship program.

When requesting issuance of an STSP, the SCCOE shall submit to the CTC: (5 CCR 80021)

1. Verification that it has conducted a local recruitment for the permit being requested
2. Verification that it has provided the permit holder with orientation to the curriculum and to instruction and classroom management techniques and has assigned a mentor teacher for the term of the permit

*(cf. 4131 - Staff Development)*

3. Written justification for the permit signed by the County Superintendent or designee

**CERTIFICATION** (continued)

The holder of an STSP may be assigned to provide the same service as a holder of a multiple subject, single subject, or education specialist credential in accordance with the authorizations specified on the permit. (5 CCR 80021)

**Provisional Internship Permit**

The SCCOE may request that the CTC issue a Provisional Internship Permit (PIP) to an applicant who meets the qualifications specified in 5 CCR 80021.1 whenever a suitable credentialed teacher cannot be found after a diligent search. The SCCOE shall verify all of the following: (5 CCR 80021.1, 80026.5)

1. A diligent search has been conducted for a suitable credentialed teacher or suitable qualified intern as evidenced by documentation of the search.

The search shall include, but not be limited to, distributing job announcements, contacting college and university placement centers, and advertising in print or electronic media.

*(cf. 4111/4211/4311 - Recruitment and Selection)*

2. Orientation, guidance, and assistance shall be provided to the permit holder as specified in 5 CCR 80026.5.

The orientation shall include, but not be limited to, an overview of the curriculum the permit holder is expected to teach and effective instruction and classroom management techniques at the permit holder's assigned level. The County Superintendent or designee shall assign an experienced educator to guide and assist each permit holder.

3. The SCCOE shall assist the permit holder in developing a personalized plan through a SCCOE-selected assessment that would lead to subject-matter competence related to the permit.
4. The SCCOE shall assist the permit holder to seek and enroll in subject-matter training, such as workshops or seminars and site-based courses, along with training in test-taking strategies, and shall assist the permit holder in meeting the credential subject-matter competence requirement related to the permit.
5. A notice of intent to employ the applicant in the identified position has been made public.

The SCCOE shall submit a copy of the Public Notice Announcement which shall state the name of the applicant, the assignment in which the applicant will be employed including the name of the school, subject(s), and grade(s) that he/she will be teaching, and that the applicant will be employed on the basis of a PIP.

**CERTIFICATION** (continued)

6. The candidate has been apprised of steps to earn a credential and enroll in an internship program.

The holder of a PIP may be assigned to provide the same service as a holder of a multiple subject, single subject, or education specialist credential in accordance with the authorizations specified on the permit. (5 CCR 80021.1)

**Credential Waiver/"Long-Term Substitute" Emergency Permits**

If the SCCOE is unable to place at a school site a teacher who has completed a teacher preparation program, the SCCOE shall make reasonable efforts to recruit an individual for the assignment in the following order: (Education Code 44225.7)

1. A candidate who is qualified to participate in and enrolls in an approved internship program in the region of the SCCOE.
2. A candidate who is scheduled to complete preliminary credential requirements within six months and who is provided orientation, guidance, and assistance by the SCCOE.

If an individual who meets the criteria specified in item #1 or 2 above is not available to the SCCOE, the SCCOE may, as a last resort, request from the CTC a credential waiver or an emergency permit for the assignment of an individual who does not meet those criteria. (Education Code 44225.7; 5 CCR 80023, 80026)

The SCCOE may request an emergency permit authorizing resource specialist, Cross-cultural, Language and Academic Development (CLAD), Bilingual, Cross-cultural, Language and Academic Development (BCLAD), or library media services.

In order to request an emergency permit, the SCCOE shall annually submit Declaration of Need for Fully Qualified Educators on a form provided by the CTC, including certification that the SCCOE has made reasonable efforts to recruit a fully prepared teacher for the assignment. (Education Code 44225.7; 5 CCR 80023, 80026)

The County Superintendent or designee shall provide any first-time recipient of an emergency teaching permit with an orientation to teaching which shall, to the extent reasonably feasible, occur before he/she begins a teaching assignment. The orientation shall include, but not be limited to, the curriculum the teacher is expected to teach and effective techniques of classroom instruction at the assigned grade-level span. The emergency permit holder also shall receive guidance and assistance from an experienced educator who is a certificated SCCOE employee or a certificated retiree from a California district or County Office of Education and who has completed at least three years of full-time classroom teaching experience. (5 CCR 80026.5)

*(cf. 4117.14/4317.14 - Postretirement Employment)*

### **Emergency Substitute Teaching Permits**

The SCCOE may employ for day-to-day substitute teaching, at any grade level, a person with an emergency substitute permit issued by the CTC with the following restrictions:

1. A person holding an emergency 30-day substitute permit, or any valid teaching or services credential that requires at least a bachelor's degree and completion of the CBEST, shall not serve as a substitute for more than 30 days for any one teacher during the school year. He/she shall not serve as a substitute in a special education classroom for more than 20 days for any one teacher during the school year. (5 CCR 80025, 80025.3, 80025.4)
2. A person with an emergency career substitute teaching permit shall not serve as a substitute for more than 60 days for any one teacher during the school year. (5 CCR 80025.1)
3. A person with an emergency substitute permit for prospective teachers shall not serve as a substitute for more than 30 days for any one teacher during the school year and not more than 90 days total during the school year. (5 CCR 80025.2)
4. A person with an emergency substitute permit for career technical education shall teach only in a program of technical, trade, or vocational education and not serve as a substitute for more than 30 days for any one teacher during the school year. (5 CCR 80025.5)

Before employing a person with an emergency substitute permit pursuant to item #1 or 4 above, the County Superintendent or designee shall prepare and keep on file a signed Statement of Need for the school year. The Statement of Need shall describe the situation or circumstances that necessitate the use of a 30-day substitute permit holder and state either that a credentialed person is not available or that the available credentialed person does not meet the SCCOE's specified employment criteria. (5 CCR 80025, 80025.5)

**INTERNS**

The Santa Clara County Superintendent of Schools may employ interns to fulfill the Santa Clara County Office of Education's need for additional instructional resources and to assist future teachers in meeting state credentialing requirements by linking teaching theory with practice.

The County Superintendent or designee may enter into an agreement with an accredited college or university to provide supervised teaching experiences within the SCCOE as part of a teacher preparation program. He/she shall ensure that the SCCOE collaborates with the college or university in the selection, placement, support, and performance assessment of interns.

*(cf. 4111/4211/4311 - Recruitment and Selection)*

The County Superintendent or designee shall ensure that interns employed by the SCCOE possess an appropriate internship credential from the Commission on Teacher Credentialing (CTC) and that their prior experiences and personal qualifications adequately prepare them for the responsibilities of the position.

*(cf. 4112.2 - Certification)*

*(cf. 4112.22 - Staff Teaching Students of Limited English Proficiency)*

*(cf. 4112.23 - Special Education Staff)*

An intern may be assigned to provide the same service as a holder of a regular credential in accordance with the authorizations specified on the internship credential. (Education Code 44454, 44325, 44326, 44830.3)

*(cf. 4113 - Assignment)*

To be assigned to teach core academic subjects, as defined in law, an intern must meet the definition of a "highly qualified" teacher adopted by the County Board of Education. (20 USC 6319, 7801; 5 CCR 6100-6112)

*(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*

Terms of employment for interns shall be consistent with law and the SCCOE's collective bargaining agreement, as applicable. Interns shall not displace certificated SCCOE employees.

*(cf. 4116 - Probationary/Permanent Status)*

*(cf. 4141/4241 - Collective Bargaining Agreement)*

**INTERNS** (continued)

Interns shall receive systematic supervision and guidance by qualified personnel in order to enhance their instructional skills and knowledge. The County Superintendent or designee shall ensure that county staff serving as supervisors, mentor teachers, or other support providers receive appropriate training to fulfill their responsibilities and maintain frequent communication with the interns they are assigned to assist.

*(cf. 4131 - Staff Development)*

*(cf. 4138 - Mentor Teachers)*

Interns shall be provided with ongoing feedback regarding their performance and shall be formally evaluated at least once every year in accordance with SCCOE policy and the SCCOE's collective bargaining agreement.

*(cf. 4115 - Evaluation/Supervision)*

The County Superintendent or designee shall regularly evaluate the effectiveness of the program to determine whether changes are needed in the support and/or assignment of interns. The County Superintendent evaluation shall include, but not be limited to, data on student performance in classes taught by interns, feedback from interns and supervisors, and the number of interns who successfully complete the program and obtain teaching or education specialist credentials.

*(cf. 0500 - Accountability)*

*Legal Reference: (see next page)*

**INTERNS** (continued)

*Legal Reference:*

EDUCATION CODE

300-340 *English language education for immigrant children*  
44253.3-44253.4 *Certificate to provide services to limited-English-proficient students*  
44253.10 *Qualifications to provide specially designed academic instruction in English*  
44259 *Minimum requirements for teaching credential*  
44314 *Diversified or liberal arts program*  
44321 *CTC approval of internship programs*  
44325-44328 *District interns*  
44339-44341 *Teacher fitness*  
44380-44387 *Alternative certification program; increased funding for internship programs*  
44450-44468 *Teacher Education Internship Act of 1967 (university interns)*  
44560-44562 *Certificated Staff Mentoring Program*  
44830.3 *Employing district interns*  
44885.5 *District interns classified as probationary employees*  
52055.605 *Identification of high priority schools, High Priority Schools Grant Program*

CODE OF REGULATIONS, TITLE 5

6100-6126 *No Child Left Behind teacher requirements*  
13000-13017 *New Careers Program*  
80021.1 *Provisional internship permit*  
80055 *Internship credential*

UNITED STATES CODE, TITLE 20

6319 *Highly qualified teachers*  
7801 *Definitions, highly qualified teacher*

**INTERNS**

**University Internship Program**

The Santa Clara County Superintendent of Schools or designee shall cooperate with a college or university in the development, implementation, and coordination of the university internship program. (Education Code 44452, 44465, 44467)

*(cf. 4112.2 - Certification)*

The County Superintendent or designee may enter into an agreement with a college or university for the employment of competent and qualified college or university staff members to supervise and guide interns as they pursue their SCCOE responsibilities. (Education Code 44461)

Salary payments for the supervision of interns may be made out of SCCOE funds and may be met by proportionately reducing the salaries of paid interns. In such cases, no more than eight interns may be supervised by one staff member and the SCCOE salary normally paid to interns may be reduced by no more than one-eighth to pay the supervisor's salary. The intern shall not be paid less than the minimum salary required by the state for a regularly certificated teacher. (Education Code 44462)

*(cf. 4151/4251 - Employee Compensation)*

Before an intern enrolls in any college or university program to renew his/her internship credential, the County Superintendent or designee shall counsel the intern and plan a program for the first and subsequent renewals. (Education Code 44457)

*(cf. 4115 - Evaluation/Supervision)*

*(cf. 4131 - Staff Development)*



**STAFF TEACHING STUDENTS OF LIMITED ENGLISH PROFICIENCY**

**Definitions**

*Instruction for English language development (ELD)* means instruction designed specifically for limited-English-proficient students to develop their listening, speaking, reading, and writing skills in English. (Education Code 44253.2)

*Specially designed academic instruction in English (SDAIE)* means instruction in a subject area, delivered in English that is specially designed to meet the needs of limited-English-proficient students. (Education Code 44253.2)

*Content instruction delivered in the primary language* means instruction in a subject area delivered in the primary language of the student. (Education Code 44253.2)

**Teacher Qualifications**

The Santa Clara County Superintendent of Schools or designee shall ensure that a teacher providing instruction for ELD, SDAIE, and/or content instruction in any student's primary language possesses the appropriate authorization issued by the Commission on Teacher Credentialing (CTC).

*(cf. 1312.4 - Williams Uniform Complaint Procedures)*

*(cf. 4112.2 - Certification)*

*(cf. 4112.21 - Interns)*

*(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*

*(cf. 4113 - Assignment)*

*(cf. 4222 - Teacher Aides/Paraprofessionals)*

*(cf. 6174 - Education for English Language Learners)*

The County Superintendent or designee shall make reasonable efforts to assign teachers with appropriate ELD authorizations to those students who need ELD instruction. However, a teacher awarded a Certificate of Completion of Staff Development for SDAIE pursuant to Education Code 44253.11 shall be considered certified and competent to provide ELD instruction. (Education Code 44253.11)

*(cf. 4131 - Staff Development)*

*Legal Reference: (see next page)*

**STAFF TEACHING STUDENTS OF LIMITED ENGLISH PROFICIENCY**  
(continued)

*Legal Reference:*

EDUCATION CODE

44253.1-44253.11 *Certification for bilingual-crosscultural competence*

44258.9 *County superintendent review of teacher assignment*

44259.5 *Standards for teachers of all students, including English language learners*

44380-44386 *Alternative certification*

52052 *Adequate yearly progress*

52160-52178 *Bilingual-Bicultural Act of 1976*

52180-52186 *Bilingual teacher training assistance program*

62001-62005. 5 *Evaluation and sunseting of programs*

99230-99242 *Mathematics and Reading Professional Development Program*

CODE OF REGULATIONS, TITLE 5

6100-6125 *Teacher qualifications, No Child Left Behind Act*

80016 *Certificate of completion of staff development to teach English learners*

UNITED STATES CODE, TITLE 20

6319 *Highly qualified teachers*

6601-6651 *Training and recruiting high-quality teachers*

6801-7014 *Language instruction for English learners and immigrant students*

7801 *Definitions, highly qualified teacher*

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 *Highly qualified teachers*

COURT DECISIONS

*Teresa P. et al v. Berkeley Unified School District et al (1989) 724 F.Supp. 698*

**SPECIAL EDUCATION STAFF**

**Qualifications/Assignment of Special Education Teachers**

Any teacher assigned to serve students with disabilities shall possess an appropriate credential or other authorization that specifically authorizes him/her to teach students with that primary disability within the program placement recommended in the students' individualized education program (IEP). (5 CCR 80046.5, 80048.7)

*(cf. 4112.2 - Certification)*

*(cf. 4113 - Assignment)*

*(cf. 6159 - Individualized Education Program)*

*(cf. 6164.4 - Identification and Evaluation of Individuals for Special Education)*

Special education teachers who teach core academic subjects shall possess the qualifications required by the No Child Left Behind Act. (20 USC 1401, 6319, 7801; 34 CFR 200.55-200.57, 300.18; 5 CCR 6100-6126)

*(cf. 4112.24 - Teacher Qualifications Under the No Child Left Behind Act)*

The Santa Clara County Superintendent of Schools or designee may request the Commission on Teacher Credentialing (CTC) to issue a special education limited assignment teaching permit to authorize a qualified special education teacher, with his/her written consent, to serve outside the specialty area of his/her credential. In so doing, the SCCOE shall submit a Declaration of Need for Fully Qualified Educators that satisfies the requirements of 5 CCR 80026. If the teacher has not yet obtained permanent status, the County Superintendent or designee shall assign one or more experienced educators in the special education subject area(s) of the permit, who have at least three years of full-time teaching experience in each of the subject area(s) of the permit, to provide guidance and assistance to the permit holder. (5 CCR 80027.1)

The SCCOE may employ a person with an appropriate SCCOE internship credential to provide classroom instruction to students with disabilities, provided he/she has met the subject matter requirement specified in Education Code 44325 and receives guidance, supervision, and professional development through an established SCCOE internship program. (Education Code 44325, 44326, 44830.3)

*(cf. 4112.21 - Interns)*

**Resource Specialists**

The SCCOE shall employ certificated resource specialists to provide services for students with disabilities which shall include, but not be limited to: (Education Code 56362)

1. Providing instruction and services to students whose needs have been identified in an IEP and who are assigned to regular classroom teachers for a majority of the school day

**SPECIAL EDUCATION STAFF** (continued)

A student shall not be enrolled in a resource specialist program for a majority of a school day without approval by the student's IEP team.

2. Providing information and assistance to students with disabilities and their parents/guardians
3. Providing consultation, resource information, and material regarding students with disabilities to their parents/guardians and regular education staff members
4. Coordinating special education services with the regular school programs for each student with disabilities enrolled in the resource specialist program
5. Monitoring student progress on a regular basis, participating in the review and revision of IEPs as appropriate, and referring students who do not demonstrate sufficient progress to the IEP team
6. At the secondary school level, emphasizing academic achievement, career and vocational development, and preparation for adult life

Resource specialists shall not simultaneously be assigned to serve as resource specialists and to teach regular classes. (Education Code 56362)

The SCCOE's resource specialist program shall be under the direction of a resource specialist who possesses the qualifications specified in Education Code 56362 and 5 CCR 80070.8. (Education Code 56362)

**Teachers of Students with Autism**

A teacher whose preliminary Level I education specialist credential or other previously issued credential authorizes him/her to provide instruction to students with mild and moderate disabilities may be assigned to provide instruction to students with autism, provided that the teacher consents to the assignment and satisfies either of the following criteria prior to the assignment: (Education Code 44265.1)

1. The teacher has provided full-time instruction for at least one year prior to September 1, 2007, in a special education program that serves students with autism in accordance with their IEP and received a favorable evaluation or recommendation from the SCCOE, district, or school to teach students with autism.
2. The teacher has completed a minimum of three semester units of coursework in the subject of autism offered by a regionally accredited institution of higher education.

The County Superintendent or designee shall report teachers assigned under the criteria specified in items #1 and 2 above to the County Office of Education credential's unit as part of

**SPECIAL EDUCATION STAFF** (continued)

the annual assignment monitoring pursuant to Education Code 44258.9. (Education Code 44265.1)

The County Superintendent or designee may employ and assign a teacher to provide instruction to students age 3-4 who are diagnosed with autism if the teacher holds a valid preliminary Level I or clear Level II education specialist credential, is authorized to provide instruction to students with autism, and satisfies either of the criteria listed in items #1 and 2 above, except that the prior service shall have been with autistic students age 3-4 or the completed coursework shall have been in the subject of special education related to early childhood education. (Education Code 44265.2)

Verification of experience or coursework for any teacher of autistic students shall be maintained on file in the SCCOE or school/program office. (Education Code 44265.1, 44265.2)

*Legal Reference:*

EDUCATION CODE

44250-44279 *Credentials, especially:*

44256 *Credential types, specialist instruction*

44258.9 *Assignment monitoring*

44265-44265.99 *Special education credential*

44325-44328 *District interns*

56000-56865 *Special education, especially:*

56195.8 *Adoption of policies*

56361 *Program options*

56362-56362.5 *Resource specialist program*

56363.3 *Average caseload limits; language, speech, and hearing specialists*

CODE OF REGULATIONS, TITLE 5

3051.1 *Language, speech and hearing development and remediation; appropriate credential*

3100 *Waivers of maximum caseload for resource specialists*

6100-6126 *Teacher qualifications, No Child Left Behind Act*

80026 *Declaration of need for fully qualified educators*

80027.1 *Special education limited assignment teaching permit*

80046-80046.1 *Adapted physical education specialist*

80046.5 *Credential holders authorized to serve students with disabilities*

80048-80048.7 *Credential requirements and authorizations*

80070.1-80070.8 *Resource specialist certificate of competence*

UNITED STATES CODE, TITLE 20

1400-1482 *Individuals with Disabilities Education Act, especially:*

1401 *Definition of highly qualified special education teacher*

6319 *Highly qualified teachers*

7801 *Definitions, highly qualified teacher*

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 *Highly qualified teachers*

300.8 *Definition of autism*

300.18 *Highly qualified special education teachers*

300.156 *Special education personnel requirements*

Regulation

approved: April 30, 2012

**SANTA CLARA COUNTY OFFICE OF EDUCATION**

San Jose, California

**TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT**

Recognizing the importance of teacher effectiveness in improving student achievement, the Santa Clara County Superintendent of Schools desires to recruit and hire teachers for core academic subjects who possess the subject matter knowledge and teaching skills required by the federal No Child Left Behind Act (NCLB).

*(cf. 4112.2 - Certification)*

*(cf. 4112.21 - Interns)*

*(cf. 4112.22 - Staff Teaching Students of Limited English Proficiency)*

*(cf. 4112.23 - Special Education Staff)*

*(cf. 6171 - Title I Programs)*

All teachers employed to teach core academic subjects shall be "highly qualified" as defined by federal law and the State Board of Education. (20 USC 6319, 7801; 34 CFR 200.55; 5 CCR 6100-6126)

The County Superintendent or designee shall inform teachers of NCLB requirements and shall identify additional qualifications, if any that individual teachers need to demonstrate in order to meet the requirements. He/she shall work with individual teachers to develop a plan for attaining full qualifications.

The County Superintendent or designee shall monitor the distribution of "highly qualified" teachers among SCCOE schools and programs and develop strategies, as needed, to encourage teachers who meet NCLB requirements to teach in schools with the lowest student performance.

*(cf. 0520.1 - High Priority Schools Grant Program)*

*(cf. 0520.2 - Title I Program Improvement Schools)*

*(cf. 0520.4 - Quality Education Investment Schools)*

*(cf. 4113 - Assignment)*

*(cf. 4114 - Transfers)*

*(cf. 4138 - Mentor Teachers)*

*Legal Reference: (see next page)*

**TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT**  
(continued)

*Legal Reference:*

EDUCATION CODE

44500-44508 *Peer Assistance and Review Program for Teachers*

44662 *Performance evaluation; Stull Act review*

44664 *Teacher evaluation; program to improve performance*

44865 *Alternative programs*

CODE OF REGULATIONS, TITLE 5

6100-6126 *Teacher qualifications, No Child Left Behind Act*

80021 *Short-term staff permit*

80021.1 *Provisional internship permit*

80089.3-80089.4 *Subject matter authorizations*

UNITED STATES CODE, TITLE 20

1401 *Definition of highly qualified special education teacher*

6311 *Parental notifications*

6312 *Title I local educational agency plan*

6314 *Schoolwide programs*

6315 *Targeted assistance schools*

6319 *Highly qualified teachers*

7345-7345b *Small Rural Schools Achievement Program*

7801 *Definitions, highly qualified teacher*

CODE OF FEDERAL REGULATIONS, TITLE 34

200.55-200.57 *Highly qualified teachers*

200.61 *Parent notification regarding teacher qualifications*

300.18 *Highly qualified special education teachers*

**TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT**

**Definitions**

*Core academic subjects* include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. (20 USC 7801)

*Hard-to-staff setting* means a middle or high school classroom eligible for the federal Small Rural Schools Achievement Program, a middle or high school special education classroom, or a middle or high school alternative education program as specified in Education Code 44865, including home teaching, hospital classes, necessary small high schools, continuation schools, alternative schools, opportunity schools, juvenile court schools, county community schools, and SCCOE community day schools. (5 CCR 6100)

*(cf. 6181 - Alternative Schools/Programs of Choice)*

*(cf. 6183 - Home and Hospital Instruction)*

*(cf. 6184 - Continuation Education)*

*(cf. 6185 - Community Day School)*

*High Objective Uniform State Standard Evaluation (HOUSSE)* is a method of determining a teacher's subject matter competence using forms developed by the California Department of Education (CDE). HOUSSE Part 1 consists of a summation of the teacher's years of experience, coursework, professional development, and service to the profession. HOUSSE Part 2, to be conducted only if Part 1 does not indicate subject matter competency, consists of direct observation and portfolio assessment and, if necessary, completion of the Peer Assistance and Review Program for Teachers or other individualized professional development plan. (5 CCR 6104)

*(cf. 4139 - Peer Assistance and Review)*

*Level 1 professional development* means training that will provide a teacher with the requisite understanding of each set of state content standards. *Level 2 professional development* means training that will provide a teacher with more in-depth understanding of the content standards than provided in a Level 1 professional development program. The trainings shall be consistent with state-adopted academic content standards, curriculum frameworks, and adopted texts and shall incorporate the assessment of subject matter competency as outlined in the CDE's document California's Subject Matter Verification Process for Middle and High School Level Teachers in Special Settings. For each type of training, at least 36 hours in the core subject for which the teacher is being certified is required to substantively address the subject matter content. (5 CCR 6100, 6105)

*Teacher new to the profession* is a teacher who either graduated from an accredited institution of higher education and received a credential, or was enrolled in or had completed an approved intern program, on or after July 1, 2002. (5 CCR 6100)



**TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT**  
(continued)

*Teacher not new to the profession* is a teacher who either graduated from an accredited institution of higher education and received a credential, or was enrolled in or had completed an approved intern program, before July 1, 2002. (5 CCR 6100)

**Teacher Qualifications**

To meet the teacher qualification requirements of the federal No Child Left Behind Act (NCLB), a teacher of a core academic subject shall meet all of the following conditions: (20 USC 6319, 7801; 34 CFR 200.55, 200.56, 300.18; 5 CCR 6101, 6104, 6105, 6110)

1. Hold a bachelor's degree
2. Hold a full credential or be currently enrolled in an approved intern program for less than three years

(cf. 4112.2 - Certification)

(cf. 4112.21 - Interns)

3. Demonstrate subject matter competency in accordance with the applicable requirements below

(cf. 6171 - Title I Programs)

A teacher who holds a supplementary authorization or is employed on a local teaching assignment shall meet the teacher qualification requirements of NCLB if he/she holds a California teaching credential and has demonstrated subject matter competency for the grade span and subject matter taught. (5 CCR 6116)

A teacher shall not meet the teacher qualification requirements of NCLB if he/she is teaching with a Short-Term Staff Permit, a Provisional Internship Permit, or a state or local waiver for the grade or subject taught. (5 CCR 6115, 80021, 80021.1)

**Demonstration of Subject Matter Competency**

Subject matter competency shall be demonstrated in accordance with the following requirements based on the grade levels taught and the teacher's length of time in the profession:

1. An *elementary teacher who is new to the profession* shall pass a validated statewide subject matter examination certified by the Commission on Teacher Credentialing (CTC). (5 CCR 6102)

**TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT**  
(continued)

2. *An elementary teacher who is not new to the profession* shall complete one of the following: (5 CCR 6103-6104)
  - a. A validated statewide subject matter examination that the CTC has utilized to determine subject matter competency for credentialing purposes
  - b. The HOUSSE, as defined above, to determine the teacher's subject matter competency in each of the core academic subjects taught by the teacher
3. *A middle or high school teacher who is new to the profession* shall pass or complete one of the following for every core academic subject currently assigned: (5 CCR 6111)
  - a. A validated statewide subject matter examination certified by the CTC
  - b. University subject matter program approved by the CTC
  - c. Undergraduate major in the subject taught
  - d. Graduate degree in the subject taught
  - e. Coursework equivalent to the undergraduate major
4. *A middle or high school teacher who is not new to the profession* shall pass or complete one of the following for every core subject assigned: (5 CCR 6112)
  - a. A validated statewide subject matter examination that the CTC has utilized to determine subject matter competency for credentialing purposes
  - b. University subject matter program approved by the CTC
  - c. Undergraduate major in the subject taught
  - d. Graduate degree in the subject taught
  - e. Coursework equivalent to the undergraduate major
  - f. Advanced certification or credential, such as certification from the National Board for Professional Teaching Standards
  - g. The HOUSSE, as defined above, to determine the teacher's subject matter competency in each of the core academic subjects taught by the teacher

**TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT**  
(continued)

5. *A middle or high school teacher in a hard-to-staff setting*, as defined above, shall complete professional development for the subject matter verification process within three years of the date of assignment to such a setting. (5 CCR 6100, 6105)
  - a. If the teacher has fewer than 20 total or 10 upper division nonremedial college-level semester units, or equivalent quarter units, in a core academic subject, he/she shall complete both Level 1 and Level 2 professional development courses as defined above.
  - b. If the teacher has fewer than 32 semester nonremedial college-level units, but at least 20 total or 10 upper division nonremedial semester units, or the equivalent quarter units, in a core academic subject, he/she shall complete a Level 2 professional development course.

*(cf. 4131 - Staff Development)*

6. *An elementary, middle, or high school special education teacher teaching multiple subjects* exclusively to students with disabilities may either: (20 USC 1401; 34 CFR 300.18; 5 CCR 6111)
  - a. Meet the requirements above for teachers who are new or not new to the profession, as applicable
  - b. In the case of a new special education teacher who has demonstrated subject matter competency in mathematics, language arts, or science, demonstrate competency in the other core academic subject(s) he/she teaches through the HOUSSE no later than two years after the date of employment

**Satisfaction of Requirements Outside District**

A teacher who has been determined by another county office or district in California to have met the teacher qualification requirements for the grade level and/or subject taught shall not be required to demonstrate again that he/she meets those requirements. (5 CCR 6120)

A teacher who has been determined to meet subject matter competency requirements outside of California shall be considered to have met those requirements for the particular subject and/or grade span in California. The date of issuance of a valid out-of-state credential shall be used to identify a teacher as new or not new to the profession. (5 CCR 6125)

A teacher prepared in a country other than the United States shall be considered to have met NCLB teaching requirements if he/she: (5 CCR 6126)

**TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT**  
(continued)

1. Holds a degree from a foreign college or university that is at least equivalent to a bachelor's degree offered by an American institution of higher education
2. Has completed a teacher preparation program that meets CTC requirements for out-of-country trained teachers
3. Demonstrates subject matter competency for the grade span and subjects taught through the same or equivalent processes and methods required of California teachers
4. Holds a California teaching credential

**Certification of Compliance**

All teachers teaching core academic subjects shall complete and sign a certificate of compliance with NCLB requirements and attach appropriate documentation. The Santa Clara County Superintendent of Schools or designee shall verify the information and retain the signed original copy.

The principal of each school receiving Title I funds shall annually attest in writing as to whether the school is in compliance with NCLB requirements related to teacher qualifications. Copies of the attestation shall be maintained at the school and at the SCCOE and shall be available to any member of the public upon request. (20 USC 6319)

**SCCOE Plan for Highly Qualified Teachers**

Within the Title I local educational agency plan, the County Superintendent or designee shall develop a plan for ensuring that all teachers of core academic subjects will meet NCLB requirements in accordance with law. As part of this plan, the County Superintendent or designee shall provide high-quality professional development designed to enable teachers to meet NCLB requirements. (20 USC 6312, 6319)

**Parental Notifications**

At the beginning of each school year, the County Superintendent or designee shall notify the parents/guardians of each student attending a school receiving Title I funds that they may request information regarding the professional qualifications of their child's classroom teacher including, but not limited to: (20 USC 6311)

1. Whether the teacher has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction

**TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT**

(continued)

2. Whether the teacher is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived
3. The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree
4. Whether the student is provided services by paraprofessionals and, if so, their qualifications

*(cf. 1312.4 - Williams Uniform Complaint Procedures)*

*(cf. 4222 - Teacher Aides/Paraprofessionals)*

*(cf. 5145.6 - Parental Notifications)*

In addition, the County Superintendent or designee shall provide timely notice to individual parents/guardians of students attending a Title I school whenever their child has been assigned to or has been taught for four or more consecutive weeks by a teacher of a core academic subject who does not meet NCLB teacher qualification requirements. (20 USC 6311; 34 CFR 200.61)

The County Superintendent or designee shall notify teachers, as appropriate, prior to distributing the above notice to parents/guardians.

The notice and information provided to parents/guardians shall be in an understandable and uniform format and, to the extent practicable, be provided in a language that the parents/guardians can understand. (20 USC 6311)

Regulation  
approved:

**SANTA CLARA COUNTY OFFICE OF EDUCATION**  
San Jose, California

**TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT**

**ATTESTATION REGARDING QUALIFICATIONS OF TITLE I TEACHERS**

*Instructions:* The following certification must be annually completed and signed by each principal in a school that operates a Title I program pursuant to 20 USC 6314 (school-wide programs) and 20 USC 6315 (targeted assistance schools).

School: \_\_\_\_\_ Principal: \_\_\_\_\_

I certify that all teachers hired after the first day of the 2002-03 school year to teach core academic subjects in a program supported by Title I funds meet the following qualifications:

1. Hold at least a bachelor's degree
2. Have a credential or are currently enrolled in an approved intern program for less than three years
3. Have demonstrated subject matter competence as required by 5 CCR 6100-6115 for the grade level(s) taught and the teacher's length of time in the profession

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Date

**TEACHER QUALIFICATIONS UNDER THE NO CHILD LEFT BEHIND ACT**

**PARENTAL NOTIFICATION OF TEACHER QUALIFICATIONS**

To Parents/Guardians:

Your child is attending a school receiving Title I federal funds under the federal No Child Left Behind Act (NCLB).

Under NCLB, teachers of core academic subjects are required to hold state certification and demonstrate subject matter competency for the grade span or subject matter taught. These requirements help us to ensure that all our students receive the best education by teachers who are highly skilled and knowledgeable in their subject areas.

This federal law requires the school to notify you that a teacher who has not yet completed the process for meeting NCLB requirements has taught your child for four or more consecutive weeks. However, the teacher is authorized to teach in California and is working toward completion of the requirements. The SCCOE continues to monitor teacher qualifications and to provide additional support and training, as necessary, to help teachers meet the requirements.

You may contact \_\_\_\_\_ [insert school name] \_\_\_\_\_ to request the qualifications of your child's teacher. If you have any questions, please contact \_\_\_\_\_ [insert principal name] \_\_\_\_\_ at \_\_\_\_\_ [insert telephone number] \_\_\_\_\_.

**All Personnel**

AR 4112.3(a)

4212.3

**OATH OR AFFIRMATION**

4312.3

All employees are declared by law to be disaster service workers and thus shall take the oath or affirmation required for disaster service workers before beginning employment with the Santa Clara County Office of Education. In the event of natural, manmade or war-caused emergencies which result in conditions of disaster or extreme peril to life, property and resources, all employees are subject to disaster service activities as assigned to them by their supervisors or by law. (Government Code 3100-3102)

*(cf. 3516 - Emergencies and Disaster Preparedness Plan)*

*(cf. 9224 - Oath or Affirmation)*

Legally employed noncitizens shall be exempt from taking this oath. (Government Code 3101)

At the advice of legal counsel, the Santa Clara County Superintendent of Schools or designee may exempt an employee from taking the oath if he/she raises a valid religious objection.

The County Superintendent, Deputy or Chief, principal or other person authorized in Education Code 60 shall administer the oath or affirmation when a SCCOE employee is hired.

In the case of intermittent, temporary, emergency or successive employments, the County Superintendent or designee may determine that the oath shall be effective for all successive periods of employment which begin within one calendar year from the date that the oath was subscribed. (Government Code 3102)

*(cf. 4121 - Temporary/Substitute Personnel)*

The County Superintendent or designee shall file the executed oath or affirmation within 30 days of the date on which it is taken and subscribed. An employee's oath or affirmation may be destroyed five years after the termination of employment. (Government Code 3105)

**Reimbursement of Expenses for Disaster Service Workers**

Whenever an employee seeks compensation or reimbursement of expenses as a disaster service worker, the County Superintendent or designee shall ascertain and certify that the employee has taken the oath or affirmation. (Government Code 3107)

*Legal Reference: (see next page)*



AR 4112.3(b)  
4212.3  
4313.3

**OATH OR AFFIRMATION** (continued)

*Legal Reference:*

EDUCATION CODE

60 Persons authorized to administer and certify oaths

44334 Oath or affirmation required for credential

44354 Administration of oath required for credential

GOVERNMENT CODE

3100-3109 Oath or affirmation of allegiance

CALIFORNIA CONSTITUTION

Article 20, Section 3 Oath of office

COURT DECISIONS

Chilton v. Contra Costa Community College District 55 Cal. App. 3d 544 (1976)

Vogel v. County of Los Angeles (1967) 68 Cal. 2d 18, 22

**All Personnel**

E 4112.3

4212.3

**OATH OR AFFIRMATION**

4312.3

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

I understand that as a public employee I am a disaster service worker pursuant to Government Code 3100 and 3102 and that I am required to take this oath before entering the duties of my employment. In the event of natural, manmade or war-caused emergencies which result in conditions of disaster or extreme peril to life, property and resources, I am subject to disaster services activities assigned to me by my supervisor.

\_\_\_\_\_  
(Signature)

Certified by:

\_\_\_\_\_  
(Person who administers the oath)

**All Personnel**

AR 4112.4(a)

4212.4

**HEALTH EXAMINATIONS**

4312.4

**Tuberculosis Tests**

No applicant shall be initially employed in a classified or certificated position unless, within the past 60 days, he/she has submitted to an intradermal or other tuberculin test licensed by the Food and Drug Administration and, if that test was positive, has subsequently obtained an xray of the lungs. The applicant shall submit to the Santa Clara County Office of Education a certificate signed by the examining licensed physician indicating that he/she is free of active tuberculosis. (Education Code 49406; 5 CCR 5503)

The cost of the pre-employment tuberculosis examination shall be paid by the applicant.

An applicant who was previously employed in another California school district may fulfill the tuberculosis examination requirement either by producing a certificate showing that he/she was examined within the last four years and found to be free of active tuberculosis or by having his/her previous school district employer verify that it has on file a certificate which contains that evidence. (Education Code 49406)

Every SCCOE employee who tests negative shall undergo a tuberculosis examination at least once every four years, or more often if so directed by the Santa Clara County Superintendent of Schools upon recommendation of the county health officer, for as long as the employee's test remains negative. An employee with a documented positive test for tuberculosis infection shall no longer be required to submit to the examination but shall be referred to the county health officer within 30 days of the examination to determine the need for follow-up care. (Education Code 49406)

Tuberculosis tests for employees shall be provided by the SCCOE or at SCCOE expense. (Education Code 44839, 45122, 49406)

If an employee's religious belief prevents him/her from undergoing a tuberculosis examination, the employee shall file an affidavit stating that he/she adheres to the faith or teachings of a well-recognized religious sect, denomination, or organization and, in accordance with its creed, tenets, or principles, depends for healing upon prayer in the practice of religion and that, to the best of his/her knowledge or belief, he/she is free from active tuberculosis. In order to exempt the individual, the County Superintendent shall determine by resolution, after a hearing, that the health of students would not be jeopardized. (Education Code 49406)

The County Superintendent or designee may exempt from the tuberculosis testing requirement classified employees who are employed for less than a school year if their functions do not require frequent or prolonged contact with students. (Education Code 49406)

## **HEALTH EXAMINATIONS** (continued)

The County Superintendent or designee may exempt a pregnant employee from the requirement that a positive tuberculin test be followed by an x-ray of the lungs, for a period not to exceed 60 days following termination of the pregnancy. (Education Code 49406)

### **Medical Certification for Communicable Diseases for Certificated Employees**

The Santa Clara County Office of Education shall not fill a position requiring certification with an applicant who has not previously been employed in a certificated position in California or a retirant who has not been employed as a retirant, unless the SCCOE has on file a medical certification completed and submitted by a physician, physician assistant, registered nurse, or commissioned medical officer. (Education Code 44839 and 44839.5)

*(cf. 4117.14/4217.14 - Postretirement Employment)*

The medical certification shall certify that the applicant or retirant is free from any disabling disease which would render him/her unfit to instruct or associate with children. The medical examination referred to in the certificate must have been conducted within six months of the date that the certificate is filed. (Education Code 44839, 44839.5; 5 CCR 5503)

*(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)*

Applicants and retirants shall pay for the cost of obtaining the medical certification. (Education Code 44849, 44839.5)

The County Superintendent or designee may require certificated employees and/or retirants to undergo, at SCCOE expense, a periodic medical examination pursuant to Education Code 44839 or 44839.5 to determine that they are free from any communicable disease making them unfit to instruct or associate with children. (Education Code 44839, 44839.5)

### **Mental Examination for Certificated Employees**

A certificated employee may be suspended or transferred to other duties if the County Superintendent has reasonable cause to believe that the employee is suffering from mental illness of such a degree as to render him/her incompetent to perform his/her duties. In such a case, the SCCOE shall follow the process specified in Education Code 44942 and the SCCOE's collective bargaining agreement, including the opportunity for the employee to be examined by a panel of psychiatrists or psychologists.

*(cf. 4032 - Reasonable Accommodation)*

*(cf. 4118 - Suspension/Disciplinary Action)*

*Legal Reference: (see next page)*

AR 4112.4(c)  
4212.4  
4312.4

**HEALTH EXAMINATIONS (continued)**

*Legal Reference:*

EDUCATION CODE

44839 *Medical certificate; periodic medical examination*

44839.5 *Requirements for employment of retirant*

44932 *Grounds for dismissal of permanent employee*

44942 *Suspension or transfer of certificated employee on ground of mental illness*

45122 *Physical examinations*

49406 *Examination for tuberculosis*

BUSINESS AND PROFESSIONS CODE

2700-2838 *Nurses*

3500-3503.5 *Physician assistants*

CODE OF REGULATIONS, TITLE 5

5502 *Filing of notice of physical examination for employment of retired persons*

5503 *Physical examination for employment of retired persons*

5504 *Medical certification procedures*

COURT DECISIONS

*Leonel v. American Airlines, Inc.*, (2005) 400 F.3d. 702

*Raven v. Oakland Unified School District*, (1989) 213 Cal.App.3d 1347

**All Personnel**

SP 4112.41(a)  
4212.41  
4312.41

**EMPLOYEE DRUG TESTING**

The Santa Clara County Office of Education maintains a drug and alcohol-free workplace. In accordance with law, all employees shall render service without using, possessing, being impaired by, or being under the influence of alcohol or drugs.

- (cf. 0450 - Comprehensive Safety Plan)*
- (cf. 4020 - Drug and Alcohol-Free Workplace)*
- (cf. 4030 - Nondiscrimination in Employment)*
- (cf. 4032 - Reasonable Accommodation)*
- (cf. 4112.42/4212.42/4312.42 - Drug and Alcohol Testing for School Bus Drivers)*
- (cf. 5131.61 - Drug Testing)*

**Pre-Employment Drug/Alcohol Testing for Safety-Sensitive Positions**

Because students and staff have the right to a safe and secure campus where they are free from physical and psychological harm, the Santa Clara County Superintendent of Schools authorizes the testing of prospective employees in safety-sensitive positions for drug and alcohol use. The following positions are safety-sensitive and are subject to the SCCOE's program:

Bus Driver	Supervisor-Transportation Svcs
Bus Driver- Lead/Scheduler	Supervisor-Warehousing Svcs
Maintenance Person I/II - Restricted	Utility Worker
Mechanic-Vehicle Maintenance	Warehouse Person
Substitute Bus Driver	Warehouse Person - Lead
Supervisor- Head Start Operations Sup. Svcs	
Supervisors who operate a commercial motor vehicles and other persons who drive vehicles designed to transport 16 or more passengers	

Once a conditional offer of employment has been made, prospective employees in these identified positions shall undergo a pre-employment drug and alcohol screening for any substance which could impair their ability to safely and effectively perform their job functions. This screening shall be part of the employee's pre-employment physical examination.

Final selection of a job applicant for a position shall not be made until the applicant has successfully completed the screening.

All testing and medical examinations shall be conducted in accordance with state and federal law, SCCOE policy, and administrative regulation.

## **EMPLOYEE DRUG TESTING** (continued)

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

### *Legal Reference:*

#### EDUCATION CODE

44011 *Controlled substance offense*

44455 *Conviction for controlled substance offenses as grounds for revocation of credential*

44836 *Employment of certificated persons convicted of controlled substance offenses*

44940 *Compulsory leave of absence for certificated persons*

44940.5 *Procedures when employees are placed on compulsory leave of absence*

45123 *Employment after conviction for controlled substance offense*

45304 *Compulsory leave of absence for classified persons*

44839 *Medical certificate; periodic medical examination*

45122 *Physical examinations*

#### GOVERNMENT CODE

8350-8357 *Drug-free workplace*

12940 *Unlawful employment practices*

#### CODE OF REGULATIONS, TITLE 5

5504 *Medical certification procedures*

#### CALIFORNIA CONSTITUTION

Article I, Section 28(c) *Right to Safe Schools*

#### UNITED STATES CODE, TITLE 20

7101-7184 *Safe and Drug-Free Schools and Communities Act*

#### UNITED STATES CODE, TITLE 41

701-707 *Drug-Free Workplace Act*

#### COURT DECISIONS

*Lanier v. City of Woodburn*, (2008, 9th Circuit) 518 F.3d 1147

*Knox County Education Association v. Knox County Board of Education*, (1998, 6th Circuit) 158 F.3d 361

*Loder v. City of Glendale*, (1997) 14 Cal. 4th 846

*Vernonia School District 47J v. Acton*, (1995) 115 S.Ct. 2386

*International Brotherhood of Teamsters v. Department of Transportation*, (1991) 932 F.2d 1292

*Skinner v. Railway Labor Executives' Assn.*, (1989) 489 U.S. 602

*National Treasury Employees Union v. Von Raab*, (1989) 489 U.S. 456

**All Personnel**

AR 4112.41

4212.41

**EMPLOYEE DRUG TESTING**

4312.41

**Pre-Employment Drug/Alcohol Screening for Safety-Sensitive Positions**

Applicants shall sign a form consenting to the drug and alcohol testing. The consent form shall authorize release of the test results to the Santa Clara County Office of Education. To ensure an individual's privacy, the SCCOE shall not use test results for any purpose other than those stated in SCCOE policy and administrative regulation, shall maintain the confidentiality of screening records, and shall not disclose such records unless the applicant consents or the Santa Clara County Superintendent of Schools or designee is presented with a court order requiring the disclosure.

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*

*(cf. 4112.4/4212.4/4312.4 - Health Examinations)*

All initial screening tests shall be conducted at the SCCOE's expense. If an applicant's initial test is positive, a second test, at the SCCOE's expense, shall be administered as soon as possible to confirm the results. Any applicant who fails to provide the SCCOE with a negative drug and alcohol screening report shall not be employed.

Failure to submit to the process or to complete the process shall preclude the applicant from being hired into the Safety-Sensitive position. Disqualified applicants shall not be prohibited from applying for another job within the SCCOE.



**All Personnel**

SP 4112.42(a)

4212.42

**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS**

4312.42

The Santa Clara County Office of Education desires to ensure that SCCOE-provided transportation is safe for students, staff, and the public. To that end, the Santa Clara County Superintendent of Schools or designee shall establish a drug and alcohol testing program for all SCCOE drivers and other employees who hold a commercial driver's license which is necessary to perform duties related to their employment with the SCCOE. This program shall be designed to fulfill the requirements of state and federal law.

*(cf. 3540 - Transportation)*

*(cf. 3543 - Transportation Safety and Emergencies)*

The SCCOE's testing program shall include pre-employment drug testing and reasonable suspicion, random, post-accident, return-to-duty, and follow-up drug and alcohol testing of drivers. (49 USC 31306)

The County Superintendent or designee shall contract for testing services and shall ensure that testing contractors and procedures are certified by the U.S. Department of Health and Human Services to conduct drug specimen analysis and to conform to the requirements of federal law.

*(cf. 3542 - School Bus Drivers)*

*(cf. 4020 - Drug and Alcohol-Free Workplace)*

No driver may operate a SCCOE vehicle when his/her blood alcohol content is found to be .01 percent or greater. A driver shall not consume alcohol while on duty or for four hours prior to on-duty time and up to eight hours following an accident or until he/she undergoes a post-accident test, whichever occurs first. A driver shall not report for duty or remain on duty that requires performing safety-sensitive functions when the driver uses a controlled substance, unless so instructed by a physician. (49 CFR 382.205, 382.207, 382.209; Vehicle Code 34520.3; 13 CCR 1213.1)

Any driver who tests positive for alcohol or drugs or who refuses to submit to a test shall be removed from safety-sensitive functions and may be subject to disciplinary action up to and including dismissal in accordance with law, administrative regulations, and the SCCOE's collective bargaining agreement.

*(cf. 4117.4 - Dismissal)*

*(cf. 4118 - Suspension/Disciplinary Action)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

The County Superintendent or designee shall ensure that each driver receives an explanation of the federal regulations and the SCCOE's policy and procedure in accordance with law. In addition, each driver shall sign a statement certifying that he/she has received a copy of the above materials. Representatives of employee organizations shall be notified of the availability of this information. (49 CFR 382.601)

SP 4112.42(b)  
4212.42  
4312.42

**DRUG AND ALCOHOL TESTING FOR SCHOOL BUS DRIVERS** (continued)

*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

*Legal Reference:*

EDUCATION CODE

35160 Authority of governing boards

VEHICLE CODE

34500-34520.5 Safety regulations

CODE OF REGULATIONS, TITLE 13

1200-1293 Motor carrier safety, especially:

1213.1 Placing drivers out-of-service

UNITED STATES CODE, TITLE 49

31306 Alcohol and controlled substances testing

41501-41507 Transportation Employee Testing Act

CODE OF FEDERAL REGULATIONS, TITLE 49

40.1-40.413 Part 40, Procedures for transportation workplace drug and alcohol testing programs

382.101-382.605 Controlled substance and alcohol use and testing; especially:

382.205 On-duty use

382.207 Pre-duty use

382.209 Use following an accident

## **Certificated Personnel**

AR 4112.5(a)  
4312.5

### **CRIMINAL RECORD CHECK**

#### **Applicants for Employment**

The Santa Clara County Superintendent of Schools or designee shall ensure that each person to be employed submits fingerprints, either electronically through the Live Scan system or on fingerprint identification cards, for processing by the Department of Justice. If the Santa Clara County Office of Education is using the Live Scan system, the County Superintendent or designee shall also provide the applicant with a Live Scan request form and a list of nearby Live Scan locations.

The County Superintendent or designee shall ensure that no person is hired in a position requiring certification qualifications or supervising positions requiring certification qualifications who have been convicted of a violent or serious felony as listed in Penal Code 667.5(c) or 1192.7(c), unless that person has obtained a certificate of rehabilitation and a pardon. (Education Code 44830.1)

*(cf. 4112 - Appointment and Conditions of Employment)*  
*(cf. 4112.2 - Certification)*

However, a certificated employee may be hired by the SCCOE, without obtaining a criminal record summary, if that employee became a permanent employee of a school district as of October 1, 1997. (Education Code 44830.1)

*(cf. 4121 - Temporary/Substitute Personnel)*

#### **Temporary Certificate of Clearance**

Before issuing a temporary certificate of clearance to an applicant whose credential is being processed, the County Superintendent or designee shall obtain a criminal record summary from the Department of Justice. The County Superintendent or designee shall not issue a temporary certificate of clearance if the applicant has been convicted of a violent or serious felony, unless the applicant has obtained a certificate of rehabilitation and pardon. (Education Code 44332, 44332.5, 44332.6)

The County Superintendent or designee may issue a temporary certificate of clearance without obtaining a criminal record summary to an employee currently and continuously employed by a district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential. (Education Code 44332.6)

The County Superintendent or designee may issue a temporary certificate of clearance to a person who has been convicted of a serious felony that is not also a violent felony, if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he/she has been rehabilitated for the purposes of school employment for at least one year. (Education Code 44332.6)

**CRIMINAL RECORD CHECK** (continued)

**Subsequent Arrest Notification**

The County Superintendent or designee shall request subsequent arrest notification from the Department of Justice as provided under Penal Code 11105.2. (Education Code 44830.1)

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*

*(cf. 4112.62/4212.62/4312.62 - Maintenance of Criminal Offender Records)*

**Current Employees**

The County Superintendent or designee shall not retain in employment any current certificated employee who is a temporary employee, substitute employee or probationary employee serving before March 15 of the employee's second probationary year if he/she has been convicted of a violent or serious felony. (Education Code 44830.1)

Upon notification by the Department of Justice of such conviction, the County Superintendent or designee shall immediately place that employee on leave without pay. (Education Code 44830.1)

When the SCCOE receives written electronic notification of the fact of conviction from the Department of Justice, the County Superintendent or designee shall terminate that employee without regard to any other procedure for termination specified in the Education Code or SCCOE procedures, unless that employee has received a certificate of rehabilitation and a pardon. (Education Code 44830.1)

If the employee challenges the Department of Justice record and the Department of Justice withdraws in writing its notification, the County Superintendent or designee shall immediately reinstate that employee with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement. (Education Code 44830.1)

*Legal Reference: (see next page)*

**CRIMINAL RECORD CHECK** (continued)

*Legal Reference:*

EDUCATION CODE

44010 Sex offense

44332 Temporary certificate

44332.5 Registering certificates by certain districts

44332.6 Criminal record check, county board of education

44346.1 Applicants for credential, conviction of a violent or serious felony

44830.1 Certificated employees, conviction of a violent or serious felony

44830.2 Certificated employees; interagency agreement

44836 Conviction of a sex offense

45122.1 Classified employees, conviction of a violent or serious felony

45125 Use of personal identification cards to ascertain conviction of crime

45125.01 Classified employees; interagency agreements

45125.5 Automated records check

45126 Duty of Department of Justice to furnish information

PENAL CODE

667.5 Prior prison terms, enhancement of prison terms

1192.7 Plea bargaining limitation

11105.2 Subsequent arrest notification

CODE OF REGULATIONS, TITLE 11

703 Release of criminal offender record information

708 Destruction of criminal offender record information

**All Personnel**

AR 4112.6(a)

4212.6

**PERSONNEL FILES**

4312.6

The Santa Clara County Superintendent of Schools or designee shall maintain personnel files for all current employees. All personnel files are confidential and shall be available only to the employee, persons authorized by the employee and those authorized by the County Superintendent or designee. Official employee files shall be maintained at the central office. The County Superintendent or designee shall determine the types of information to be included and shall process all material to be placed in a personnel file.

*(cf. 4141/4241 - Collective Bargaining Agreement)*

The contents of all personnel files shall be kept in strict confidence by any authorized reviewer.

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*

*(cf. 9011 - Disclosure of Confidential/Privileged Information)*

*(cf. 9321 - Closed Session Purposes and Agendas)*

*(cf. 9321.1 - Closed Session Actions and Reports)*

Personnel files shall be reviewed and replaced within the shortest time possible. In no case shall a personnel file be left unattended or left unfiled overnight.

**Files for District Police/Security Officers**

Personnel files for Santa Clara County Office of Education police or security officers shall be maintained and accessed in accordance with SCCOE policy and Government Code 3305-3306.

*(cf. 3515.3 - SCCOE Police/Security Department)*

**Placement of Material in Personnel Files**

Any person who places written material or drafts written material for placement in an employee's file shall sign the material and signify the date of placement.

When an employee is asked to sign any material that is to be placed in his/her file, it is with the understanding that his/her signature signifies only that he/she has read the material and does not necessarily indicate agreement with its contents.

Any request by an employee to include materials in his/her personnel file must be approved by the County Superintendent or designee.

A certificated employee may initiate a written reaction or response to his/her performance evaluation and that response shall become a permanent attachment to the employee's personnel file. (Education Code 44663)

*(cf. 4115 - Evaluation/Supervision)*

## **PERSONNEL FILES** (continued)

### **Derogatory Information**

Information of a derogatory nature shall not be entered into an employee's personnel file unless and until the employee is given notice and an opportunity to review and comment on that information. Such a review shall take place during normal business hours. The employee shall be released from duty for this purpose without a salary reduction. The employee may enter his/her own comments and have them attached to the derogatory statement. (Education Code 44031)

*(cf. 1312.1 - Complaints Concerning SCCOE Employees)*

*(cf. 4117.4 - Dismissal)*

*(cf. 4118 - Suspension/Disciplinary Action)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

### **File Review by Employee**

The contents of personnel records relating to the employee's performance or to any grievance concerning the employee shall be made available to the employee at reasonable intervals and at reasonable times. The County Superintendent or designee shall not be required to make such records available at a time when the employee is required to render services to the SCCOE, unless the employee is required to view the file where it is stored. (Labor Code 1198.5; Education Code 44031)

The County Superintendent or designee shall do one of the following: (Labor Code 1198.5)

1. Keep a copy of each employee's personnel records at the place where the employee reports to work
2. Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request
3. Permit the employee to inspect the personnel records at the location where the SCCOE stores the personnel records, with no loss of compensation to the employee

Any employee wishing to inspect his/her personnel record shall contact the County Superintendent or designee.

With the exceptions noted below, all personnel records related to the employee's performance or to any grievance concerning the employee shall be made available for inspection by the employee. Noncredentialed employees shall have access to any numerical scores obtained as result of written examinations. (Education Code 44031)

**PERSONNEL FILES** (continued)

The County Superintendent or designee shall not be required to make available to the employee: (Labor Code 1198.5, Education Code 44031)

1. Records relating to the investigation of a possible criminal offense
2. Letters of reference
3. Ratings, reports or records that were obtained prior to the employee's employment, prepared by identifiable examination committee members, or obtained in connection with a promotional examination

*(cf. 4112.41/4212.41/4312.41 - Employee Drug Testing)*

*(cf. 4112.62/4212.62/4312.62 - Maintenance of Criminal Offender Records)*

The employee may be accompanied by a representative of the employee's choice while reviewing the record.

Inspection shall take place in the presence of the County Superintendent or designee. All reviews of personnel records shall be recorded, including the date and time the file was reviewed and the name and title of the person(s) present during the review.

In no instance shall any material be removed from the records. Requests for copies of material in a personnel record must be made in writing.

**File Review by Management**

Management personnel or SCCOE legal counsel with a valid "right to know" or "need to know" may, with the County Superintendent or designee's authorization, review an employee's personnel file.

*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*

*Legal Reference: (see next page)*



AR 4112.6(d)  
4212.6  
4312.6

**PERSONNEL FILES** (continued)

*Legal Reference:*

EDUCATION CODE

35253 Regulations to destroy records

44031 Personnel file contents and inspection

44663 Performance appraisals and related materials

GOVERNMENT CODE

3305-3306 District police officers; personnel files

6254.3 Disclosure of home address and phone number

LABOR CODE

1198.5 Inspection of personnel files

PENAL CODE

11165.14 Report of investigation of child abuse complaint

CODE OF REGULATIONS, TITLE 5

16020-16022 Records, general provisions

16023-16027 Retention of records

ATTORNEY GENERAL OPINIONS

Cal. Atty. Gen., Indexed Letter, no. IL 75-73 (June 6, 1975)