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*A Joint Powers Authority serving school and
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LEGAL UPDATE

November 22, 2011

To: Superintendents, Member School Districts (K-12)

From: Loren W. Soukup, Assistant General Counsel 

Re: Non-Discrimination Statutes Expanded
Memo No. 20-2011

The recent legislative session resulted in changes to two important statutes that affect discrimination policies in California school districts.

Government Code, section 12940. Government Code, section 12940 is a critical provision within the California Fair Employment and Housing Act: it prohibits discrimination in employment. Section 12940 was expanded when Governor Brown approved two separate bills (Senate Bill 559 and Assembly Bill 887). The amendments to section 12940 are underscored below:

Government Code, section 12940:

[It is unlawful]

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic condition, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

Government Code, section 11135. Government Code, section 11135 addresses nondiscrimination in school district programs and activities. Section 11135 was also amended by SB 559 as underscored below.

(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, this section applies to the California State University.

Pursuant to Section 4610 of Title 5 of the California Code of Regulations, school districts are required to follow Uniform Complaint Procedures when addressing complaints alleging unlawful discrimination against any protected group identified under Government Code, section 11135. Now that Section 11135 has been expanded, Title 5, section 4610 will need to be updated to include “genetic information” as a protected element.

The revisions to Government Code, sections 12940 and 11135 take effect January 1, 2012. To the extent sections 12940 and 11135 are reflected in current district policies and regulations, we recommend that districts begin the process to incorporate the new language so as to be current with the new laws by the time, or within a short time after, they take effect.

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