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## LEGAL UPDATE

August 10, 2009

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

**From:** Carl D. Corbin, Assistant General Counsel *cdc*

**Subject:** **Special Education and Section 504 Students No Longer Required to Pass the CAHSEE to Receive a High School Diploma**  
Memo No. 22-2009

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As part of the recent budget related legislation passed by the Governor on July 28, 2009, students that qualify for services under the Individuals with Disabilities Education Act (“IDEA”) and/or Section 504 of the 1973 Rehabilitation Act (“Section 504”) are not required to pass the California High School Exit Exam (“CAHSEE”) in order to receive a high school diploma. This change commences with the 2009-2010 school year and does not appear to be retroactive to the 2008-2009 or earlier school years.

For your convenience, the revised Education Code section 60852.3 is provided at the end of this Legal Update.

Please contact any of the attorneys in our offices if you have any questions.

### **CALIFORNIA EDUCATION CODE SECTION 60852.3**

- (a) Notwithstanding any other provision of law, commencing with the 2009–10 school year, an eligible pupil with a disability is not required to pass the high school exit examination established pursuant to Section 60850 as a condition of receiving a diploma of graduation or as a condition of graduation from high school.
- (b) This exemption shall last until the state board, pursuant to Section 60852.1, makes a determination that the alternative means by which an eligible pupil with disabilities may demonstrate the same level of academic achievement in the portions of, or those content standards required for passage of, the high school exit examination are not feasible or that the alternative means are implemented.
- (c) For the purposes of this section, an eligible pupil with a disability is a pupil with an individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1972 (29 U.S.C. Sec. 794(a)) that indicates the pupil is scheduled to receive a high school diploma, and that the pupil has satisfied or will satisfy all other state and local requirements for the receipt of a high school diploma, on or after July 1, 2009.
- (d) A local educational agency, as defined in Section 56026.3, shall not adopt an individualized education program pursuant to the federal Individuals with Disabilities Education Act or a plan pursuant to Section 504 of the federal Rehabilitation Act of 1972 for a pupil for the sole purpose of exempting the pupil from the requirement to pass the high school exit examination as a condition of receiving a high school diploma, unless that adoption is consistent with federal law.
- (e) Pursuant to subdivision (b) of Section 60851, pupils with exceptional needs shall take the high school exit examination in grade 10 for purposes of fulfilling the requirements of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 7114).