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## The Kindergarten Readiness Act and Other Issues Impacting Kindergarten Students

2011-2012 Student Webinar Series  
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**Notes:**

**Comment:**

Parents and guardians seeking to enroll their children in kindergarten must verify satisfaction of immunization requirements. Information on those requirements is accessible on the California Department of Public Health's website, at <http://eziz.org/assets/docs/IMM-231.pdf>.

**Legal Citation:**

See *Barajas v. Bd. of Trustees*, Sonoma County Super. Ct. Case No. 80963 (1990).

**Legal Citation:**

Ed. Code, § 48118, subd. (b)-(d)

## Overview

Budget cuts and an increased emphasis on test scores are impacting the foundational level of formal education, kindergarten. Lean fiscal times are requiring school districts to be more prudent about the expenditure of resources on kindergarten programs. Further, increased stress on test scores has resulted in a heavier focus on academics, even as early as kindergarten. As a result of these events, the State Legislature has begun restructuring kindergarten education in California. Based upon these events and the resulting restructuring and other pertinent kindergarten issues, the following is covered in today's webinar:

- General Kindergarten Parameters;
- Kindergarten Readiness Act of 2010;
- Early Admission;
- Half-Day vs. Full-Day Kindergarten;
- Continuance in Kindergarten; and
- Restroom Training.

## General Kindergarten Parameters

Parents are not required to enroll children in kindergarten as children under the age of six are not subject to compulsory education laws. (See Ed. Code, § 48200.) Although parents are not required to enroll children in kindergarten, elementary and unified school districts are required to offer kindergarten programs. Schools must admit children who are of legal age to enroll in kindergarten. (See *id.*, § 48000, subd. (a).) Admission of age-eligible children must occur at the beginning of the school year or whenever the students move into the school district. No age-eligible child may be denied access to school by being placed on a waiting list.

Pursuant to Education Code section 48118, as is discussed more fully below, "[a] single-session kindergarten class shall . . ." be "maintained for a minimum of 180 minutes per schoolday." (Ed. Code, § 48118, subd. (a).) Additionally, section 48118 mandates that kindergarten classes meet the following criteria:

- the kindergarten teacher is assigned to only one session of kindergarten a day as the principal teacher of the class;
- the teacher is a full-time certificated employee; and
- the teacher "shall be available for assistance or assignment in the instructional program of the primary grades when not involved in the kindergarten program."

**Legal Citation:**

The KRA was proposed in and passed as Senate Bill 1381 (2009-2010 Reg. Sess.), § 1.

**Legal Citation:**

Ed. Code, § 48002 (“The parent or guardian of a child shall, prior to the admission of the child to the kindergarten or first grade of a school district, present proof to the authorities of the district evidencing that the child is of the minimum age fixed by law for admission thereto. The method of proof of age shall be prescribed by the governing board, and the evidence may be in the form of a certified copy of a birth record or a statement by the local registrar or a county recorder certifying the date of birth, or a baptism certificate duly attested, or a passport, or, when none of the foregoing is obtainable, an affidavit of the parent, guardian, or custodian of the minor, or any other appropriate means of proving the age of the child as prescribed by the governing board of the school district.”)

**Legal Citation:**

Ed. Code, § 48000, subd. (a)(1)-(4)  
Ed. Code, § 46300, subd. (g)  
Ed. Code, § 48210

## Kindergarten Readiness Act

On September 30, 2010, the Kindergarten Readiness Act (“KRA”) was signed into law. The KRA has two significant impacts on kindergarten education: (1) incrementally changes kindergarten enrollment dates; and (2) provides students with an opportunity to attend a new program called “transitional kindergarten.”

- **Enrollment Dates**

A student may enroll in kindergarten at the beginning of the school year, or a later time in the same school year if the child will have his/her fifth birthday on or before December 2. (Ed. Code. § 48000, subd. (a).) Accordingly, California law previously required that a student’s birthday fall on or before December 2 in order for the student to be enrolled in kindergarten at the beginning of the school year. California was one of four states in the nation to have such a late cutoff date for kindergarten enrollment that fell between December 1 and January 1. As a result of this late cutoff, four year old students were often previously enrolled in kindergarten classrooms for the first semester of a school year.

Success in kindergarten is not only affected by what children know or do not know academically, but by their physical, social, and emotional readiness. Therefore, the intent of the delay of the entry date of four year olds into kindergarten is to give such children time to prepare and mature intellectually, academically, physically, socially, and emotionally prior to kindergarten enrollment. Accordingly, the KRA delays the entry date of four year olds into kindergarten.

For a school district to receive state education funding for the enrollment of a kindergarten student, the KRA requires that enrolled kindergarten students reach five years old by:

- December 2 for the 2011-12 school year;
- November 1 for the 2012-13 school year;
- October 1 for the 2013-14 school year; and
- September 1 for the 2014-15 school year and each year thereafter.

A school district may still enroll a student that does not meet the age requirements above; however, the school district will not receive average daily attendance (“ADA”) funding for the student until he/she attains the age of five years.

**Legal Citation:**

Ed. Code, § 48000, subd. (c)-(e)

**Legal Citation:**

Ed. Code, § 48000, subd. (c)(1)-(3)

**Notes:**

**Legal Citation:**

Ed. Code, § 48200, subd. (b)

- **Transitional Kindergarten**

For children not eligible to enroll in traditional kindergarten because of age eligibility requirements, the KRA **requires** that school districts offer *transitional* kindergarten. Transitional kindergarten is the first year of a two-year kindergarten program that is taught by a credentialed teacher and uses a modified kindergarten curriculum that is age and developmentally appropriate. There is no mandated state curriculum for transitional kindergarten instruction. School districts are responsible for modifying the local kindergarten course of study to provide age and developmentally appropriate curriculum. Accordingly, school districts have flexibility to determine how best to meet the curricular needs of their transitional kindergarten students.

A child is eligible for transitional kindergarten if his/her fifth birthday is between:

- November 2 and December 2 for the 2012-13 school year;
- October 2 and December 2 for the 2012-14 school year; and
- September 2 and December 2 for the 2014-15 school year and each school year thereafter

The minimum school day for transitional kindergarten students is three hours. (Ed. Code, § 46117.) The maximum school day for transitional kindergarten students is four hours, excluding recess. (*Id.*, § 46111.) As discussed below, school districts that have adopted an early primary program may exceed this four hour maximum. (*Id.*, § 8973.)

Because charter schools are not exempt from laws establishing age requirements, charter schools with traditional kindergarten programs are also required to provide transitional kindergarten. (See *id.*, § 47610.) School districts may receive ADA funding for up two years for students enrolled in kindergarten provided certain requirements are met or for a combination of enrollment in transitional kindergarten and kindergarten. (See *id.*, § 46300, subd. (g).)

## **Early Admission**

There is an option for admitting children into kindergarten whose birthdays fall outside of the entry date. Education Code section 48200, subdivision (b), provides:

The governing board of a school district maintaining one or more kindergartens may, on a case-by-case basis, admit to a kindergarten a child having attained

the age of five years at any time during the school year with the approval of the parent or guardian, subject to the following conditions:

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

Thus, Education Code section 48000, subdivision (b), allows the governing board of a school district to admit a child having attained the age of five years at *any time during the school year*, including after the five-year birthday deadlines set by the KRA, on a case-by-case basis. The following conditions must be satisfied for the governing board to admit the child:

- approval of the parent/guardian;
- determination that the admittance is in the best interests of the child; and
- parent/guardian must be provided with information regarding the advantages and disadvantages and any other explanatory information about the effect of early admittance.

The CDE describes this early admission option as “rarely used.” The CDE also recommends that if a school district exercises this option, it should seek to obtain an agreement with the child’s parent to the student’s continuance in kindergarten the following school year through the end of the following school year, should the student remain enrolled in kindergarten beyond the “anniversary date” of the student’s enrollment in kindergarten.

## Half-Day vs. Full-Day Kindergarten

As noted above, while all elementary and unified school districts must offer kindergarten to age-appropriate students, kindergarten attendance is optional.

With this in mind, the length of the schoolday, including the length of a kindergarten schoolday, is mandated by Education Code sections 46110 and 46117. Under section 46117, the minimum schoolday for kindergarten students is 180 minutes

### Comment:

Education Code section 51101 enumerates the rights of parents with respect to their children’s education. No express right exists to request acceleration of their child beyond the child’s chronological placement or age of eligibility for enrollment.

### Legal Citation:

Ed. Code, § 46300, subd. (g)(1)(A)

### Legal Citation:

Ed. Code, § 48200

### Legal Citation:

Ed. Code, § 46110  
Ed. Code, § 46111, subd. (a)(1)-(2)  
Ed. Code, § 46117

**Legal Citation:**

Ed. Code, § 46111, subd. (a)(1)-(2)  
Ed. Code, § 8970 et seq.  
Ed. Code, § 37670, subd. (a)

**Legal Citation:**

Education Code section 8971, subdivision (b), defines "Early primary program" as "an integrated, experiential, and developmentally appropriate educational program for children in preschool, kindergarten, and grades 1 to 3, inclusive, that incorporates various instructional strategies and authentic assessment practices, including educationally appropriate curricula, heterogeneous groupings, active learning activities, oral language development, small group instruction, peer interaction, use of concrete manipulative materials in the classroom, planned articulation among preschool, kindergarten, and primary grades, and parent involvement and education."

**Legal Citation:**

Additional requirements for Early Primary Programs are set forth in Education code section 8974.

**Comment:**

California schools do not receive increased ADA funding for offering full-day/extended day kindergarten instruction.

(including recess). However, section 46111 also generally forbids kindergarten students from being kept in school for more than four hours (excluding recess) in a schoolday.

There are two exceptions to the four-hour ceiling under section 46111: (1) Early Primary Programs; and (2) multi-track year round schedules. Early Primary Programs in which full-day or extended day kindergarten may be offered must follow certain requirements and procedures. In order to offer a full-day/extended day kindergarten program, a school district's governing board must adopt a policy to establish an Early Primary Program. (See Ed. Code, § 8972.) Additionally, Education Code section 8973 provides that in an Early Primary Program under section 8972, kindergarten classes may exceed four hours, exclusive of recesses, so long as:

- The governing board of a school district declares that the extended-day kindergarten program does not exceed the length of the primary schoolday.
- The extended-day kindergarten program takes into account ample opportunity for both active and quiet activities within an integrated, experiential, and developmentally appropriate educational program.

(*Id.*, § 8973, subd. (a)-(b).)

Prior to 2005, Education Code section 37202 provided in relevant part,

"[e]xcept where a school has been closed by order of a city or a county board of health, or of the State Board of Health, on account of contagious disease, or where the school has been closed on account of fire, flood, or other public disaster, the governing board of any a school district *shall maintain all of the elementary day schools established by it for an equal length of time during the school year . . . .*"

(Emphasis added.) This provision was read to prohibit full-day kindergarten at some sites while providing half-day kindergarten at other sites. As a result, in order to operate full-day kindergarten at some sites and half-day kindergarten at others, school districts were required to request a waiver of

**Legal Citation:**  
Ed. Code, § 37202

section 37202 from the State Board of Education in order to provide both full-day and half-day kindergarten classes.

As of 2005, section 37202 was amended to include the following exception in subdivision (b) of the statute: “Notwithstanding subdivision (a), a school district that is implementing an early primary program, pursuant to Chapter 8 (commencing with Section 8970) . . . , may maintain kindergarten classes at different schoolsites within the district for different lengths of time during the schoolday.” As a result, there is no legal obligation to provide full-day kindergarten instruction; and where a district does offer full-day kindergarten, the school district is not required to do so at all schools where kindergarten is offered.

## Continuance

**Legal Citation:**  
Ed. Code, § 48011

Education Code section 48011 provides in relevant part:

A child who, consistent with Section 48000, has been admitted to the kindergarten maintained by a private or a public school in California or any other state, and who has completed one school year therein, *shall be admitted to the first grade of an elementary school unless the parent or guardian of the child and the school district agree that the child may continue in kindergarten for not more than an additional school year.*

(Emphasis added.) Based upon the above language, the norm and requirement is that a student that completed kindergarten must move onto the first grade, unless the student’s parent or guardian agree to the student’s continuance in kindergarten. The Kindergarten Continuance Form is available on the CDE’s website (at <http://www.cde.ca.gov/ci/gs/em/documents/parentagreeform.pdf>), and must be completed in order for a student who has completed one year of kindergarten to continue in kindergarten for the following school year. A student may continue in kindergarten for no more than one additional school year.

**Comment:**  
This form is available on the CDE’s *FAQs Pupil Promotion & Retention* webpage.

Education Code section 48070 et seq. covers student promotion and retention, and standards for promotion or



**Legal Citation:**

Ed. Code, § 48070.5, subd. (j)  
("Nothing in this section shall be construed to prohibit the retention of a pupil not included in grade levels identified pursuant to subdivision (a), or for reasons other than those specified in subdivision (b), if such retention is determined to be appropriate for that pupil. Nothing in this section shall be construed to prohibit a governing board from adopting promotion and retention policies that exceed the criteria established in this section.")

**Comment:**

The CDE's webpage on kindergarten FAQs states the following, in relevant part: "**What are the eligibility criteria for kindergarten enrollment?** Eligibility for kindergarten is on the basis of age *only* . . . ." (Emphasis added.)

**Notes:**

retention of students in California schools. Notably, however, these provisions do not contain any specific standards for determining whether a student should be retained in kindergarten. Instead, school districts may adopt standards to consider when determining whether to request a student's parent to voluntarily agree to continuance in kindergarten for an additional school year.

## Restroom Training

Can a school district refuse to enroll or disenroll a kindergarten student that is not properly trained to use the restroom?

Considerations:

- Applicability of special education laws, the IDEA and section 504;
- Recurrent nature of "accidents";
- Alternative positive interventions and remedies (e.g., pull-ups, rewards programs and/or required change of clothes); and/or.
- Disruption to educational environment, as well as health and safety of other students.

## ***What does all this mean for school districts?***

### KRA and Related Resources

Resources for implementation and understanding of the KRA and other relevant Kindergarten issues include:

- The California Department of Education's ("CDE") "Kindergarten in California" webpage, accessible at <http://www.cde.ca.gov/ci/gs/em/kinderinfo.asp?print=yes>;
- The CDE's "Kindergarten Frequently Asked Questions" webpage, accessible at <http://www.cde.ca.gov/ci/gs/em/kindergartenfaq.asp?print=yes>;
- The CDE's "Transitional Kindergarten FAQs" webpage, accessible at <http://www.cde.ca.gov/ci/gs/em/kinderfaq.asp?print=yes>; and
- The Transitional Kindergarten Library at <http://www.tkcalifornia.org/>



## **Appendix (Selected Education Code Provisions)**

Notes:

### ***Education Code § 46111***

(a) (1) No pupil in a kindergarten shall be kept in school in any day more than four hours exclusive of recesses except for pupils in Early Primary Programs, as set forth in Chapter 8 (commencing with Section 8970) of Part 6.

(2) A pupil in a kindergarten in a school operating on a program of multitrack year-round scheduling pursuant to subdivision (a) of Section 37670 may be kept in school on any day for 265 minutes of instruction, exclusive of recesses.

(b) This section shall not apply to the Pasadena Unified School District or counties of the third class as determined pursuant to Section 28024 of the Government Code, as it read on January 1, 1977.

(c) This section shall not apply to the San Bernardino Unified School District with regard to any pupil of that district who is determined by the principal of the school in which that pupil is enrolled, pursuant to testing, teacher recommendation, or both, to be developmentally and academically suited for the longer instructional day.

### ***Education Code § 46117***

The minimum schoolday for pupils in kindergartens is 180 minutes inclusive of recesses, and no units of average daily attendance shall be credited for attendance in kindergarten classes if the minimum schoolday of such classes is less than 180 minutes.

### ***Education Code § 48000***

(a) A child shall be admitted to a kindergarten maintained by the school district at the beginning of a school year, or at a later time in the same year if the child will have his or her fifth birthday on or before one of the following dates:

- (1) December 2 of the 2011-12 school year.
- (2) November 1 of the 2012-13 school year.
- (3) October 1 of the 2013-14 school year.
- (4) September 1 of the 2014-15 school year and each school year thereafter.

**Notes:**

(b) The governing board of a school district maintaining one or more kindergartens may, on a case-by-case basis, admit to a kindergarten a child having attained the age of five years at any time during the school year with the approval of the parent or guardian, subject to the following conditions:

(1) The governing board determines that the admittance is in the best interests of the child.

(2) The parent or guardian is given information regarding the advantages and disadvantages and any other explanatory information about the effect of this early admittance.

(c) As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to subdivision (g) of Section 46300, a school district or charter school shall ensure the following:

(1) In the 2012-13 school year, a child who will have his or her fifth birthday between November 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district.

(2) In the 2013-14 school year, a child who will have his or her fifth birthday between October 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district.

(3) In the 2014-15 school year and each school year thereafter, a child who will have his or her fifth birthday between September 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district.

(d) For purposes of this section, "transitional kindergarten" means the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate.

(e) A transitional kindergarten shall not be construed as a new program or higher level of service.

***Education Code § 48011***

A child who, consistent with Section 48000, has been admitted to the kindergarten maintained by a private or a public school in California or any other state, and who has completed one school year therein, shall be admitted to the first grade of an elementary school unless the parent or guardian of the child and the school district agree that the child may continue in kindergarten for not more than an additional school year.

A child who has been lawfully admitted to a public school kindergarten

**Notes:**

or a private school kindergarten in California and who is judged by the administration of the school district, in accordance with rules and regulations adopted by the State Board of Education, to be ready for first-grade work may be admitted to the first grade at the discretion of the school administration of the district and with the consent of the child's parent or guardian if the child is at least five years of age. When a child has been legally enrolled in a public school of another district within or out of the state, he or she may be admitted to school and placed in the grade of enrollment in the district of former attendance, at the discretion of the school administration of the district entered.

***Education Code § 48200***

Each person between the ages of 6 and 18 years not exempted under the provisions of this chapter or Chapter 3 (commencing with Section 48400) is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted under the provisions of Chapter 3 (commencing with Section 48400) shall attend the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located.

Unless otherwise provided for in this code, a pupil shall not be enrolled for less than the minimum schoolday established by law.