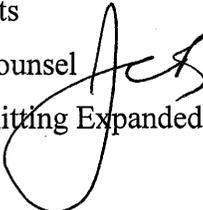




**COUNTY OF SAN MATEO**  
**INTERDEPARTMENTAL CORRESPONDENCE**

***CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION***

**To:** All School Superintendents  
**From:** John C. Beiers, County Counsel   
**Subject:** AB 104 – New Law Permitting Expanded Enrollment in Transitional Kindergarten  
**Date:** July 21, 2015

On June 24, 2015, the Governor approved Assembly Bill (AB) 104, an education omnibus trailer bill which took effect on July 1, 2015. AB 104 permits, but does not require, districts to enroll students in transitional kindergarten classes who will turn five during the school year, and allow them to begin school on the first day of school. Previously, districts were allowed to enroll students turning five after December 2<sup>nd</sup> but these students could not enter the program until after their fifth birthday.

However, AB 104 makes it clear that LEAs cannot claim average daily attendance, or include in their LCFF enrollment or unduplicated pupil count, any student until they attain their fifth birthday. In other words, students who will turn five on or before March 31<sup>st</sup> can start transitional kindergarten at the beginning of the school year, but LEAs will not receive funding for those students until they turn five.

Superintendent of Public Instruction Torlakson issued a letter on July 17<sup>th</sup> that seems to acknowledge the lack of incentive for districts to enroll students for whom they will not receive funding: “Whether to take advantage of this new law and allow younger-aged children (children whose fifth birthday is **not** from September 2 through December 2) to attend TK is a decision entirely left to the LEA or charter school that operates a TK program.” His letter also reaffirms the CDE’s position about the need to offer transitional kindergarten: “As a reminder, all LEAs, and charter schools that operate a TK and/or a kindergarten program are required to offer a TK program for children who will have their fifth birthday between September 2 and December 2, but a child’s attendance in a TK program is optional on the part of the child’s parent or

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guardian.”

As before, admitting a student to TK whose birthday occurs after December 2nd is subject to two conditions: (1) the district must determine that admittance is in the child’s best interest; and (2) the parent or guardian must be given information regarding “the advantages and disadvantages and any other explanatory information about the effect of early admittance to TK.” (Education Code § 4800(c)(3)(B)(i).)

AB 104 does not add new penalties for not providing transitional kindergarten. Rather, districts must maintain a transitional kindergarten program “as a condition of receipt of apportionment for the pupils in a transitional kindergarten program.” Consequently, our recommendation has not changed: we believe transitional kindergarten is not mandatory. Legislative counsel agrees with this conclusion. However, a decision not to offer age-eligible students enrollment in transitional kindergarten, though not expressly forbidden by law, still carries legal risks. For further information, please refer to our memo entitled “Current Status of Transitional Kindergarten,” dated October 25, 2013.

Please consult your school deputy with any questions.

JCB:cac