



CDE Issues Guidance on CAHSEE Exemption

The California Department of Education (“CDE”) recently issued guidance regarding the California High School Exit Examination (“CAHSEE”) exemption for students with disabilities. Posted on CDE’s website, “Questions and Answers regarding EC Section 60852.3” sets forth CDE’s opinions regarding sixteen issues related to the CAHSEE exemption, including whether the exemption may be applied to students in the classes of 2008 and 2009. (www.cde.ca.gov/ta/tg/hs/cahseefaqexempt.asp.) According to CDE and as explained below, the current exemption may be applied to those students, under certain circumstances.

In July, the California legislature added section 60852.3 to the Education Code, thus exempting students with disabilities from being required to pass the CAHSEE in order to obtain a high school diploma beginning in the 2009-2010 school year. The legislature previously provided similar exemptions for students with disabilities in the classes of 2006 and 2007. However, students in the classes of 2008 and 2009 received no such exemption. Consequently, a number of students in those classes left high school without a diploma. The recent addition of section 60852.3 raised numerous questions not specifically addressed in the new law, including whether the exemption could apply to students in the classes from previous years. CDE has now addressed these unanswered questions.

In response to whether the new law may be applied to students with disabilities from the classes of 2008 and 2009, CDE began by stating that under the Individuals with Disabilities Education Act, students are entitled to special education services until age 22 or until they receive a diploma. As such, CDE explained that school districts may be required to reopen and, if appropriate, revise IEPs for students who have not reached age 22, but who left high school without a diploma. According to CDE, if an IEP for such a student is reopened and revised, and if the revisions include “additional quality instruction” and indicate that the student is expected to earn a diploma after July 1, 2009, then the student may be exempt from passing the CAHSEE under the new law.

CDE noted that it is within the IEP team’s discretion to determine what revisions to an IEP will be appropriate for a particular student. However, the guidance indicates that the “additional quality instruction” identified in the IEP should include instruction to help the student pass the CAHSEE. Notably, CDE further stated that a dispute regarding the IEP team’s determination could be subject to due process.

The CDE guidance also states that:

- a student who received a certificate of completion in 2008 or 2009, or who is currently enrolled in an adult school offered by a K-12 public school district, may be eligible for a CAHSEE exemption under the circumstances described above;
- while all students with disabilities must take the CAHSEE in tenth grade and “should be encouraged” to take the exam in subsequent years, they cannot be required to do so by a district;

- an IEP may not be adopted solely for the purpose of exempting a student from the CAHSEE, if that student is or was not previously eligible for special education services; and
- section 60852.3 does not require school districts to notify parents of students who may be eligible for the exemption.

This guidance affirms that a district may grant a CAHSEE exemption and a diploma to a student who did not pass the CAHSEE in 2008 or 2009, and subsequently left the district, as long as (1) the student was eligible for IEP services when s/he disenrolled; (2) the student has not reached the age of 22; (3) the IEP is revised to reflect quality instruction to be provided to the student after July 1, 2009; and (4) the IEP states that the student has satisfied or will satisfy all state and local requirements for high school graduation, and is scheduled to receive a high school diploma, after July 1, 2009.

We note that the current CAHSEE exemption extends to students with 504 plans as well as those with IEPs. However, because the law governing 504 plans is not aligned with the IDEA in many respects, whether and when an exemption may apply to a 504 student who left a school district prior to July 1, 2009, is a decision that should be made on a case-by-case basis, with the advice of legal counsel.

If you have any questions regarding the CDE guidance or the CAHSEE exemption, please contact one of our four offices.

*F3 NewsFlash prepared by Jan Tomsky and Susan Winkelman.
Jan is a partner in the F3 Oakland office.
Susan is an associate in the F3 San Marcos office.*

This F3 NewsFlash is a summary only and not legal advice. We recommend that you consult with legal counsel to determine how this matter may apply to your specific facts and circumstances. Information on a free NewsFlash subscription can be found at www.fagenfriedman.com.

00001.00007/169483

6300 Wilshire Blvd., Suite 1700, Los Angeles, California 90048 Tel. 323.330.6300 Fax 323.330.6311
70 Washington St., Suite 205, Oakland, California 94607 Tel. 510.550.8200 Fax 510.550.8211
520 Capitol Mall, Suite 400, Sacramento, California 95814 Tel. 916.443.0030 Fax 916.443.0030
1 Civic Center Dr., Suite 300, San Marcos, California 92069 Tel. 760.304.6000 Fax 760.304.6011

© 2009 Fagen Friedman & Fulfroft, LLP

All rights reserved, except that the Managing Partner of Fagen Friedman & Fulfroft, LLP hereby grants permission to any client of Fagen Friedman & Fulfroft, LLP to use, reproduce and distribute this NewsFlash intact and solely for the internal, noncommercial purposes of such client.