



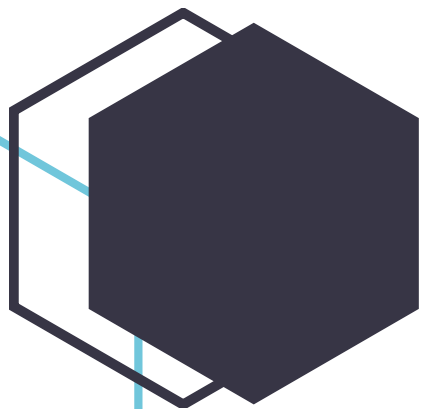
# SCHOOL SAFETY:

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## TOOLS FOR PUBLIC EDUCATION EMPLOYEES

CALIFORNIA TEACHERS ASSOCIATION – LEGAL DEPARTMENT

2020 EDITION



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This legal reference guide was updated in the Spring of 2020, in the midst of the COVID-19 pandemic. While this resource primarily focuses on federal and state laws on school safety related to student discipline and campus conduct issues, it also includes a general legal overview of COVID-19 public health issues. For more in-depth guidance on COVID-19-related public health issues, please see CTA’s extensive COVID-19 materials, including the following resources:

- C4OB Bargaining Advisory: Bargaining a Return to Work During the COVID Pandemic (5/22/2020)
- C4OB Bargaining Advisory: Health and Safety: What Will it Take to Reopen Schools? (5/31/2020)
- Legal Advisory Memorandum: Reopening Schools: Bargaining Regarding Safety and Refusals to Work in Unsafe Conditions. (6/22/20)

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## I. INTRODUCTION

Public schools can be complicated workplaces. There are many rights and responsibilities established to provide the basic conditions for a safe, secure and productive learning environment. Federal and state laws, as well as collective bargaining agreements, assign specific parties with the legal rights to fulfill distinct responsibilities, and this guide is organized based on how those rights and responsibilities are distributed between parents, students, school districts, and teachers. However, in practice on school campuses, these rights and responsibilities are not so easily delineated. They often intersect and overlap, and sometimes, they even conflict. Students have a constitutional right to a free and equitable public education, but many come to school with complex needs and negative, disruptive behaviors that seriously interfere with their fellow students' constitutional right to a public education. Educators are deeply committed to the success of all students, no matter the challenges they face in or out of school, but the disruptive behaviors of the students most in need of assistance can, in extreme cases, threaten educators' legal rights to a safe and secure workplace. Teachers have a general duty to maintain control over students and their classrooms, and school districts have a legal responsibility to establish and enforce discipline policies which establish the parameters of teachers' supervisory efforts, but district administrators sometimes fail to execute this responsibility in ways that support teachers. And most recently, we see that many students are at risk of suffering from a loss of learning as a result of the COVID-19 pandemic, while schools themselves may not have the capacity or resources to adequately protect students and teachers from public health risks at school. As these difficult conflicts arise, the competing rights and responsibilities must be thoughtfully balanced and collectively navigated to create a safe, secure and productive learning environment.

These interactions between the rights and responsibilities of students, parents, teachers, and administrators are particularly complex because they sometimes result in unintended but discriminatory effects on the learning environment. In recent years, the California Legislature has recognized that overly-restrictive security measures and overbroad zero-tolerance discipline systems, originally enacted to limit disruptions to learning, actually undermine supportive and productive learning environments overall, resulting in systematic and discriminatory denials of the right to education across school districts, particularly for students in marginalized communities.

In response to these legislative findings, the Governor and the Legislature have enacted changes to the Education Code which, while continuing to reinforce the rights of school districts and teachers to suspend or expel students engaged in serious violent or criminal activity, also encourage school districts to develop and implement alternative discipline policies for lesser disruptive behavior. These alternative discipline policies utilize social and emotional learning strategies, positive behavioral interventions, restorative justice practices, and multi-tiered learning supports prior to suspension. To be effective, these alternative discipline policies, practices, and programs must be developed with a sensitivity to each school community's unique socio-economic context, discipline data, and student population demographics, and the entire school community must be institutionally committed to their implementation. Also, these alternatives require financial resources and time to address the root causes of disruptive and threatening behavior. Thus, school communities must hold school districts and the Legislature

accountable to provide the necessary support, time and resources to ensure alternative policies that can effectively protect both a teacher's right to a safe workplace, and every student's right to a free and equitable public education.

This document is a collection of the respective legal rights and responsibilities of parents, students, teachers, and administrators as set forth in California law. Also included are sample CBA provisions on select discipline/health and safety issues which chapters may consider using at the bargaining table.

## **II. SCHOOL SAFETY**

### ***A. PARENTS' RESPONSIBILITY FOR THEIR CHILDREN'S CONDUCT***

Under California law, parents and legal guardians are responsible for the conduct of their minor children. Ultimately, parents must maintain discipline and control of their children's behavior, whether at school or away from school. The parental duty in this regard includes financial liability for their willful misconduct. *See* Educ. Code § 48904; Civil Code § 1714.1; Welf. & Inst. Code § 730.7. And of course, parents are prohibited from abusing or neglecting their children.

A district may adopt a policy authorizing teachers to require the parent or guardian of a pupil suspended by the teacher to attend a portion of the school day in the classroom from which the pupil was suspended. Parents are to be notified of the policy prior to its implementation and are to meet with the school administrator after the classroom visitation. Educ. Code § 48900.1.

In the event of a decision to expel a student, a rehabilitation program may be instituted in lieu of expulsion and the school board may involve the student's parents in the student's rehabilitation. Educ. Code § 48917.

The parent of a student who possesses a firearm or live ammunition may be ordered to participate in parent education classes. Penal Code § 12101.

The parent of a student whose willful misconduct results in injury or death to any school pupil, employee, or volunteer, or who willfully injures the property of such person is liable for damages not to exceed \$10,000 (adjusted annually for inflation), and for all school property loaned to a minor and not returned on demand. Educ. Code § 48904.

Parents may be protected against unfair treatment in their employment in retaliation for being absent from work for forty hours per year (not to exceed eight hours per month) for each child to participate in the child's school activities or to address a school emergency. Labor Code § 230.8.

While parents are ultimately liable, students are also responsible for their own behavior, and are required to conform their conduct to acceptable standards. These general standards



include the duties to:

- » Attend school punctually and regularly;
- » Obey promptly all directives of teachers and others in authority;
- » Observe good order and proper deportment;
- » Be respectful to teachers and others in authority;
- » Be kind and courteous to other students;
- » Refrain entirely from the use of profane and vulgar language;
- » Remain on school premises.

See 5 Cal. Code Reg. §§ 300-306; Educ. Code § 48908. In addition, students are prohibited from engaging in any of the conduct which constitutes grounds for suspension or expulsion. See Suspension and Expulsion sections in Part III. C below.

## **B. TEACHERS' GENERAL DUTY AND LIABILITY**

In most discipline and control situations, a teacher's legal position is that of "in loco parentis."<sup>1</sup> As historically formulated, California public school educators legally stand in "a position in reference to a child of that of a lawful father, assuming the office of a father and . . . , discharging parental duties, although not the parent."<sup>2</sup>

However, a teacher is also a governmental agent whose actions may be subject to both Federal and State Constitutions and, thus, who must respect the constitutional rights of students in their charge – for example, students' rights against unreasonable searches and seizures.<sup>3</sup>

Teachers shall not be subject to criminal prosecution or criminal penalties for exercising, during the performance of duties, the same degree of physical control over a pupil that a parent would be legally privileged to exercise, which shall not exceed the amount of physical control reasonably necessary to maintain order, protect property, protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning. Educ. Code § 44807.

Under California law, "[e]very teacher shall enforce the course of study, . . . and the rules and regulations prescribed for schools." Educ. Code § 44805. California law requires every public school teacher to hold pupils to a strict account for their classroom behavior and their conduct on the way to and from school, on the playgrounds, or during recess. Educ. Code § 44807. Teachers are not responsible or liable for the conduct or safety of pupils while they are

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<sup>1</sup> Educ. Code § 44807. See, e.g., *Phyllis P. v. Superior Court* (1986) 183 Cal.App.3d 1193, 1196.

<sup>2</sup> *Brinkerhoff v. Merselis' Executors* 24 N.J.L. 680, 683; see also Educ. Code § 44807; 39 AM.JUR., P. & C. § 61.

<sup>3</sup> *In re William G* (1985) 40 C.3d 550, 560.

not on school property, unless the teacher has undertaken to provide transportation to and from school, or undertaken school activity off the campus, or otherwise assumed responsibility or liability, or has failed to exercise reasonable care. Educ. Code §§ 44808, 87706.<sup>4</sup>

## **1. LIABILITY**

Under Government Code section 820, teachers, like all other public employees in California, are liable for injury caused by their acts or omissions to the same extent as private persons, unless otherwise specified in the law. They may be personally liable if, in the performance of their school duties, their negligent or wrongful conduct causes harm to pupils or others. Teachers face the risk of lawsuits for torts such as assault and battery, slander, libel, defamation, false arrest, and malpractice.

Fortunately, however, Government Code section 825 generally requires a school district to provide a defense to a school employee and pay any judgment or settlement resulting from any action taken in the course and scope of employment. Note, too, that CTA/NEA members are covered by our Educators Employment Liability (EEL) insurance program, which provides coverage for certain damages and defense costs if a member is sued over actions taken on the job. Further, school districts are required by law to insure against the personal liability of employees for loss or damage to property or damages for death or injury to any person as a result of any **negligent** act of an employee within the scope of employment. Educ. Code § 35208.

## **C. SCHOOL DISTRICT RESPONSIBILITY**

While every teacher has a general duty to maintain custody and control over their students, school districts have the legal responsibility to establish and enforce the discipline policy which circumscribes teachers' supervisory efforts. Board members and administrators are responsible for general school administration, including enforcement of the school district's discipline policy. 5 Cal. Code Reg. §§ 5551, 5530. The sections below discuss districts' various responsibilities to maintain school safety.

### **1. PROVIDE SAFE WORKPLACE**

The "Victims' Bill of Rights" initiative in part added the following to the California Constitution:

All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

Cal. Const. Art. I, Sec. 28(c).

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<sup>4</sup> Educ. Code § 87706 applies to community colleges.

Every employer is required to furnish employment and a place of employment which are safe and healthful for the employees therein. Labor Code § 6400.

Every employer is required to furnish and use safety devices and safeguards, and to adopt and use practices, means, methods, operations and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do everything reasonably necessary to protect the life, safety, and health of employees. Labor Code § 6401.

No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Labor Code § 6402.

“Safe,” “safety,” and “health” . . . mean such freedom from danger to the life, safety, or health of employees as the nature of the employment reasonably permits. Labor Code § 6306(a).

“Safety device” and “safeguard” are given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger. Labor Code § 6306(b).

To enforce these provisions, teachers can purchase necessary safety devices and compel the district to reimburse them. *Oakland Police Officers Assn. v. City of Oakland* (1973) 30 Cal.App.3d 96. Also, as further discussed below, teachers can file a complaint with Cal/OSHA to compel the district to furnish such equipment, to implement safety procedures, and to “do every other thing reasonably necessary to protect the life, safety, and health of employees.” *Sacramento County Deputy Sheriffs Assn. v. County of Sacramento* (1990) 220 Cal.App.3d 280, 285-286.

An employer’s statutory duty under the Labor Code is greater than a duty of care imposed pursuant to common law principles. The statutory duty is not predicated on a finding that a particular injury is foreseeable. The statutory duty to maintain a safe workplace encompasses many responsibilities, including the duty to inspect the workplace, to give an adequate warning of and to correct a dangerous condition. *Bonner v. W.C.A.B.* (1990) 225 Cal.App.3d 1023, 1034.

The duty of an employer to its employees is a special relationship, similar to or greater than that of a landowner to a business invitee: “to take affirmative action to control the wrongful acts of third persons which threaten invitees where the occupant has reasonable cause to anticipate such acts and the probability of injury resulting therefrom.” *Taylor v. Centennial Bowl* (1966) 65 Cal.2d 114, 121. This includes a duty to take adequate and reasonable security precautions. *See, e.g., Cohen v. Southland Corp.* (1984) 157 Cal.App.3d 130, 144.

In addition, numerous laws, including federal laws such as the Title IX education amendments to civil rights laws, provide that students have the right to be free from discrimination or unsafe harassment at school based on characteristics such as race, gender, or disability.

## 2. SCHOOL SAFETY PLAN

In order to prevent campus crime and violence and to promote safe educational conditions, each school district shall adopt a comprehensive “School Safety Plan.” Educ. Code §§ 32280 to 32289.

The Plan must be drafted by the school site council, if one exists, or else by a school safety committee made up of at least the principal or designee, teacher’s union representative, classified employee union representative, and parent, in consultation with a representative from law enforcement, the fire department, and other first responders.

Prior to adoption of the Plan, the school site council or safety committee shall hold a public hearing at the school site. The Plan must be reviewed and updated by March 1 each year by the school site council or safety committee.

A “School Safety Plan” shall include at least the following:

- » An assessment of the current status of crime committed on school campuses and at school-related functions;
- » Appropriate strategies that will provide or maintain a high level of school safety;
- » School procedures for complying with all of the following laws relating to school safety;
- » Child Abuse reporting procedures;
- » Disaster and emergency procedures;
- » Procedures to notify teachers of dangerous pupils;
- » A discrimination and harassment policy;
- » A dress code that prohibits wearing “gang related apparel,” if the school has adopted one;
- » Procedures for safe and orderly ingress and egress to and from school;
- » A safe and orderly environment;
- » Rules and procedures on school discipline; and
- » Hate crime reporting procedures.

A comprehensive school safety plan may include, to the extent resources are available clear guidelines for the roles and responsibilities of mental health professionals, community

intervention professionals, school counselors, school resource officers, and police officers on school campuses.

As comprehensive school safety plans are reviewed and updated, the Legislature encourages all plans, to the extent that resources are available, to include policies and procedures aimed at the prevention of bullying. Educ. Code §§ 32280 to 32289.

All certificated personnel, but particularly administrators, are responsible for student supervision and enforcement of a school district's safe schools plan and student discipline policy. California administrative regulations mandate that all certificated personnel "exercise careful supervision over the moral conditions in their respective schools." 5 Cal. Code Reg. § 5530. Their supervisory responsibilities also include extracurricular activities. 5 Cal. Code Reg. § 5531.

School principals have explicit responsibility for the general administration and supervision of their school. 5 Cal. Code Reg. § 5551. This duty includes enforcement of discipline policy. Principals' direct supervisory responsibilities explicitly include:

- » Playground supervision (5 Cal. Code Reg. § 5552); and
- » Dissemination of the district's student discipline policy to all employees and all students (5 Cal. Code Reg. § 5553).

### **3. COMPLIANCE WITH CAL/OSHA GUIDELINES**

#### ***a.) INJURY AND ILLNESS PREVENTION PROGRAM (IIPP)***

A school district shall establish, implement, and maintain an effective injury and illness prevention program ("IIPP"). Labor Code § 6401.7; 8 CCR § 3203.

The IIPP is a workplace safety program that must be produced in writing by district employers. Cal/OSHA (California's Division of Occupational Safety and Health) has the authority to enforce the IIPP through the issuance of a citation against any district employer for any failure to "establish, implement, or maintain an effective IIPP." Labor Code § 6401.7; 8 CCR § 3203; *see* section below on Cal/OSHA Enforcement.

The regulations require that the IIPP must be written and shall include at least the following:

1. The person or persons responsible for implementing the program.
2. A system for identifying and evaluating workplace hazards, including periodic inspections to identify unsafe conditions and work practices.

3. Methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.
4. An occupational health and safety training program designed to instruct employees in safe and healthy work practices and to provide instruction with respect to hazards specific to each employee's job assignment.

The district shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, whenever any new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard.

5. A system for communicating with employees on occupational health and safety matters, including provisions designed to encourage reporting of hazards without fear of reprisal.
6. A system for ensuring that employees comply with safe and healthy work practices.
7. Methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard when observed or discovered. When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, the employer must remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

The employer's IIPP may include an employer and employee occupational safety and health committee with the following minimum duties:

1. Review of employer's periodic, scheduled worksite inspections, investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.
2. Verification of abatement action taken by the employer.

Procedures for selecting employee representatives for employer-employee occupational health and safety committees may be specified in the collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee. Labor Code § 6401.7.

***b.) CAL/OSHA REGULATIONS RELEVANT TO COVID-19***

Cal/OSHA standards cover many topics, but here are specific standards that are relevant to the COVID-19 pandemic.

As noted above, the Cal/OSHA IIPP standard requires that district employers must establish, implement, and maintain an effective system for identifying hazards and an effective process to address them. Since health and safety is an enumerated mandatory subject of bargaining under EERA, chapter leaders and members have the right to collectively bargain over the IIPP, and may request a copy of any pre-existing IIPP from the district. Govt. Code § 3543.2(a). Here, chapters and districts should work together through the collective bargaining process to address the risks associated with COVID-19 in their written IIPP and create a system that ensures effective compliance with all safety precautions that mitigate the risk of spreading the disease. The COVID-19 provisions in the IIPP should establish a specific individual with oversight and implementation responsibilities, such as a district infection control supervisor, along with a clear plan and roles for case notification, contact tracing, and testing when a case emerges in a school setting. The IIPP should also establish a protocol for how staff and parents/guardians will be informed about what this plan is before school opens. The COVID-19 sections of the written IIPP should consider incorporating any relevant Cal/OSHA standards as well as any local public health orders when identifying hazards and the necessary processes to address them, such as the following:

- » Aerosol Transmissible Disease Standard – 8 CCR § 5199 – Schools with nurses’ stations might be considered “referring employers” under this standard, which would require screenings and protections to prevent the spread of infectious diseases, such as COVID-19.
- » Personal Protective Devices Standard – 8 CCR § 3380 – In the event there is a hazard or likely to be a hazard in the workplace, employers are required to select and have employees use the appropriate personal protective equipment (PPE) to protect against the hazard. Employees must be trained in the use of PPE.
- » Washing Facilities – 8 CCR § 3366 – Workplaces are required to maintain facilities for washing with suitable cleaning agents (e.g., hard soap) available.

***c.) CAL/OSHA ENFORCEMENT***

In the event a Cal/OSHA standard is violated in the workplace, a complaint may be filed with Cal/OSHA. Cal/OSHA must summarily investigate a formal complaint filed by a union representative alleging an unsafe working condition, within 3 days for “serious complaints” (which allege that a realistic possibility of death or serious injury exists due to an unsafe worksite condition, practice, means, methods or operations) or within 14 days for all other “non-serious complaints.” Labor Code § 6390(a). However, as a practical matter, Cal/OSHA practitioners have warned that these statutory deadlines may be subject to the agency’s administrative and staffing capacities, as well as complaint volume. After such an investigation, Cal/OSHA may

issue a Citation and Notice of Penalty. A citation will include a timeframe within which the employer must abate the violation. Labor Code § 6317. Employees who file complaints are protected from retaliatory discharge or discrimination. Labor Code § 6310.

In the event a local public health order is violated in the workplace, California Health and Safety Code section 120295 provides that any individual who caused such a violation shall be guilty of a misdemeanor, punishable by a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or by imprisonment for a term of not more than 90 days, or by both. The person is guilty of a separate offense for each day that the violation continued.

California Health and Safety Code section 11095 provides that the sheriff of each county, or city and county, may enforce within the county, or the city and county, all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease. Every peace officer of every political subdivision of the county, or city and county, may enforce within the area subject to his or her jurisdiction all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease.

***d.) CAL/OSHA GUIDELINES FOR WORKPLACE SECURITY***

Cal/OSHA categorizes workplace violence events as different types. A Type II workplace violence event involves an assault by someone who is either the recipient or the object of a service provided by the affected workplace or the victim. Type II events involve fatal or nonfatal injuries to individuals who provide services to the public, including teachers, education support professionals, and other staff in schools.

**i. Initial Assessment**

Many workplaces are at risk for workplace violence, but certain workplaces are recognized to be at significantly greater risk than others. Therefore, every employer should perform an initial assessment to identify workplace security factors which have been shown to contribute to the risk of violence in the workplace. If you have one or more of the following factors present in your workplace, you should consider your workplace to be a potential risk of violence:

- \* Working with students or parents known or suspected to have a history of violence; or
- \* Employees with a history of assaults or who have exhibited belligerent, intimidating or threatening behavior to others.



## **ii. Preventive Strategies For Type II Events**

An important component of a workplace security program for employers at risk for Type II events is supervisor and employee training in how to effectively defuse hostile situations.

The control of physical access through workplace design is also an important preventive measure. This can include controlling access into and out of the workplace and freedom of movement within the workplace. Escape routes can also be an important component of workplace design. Districts and chapters should consult Cal/OSHA guidelines for further information.

### **4. DISCIPLINE POLICY**

The governing board of any school district shall prescribe rules, not inconsistent with law or with the rules prescribed by the State Board of Education, for the government and discipline of the schools under its jurisdiction. Every public school may adopt rules and procedures on student discipline consistent with the rules established by the governing board. If a school chooses to proceed with this process, it must solicit the views of parents, teachers, school administrators, school security personnel, and junior and senior high school pupils. The rules may then be adopted by a panel consisting of the school principal and a teacher representative. Students, parents and employees are to receive written notice of the procedures at the beginning of the school year. It is the duty of each employee to enforce these rules and procedures. Educ. Code §§ 35291, 35291.5; 5 Cal. Code of Regs. § 5552. Issues regarding student discipline, including student suspension and expulsion and alternatives to discipline, are detailed in Part III below.

### **5. DISTRICT RESPONSIBILITY TO INFORM TEACHERS OF CRIMINAL HISTORY**

A school district must inform any teacher, counselor or administrator in a supervisory or disciplinary position when, based on records maintained by the district or received from law enforcement, it has information that, during the three previous school years, a pupil has engaged in, or is reasonably suspected to have engaged in conduct at school while going to or from school, or during a school sponsored activity which is grounds for suspension or expulsion, except offenses related to tobacco use. Educ. Code § 49079; *see* Suspension and Expulsion sections in Part III below.

A school district must maintain a record of each suspension or expulsion in pupil records.

A district employee who knowingly fails to provide mandated information about a pupil is guilty of a misdemeanor punishable by up to six months in jail, or up to \$1000 fine, or both.

Such information is confidential and shall not be further disseminated. Educ. Code § 49079.

If a minor enrolled in a public school is found by a court to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, assault or battery, larceny, vandalism, or graffiti, the court must send written notice to the school superintendent within seven days. The information shall be expeditiously transmitted to any counselor who directly supervises the student and shall be transmitted to any teacher or administrator with direct supervisory or disciplinary responsibility over the minor who needs the information in order to work with the student, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. Any information received by a teacher shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff and shall not be further disseminated except insofar as communication with the juvenile, his or her parents, probation officer, and law enforcement is necessary for these purposes. Welf. & Inst. Code § 827(b).

Each notice received from the court shall be kept in a confidential file at the student's school, transferred to any subsequent school, and maintained until the student graduates from high school, is released from juvenile court jurisdiction or reaches the age of 18. The record shall then be destroyed. Welf. & Inst. Code § 827(b).

Further, even short of conviction, when a petition is filed in juvenile court or a complaint is filed in any court alleging that a minor is using, selling, or possessing drugs, or has committed felonious assault, homicide, or rape, the district attorney may provide written notice within 48 hours to the superintendent of the school district of attendance. Educ. Code § 48909.

A school district police or security department may provide written notice to the superintendent of the school district that a minor enrolled in the district has been convicted of certain drug or violent crime felonies, and that information may be expeditiously transmitted to any teacher, counselor, or administrator with direct supervisory or disciplinary responsibility over the minor, who the superintendent or his or her designee, after consultation with the principal at the school of attendance, believes needs this information to work with the student in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. The teacher must maintain this information in confidence for the limited purpose it was provided, and shall not disseminate it further. Welf. & Inst. Code § 828.1.

The superintendent or designee of the district where the minor is enrolled may inspect the minor's juvenile court file and all documents contained therein. Welf. & Inst. Code § 827(b).

A law enforcement agency may also release information to a school district relating to the taking into custody or conviction of a minor for crime(s) against the property, students or personnel of that district. Welf. & Inst. Code § 828.3.

Additionally, the name of a minor 14 years of age or older, who has been found to be a ward of the court, may be disclosed to the public if the minor has committed a specified "serious" or "violent" felony. Welf. & Inst. Code § 204.5.

A student or his/her parent or guardian must notify a school at the time of enrollment if the student was expelled previously from another school and must disclose the reason for the expulsion. Educ. Code § 48915.1.

## **6. COMMUNITY COLLEGE RESPONSIBILITY FOR HATE CRIME STATISTICS, SEXUAL ASSAULT, AND SAFETY POLICIES**

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act is a federal law that requires colleges and universities to gather and disclose certain timely and annual information about crime and security policies, and information relevant to safety and security on campus. This information includes statistics for reported crimes that occurred on campus or on public property within or immediately adjacent to and accessible from the campus, including hate crimes, dating violence, and stalking. In complying with the statistical reporting requirements of the Clery Act, community colleges must obtain the required statistics for campus crimes through actual in-person reporting of crimes, through confidential reporting, and through contact with local law enforcement agencies. 20 U.S.C. § 1092(f).

Community college districts must direct the compiling of records for all reported occurrences of on-campus crimes involving violence, hate violence, theft, property damage, or alcohol intoxication, and all reported non-criminal acts involving hate violence. This information must be produced within 2 days of a request by a student, employee, or media. Educ. Code § 67380.

Community college districts must develop and implement written procedures and protocols for the treatment and provision of information to victims of sexual assault on campus grounds or related facilities. Educ. Code § 67385.

### ***D. LOCAL CHAPTER SCHOOL SAFETY CONSIDERATIONS***

#### **1. EERA BARGAINING RIGHTS**

California's Educational Employment Relations Act (EERA) gives chapters the right to bargain regarding workplace safety conditions of employment. Cal. Gov. Code § 3543.2(a)(1). District employers must provide notice, relevant information, and an opportunity to bargain over any changes to such conditions.

For example, a chapter may seek to negotiate the specific campus procedures by which a teacher can have a willfully defiant student removed from the classroom, consistent with the teacher's rights under Education Code section 48910. In the COVID-19 context, a chapter may also seek to negotiate positive behavioral interventions and supports at the district which encourage student compliance with district COVID-19 safety protocols, such as regular handwashing and mask-wearing.

Any decisions that are directly related to health and safety fall within the mandatory scope of bargaining. Govt. Code § 3543.2(a). An employer's obligation to give notice and an opportunity to bargain over those mandatory subjects remains in effect, even during a public health crisis. However, it is critical to review the specific provision of your collective bargaining agreement (CBA) and its impact on this situation. We strongly recommend consulting with your CTA Primary Contact Staff person if you have questions or concerns.

Some decisions may impact or affect employee safety, but are not directly safety-related. For example, student discipline issues and procedures have impacts on the work environment and on the health and safety of teachers, and those impacts are negotiable (even if the procedures themselves are not negotiable).

Applicable state statutes and regulations take precedent over contrary CBA provisions, unless the statute provides otherwise for collectively-bargained provisions. If a statute provides discretion to the employer in how to comply, the chapter may bargain regarding the way in which the district exercises that discretion. For example, chapters may request to bargain over the development of the school's Injury & Illness Prevention Plan because, although the law requires a plan with certain components, it does not dictate the details of the plan.

Any refusals to bargain regarding workplace safety or bargaining in bad faith should be discussed with the Legal Department. Such failures are likely a violation of the EERA, and filing an unfair labor practice charge with the Public Employment Relations Board (PERB) may be appropriate. In the event of particularly egregious failures to bargain or surface bargaining, the chapter may consider initiating an unfair labor practice strike to pressure the employer to cease its refusal to bargain or bargaining in bad faith regarding these critical issues. Chapters and Primary Contact Staff should consult the Legal Department regarding any potential unfair labor practice strike or if the chapter is considering any other type of health-and-safety-related work stoppage, whether or not the possible action is connected to bargaining.

## **2. EMPLOYEE RIGHTS TO REFUSE TO WORK IN UNSAFE CONDITIONS**

Individual employees may be able to resort to a protected right to refuse work or assignments in certain circumstances when an employer directs them to work in unsafe conditions. In a PERB case, *Pleasant Valley School District* (1988) PERB Decision No. 708, an individual employee who refused an assignment to work with unsafe equipment was found to have engaged in protected activity under the EERA provision (Govt. Code § 3543) that gives individual employees the protected right to represent themselves in their employment relations with district employers. In the case, PERB noted that Cal/OSHA later issued a citation to the district regarding the equipment, and the district itself admitted that the equipment required repairs, so PERB found that the employee had a reasonable concern for unsafe work conditions, and his refusal to work was justified.

In a second PERB case, *Department of Corrections* (1997) 21 PERC 28133, an ALJ found that when a correctional officer reasonably believed that his safety was at risk due to

indications that a certain inmate might be contagious with tuberculosis, the officer had a protected right to refuse a direct order to transport the inmate by van, and could not be disciplined for this refusal. The reasonableness of the belief was based on the tuberculosis training and protocols all officers received, management policies on tuberculosis amongst inmates, and management statements that indicated an unreasonable disregard for the officer's concerns. The ALJ stated that it was not reasonable to require that an employee take an "obey now, grieve later" approach when there is a reasonable belief in a safety risk. He based his decision on anti-retaliation provisions in the collective bargaining law (Govt. Code § 3519) which state that "it shall be unlawful for the state to do any of the following: (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter." The parties settled the case and exceptions were withdrawn leading PERB to vacate the ALJ decision, so this non-precedential case cannot be relied upon heavily. However, it provides some indication of how an ALJ might address whether a refusal to work due to health and safety concerns is protected from disciplinary action.

The California Labor Code also protects employees from layoff or discharge if they are "refusing to perform work in the performance of which this code, [...] any occupational safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees." Labor Code § 6311.

Employees and chapters should be careful when exercising these rights. Employees risk being subject to discipline for insubordination, and chapters risk being perceived as calling for an unlawful work stoppage. To prevail in any case regarding a refusal to work, employees must be able to demonstrate that the hazardous condition existed and the refusal to work was reasonable. If a hazard is sufficiently serious to prompt a refusal to work, it should be thoroughly documented. Evidence from third parties that the hazard is a serious danger should also be gathered, such as any Cal/OSHA citations, contrary state or county public health guidance, or assessment of the hazard by a worker's compensation carrier. Consult PCS and the Legal Department if employees are considering any refusal to work.

### **3. SAFETY COMPLAINTS AND ANTI-RETALIATION PROTECTIONS**

EERA protects both employees' rights to pursue safety-related complaints through their employee organization as well as their right to report safety concerns directly to their employers. *See Regents of the University of California* (1983) PERB Decision No. 319-H (complaint through union); *Los Angeles Unified School District* (1995) PERB Decision No. 1129 (complaint directly to employer). In some circumstances, reporting to third parties is also protected. *Oakdale Union Elementary School District* (1998) PERB Decision No. 1246-E (report to outside safety inspector was protected as consistent with CBA process and as an extension of complaint employee had attempted to resolve through union). California Labor Code Section 6310 protects employees who report unsafe conditions to Cal/OSHA, to the employer directly, or to an employee representative.

#### **4. SITE REP TRAINING AND SCHOOL SITE COUNCILS**

Worksite leaders play a key advocacy role in enforcing health and safety rights. Chapters should plan and conduct training for chapter site representatives so they are knowledgeable about the health and safety provisions in their CBA's, the district employer's safety plan, and the advocacy steps to take if there are unsafe conditions at a site. In pandemic/influenza related crises such as COVID-19, prevention and safety are key areas for collaboration with parents. Strongly consider involving members who serve on School Site Councils in any chapter training for health and safety advocacy.

### **III. STUDENT SUPPORTS AND PROTECTIONS AGAINST VIOLENCE AND DISRUPTION IN SCHOOLS**

#### ***A. FRAMEWORKS & PRACTICES FOR SCHOOLWIDE REDUCTIONS IN DISRUPTIVE BEHAVIOR***

California law requires that, prior to imposing suspension and expulsions in all but the most serious disciplinary offenses, school districts must document alternative means of correction used in the student's record. It authorizes schools to use alternative frameworks and methods, including evidence-based multi-tiered systems of supports that have been shown in national studies to reduce anti-social behavior on a schoolwide basis.

“It is the intent of the Legislature that the Multi-Tiered System of Supports, which includes restorative justice practices, trauma-informed practices, social and emotional learning, and schoolwide positive behavior interventions and support, may be used to help pupils gain critical social and emotional skills, receive support to help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community.” Educ. Code § 48900(w)(2).

For a student subject to suspension, a superintendent of the school district or principal is encouraged to provide alternatives to suspension or expulsion, using a research-based framework with strategies that improve behavioral and academic outcomes, that are age appropriate and designed to address and correct the pupil's specific misbehavior as set forth in Educ. Code § 48900.5. Educ. Code § 48900(v).

Education Code section 48900.5 states:

(a) Suspension, including supervised suspension as described in Section 48911.1, shall be imposed only when other means of correction fail to bring about proper conduct. A school district may document the other means of correction used and place that documentation in the pupil's record, which may be accessed pursuant to Section 49069.7. However, a pupil, including an individual with exceptional needs, as defined in Section 56026, may be suspended, subject to Section 1415 of Title 20 of the United States Code,

for any of the reasons enumerated in Section 48900 upon a first offense, if the principal or superintendent of schools determines that the pupil violated subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the pupil's presence causes a danger to persons.

(b) Other means of correction include, but are not limited to, the following:

- (1) A conference between school personnel, the pupil's parent or guardian, and the pupil.
- (2) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.
- (3) Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the pupil and the pupil's parents.
- (4) Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program, or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)).
- (5) Enrollment in a program for teaching prosocial behavior or anger management.
- (6) Participation in a restorative justice program.
- (7) A positive behavior support approach with tiered interventions that occur during the school day on campus.
- (8) After school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.
- (9) Any of the alternatives described in Section 48900.6.

## **1. POSITIVE BEHAVIORIAL INTERVENTIONS & SUPPORTS (PBIS)**

In conjunction with any school safety plan, a school district may develop and implement a broad, multi-year implementation framework, commonly referred to as Positive Behavioral Interventions & Supports (PBIS), for maximizing the selection and use of evidence-based, proven prevention and intervention practices along a multi-tiered continuum (Universal Practices, Targeted Practices, and Indicated Practices) that supports the academic, social, emotional, and behavioral competence of students. PBIS is not exclusive of other interventions and supports, but a framework which integrates other complementary practices, policies, and initiatives, such as restorative justice programs. This framework is based on strengthening the relations between staff and students, and implementation of the framework involves explicit prompting, modeling, practicing, and encouraging positive expected social skills across settings and individuals. PBIS is focused on promoting positive behaviors, but it also can be used to develop preventive supports to enhance and align with the procedures outline in discipline handbooks and codes of conduct.

A PBIS framework is intended to lead to systemic reductions in disciplinary infractions and aggressive, anti-social behavior, as well as improvements in emotional regulation of

students. However, to achieve such outcomes, an effective PBIS framework requires the commitment of district resources and district-wide implementation of multiple systems, programs and practices over several years, with adequate resources, teacher-on-teacher training, and dedicated time in the instructional day.

**Practitioners and experts deem the following necessary for an effective PBIS:**

○ **At the District Level**

Superintendent and school board endorsement  
Data-based decision-making and problem solving  
Implementation leadership team  
Dedicated budgetary priority  
Prioritized integration of PBIS initiative in all relevant district programs  
Implementation capacity  
Multi-tiered systems approach and expertise  
District policy supporting efficient and long-term behavior support priority  
Continuous and embedded professional development opportunities, including teacher-on-teacher training

○ **At the School Level**

School principal participation and modeling  
School leadership team  
Data-driven decision making and problem solving  
3-5 year implementation investment  
Integrated initiative priority  
Multi-tiered systems approach (including trauma-informed teaching and restorative practices) and expertise  
Continuous and embedded professional development opportunities, including teacher-on-teacher training  
Participation by all staff across all settings

○ **At the Classroom Level**

Integration with school-wide expectations and classroom practices  
Teacher participation in student extracurricular activities  
Effective instructional practices  
Daily use of effective classroom management practices (including trauma-informed teaching and restorative practices)

**2. TRAUMA-INFORMED AND RESTORATIVE JUSTICE PROGRAMS**

Trauma-Informed Teaching Methods are based on pedagogical strategies that many teachers already practice in their classrooms, perhaps without the label, but which are even more effective when formally recognized and applied by the school community as a set of best practices and policies.



This method of teaching emphasizes an increased awareness of all of the factors driving a child’s disruptive behavior by observing the behavior through the lens of social and economic trauma, which informs an alternative approach to behavioral modification. Trauma-informed teaching draws on a growing body of brain research which links childhood trauma and trouble at school, recognizing that some misconduct (not all) is a symptom of traumatic stress and the inability of young students to self-regulate the resulting emotional responses to traumatic stress and adverse childhood experiences. Effective, high-quality trauma-informed practices require ongoing professional development opportunities to be widely understood and implemented.

Trauma-informed teaching tools and practices include:

**Consistency, Rationality and Routines**

- Predictable schedules and recurring classroom routines create a sense of stability and safety
- Disruptive behavior is actively distinguished from character judgements and from academic success

**Building Relationships and Trust**

- Positive, empathic communication cues are regularly used
- Humor and other de-escalation strategies can be employed as a safety valve in conflicts
- Purposeful in words, tone of voice, and follow-through

**Teaching and Creating Space for Mindfulness, Self-Regulation and Niche Groups**

- Social and emotional learning (SEL) can be taught during dedicated advisory or instructional time, which can lead to an increased capacity to self-regulate emotional reactions to traumatic stress
- For successful implementation of SEL, students must have access to explicit SEL skills instruction, integrated SEL through teacher instructional practices and academic curriculum integration, and organizational, culture, and climate strategies. SEL should be implemented in a sequenced, active, focused, and explicit (“SAFE”) approach.
- Niche groups for marginalized groups like LGBTQ students help students manage certain forms of traumatic stress

**Self-care for Educators**

- Educators who engage in self-care practices are better equipped to manage the stress of disruptive behavior, to model constructive responses to that stress, and to lead students in their own self-care practices.

Restorative Justice Programs are a set of practices, policies, and initiatives which complements a PBIS framework by establishing a school culture that actively values interpersonal relationships. These programs emphasize the role of preventative and post-conflict resolution practices in behavior modification, such as the repair of injured relationships. A

restorative justice program allows individuals who may have committed harm to take full social responsibility for their disruptive behavior by addressing the individual(s) affected. A restorative justice program works best when implemented school-wide. If it can be integrated into the fabric of the school community, it can become a cultural mindset at the school that guides adult and youth behavior and relationship management at the school. When well-implemented, such a program can help promote racial and social justice.

Such programs seek to make the individual responsible for their actions through:

- Understanding how behavior affected others
- Acknowledging that behavior was harmful to others
- Taking concrete action to repair the harm
- Making changes necessary to avoid such behavior in the future

Types of Restorative Justice Practices include:

- **Restorative Justice (Dialogue between Rulebreaker and Victim)**

The victim(s) and rule-breaker(s) have opportunity to share with one another how they were harmed, as victims, or how they will work to resolve the harm caused, as wrongdoers.

- **Community Conferencing**

Students and teachers affected by disruptive behavior have the opportunity to respond to and prevent school conflict by participating in the conflict resolution process.

- **Community Service**

Rule-breakers are allowed the opportunity to restore harm they caused to school communities with meaningful service that contributes to their individual self-improvement.

- **Peer Juries/Peer Mediators**

Rule-breakers have the opportunity to collectively discuss with trained student jurors/mediators why rules were broken, who was affected, and how students can repair the harm caused.

- **Circle Process**

A dedicated time at beginning and end of day to celebrate growth and to reflect on challenges.

- **Informal Restorative Practices**

These practices emphasize empathetic interpersonal communication habits, including the use of:

- Affective statements – communicating people’s feelings so they feel heard and seen
- Affective questions – causing people to reflect on how their behavior affected others
- Mentor relationships
- Proactive engagement with students and their families

**B. PROHIBITED CONDUCT**

**1. SCHOOL SITE INTERRUPTIONS**

Governing boards are required to post at every entrance to each school and grounds a notice setting forth “school hours” as defined by the board. Educ. Code § 32211.

No outsider shall enter or remain on school grounds during school hours without having registered with the principal. Penal Code § 627.2.

Any person who comes into a school building or upon K-12 school grounds, street, sidewalk, or public way adjacent thereto, without lawful business, and whose presence or acts interfere with the peaceful conduct of school activities or disrupt the school or its pupils may be asked to leave the premises. Failure to comply with such a request when made by the school’s chief administrative official or designee, or any attempt to reenter the prohibited premises within seven days after being asked to leave, constitutes a misdemeanor. Upon first conviction, such person may be punished by a fine not to exceed \$500, by imprisonment not to exceed six months, or by both a fine and imprisonment. Penal Code § 626.8.

Any person other than a student, parent/guardian, or employee/union representative of the school district shall promptly depart from the school premises during school hours when requested to do so by the school principal or designee. If that person fails to do so or if the person returns without following the posted requirements to contact the administrative offices of the campus, then the person is guilty of a misdemeanor. The request to leave shall be made exclusively on the basis that the chief administrative officer or designee reasonably concludes that the person’s continued presence on school grounds will be disruptive of, or interfere with, classes or other school activities. Any person requested to leave the premises may appeal his expulsion to the district superintendent and ultimately to the governing board. Penal Code § 626.7; Educ. Code § 32211.

Any person other than a student, parent or guardian, or employee/union representative of a community college or university shall promptly depart from the college/university campus when requested to do so by the chief administrative officer or designee. If that person fails to do so or if the person willfully and knowingly attempts to reenter the prohibited premises within seven days, then the person is guilty of a misdemeanor. The request to leave shall be made exclusively on the basis that the chief administrative officer or designee reasonably concludes that the person intends to commit an act or is acting to interfere with the peaceful conduct of campus activities. Penal Code § 626.6<sup>5</sup>

Every person who loiters about any school, or who reenters a school within 72 hours after being asked to leave is a vagrant and subject to a fine and/or imprisonment. Penal Code § 653b.

Every minor over 16 or adult who is not a pupil of the school who enters any school ground and willfully interferes with any class or school activity with the intent to disrupt,

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<sup>5</sup> Penal Code § 626.6 applies only to community colleges or universities.

obstruct, or to inflict damage to property or bodily injury to any person, is guilty of a misdemeanor. A first offense is punishable by a fine of not less than \$500 or more than \$1,000, or by imprisonment in county jail for up to one (1) year, or both. Imprisonment is mandatory for a second or subsequent conviction. Educ. Code § 44810.

Any person who willfully disturbs any public school or any public school meeting is guilty of a misdemeanor and shall be subject to a fine of not more than \$500. Educ. Code § 32210.

Any drug offender who enters school grounds or an adjacent street, sidewalk or public way within seven days after being asked to leave by a school official or public safety officer, is guilty of a misdemeanor punishable by a fine of \$1,000 or up to six months in jail or both, unless the drug offender is a student or a parent or guardian of a student or has prior written permission to enter. Penal Code § 626.85.

## **2. CLASSROOM INTERRUPTIONS**

The California Education Code requires that each school district board formally address the problem of classroom interruptions and adopt a policy to control those interruptions. The Superintendent of Public Instruction shall develop and distribute to each district governing board a model policy for the reduction and control of classroom interruptions. Educ. Code § 32212.

While performing work, school employees have a right to be free of disruption or substantial disorder from parents, guardians, or outsiders. Any parent, guardian or other person whose conduct in a place where a school employee is required to be in the course of his or her duties, materially disrupts classwork or extracurricular activities or involves substantial disorder, is guilty of a misdemeanor. A first offense is punishable by a fine of not less than \$500 or more than \$1,000, or by imprisonment in county jail for up to one (1) year, or both. Imprisonment is mandatory for a second or subsequent conviction. This section does not apply to any otherwise lawful employee concerted activity. Educ. Code § 44811.

## **3. UNAUTHORIZED ENTRY ON SCHOOL BUS**

Any person who enters a school bus without proper authorization, with the intent to commit any crime and who refuses to disembark, is guilty of a misdemeanor punishable by a fine of up to \$1,000, or up to six (6) months in jail, or both. Educ. Code § 39842.

## **4. THREATS TO PERSONAL SAFETY**

It is a public offense to cause or attempt to cause any school employee to do, or refrain from doing their duties, by directly communicating a threat to injure their person or property, where the person threatened reasonably believes that such threat could be carried out. Such offense is punishable by a fine up to \$10,000, or up to one year in jail, or both. Penal Code § 71.

Any person, except an employee engaged in concerted activity or a registered student of the school or college who (1) fights or challenges another to a fight on school grounds, or (2) maliciously and willfully disturbs another person in a school building or on school grounds by loud and unreasonable noise, or (3) uses offensive words likely to provoke an immediate, violent reaction, is guilty of a misdemeanor punishable by a series of penalties dependent upon whether the offense is a first offense or the offender has previous convictions. Penal Code § 415.5.<sup>6</sup>

An assault or battery committed on school property against any person is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in the county jail not to exceed one year, or by both. Penal Code §§ 241.2, 241.6, 243.2, 243.6. If committed by a minor, counseling may be ordered at parents' expense. Penal Code § 243.2. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. Penal Code § 240.<sup>7</sup> A battery is any willful and unlawful use of force or violence upon the person of another. Penal Code § 242.

A peace officer may, without a warrant, arrest a person who commits an assault or battery on school property during hours when school activities are being conducted if:

1. The person has committed the assault or battery, although not in the peace officer's presence, or
2. The peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed. Penal Code § 243.5.<sup>8</sup>

## **5. WEAPONS AND AMMUNITION**

Any person who brings a firearm within 1000 feet of the grounds of any public or private K-12 school, may be imprisoned for up to five years under specified circumstances. Any person who recklessly discharges a firearm in such a "school zone" may be imprisoned for three, five, or seven years. Penal Code § 626.9. Possession of a firearm on a community college campus is also a felony, punishable by imprisonment for up to three, five, or seven years. Penal Code § 626.9(h). It is a public offense punishable by up to one year in jail to bring or possess ANY weapon on the premises of any public school. Penal Code § 626.10. Any person who carries any ammunition onto school grounds may be imprisoned for six months, except sworn law enforcement officers acting within the scope of their duties. Penal Code § 30310.

A minor shall not possess live ammunition or a pistol, revolver or other firearm capable of being concealed on the person except under specified circumstances including where the minor is accompanied by his or her parent or guardian. Violation is punishable by imprisonment. The custodial parent or guardian may be ordered to participate in parenting education classes. Penal Code §§ 29700 and 29705.

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<sup>6</sup> Penal Code § 415.5 applies to K-12 schools, community colleges, universities, and state universities.

<sup>7</sup> Penal Code § 240 applies to K-12 schools and community colleges.

<sup>8</sup> Penal Code § 243.5 applies to K-12 schools and community colleges.

## **6. GRAFFITI**

It is a misdemeanor to possess aerosol paint, felt-tip markers, or other marking instruments with the intent to commit graffiti or vandalism. Penal Code § 594.2. A court may order not less than 24 hours and up to 90 hours of community service, graffiti abatement, and/or counseling. Penal Code § 594.8.

## **7. HATE VIOLENCE**

Under the California Schools Hate and Violence Reduction Act of 1995 for pupils in grades K-12, if private funding is available, the State Board of Education is directed to adopt policies and procedures to prevent and respond to acts of hate violence and bias-related incidents; revise state curriculum frameworks and guidelines to include human relations education; and establish guidelines for teacher and administrator in service to promote appreciation of diversity, discourage discrimination, and prevent and respond to hate violence.

The California Student Safety and Violence Prevention Act of 2000 amended the various existing anti-discrimination and anti-hate sections of the Education Code to add protections against discrimination and hate crimes on the basis of actual or perceived sexual orientation and gender identity.

Teachers are required to promote morality, truth, justice, and the meaning of equality and human dignity, including the promotion of harmonious relations. Teachers are encouraged to foster an educational environment that is “free from discriminatory attitudes, practices, events, or activities, in order to prevent acts of hate violence.” Educ. Code § 233.5. Students can face serious discipline for acts of hate violence. Educ. Code § 48900.3.

Further, both state and federal civil rights laws prohibit harassment and discrimination based on actual or perceived characteristics such as race, gender, religion, and disability. California’s Safe Place to Learn Act requires districts to work to reduce discrimination, harassment, violence, intimidation, and bullying. Educ. Code § 234. Districts must adopt policies to prohibit all such conduct; adopt complaint procedures; publicize those policies; and protect complainants from retaliation. Educ. Code §§ 234-234.6.

## **8. BULLYING**

“Bullying” is an authorized basis for suspension or expulsion, so long as alternative approaches to behavior modification were exhausted without change in conduct. Educ. Code § 48900(r).

Bullying means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils, directed toward one or more pupils that has or can be reasonably predicted to have the bullying effect of one or more of the following:

- Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.
- Causing a reasonable pupil to experience a substantially detrimental effect on the pupil's physical or mental health.
- Causing a reasonable pupil to experience substantial interference with the pupil's academic performance.
- Causing a reasonable pupil to experience substantial interference with the pupil's ability to participate in or benefit from the services, activities, or privileges provided by a school.

A "reasonable pupil" means a pupil, including, but not limited to, a pupil with exceptional needs, who exercises average care, skill, and judgment in conduct for a person of that age, or for a person of that age with the pupil's exceptional needs.

An "electronic act" means the creation or transmission originated on or off the school site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:

- (1) A message, text, sound, video, or image.
- (2) A post on a social network internet website, including, but not limited to:
  - Posting to or creating a burn page. "Burn page" means an internet website created for the purpose of having one or more of the bullying effects described above.
  - Creating a credible impersonation of another actual pupil for the purpose of having one or more of the bullying effects described above.
  - "Credible impersonation" means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed, that the pupil was or is the pupil who was impersonated.
  - Creating a false profile of another student for the purpose of having one or more of the bullying effects described above.
- (3) An act of cyber sexual bullying.
  - "Cyber sexual bullying" means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the bullying effects described above.
  - A prohibited photograph or other visual recording includes the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act. Cyber sexual bullying does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political,

or scientific value or that involves athletic events or school-sanctioned activities.

The Principal may refer students engaged in bullying, victims and witnesses of bullying, or students affected by bullying, to counselors, social workers, nurses for case management, counseling, and participation in restorative justice programs. Educ. Code § 48900.9. Districts are required to adopt procedures for preventing acts of bullying, including cyberbullying. Educ. Code § 234.4.

## **9. COMMUNITY COLLEGE SEXUAL ASSAULT**

Community college districts must adopt comprehensive policies and disciplinary procedures concerning sexual assault, domestic violence, dating violence, and stalking, as defined in the federal Higher Education Act of 1965 (20 U.S.C. § 1092(f)), involving a student, both on and off campus. State law includes policy requirements for: (a) the campus disciplinary process, (b) campus policies and protocols, and (c) outreach and programming.

Campus Disciplinary Process Requirements: The institution's policy governing its campus disciplinary process must use an affirmative consent standard to determine whether a sexual assault complainant consented to the alleged conduct. "Affirmative consent" is defined as an affirmative, conscious, and voluntary agreement to engage in sexual activity. Under the law, neither the lack of protest or resistance nor silence constitutes consent, and consent may be withdrawn at any time. Affirmative consent must be given by all parties to sexual activity. Educ. Code § 67386, subd. (a)(1).

The policy must also make clear that, for the purpose of evaluating complaints during the campus disciplinary process, it is not a valid excuse that the accused believed the complainant consented if:

- (A) the accused's belief arose from his or her own intoxication or recklessness, or
- (B) the accused did not take reasonable steps to ascertain whether the complainant affirmatively consented.

Educ. Code § 67386, subd. (a)(2).)

Similarly, it will not be a valid excuse that the accused believed the complainant affirmatively consented where the accused knew or reasonably should have known that the complainant was unable to consent because he or she was:

- (A) asleep or unconscious,
- (B) incapacitated due to drugs/alcohol/medication, or
- (C) unable to communicate due to a mental or physical condition.

Educ. Code § 67386, subd. (a)(4).)



Further, a campus’s policy must require the use of a preponderance of the evidence standard when adjudicating complaints in the disciplinary process. To satisfy this standard of proof, the evidence must show that it is “more likely than not”—i.e., greater than 50% likelihood—that the victim did not consent. Educ. Code § 67386, subd. (a)(3).

A sexual assault victim/patient has: (1) the right to a Sexual Assault Forensic Medical Examination at no cost to the victim/patient, and (2) the right to participate or not participate with the local law enforcement agency or the criminal justice system, either prior to the examination, or at any other time. Penal Code §§ 13823.7, 13823.13, 13823.95. Additionally, a victim may agree to engage with local law enforcement and participate in the investigation and prosecution using a pseudonym (i.e. Jane or John Doe) instead of his/her/their true name.

### ***C. DISTRICT METHODS OF ENFORCING SCHOOL DISCIPLINE***

#### **1. DRESS CODE**

Gang-related apparel may be hazardous to the health and safety of a school. A school district can adopt a policy allowing a school site to adopt a dress code that prohibits pupils from wearing gang apparel or requires pupils to wear a school uniform if necessary for school health and safety. The uniform shall be selected by the principal, staff and parents. The district shall provide six (6) months’ notice of a uniform policy to parents and assistance to economically disadvantaged pupils, and shall allow parents to opt out without penalty. Educ. Code § 35183.

#### **2. COMMUNITY SERVICE**

As part of a disciplinary action, a superintendent, principal or designee may require a pupil to perform community service on school grounds during non-school hours, including outdoor beautification, campus betterment, and teacher or peer assistance programs; or off school grounds with a parent’s written permission. Educ. Code § 48900.6.

#### **3. TRANSFER**

Disruptive or violent high school students can be involuntarily transferred to “continuation schools,” which may or may not be located on a separate site. Educ. Code § 48432.5. However, a teacher in the school in which the student is enrolled cannot participate in the final decision for an involuntary transfer. Certain notices and hearing must precede such a transfer. Such involuntary transfers can occur only when other less drastic methods of correction have failed, unless the principal determines that the student presents an immediate danger to people or property or threatens the instructional process at the original school.

These involuntary transfers can extend only to the end of the semester following the acts leading up to the transfer.

Pupils aged 8-16 can be temporarily assigned to 24-hour elementary schools for insubordination or refusal to obey the rules and regulations of school authorities, when a parent/guardian fails to exercise care or supervision over the child. Educ. Code § 48607. School principals can recommend admission to a board of admission. Educ. Code § 48606. The goal is to return the student to the regular school as soon as possible and to use this school only as a means of preventing later and more difficult delinquency.

#### **4. SUSPENSION AND EXPULSION**

Suspension and supervised suspension may only be imposed when other alternative means of correction fail to bring about proper conduct, unless there is a violation of the most serious grounds for suspension/expulsion (Education Code § 48900 (a)-(e) set forth below), or if the student causes a danger to others at school, in which case a first offense may be grounds for suspension or expulsion. Educ. Code § 48900.5.

A student may be suspended or expelled for acts that are enumerated in the Education Code and related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following times:

- (1) While on school grounds.
- (2) While going to or coming from school.
- (3) During the lunch period whether on or off the campus.
- (4) During, or while going to or coming from, a school-sponsored activity.

Educ. Code § 48900(s).

##### **a.) *GROUNDS FOR SUSPENSION AND EXPULSION***

The grounds for student suspension and expulsion are:

- a. 1) Causing, attempting, or threatening to cause physical injury to another person.
- 2) Willfully using force or violence on another person, except in self-defense.
- b. Possessing, selling, or furnishing any firearm, knife, explosive or other dangerous object, unless possession is with written permission from a certificated employee concurred in by the principal.
- c. Unlawfully possessing, using, selling or furnishing, or being under the influence of, any controlled substance, an alcoholic beverage, or intoxicant, or drug paraphernalia.
- d. Unlawfully offering, arranging, or negotiating to sell a controlled substance or what is represented as a controlled substance.
- e. Committing or attempting to commit robbery or extortion.
- f. Causing or attempting to cause damage to school or private property.

- g. Stealing or attempting to steal school or private property.
- h. Possessing or using tobacco.
- i. Committing an obscene act or engaging in habitual profanity or vulgarity.
- j. Unlawfully possessing or unlawfully offering, arranging, or negotiating to sell drug paraphernalia.
- k. Disrupting school activities or willfully defying valid authority, subject to limits noted here:

*Important Notes, effective July 1, 2020:*

- Disruption or willful defiance is not a basis for suspensions *from school* for grades K-5.
- Disruption or willful defiance is not a basis for suspensions *from school* for grades 6-8 until July 1, 2025.
- Disruption or willful defiance is not a basis for recommendations for expulsion for grades K-12.
- Teachers may only suspend a student for disruption or willful defiance *from their class* for the day of the incident and the following day. (Educ. Code § 48910).

- l. Knowingly receiving stolen school or private property.
- m. Possession of an imitation firearm so substantially similar to an actual firearm as to lead a reasonable person to conclude that the imitation is a firearm.
- n. Committing or attempting to commit a sexual assault or sexual battery.
- o. Harassing, threatening or intimidating a witness in a school disciplinary proceeding.
- p. Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.
- q. Engaged in, or attempted to engage in, hazing, defined as a method of initiation into an official or unofficial pupil organization, that is likely to cause serious bodily injury or personal degradation resulting in physical or mental harm to a former, current, or prospective pupil.
- r. Bullying, including cyberbullying and cyber sexual bullying (*see above Section B.8 for details and definitions*).

Educ. Code § 48900.

Additional grounds for suspension and expulsion:

- Committing sexual harassment, as defined (applies only to grades 4–12). Educ. Code § 48900.2.

- Causing, attempting or threatening to cause, or participating in hate violence as defined (applies only to grades 4–12). Educ. Code § 48900.3.
- Intentionally engaging in harassment, threats, or intimidation directed against school personnel or pupils, that is sufficiently severe or pervasive as to materially disrupt classwork, create substantial disorder, and invade the rights of staff or pupils to a non-hostile educational environment (applies only to grades 4–12). Educ. Code § 48900.4.

***b.) EXPULSION AND READMISSION***

A teacher has no power to expel a disruptive or violent student from class or school. The expulsion process can be initiated only by recommendation of the principal or superintendent (or a hearing officer).

***i. Serious Offenses (Zero Tolerance)***

For any of the following acts, a principal or superintendent shall recommend and the governing board may order expulsion (unless the principal or superintendent finds in writing that expulsion is inappropriate):

- 1) Causing serious physical injury to another person, except in self-defense.
- 2) Possession of any knife or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds.
- 3) Possession of any controlled substance except for the first offense for the possession of marijuana, or properly prescribed medication.
- 4) Robbery or extortion.
- 5) Assault or battery on any school employee.

Educ. Code § 48915(a).

A teacher can, of course, present evidence and urge expulsion to the principal or superintendent. Once expulsion is formally recommended to the governing board, a detailed series of notices and hearings transpires prior to actual expulsion. Educ. Code § 48918. Various appeals can also be undertaken to the county board of education within 30 days of a decision to expel a student. Educ. Code §§ 48920-48924.

In order to expel a pupil, the governing board must find that either 1) other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or 2) due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others. Educ. Code § 48915.

At the time of expulsion, the governing board shall recommend a rehabilitation plan during the expulsion which may include recommendations for improved academic performance, tutoring, special education assessments, job training, counseling, employment, community service and parent involvement. The governing board may suspend enforcement of the expulsion order for up to one year during the rehabilitation period, during which time the student is deemed to be on probation. Educ. Code § 48917.

The principal, the superintendent or the governing board may require a pupil to perform community service during non-school hours as part of or in lieu of suspension or expulsion. Educ. Code § 48900.6.

A pupil expelled from school shall not be permitted to enroll in any other school or school district during the period of expulsion except a county community school, a juvenile court school, or a community day school. Educ. Code § 48915.2.

After the expulsion period, a different school district may permit the individual to enroll if a determination is made that the student does not pose a danger to either the pupils or employees of the district. Educ. Code §§ 48915.1, 48915.2(b).

An expulsion order remains in effect until the governing board of the expelling school district orders the pupil's readmission. The governing board must adopt rules and regulations establishing a procedure for filing, processing and reviewing requests for readmission.

The governing board shall set a date, not later than one year after the expulsion occurred, when the pupil may apply for readmission to the district. The governing board shall readmit a pupil unless the pupil has not satisfied the rehabilitation plan or continues to pose a danger to campus safety. If the governing board denies readmission, the board shall determine whether the pupil shall continue in the program initially selected for them or to place the pupil in another program. Educ. Code § 48916, 48916.2.

## ii. Immediate Suspension

**The principal or superintendent of schools shall immediately suspend**, pursuant to due process requirements, and **shall recommend expulsion** of any pupil who committed the following acts at school or at a school activity off school grounds:

- 1) possessing, selling or furnishing a firearm.
- 2) brandishing a knife at another person;
- 3) selling a controlled substance;
- 4) committing or attempting to commit a sexual assault or sexual battery;
- 5) possession of an explosive.

Upon finding that a pupil committed one of these acts, the governing board shall expel the pupil for up to one year, and shall refer that pupil to a program of study that is prepared to accommodate students who exhibit discipline problems and is not provided at a comprehensive middle, junior, or senior high school or at the school attended by the pupil at the time of

expulsion, such as a county community school, a juvenile court school, or a community day school. Educ. Code §§ 48915(c), 48915.2.

A pupil expelled for possessing, selling or furnishing a firearm, brandishing a knife, or selling drugs shall be referred to a program of study which is not housed within an elementary, middle, junior or senior high school or at the school site attended by the pupil at the time of suspension. A pupil who is expelled for a lesser offense shall be placed in a similar program unless such program is not available, then the pupil may be referred to a program of study at an elementary, middle, junior or senior high school. Educ. Code § 48915.

### **iii. Less Serious Offenses**

In order to expel pupils based on other, lesser grounds for expulsion, the governing board must find that either 1) other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or 2) due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others. Educ. Code § 48915.

A pupil expelled for a less serious offense shall not be placed in a program of study at an elementary, middle, junior or senior high school unless no other program is available. Educ. Code § 48915.

To readmit students expelled on these grounds, the board shall hold a hearing to determine whether the student poses a continuing danger to the pupils or employees of the district. The district may request information from another district regarding the expulsion of an enrollment applicant. A parent, guardian, emancipated pupil, or pupil of legal age, shall inform the receiving school district of his or her expulsion from a previous school district. Educ. Code § 48915.1.

A school board can deny enrollment to a pupil who has been expelled from another school district during the expulsion period, if it determines that the pupil poses a danger to students or employees in the school district. Educ. Code § 48915.1. However, if the governing board determines that the student does not pose a danger to pupils or employees, it shall permit the individual to enroll in the district during the term of the expulsion, provided that the student has either legal residence in the district or pursuant to an inter-district agreement. Educ. Code § 48915.1.

### **c.) *SUSPENSION AND EXPULSION OF STUDENTS RECEIVING SPECIAL EDUCATION SERVICES***

Suspension and supervised suspension of students, including students receiving special education services, may only be imposed when other alternative means of correction fail to bring about proper conduct, unless there is a violation of the most serious grounds for suspension/expulsion, or if the student causes a danger to others at school, in which case a first offense may be grounds for suspension or expulsion. Suspension and expulsion for students

receiving special education services must comply with federal procedural rules and regulations. Educ. Code § 48900.5.

A student receiving special education generally may not be suspended or removed from his or her educational placement for more than 10 consecutive school days without parental consent or a court or hearing officer's order. 34 C.F.R. § 300.530(b). This limitation on suspensions may not apply to a special education student who has multiple suspensions for separate offenses that add up or accumulate to more than 10 school days in a school year, if no single suspension exceeds 10 consecutive school days. However, the limitation would apply if the cumulative suspensions together form a pattern which can be considered a "change of placement." 34 C.F.R. § 300.536(a)(1), (2).

- Factors that are considered when determining whether the pattern of suspensions look more like an unlawful change of placement or expulsion include: the length of each removal, the total amount of time the student is removed, the proximity of the removals to one another, and the similarity of the child's behavior over the series of suspensions. 34 C.F.R. § 300.536(a)(1), (2)(iii).
- If the suspensions seem to constitute a pattern, then the series of suspensions may constitute a change of placement. 34 C.F.R. § 300.536(a)(2). If the suspensions can be considered a change of placement, then the IEP team must schedule a manifestation determination meeting, and all rights and duties regarding a change of placement apply. 34 C.F.R. § 300.530(e).

A special education student can be suspended from just the school bus. However, if a special education student is excluded from school bus transportation, the student is entitled to be provided with an alternative form of transportation at no cost to the parent or guardian if transportation is specified in the student's IEP. Educ. Code § 48915.5(c).

During a suspension, the school or district personnel has the authority to remove a special education student from the current placement into another placement on a temporary basis. This is often referred to as an "interim alternative educational setting" (IAES). However, the removal cannot be for more than 10 consecutive school days. 34 C.F.R. § 300.530(b).

- A special education student must receive a free appropriate public education (FAPE) after being suspended for more than 10 cumulative days in a school year even if the suspended student is placed in an interim alternative placement. 34 C.F.R. §§ 300.530(b)(2) and (d)(4); and § 300.536.
- The District must provide services, to the extent necessary, to allow the student to progress appropriately in the general curriculum and to make progress toward achieving his/her IEP goals. This means that on the 11th day of suspension in a school year, the District must provide the student with FAPE even though the student may not be in his/her/their regular placement to receive his/her/their educational services. The student should also receive, as appropriate, a functional behavioral assessment, behavioral intervention services and behavioral modifications that are designed to address the

underlying behavior violation related to the suspension so that it does not recur. 20 U.S.C. § 1415 (k)(1)(D).

A **manifestation determination meeting** must be held within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct. This meeting is required regardless of whether the school or district calls the change in placement either a suspension or an expulsion. 20 U.S.C. §§ 1415(k)(1)(E); 34 C.F.R. § 300.530(e)(1).

- The purpose of a manifestation determination meeting is for the IEP team to determine whether the behavior that led to the decision to expel was caused by or was directly and substantially related to the child’s disability, or was a direct result of the school’s failure to implement the IEP. 20 U.S.C. §§ 1415(k)(1)(E); 34 C.F.R. § 300.530(e)(1).
- A student has the right to go back to their initial classroom placement after the 10 consecutive days of suspension expire even if a manifestation determination meeting is pending. However, there is an exception if the student’s conduct or behavior involved weapons, drugs or inflicted serious bodily injury. When this occurred, the school can move the student’s placement to another interim setting for 45 days. 1415(k)(1)(G); 34 C.F.R. § 300.530(f)(2), 300.530(g).
- If the conduct is determined to be a manifestation of the student’s disability, the IEP team must complete a functional behavioral assessment and implement a behavioral intervention plan for the student. If the student already has such a plan, the IEP team must review and modify the behavior plan as necessary to address the behavior. 34 C.F.R. § 300.530(f)(1).
- The IEP team must also return the student to his/her/their current placement unless the conduct or behavior involved weapons, drugs or the infliction of serious bodily injury on someone, or unless the school and parent(s) agree otherwise to a different placement. 34 C.F.R. § 300.530(f)(2) and 34 C.F.R. § 300.530(g).
- The term “serious bodily injury” means bodily injury which involves:
  - (A) a substantial risk of death;
  - (B) extreme physical pain;
  - (C) protracted and obvious disfigurement; or
  - (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. 18 U.S.C. § 1365(h)(3).
- If the conduct is found to be directly related to the district’s failure to implement the IEP, then the district must take immediate action to correct the deficiency or problem. 34 C.F.R. § 300.530(e)(3).
- When the IEP team determines that the behavior was not a manifestation of the student’s disability, the team is saying that (1) the behavior was not caused by, or



that the behavior did not have a substantial relationship to the student's disability, and/or (2) the behavior was not a direct result of the district's failure to implement the student's IEP. If the behavior was determined not to be a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, with exceptions. 34 C.F.R. § 300.530.

- 34 C.F.R. § 300.530 states:
  - (d)(1) A child with a disability who is removed from the child's current placement must:
    - (i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
    - (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
  - (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.
  - (3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.
  - (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
  - (5) If the removal is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

34 C.F.R. § 300.530.

Unfortunately, it is not uncommon for students with disabilities to engage in dangerous behaviors at school. Educators and other school personnel can take various steps to protect their own safety and others' safety, such as: complaining and reporting to administrators and the governing board; reporting violence to law enforcement as required by Education Code Section 44014; filing workers' compensation claims when appropriate; requesting IEP meetings; filing grievances under CBA safety articles; and, when appropriate, filing administrative complaints

with the California Department of Education, Cal/OSHA, and/or the U.S. Department of Education Office for Civil Rights.

## 5. TRUANCY

It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities. Educ. Code § 48900(w)(1).

Pupils are truant if they are absent without excuse three days in one school year, or tardy or absent without excuse any 30-minute period on more than three days in one school year. A school district must notify the truant's parent or guardian that the parent or guardian is obligated to compel the pupil's attendance at school. Additionally, the notice must: inform the parent or guardian (1) that the pupil may be subject to prosecution and suspension of driving privileges; (2) that alternative education programs are available in the district; (3) that the parent or guardian has a right to meet with appropriate school personnel to discuss solutions to the pupil's truancy, and (4) of a recommendation that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day. Educ. Code §§ 48260, 48260.5.

If a minor pupil is a habitual truant, or is irregular in attendance at school, or is habitually insubordinate or disorderly during school, the school district may refer the pupil to a school attendance review board or to the probation department if the probation department has agreed to receive such referrals. The school district must inform the pupil and his/her/their parent(s) in writing of the referral, the reason for the referral, and that they are required to attend a meeting with the referring person and the agency to which referred. The pupil may be required to participate in community services. If available community services cannot resolve the problem or the pupil fails to participate in the services provided, the school district may notify the district attorney or probation officer, or both. Educ. Code § 48263.

A minor who is subject to compulsory full-time or continuation education and is absent from school and away from home without a valid excuse may be taken into custody during school hours by an attendance supervisor or designee, a peace officer, a school administrator or designee, or any probation officer. Educ. Code § 48264.

A minor who is classified as truant is required to attend a weekend makeup class, and is subject to the following:

- (a) The first time a truancy report is issued, the pupil and, as appropriate, the parent or legal guardian, may be requested to attend a meeting with a school counselor or other school designee to discuss the root causes of the attendance issue and develop a joint plan to improve the pupil's attendance.
- (b) The second time a truancy report is issued within the same school year, the pupil may be given a written warning by a peace officer. A record of the written warning may be kept at the school for two years or until the pupil graduates or transfers from the school. The law enforcement agency may also maintain a record of the written

warning. Upon the second truancy within the same school year, the pupil may be assigned to an after school or a weekend study program.

- (c) The third time a truancy report is issued, within the same school year, the pupil will be classified as a habitual truant and required to attend an attendance review board, truancy mediation program, or a comparable program.
- (d) The fourth time a truancy report is issued within the same school year, a pupil will be classified as a “habitual truant” and will be under the jurisdiction of the juvenile court. If the pupil is then found to be a ward of the court, the pupil will be subject to one or more of the following: (1) 20 to 40 hours of community service; (2) up to a \$50 fine for which parents are jointly liable; (3) attendance in a court approved truancy prevention program; and/or (4) loss of driving privileges.

Educ. Code § 48264.5.

## 6. WITHHOLDING OF GRADES, DIPLOMA, TRANSCRIPTS

After affording due process, a school district may withhold the grades, diploma, and transcripts of a pupil responsible for willfully cutting, defacing or otherwise injuring district property until the pupil or the parent or guardian has paid for the damages, or completed a program of voluntary work if unable to pay. Districts must establish rules and regulations to implement such actions. Educ. Code § 48904(b).

## 7. NOTIFICATION OF LAW ENFORCEMENT AGENCY

Whenever any school district employee is attacked, assaulted, or physically threatened by a pupil, it is **the duty of the employee and the supervisor** who has knowledge of the incident to promptly report the matter to the law enforcement authorities. Failure to make such a report is an infraction punishable by a fine of not more than \$1,000. Any employee of any school district who attempts to impede the making of a required report is guilty of an infraction and may be assessed a fine of not less than \$500 or more than \$1,000. No board, board member, or county or district employee shall impose any sanctions against a person for making this report. Educ. Code § 44014.

In case of assault with a deadly weapon or force likely to produce great bodily injury against any person, the principal is **required** to notify city or county law enforcement authorities prior to suspension or expulsion of a pupil. Educ. Code § 48902(a).

In cases of unlawful possession, use, sale, furnishing, or being under the influence of any controlled substance, alcoholic beverage or intoxicant, the principal is **required** to notify county or school district law enforcement authorities within one school day after suspension or expulsion. Educ. Code § 48902(b).

In cases of unlawful acts involving narcotics, controlled substances, or the possession of firearms, explosives or weapons on school grounds, the principal is **required** to notify city or county law enforcement authorities and the school security or police department. Educ. Code § 48902(c).

A principal is immune from civil or criminal liability for such report unless the report was false and the principal knew the report was false or the report was made with reckless disregard for the truth or falsity of the report. Educ. Code § 48902(d).

A principal reporting a criminal act committed by a special needs student is required to transmit copies of the student’s special education and disciplinary records to the authorities to whom he or she reports the criminal act. These copies may be transmitted only to the extent permissible under the federal Family Educational Rights and Privacy Act of 1974. Educ. Code § 48902(e).

## **8. INJUNCTION**

Any public employer can seek and obtain a temporary restraining order and injunction on behalf of an employee who has suffered an assault, battery, stalking or “credible” threat of violence at the workplace.

To obtain a temporary restraining order, a public employer must file a sworn affidavit which provides reasonable proof an employee has suffered unlawful violence, a credible threat of violence, or great or irreparable harm. If a temporary restraining order is issued by the court, it typically remains in effect for up to 21 days pending a hearing where the defendant can appear. If the person allegedly making threats is a current employee, the judge shall receive evidence concerning the school district’s decision to retain, terminate, or otherwise discipline the defendant. Ultimately, if the judge determines the defendant engaged in violence or threatened violence, the judge may issue an injunction for up to three (3) years prohibiting further unlawful violence or threats.

No one who has had a restraining order issued against them can purchase a firearm. Violation of a temporary restraining order is punishable by a fine of up to \$1,000 and/or one year of imprisonment. Civ. Proc. Code § 527.8.

## ***D. TEACHERS’ METHODS OF ENFORCING SCHOOL DISCIPLINE***

### **1. CORPORAL PUNISHMENT PROHIBITED**

Corporal punishment is prohibited by California law. Corporal punishment means “the willful infliction of physical pain on a pupil.” It does not include reasonable and necessary force for self-defense, to quell a disturbance, to prevent injury to others or damage to property, or to remove dangerous weapons from the possession of students. Educ. Code §§ 49000, 49001; Penal Code § 11165.4.

Any person who inflicts unjustifiable physical pain or mental suffering on a child that does not result in great bodily harm or injury is guilty of a misdemeanor. Penal Code § 273(b).

Corporal punishment does not include all reasonable force necessary to carry out the teacher's duty to hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess, with the same degree of physical control over a pupil that a parent would be legally privileged to exercise but shall not exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning. Educ. Code § 44807.

## **2. SECLUSION OR BEHAVIORAL RESTRAINT OF STUDENTS**

Educators' ability to restrain or seclude students is highly limited. The law encourages positive behavioral interventions. Education Code Section 56520 states:

(a) The Legislature finds and declares all of the following:

(1) That the state has continually sought to provide an appropriate and meaningful educational program in a safe and healthy environment for all children regardless of possible physical, mental, or emotionally disabling conditions.

(2) That some school age individuals with exceptional needs have significant behavioral challenges that have an adverse impact on their learning or the learning of other pupils, or both.

(3) That Section 1400(c)(5)(F) of Title 20 of the United States Code states that research and experience demonstrate that the education of children with disabilities can be made more effective by providing incentives for positive behavioral interventions and supports to address the learning and behavioral needs of those children.

(4) That procedures for the elimination of maladaptive behaviors shall not include those deemed unacceptable under Section 49001 or those that cause pain or trauma.

(b) It is the intent of the Legislature:

(1) That children exhibiting serious behavioral challenges receive timely and appropriate assessments and positive supports and interventions in accordance with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing regulations.

(2) That assessments and positive behavioral interventions and supports be developed and implemented in a manner informed by guidance from the

United States Department of Education and technical assistance centers sponsored by the Office of Special Education Programs of the United States Department of Education.

(3) That when behavioral interventions, supports, and other strategies are used, they be used in consideration of the pupil's physical freedom and social interaction, be administered in a manner that respects human dignity and personal privacy, and that ensure a pupil's right to placement in the least restrictive educational environment.

(4) That behavioral intervention plans be developed and used, to the extent possible, in a consistent manner when the pupil is also the responsibility of another agency for residential care or related services.

(5) That training programs be developed and implemented in institutions of higher education that train teachers and that in-service training programs be made available as necessary in school districts and county offices of education to ensure that adequately trained staff are available to work effectively with the behavioral intervention needs of individuals with exceptional needs.

*a.) SECLUSION AND RESTRAINT RULES FOR ALL STUDENTS*

The below-described rules apply with regard to all pupils, including individuals with exceptional needs:

A pupil has the right to be free from the use of seclusion or behavioral restraints of any form (including administration of drugs that are not part of pupil's standard medical treatment) imposed as a means of coercion, discipline, convenience, or retaliation by staff. Educ. Code § 49005.2.

An educational provider should avoid, whenever possible, the use of seclusion or behavioral restraints, but MAY use seclusion or a behavioral restraint only to control behavior that poses **a clear and present danger of serious physical harm to the pupil or others that cannot be immediately prevented by a response that is less restrictive**. Educ. Code §§ 49005.4, 49005.6.

Further, the Education Code specifically delineates the duties of educational providers in the use of seclusion or restraints:

(a) An educational provider shall NOT do any of the following:

(1) Use seclusion or a behavioral restraint for the purpose of coercion, discipline, convenience, or retaliation.

(2) Use locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.

(3) Use a physical restraint technique that obstructs a pupil's respiratory airway or impairs the pupil's breathing or respiratory capacity, including techniques in which a staff member places pressure on a pupil's back or places his or her body weight against the pupil's torso or back.

(4) Use a behavioral restraint technique that restricts breathing, including, but not limited to, using a pillow, blanket, carpet, mat, or other item to cover a pupil's face.

(5) Place a pupil in a facedown position with the pupil's hands held or restrained behind the pupil's back.

(6) Use a behavioral restraint for longer than is necessary to contain the behavior that poses a clear and present danger of serious physical harm to the pupil or others.

(b) An educational provider shall keep constant, direct observation of a pupil who is in seclusion, which may be through observation of the pupil through a window, or another barrier, through which the educational provider is able to make direct eye contact with the pupil. The observation required pursuant to this subdivision shall not be through indirect means, including through a security camera or a closed-circuit television.

(c) An educational provider shall afford to pupils who are restrained the least restrictive alternative and the maximum freedom of movement, and shall use the least number of restraint points, while ensuring the physical safety of the pupil and others.

(d) If prone restraint techniques are used, a staff member shall observe the pupil for any signs of physical distress throughout the use of prone restraint. Whenever possible, the staff member monitoring the pupil shall not be involved in restraining the pupil.

Educ. Code § 49005.8.

***b.) SECLUSION AND RESTRAINT RULES FOR STUDENTS  
RECEIVING SPECIAL EDUCATION***

California law includes behavioral intervention rules applicable to students receiving special education services. As noted, the law encourages positive behavioral interventions, but allows emergency interventions as needed. Educ. Code § 56521.1.

Education Code Section 56521.2 states:

(a) A local educational agency or nonpublic, nonsectarian school or agency serving individuals with exceptional needs pursuant to Sections 56365 and 56366,

shall not authorize, order, consent to, or pay for the following interventions, or any other interventions similar to or like the following:

- (1) Any intervention that is designed to, or likely to, cause physical pain, including, but not limited to, electric shock.
- (2) An intervention that involves the release of noxious, toxic, or otherwise unpleasant sprays, mists, or substances in proximity to the face of the individual.
- (3) An intervention that denies adequate sleep, food, water, shelter, bedding, physical comfort, or access to bathroom facilities.
- (4) An intervention that is designed to subject, used to subject, or likely to subject, the individual to verbal abuse, ridicule, or humiliation, or that can be expected to cause excessive emotional trauma.
- (5) Restrictive interventions that employ a device, material, or objects that simultaneously immobilize all four extremities, including the procedure known as prone containment, except that prone containment or similar techniques may be used by trained personnel as a limited emergency intervention.
- (6) Locked seclusion, unless it is in a facility otherwise licensed or permitted by state law to use a locked room.
- (7) An intervention that precludes adequate supervision of the individual.
- (8) An intervention that deprives the individual of one or more of his or her senses.

(b) In the case of a child whose behavior impedes the child's learning or that of others, the individualized education program team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior, consistent with Section 1414(d)(3)(B)(i) and (d)(4) of Title 20 of the United States Code and associated federal regulations.

For an individual with exceptional needs, if a behavioral restraint or seclusion is used, there are additional procedures for follow-up. Education Code Section 56521.1 states:

(e) To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one school day if an emergency intervention is used or serious property damage occurs. A behavioral emergency report shall immediately be completed and maintained in the file of the individual with exceptional needs. The behavioral emergency report shall include all of the following:

- (1) The name and age of the individual with exceptional needs.
- (2) The setting and location of the incident.
- (3) The name of the staff or other persons involved.



- (4) A description of the incident and the emergency intervention used, and whether the individual with exceptional needs is currently engaged in any systematic behavioral intervention plan.
- (5) Details of any injuries sustained by the individual with exceptional needs, or others, including staff, as a result of the incident.

(f) All behavioral emergency reports shall immediately be forwarded to, and reviewed by, a designated responsible administrator.

(g) If a behavioral emergency report is written regarding an individual with exceptional needs who does not have a behavioral intervention plan, the designated responsible administrator shall, within two days, schedule an individualized education program (IEP) team meeting to review the emergency report, to determine the necessity for a functional behavioral assessment, and to determine the necessity for an interim plan. The IEP team shall document the reasons for not conducting the functional behavioral assessment, not developing an interim plan, or both.

(h) If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive behavioral intervention plan, an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention plan.

Educ. Code § 56521.1.

### 3. SEIZURE OF INJURIOUS OBJECTS

A teacher is authorized to seize any weapon – a firearm, knife, razor, switchblade, machine gun or other “injurious object” capable of inflicting substantial bodily damage from any **person** on school premises or on a public right of way adjacent to school property, or while under the authority of school personnel. Educ. Code § 49331; Penal Code § 626.10.

### 4. STUDENT SEARCHES

In the case of *In Re William G*, the California Supreme Court stated the constitutional standard to be applied to a student search as follows:

Searches of students by public school officials must be based on a **reasonable suspicion** that the student or students to be searched have engaged, or are engaging, in a proscribed activity, i.e., a violation of a school rule or regulation, or a criminal statute; there must be articulable facts together with rational inferences from those facts, supporting that reasonable suspicion. Neither indiscriminate searches of lockers nor more discreet individual searches of a locker, purse or a person, of a student, can take place absent the existence of reasonable suspicion. Respect for privacy is the rule--a search is the exception.

*In Re William G* (1985) 221 Cal.Rptr.118 (emphasis added).

However, no school employee shall conduct a search that involves: a) conducting a body cavity search of a pupil manually or with an instrument or b) removing or arranging any or all of the clothing of a pupil to permit a visual inspection of the underclothing, breast, buttocks, or genitalia of the pupil. Educ. Code § 49050.

The California Attorney General has issued an opinion that the use of metal detectors in schools is not unconstitutional where a substantial safety problem exists and the use is governed by formally adopted uniform procedures which minimize the intrusion and the opportunity for the exercise of arbitrary discretion. Such procedures should include at least advance notice of the search, truly random selection of students to be searched, and a second walk-through where the metal detector is activated. Ops. Cal. Atty. Gen. 92-201 (1992). However, districts, employees, and unions should be aware of racially discriminatory policing and disciplinary practices in schools, and should work to implement positive student support systems and interventions.

## 5. DETENTION

A pupil may be detained for up to one hour after school for disciplinary reasons except a pupil may not be detained so as to miss regular bus transportation. Pupils may not be detained during lunch or recess for disciplinary reasons. 5 Cal. Code Reg. §§ 307, 352, 353. A school district may adopt reasonable rules and regulations authorizing a teacher to restrict a pupil's recess time for disciplinary purposes. Educ. Code § 44807.5.

## 6. SUSPENSION FROM CLASS BY TEACHER

A teacher may **suspend** any pupil from his/her/their class or class period for any act discussed in the “grounds for suspension and expulsion” section above, for the **day of suspension and the day following**. Educ. Code §§ 48910; 48900. The suspension must be immediately reported to the principal and the student sent to the principal for further action. The student may not be placed in another regular class during the time of the class suspension. Educ. Code § 48910. The teacher must also request a parent/teacher conference regarding the suspension as soon as possible, with a counselor or school psychologist, if possible. An administrator must attend the conference at the request of the parent or teacher. The pupil shall not be returned to the class from which the pupil was suspended without the concurrence of the teacher and principal. Educ. Code § 48910.

The district **may** adopt a policy authorizing teachers to require the parent or guardian of a pupil suspended by the teacher to attend a portion of the school day in the classroom from which the pupil was suspended. If adopted, teachers must apply the policy uniformly. Parents are to be notified of the policy in writing prior to the policy being invoked, and are to meet with the school administrator after the classroom visitation. Educ. Code § 48900.1.

A teacher may also **recommend** a pupil for suspension from school, but the final decision lies in the hands of school administrators after following detailed procedures. These suspensions may last for no more than five (5) consecutive school days and the student has

certain rights to at least an informal conference before being suspended. “Wherever practicable,” the referring teacher is to be present at the conference. If the student poses “a clear and present danger,” however, suspension can precede the conference. Educ. Code § 48911. Once the student returns, the teacher can require the student to complete missed assignments or tests. Educ. Code § 48913. If the student is suspended from school for more than two days, the student or parent can request homework that would have otherwise been assigned. Educ. Code § 48913.5.

## **7. CIVIL ACTION**

As previously discussed, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil, employee, or volunteer in a district or who willfully cuts, defaces, or injures the property of any such person is liable for damages not to exceed \$10,000 (adjusted for inflation). The parent or guardian is also liable for all property belonging to the district loaned to a minor and not returned upon demand. Educ. Code § 48904.

A teacher may request the school district to take legal action against a pupil (or the pupil’s parents) when the teacher or the teacher’s property is injured or damaged by the pupil while (1) located on district property, (2) being transported to or from a district activity, (3) present at a district activity, or (4) in retaliation for an employee’s lawful acts in the line of duty. Educ. Code § 48905.