

# **SCHOOL SAFETY:**

## **Tools for Teachers**

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**Rosalind D. Wolf**  
**California Teachers Association**  
**Department of Legal Services**

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# INTRODUCTION

In 2002, the California Legislature found as follows:

SECTION 1. The Legislature hereby finds and declares that over the past decade school violence, specifically “school terrorism,” has increased dramatically. There has been reported 27 shooting incidents since 1992. In recent years, the frequency of these violent acts have increased 73 percent. Nineteen of these incidents have occurred in the last three and one-half years. California has not been immune from these attacks. There have been five reported school shootings since 1998. Many more shootings have escaped media attention.

In nearly all of these cases the perpetrator has either made statements threatening future violence or engaged in overt behavior commonly associated with criminal violence prior to the shooting. Those who were aware of this behavior often did not report their concerns to school officials or law enforcement.

The Legislature further finds and declares that there is a compelling need to encourage students, educators, and parents to report threats of violence and violent behavior of pupils and others that pose a danger to school safety. AB 2484 (2002).

The problem of violence and criminality is a pervasive social problem which threatens all of us. Schools are in every respect a microcosm of society. Everything that is happening in the larger society is reflected in schools at a higher level of intensity because pupils are immature and lack the good judgment of adults. Illegal drug use, uncontrolled sexual behavior, and rampant violence - once thought to be adult activities - plague schools.

Schools did not create these problems and they alone cannot solve them. But, the failures of society and parents are visited on teachers. The most that schools can hope to do is to manage these problems, to contain them, and to minimize the extent to which they interfere with the educational mission and threaten the safety of teachers and pupils.

School violence is a particular problem because students and teachers are a captive audience compelled to be in attendance and also, because fear and witnessing violent acts is antithetical to a learning environment.

The law is not the best vehicle for preventing violence, but the primary response to increasing violence has been more laws sanctioning violent conduct, increasing penalties and longer jail sentences. In seeking remedies for school violence, it is imperative that measures other than law enforcement be adopted. Obviously, law enforcement is necessary, but in itself enforcement serves the purpose of punishment far more effectively than deterrence.

The best way to prevent violence is through socialization - training, educating, and shaping the behavior of the young to reject violence as a way of expressing strong emotion or resolving disputes. On the contrary, this society socializes its children to choose violence. Television, movies, cartoons, toys, and video games glorify and glamorize violence. Many children for whom these are the major shapers of behavior hear no countervailing messages.

Real solutions to violence depend on a resolve by society to reduce it. That will is lacking now, but it may grown as more and more people are threatened and more and more societal resources are devoted to law

enforcement, security, and prisons.

Education must be considered as part of the solution - as a means of preventing violence. This can be accomplished by including education for teachers and administrators in conflict resolution, mediation and managing violent situations. More significantly, education for students is needed regarding the consequences of and alternatives to violence, including conflict resolution and mediation techniques. And public education is needed regarding the social cost of violence and conflict resolution - e.g., anti-violence campaigns financed by tax on weapons and ammunition.

In addition, any serious effort to reduce and prevent violent crime must include:

- ▶ DECRIMINALIZATION OF DRUGS; AND
- ▶ More GUN CONTROL

This said, we turn to a discussion of laws which may help to minimize school violence.

# SCHOOL SAFETY

## ***A. PARENTS' DUTY TO DISCIPLINE AND CONTROL THEIR CHILDREN***

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 direct responsibility for all aspects of children's conduct and financial liability for their misconduct or negligence. *See generally*, FAMILY CODE §§ 3010, 3900, 4100-4105. Certainly, parents are also prohibited from abusing or neglecting their children.

While parents are ultimately liable, students are required to conform their conduct to acceptable standards. These general standards include the duties to:

- ▶ Attend school punctually and regularly (5 CAL. CODE REG. § 300);
- ▶ Obey promptly all directives of teachers and others in authority (5 CAL. CODE REG. § 300);
- ▶ Observe good order and proper deportment (5 CAL. CODE REG. § 300);
- ▶ Be respectful to teachers and others in authority (5 CAL. CODE REG. § 300);
- ▶ Be kind and courteous to other students (5 CAL. CODE REG. § 300);
- ▶ Refrain entirely from the use of profane and vulgar language (5 CAL. CODE REG. § 300);
- ▶ Remain on school premises (5 CAL. CODE REG. § 303).

In addition, students are prohibited from engaging in any of the conduct which constitutes grounds for suspension or expulsion. See pages 16-18.

In the event of a student's expulsion, 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. ED CODE § 48917.

The parent of a student who possesses a firearm or live ammunition may be ordered to participate in parent education classes. PEN. 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, and for all school property loaned to a minor and not returned on demand. ED. CODE 48904.

## **B. Teachers' General Duty of Custody and Control**

In most discipline and control situations, a teacher's legal position is that of "in loco parentis."<sup>1</sup> As traditionally 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>

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. ED. CODE § 44807.

Under California law, "[e]very teacher shall enforce the course of study, . . . and the rules and regulations prescribed for schools." ED. 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. ED. CODE § 44807. Teachers are not responsible or liable for the conduct or safety of pupils while they are 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. ED. CODE §§ 44808, 87706.

## **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. This means that Board members and administrators are responsible for general school administration, including enforcement of the school district's discipline policy. 5 CAL. CODE REG. § 5551.

### **1. 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." ED. CODE § 35294 - 35294.9.

The Plan must be drafted by the school site counsel, 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. 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:

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ED. CODE § 44807. See, e.g., *Phyllis P. v. Superior Court* (1986) 183 Cal.App.3d 1193, 1196 [228 Cal.Rptr. 776, 778]; but see *In re William G.* (1985) 40 C.3d 550, 560 [709 P.2d 1287].

*Brinkerhoff v. Merselis' Executors* 24 N.J.L. 680, 683; see also ED. CODE § 44807. 39 AM.JUR., P. & C. § 61.

- ▶ 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.

## 2. SAFE SCHOOLS ASSESSMENT

Semi-annually, each school must report to the county superintendent all crimes committed on school grounds. Each county superintendent must compile the data and submit it to the state department of education. The SDE shall make available a summary of the aggregated data, shall identify trends in school crime and evaluate school crime prevention programs by comparing the numbers and rates of crimes for each year against those of previous years. Penal Code 628.1, et. seq; Title 5 Section 700-705.

## 3. DISCIPLINE POLICY

Additionally, each **school** must adopt rules and procedures on student discipline. After soliciting the views of parents, teachers, school administrators, school security personnel, and junior and senior high school pupils, the rules shall 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. ED. CODE §§ 35291, 35291.5, Title 5 Section 5552.

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);
- ▶ Dissemination of the district's student discipline policy to all employees and all students (5 CAL. CODE REG. § 5552).

#### **4. 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).

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 every other thing reasonably necessary to protect the life, safety, and health of employees. LABOR CODE § 6401.

“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” shall be 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 [106 Cal.Rptr. 134]. Also, 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 [269 Cal.Rptr. 6].

“An employer's statutory duty under the Labor Code is greater than a duty of care imposed pursuant to common law principles. The duty “is not predicated on a finding that a particular injury is foreseeable.” *Bonner v. W.C.A.B.* (1990) 225 Cal.App.3d 1023, 1034 [275 Cal.Rptr. 337].

The duty of an employer to its employees is 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 [52 Cal.Rptr. 561]. This includes a duty to take adequate security precautions. *See, e.g., Cohen v. Southland Corp.* (1984) 157 Cal.App.3d 130, 144 [203 Cal.Rptr. 572].

#### **5. INJURY PREVENTION PROGRAM**

A school district shall establish, implement, and maintain an effective injury prevention program. The program shall 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. The school district shall correct unsafe and unhealthy conditions and work practices in a timely manner.

The employer's injury prevention program 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

## **6. CAL/OSHA GUIDELINES FOR WORKPLACE SECURITY**

### **A) CHARACTERISTICS OF TYPE II EVENTS = ASSAULT BY STUDENT/PARENT**

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 **teaching, administrative and support staff in schools where students have a history of violent behavior.**

Unlike Type I events which represent irregular occurrences in the life of any particular at-risk establishment, Type II events occur on a daily basis in many service establishments, and therefore

represent a more pervasive risk for many service providers.

## **B) PREVENTIVE MEASURES**

### **1. 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 patients, clients, passengers, customers or students 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.

### **2. Preventive Strategies for Type II Events**

An increasing number of fatal, nonfatal assaults and threats involve an employee who is providing a service to a client, patient, customer, passenger or other type of service recipient.

Employers who provide service to recipients, or service “objects,” known or suspected to have a history of violence must also integrate an effective workplace security component into their injury prevention program. 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 involving their clients, patients, customers, passengers and members of the general public to whom they must provide services.

Employers concerned with Type II events need to be aware that 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, in addition to placing barriers between clients and service providers. Escape routes can also be a critical component of workplace design. In certain situations, the installation of alarm systems or “panic buttons” may be an appropriate back-up measure. Establishing a “buddy” system to be used in specified emergency situations is often advisable as well. The presence of security personnel should also be considered where appropriate.

## **7. 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 (see pp. 16-18):

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. ED. 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 **may** 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, the district attorney **may** provide written notice to the superintendent of the school district of attendance. ED. CODE § 48909.

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. ED. CODE § 48915.1.

## **8. UNSAFE SCHOOL CHOICE**

The Elementary and Secondary Education Act (ESEA or No Child Left Behind Act of 2001) provides that every state education agency, as a condition of receiving federal funds, must develop a policy to identify "*persistently dangerous schools.*"

A California public elementary or secondary school is considered to be "persistently dangerous" if **both** of the following conditions exist for **three-consecutive fiscal years**:

1. The school has a federal or state gun-free schools violation or a violent criminal offense has been committed by a student or a non-student on school property; **and**
2. The school has expelled a specified number of students for any of the following offenses:
  - Assault or battery upon any school employee - Section 48915(a)(5)
  - Branding a knife - Section 48915(c)(2)
  - Causing serious physical injury to another person, except in self-defense - Section 48915(a)(1)
  - Hate violence - Section 48900.3
  - Possessing, selling or furnishing a firearm - Section 48915(c)(1)
  - Possession of an explosive - Section 48915(c)(5)
  - Robbery or extortion - Section 48915(a)(4)
  - Selling a controlled substance - Section 48915(c)(3)
  - Sexual assault or sexual battery - Section 48915(c)(4)

**The number of expulsions for these offenses must exceed one of the following rates:**

- For a school of fewer than 300 students, three expulsions;
- For a larger school, one expulsion for every 100 students or fraction thereof.

Students who attend “persistently dangerous” schools, or who are victims of violent criminal offenses, now have a new federal **right to transfer** to another public school within the District (including a public charter school) that has not been identified as unsafe.

A district that has one or more schools identified as persistently dangerous must:

- Notify parents of each student attending the school;
- Offer students the opportunity to transfer to a safe public school;
- For those students who accept the offer, complete the transfer.

# **PROHIBITIONS AGAINST VIOLENCE AND DISRUPTION IN SCHOOLS**

## ***A. 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. ED. CODE § 32211.

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

Any person who comes into a school building or upon 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 72 hours 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. PEN. CODE § 626.8.

Any person other than a student, parent or guardian, or employee 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. Such person shall not return for at least thirty (30) days. The request to leave shall be made exclusively on the basis that it appears reasonable to conclude that the continued presence of the person would be disruptive of, or interfere with, classes or other school activities. Failure to comply promptly with the request to remain off the school premises for thirty days constitutes a misdemeanor. Any person requested to leave the premises may appeal his expulsion to the district superintendent and ultimately to the governing board. PEN. CODE § 626.7; ED. CODE § 32211.

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. PEN. CODE § 653(g.)

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, obstruct, or to inflict damage to property or bodily injury to any person, is guilty of a misdemeanor. A first offence 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. ED. 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. ED. 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. PEN. CODE § 626.85.

## **2. CLASSROOM INTERRUPTIONS**

It is the intent of the of the Legislature that each school district board formally address the problem of classroom interruptions and adopt a policy to control those interruptions. ED. CODE § 32212.

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 offence 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. ED. 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. ED. 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 his 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. PEN. CODE § 71.

Any person, except a registered student of the school, 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. PEN. CODE § 415.5.

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 (1) year, or by both. PEN. CODE § 241.2, 243.2. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. PEN. CODE § 240. A battery is any willful and unlawful use of force or violence upon the person of another. PEN. 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. PEN. CODE § 243.5(a).

## **5. WEAPONS AND AMMUNITION**

Any person who brings a firearm within 1000 feet of the grounds of any public or private school,

college, or university, 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. PEN. CODE § 626.9. 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. PEN. CODE § 626.10. Except as specified, any person who carries any ammunition onto school grounds may be imprisoned for six months. PEN. CODE § 12316.

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 for up to one year, by 50-500 hours of community service, and by the withholding, suspension or revocation of the minor's driver's license until age 18. The custodial parent or guardian may be ordered to participate in parenting education classes. PEN. CODE § 12101.

## **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. PEN. CODE § 594.1.

## **7. HATE AND 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; establish guidelines for teacher and administrator inservice to promote appreciation of diversity, discourage discrimination and prevent and respond to hate violence.

Teachers are required to promote morality, truth, justice, patriotism . . . and the meaning of equality and human dignity, including the promotion of harmonious relations . . . Teachers are encouraged to foster an environment that is free from discriminatory attitudes, practices, events, or activities in order to prevent acts of hate violence. ED. CODE § 233.5.

### ***B. METHODS FOR 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. ED. CODE §§ 49000, 49001; PEN. CODE § 11165.4.

Any person who inflicts unjustifiable physical pain or mental suffering on a child is guilty of a misdemeanor. PEN. CODE § 273(a).

#### **2. DRESS CODE**

Gang related apparel is hazardous to the health and safety of the 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 healthy and safety. The



uniform shall be selected by the principal, staff and parents; shall provide six (6) months notice, assistance to economically disadvantaged pupils, and shall allow parents to opt out without penalty. ED. CODE § 35183

Gang related apparel shall not be considered a protected form of free speech. ED. CODE § 35183.

### **3. SEIZURE**

A teacher is authorized to seize any 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. ED. CODE § 49331; PEN. CODE § 626.10.

### **4. SEARCH**

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

We conclude that 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 (that is, a violation of a school rule or regulation, or a criminal statute). These must be articulable facts supporting that reasonable suspicion. Neither indiscriminate searches of lockers nor more discreet individual searches of a locker, purse or a person, here 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. ED. CODE § 49050.

The 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).

### **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 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. ED. CODE § 44807.5.

### **6. COMMUNITY SERVICE**

A Superintendent, principal or designee may require a pupil to perform community service on

school grounds during nonschool hours, including outdoor beautification, campus betterment, and teacher or peer assistance programs, or off school grounds with a parent's written permission. ED. CODE § 48900.6.

## **7. TRANSFER**

Disruptive or violent students, age 16 and up, can be involuntarily transferred to "continuation schools," which may or may not be located on a separate site. ED. 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.

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 also be temporarily assigned to 24-hour elementary schools for insubordination or refusal to obey the rules and regulations of school authorities. ED. CODE § 48607. School principals can recommend admission to a board of admission. ED. 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.

## **8. SUSPENSION AND EXPULSION**

### **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
- 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. 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.
- d. Unlawfully possessing, using, selling or furnishing, or being under the influence of, any controlled substance, an alcoholic beverage, or intoxicant, or drug paraphernalia.
- e. Possessing or using tobacco.
- f. Committing or attempting to commit robbery or extortion.
- g. Causing or attempting to cause damage to school or private property.

- h. Stealing or attempting to steal school or private property.
- i. Knowingly receiving stolen school or private property.
- j. Disrupting school activities or willfully defying valid authority.
- k. Harassing, threatening or intimidating a witness in a school disciplinary proceeding.
- l. Committing an obscene act or engaging in habitual profanity or vulgarity.
- m. Committing a sexual assault or sexual battery.
- n. Committing sexual harassment, as defined. (Applies only to grades 4-12). ED. CODE § 48900.2.
- o. Causing, attempting or threatening to cause, or participating in hate violence as defined. (Applies only to grades 4-12). ED. CODE § 48900.3.
- p. Intentional harassment, threat, intimidation of pupil or group of pupils that materially disrupts or . . . creates a hostile educational environment. ED. CODE § 48900.4
- q. Making terrorist threats, as defined, against school officials or school property.

The above-listed acts must be related to school activity or attendance to be used as a basis for suspension or expulsion. ED. CODE § 48900.

However, the Attorney General has ruled that suspension or expulsion may be imposed upon students for conduct away from school premises, outside of school hours and not involving a school activity or attendance when the nature and extent of such conduct have become common knowledge among other students at the school and parents of other students have expressed concern because of the contemptuous attitude of the students engaged in the questionable conduct. 48 OPS. ATTY. GEN. 4 (1966).

It is the intent of the Legislature that alternatives to suspension or expulsion be used for pupils who are truant or tardy. ED. CODE § 48900.

Suspension is to be the last resort after the failure of other forms of discipline. ED. CODE § 48900.5 and 48911.

## **B) SUSPENSION BY TEACHER**

A teacher may suspend any pupil from his/her class or class period for any act listed above, for the **day of suspension and the day following**. The suspension must be immediately reported to the principal and the student sent to the principal for further action. The teacher must also request a parent/teacher conference with a counselor regarding the suspension as soon as possible. The pupil shall not be returned to the class from which the pupil was suspended without the concurrence of the teacher

and principal. ED. CODE § 48910.

The district **shall** 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. ED. CODE § 48900.1. Parents are 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. LABOR CODE § 230.8.

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. If the student poses "a clear and present danger," however, suspension can precede the conference. ED. CODE § 48911. Once the student returns, the teacher can require him/her to complete missed assignments or tests. ED. CODE § 48913.

In a given year, a student cannot be suspended for more than twenty (20) school days from a given school, or thirty (30) school days if he/she transfers to another school. ED. CODE § 48903.

"Suspension" means removal of a pupil from instruction for adjustment purposes. It does not mean reassignment to another class at the same school where the pupil will receive instruction. ED. CODE § 48925. However, if the pupil poses no imminent danger to campus safety, they may be assigned to "a supervised suspension classroom," separated from other students, to complete schoolwork assigned by the pupil's regular teacher or the supervising teacher. ED. CODE § 48911.1.

### **C) EXPULSION AND READMISSION**

A teacher has no power to expel a disruptive or violent student from class or school. The expulsion process can be triggered only by recommendation of the principal or superintendent (or a hearing officer). ED. CODE § 48915. A teacher can, of course, present evidence and urge expulsion. Once expulsion is formally recommended, a detailed series of notices and hearings transpires prior to actual expulsion. ED. CODE § 48918. Various appeals can also be undertaken to the county board of education. ED. CODE § 48920-48924.

At the time of expulsion, the governing board shall recommend a rehabilitation plan 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. ED. CODE § 48917.

An expulsion order remains in effect until the governing board 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 him or to place the pupil in another program. ED. CODE § 48916, 48916.2.

The principal, the superintendent or the governing board may require a pupil to perform community service during nonschool hours as part of or in lieu of suspension or expulsion. ED. CODE § 48900.6.

An expulsion can be appealed within 30 days to the county board of education. ED. CODE § 48919.

## 1. 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, except a community day school. ED. 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. ED. CODE § 48915.

## 2. 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.

- 4) Robbery or extortion.
- 5) Assault or battery on any school employee. ED. CODE § 48915(a).

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. ED CODE § 48915.

A pupil expelled from school for the above reasons 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. ED. CODE § 48915.2.

After the expulsion period, a 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. ED. CODE § 48915.2(b)).

### **3. Less Serious Offenses**

In order to expel pupils based on other 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. ED 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. ED. 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. ED. CODE § 48915.1.

A school board can deny enrollment to a pupil who has been expelled from another school district for the expulsion period, if it determines that the pupil poses a danger to students or employees in the school district. ED. 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 interdistrict agreement. ED. CODE § 48915.1.

### **D) SUSPENSION AND EXPULSION OF SPECIAL EDUCATION STUDENTS**

In 2002, the California Legislature finally brought California into conformity with the federal Individuals with Disabilities in Education Act (IDEA). A.B. 1859.

### **Removal For Up to Ten School Days**

- School personnel may remove a child with a disability for up to 10 school days in a school year for any violation of school rules. and may remove for additional periods of up to 10 school days for separate acts of misconduct, as long as the removals do not constitute a pattern.
- Schools do not need to provide services during the first 10 school days in a school year that a child is removed.

### **Removal For More Than Ten Days**

- School personnel can remove a child to an interim alternative educational placement for up to 45 days if the child brings a gun or a dangerous weapon to school or a school function, or for possession or sale of illegal drugs or controlled substances
- Schools can also request a due process hearing officer in an expedited hearing to remove a child for up to 45 days if keeping the child in his or her current placement is substantially likely to result in injury to the child or to others.
- When commencing a removal (after removal for more than 10 school days in a school year), the parents must be notified and a child's IEP team must meet to assess the child's troubling behavior and develop a behavioral assessment plan or review the child's behavioral intervention plan to address that behavior.
- Schools must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of his or her IEP.
- Removal of a child for more than 10 school days in a school year is considered a change of placement, and a manifestation determination is required to determine whether the behavior was a manifestation of the child's disability. The parent may challenge the determination in an expedited due processing hearing.
- A child with a disability cannot be long-term suspended or expelled from school for behavior that is a manifestation of his or her disability.

A pupil who has not been determined to be eligible for special education and who has engaged in behavior that violated any rule or code of conduct may assert the protections afforded to pupils in special education programs.

Copies of the special education and disciplinary records of a pupil with exceptional needs must be transmitted for consideration by law enforcement authorities when a criminal act committed by that pupil is reported.

## **9. TRUANCY**

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; and (3) recommend that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day. ED. 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 parents 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. ED. 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. ED. CODE 48264.

Upon the first truancy, 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. Upon the third truancy 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.

Upon the fourth truancy 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 \$100 fine for which parents are jointly liable; (3) attendance in a court approved truancy program; (4) loss of driving privileges. ED. CODE § 48264.5.

## **10. STUDENT GRADES**

In the absence of clerical or mechanical mistake, fraud, bad faith, or incompetency on the part of the teacher, grades given by a teacher to each pupil shall be final and not subject to change by others. A board or superintendent shall not order a grade changed unless the teacher who gave the grade is given the opportunity to state orally or in writing, or both, the reasons the grade was given, and is, to the extent practicable, included in all discussions relating to the changing of the grade. ED. CODE § 49066.

No grade of a pupil in a physical education class shall be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where circumstances beyond control of the pupil are involved. ED. CODE § 49066.

Boards must prescribe regulations requiring the evaluation of each pupil's achievements for each marking period, and requiring a conference with, or written report to parents when the pupil is in danger of failing a course. Unexcused absences equal to a number established by the board are grounds for a failing grade. Parents must be given reasonable opportunity to explain the absences, and there must be a method for identifying in the pupil's record that the failing grade was assigned because of unexcused



absences. ED. CODE § 49067.

## **11. 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. The district shall establish rules and regulations to implement this section. ED. CODE § 48909.

## **12. 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. ED. 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 law enforcement authorities prior to suspension or expulsion.

In cases of unlawful possession, use, sale, furnishing, or being under the influence of any controlled substance, alcoholic beverage or intoxicant, the principal **may** notify law enforcement authorities prior to suspension or expulsion.

The willful failure of a principal to make such a report is an infraction punishable by a fine to be paid by the principal of not more than \$500. 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. ED. CODE § 48902.

## **13. CIVIL ACTION**

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. The parent or guardian is also liable for all property belonging to the district loaned to a minor and not returned upon demand. ED. 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 his/her 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. ED. CODE § 48905.

In addition, injured teachers may have a right of action against the school district under the Constitutional right to safe schools. Article I, Section 28c provides that all public school students **and staff** have an “inalienable right to attend campuses which are safe, secure and peaceful.”

#### **14. INJUNCTION**

A school district 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.

In order to obtain a temporary restraining order, the school district 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 remains in effect for up to fifteen (15) 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 imprisonment. CODE OF CIV. PROC. § 5278.

#### **15. TEACHERS' RIGHT TO WALK OFF JOB BECAUSE OF SAFETY CONCERNS.**

An employee's refusal to work in unsafe working conditions is protected activity under the Educational Employment Relations Act (EERA), where the safety concern is legitimate and reasonable, arises during the course of duties either necessary to the job or requested by the supervisor, and the refusal to work is limited to actual and reasonable safety concerns. *Pleasant Valley School District* (1988) PERB Decision No. 708.

An employee cannot be laid off or discharged, or otherwise not paid, for refusing to perform work in the performance of which the Labor Code, any occupational safety or health standard or any Labor Department safety order 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.

# CIVIL LIABILITY AND DISTRICT RESPONSIBILITY

## *A. 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. 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. However, GOVERNMENT CODE section 825 requires a school district to provide a defense and pay any judgment or settlement resulting from any action in the course and scope of employment.

Fortunately, teachers are afforded considerable protection by the law in the performance of their duties. 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. ED. CODE § 35208. Additional coverage may be secured by school districts wishing to insure against personal liability of employees for injury resulting from any act or omission in the [scope of employment]. ED. CODE § 35208.

## *B. LIMITATIONS ON LIABILITY*

No employee of any school district shall be responsible or liable for the conduct or safety of pupils while they are not on school property, unless the district or a specified person 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. ED. CODE §§ 44808, 87706. In such specific undertakings, liability extends only while the pupil is or should be under the immediate and direct supervision of a district employee. ED. CODE § 44808.

# PROPOSED CONTRACT LANGUAGE

## TOPIC: SAFE WORKING CONDITIONS

- 22.1.1 Bargaining unit members shall not be required to work in unsafe conditions or to perform tasks that endanger their health, safety or well-being.

Upon notification, the District shall eliminate or correct any unsafe or hazardous condition.

The District shall comply with provisions of the California Occupational Safety and Health, as amended (California Labor Code 6300, et seq.) and regulations relating thereto (8 California Administrative Code section 330, et seq.).

- 22.1.3.1 The Association shall be immediately contacted and an Association designee shall be released with pay to participate in any opening conference between the District's representative(s) and a CAL-OSHA Compliance Inspection Engineer.
- 22.1.3.2 The Association designee shall be afforded release time with pay to accompany the District representative(s), if any, and the CAL-OSHA Compliance Inspection Engineer as the engineer conducts her/his walk-around inspection.
- 22.1.3.3 The Association on-site building representative shall also be provided all rights provided in 22.8.3.1 and 22.8.3.2.
- 22.1.3.4 The Association designee shall be provided release time with pay to be present at a closing conference between any District representative(s) and a CAL-OSHA Compliance Inspection Engineer.
- 22.1.3.5 The District shall, within two (2) days of receipt, provide to the Association a copy of any correspondence between the District and CAL-OSHA.
- 22.1.3.6 The Association shall appoint \_\_\_\_\_ representatives to the District Safety Committee established to implement the provisions of Labor Code 6401.7. Association representatives shall receive release time or their hourly rate of pay for committee work. The District Safety Committee shall also formulate a plan for developing disaster preparedness.
- 22.1.3.6.1 Copies of the plan will be distributed to each bargaining unit member and additional copies will be provided to the Association upon request.
- 22.1.3.6.2 The District is responsible for coordinating contact with outside agencies, maintenance of Emergency Procedures Manuals policy development and review (as recommended by the District

Safety Committee), equipment maintenance, coordination of emergency evaluation drills, maintenance of District and worksite safety supplies, and maintenance of worksite safety devices.

- 22.1.4 A bargaining unit member may refuse any directions that she/he feels could reasonably endanger anyone's life, safety and/or welfare. No bargaining unit member may be required to perform duties that would or possibly could endanger one's life, safety or welfare unless a state of emergency has been declared by a government entity having the authority to do so and the bargaining unit member has been pressed into service as a "disaster service worker" under Government Code § 3100 by a person having the authority to command citizens in the execution of their duties. Bargaining unit members may refuse any direction by such person(s) until adequate proof of his/her authority is provided.
- 22.1.5 In the event of an emergency school or District closure, including but not limited to natural disaster, quarantine, or government order, unit members shall receive their daily rate of pay and benefits. If make-up days are required by law, the District shall negotiate said days with the Association.
- 22.1.6 The District shall provide each classroom and major work area with first aid kits containing rubber gloves, mouth to mouth breathers, first aid book, flashlight, basic first aid supplies, and other items which may be unique to a work location such as a portable ladder, bull horn, am/fm radio, 100 to 1000 feet of line (for use in smoke filled halls or dark buildings), blankets, water, and food packages.
- 22.1.7 Each classroom and major work area shall have a telephone with monitored central office intercom service and an outside line. The intercom shall be used only for emergency purposes or special announcements. Intercoms and television cameras used for communications and monitoring safety conditions shall not be used for the purposes of evaluation, discipline, or discharge of unit members.
- 22.1.8 All medical plans of the District shall provide, with no co-payment or deductible requirements, hepatitis B vaccine injections for unit members.
- 22.1.9 With unit member participation, as decided by unit members at the site, and District Safety Committee direction and guidance, each work site shall have a Site Safety Committee which shall develop and annually review its site safety, health, and emergency preparedness plan for distribution to employees at the site. The committee shall also make the District aware of any unaddressed safety issues. Unit members serving on Site Safety committees shall receive release time or their hourly rate of pay for committee work. Site safety plans are expected to cover contingency plans for a wide variety of safety risks, including but not limited to suspicious or unwanted persons on the worksite, fires, earthquakes, floods, evacuations, and emergency closings. The District Safety Committee shall provide each worksite with general procedures for safety while the Site committee shall oversee unique site issues. The District shall comply with all recommendations of the Site Safety Committee.
- 22.1.10 The District shall keep all school grounds and facilities free of unwanted rodents, pests, and insects such as ants, roaches, and fleas. If insecticides or poisons are used, the

District shall notify unit members of the names of the chemicals used at least one week in advance of their use. The District shall apply them only at times when unit members and pupils are not present, allowing sufficient time for toxic effects to wear off before humans re-enter the affected area.

## **TOPIC: PUPIL SUSPENSION AND EXPULSION**

### **22.2 Short Term Pupil Suspension**

- 22.2.1 A bargaining unit member may suspend a pupil from her/his class for the day of the suspension and the following day for any act that disrupts or diminishes the education process, including but not limited to the following:
  - 22.2.1.1 Causing, attempting to cause, or threatening to cause physical injury to another person.
  - 22.2.1.2 Possessing, selling, or otherwise furnishing a firearm, knife, explosive, or other dangerous objects.
  - 22.2.1.3 Unlawfully possessing, using, selling, otherwise furnishing, or being under the influence of any controlled substance as defined under Health and Safety Code section 11007, alcoholic beverage, or intoxicant.
  - 22.2.1.4 Committing robbery or extortion.
  - 22.2.1.5 Causing or attempting to cause damage to school or private property.
  - 22.2.1.6 Stealing or attempting to steal school or private property.
  - 22.2.1.7 Committing an obscene act or engaging in habitual profanity or vulgarity.
  - 22.2.1.8 Disrupting school activities or willfully defying authority of a bargaining unit member.
  - 22.2.1.9 Committing sexual harassment as defined in Education Code section 212.5.
- 22.2.2 The acts stated above may occur at any time or place related to school attendance or school activity including, but not limited to, the following:
  - 22.2.2.1 While on school grounds.
  - 22.2.2.2 While going to or from school.
  - 22.2.2.3 During lunch period either on or off campus.
  - 22.2.2.4 During, going to, or coming from school-sponsored activities.
- 22.2.3 The unit member shall immediately report the suspension to the school principal (or her/his designee) and send the pupil to the principal (or her/his designee) for appropriate action.

- 22.2.4 The District shall facilitate in carrying out any and all obligations required of the bargaining unit member by the Education Code including but not limited to the sending of notices to parents regarding required meetings and the scheduling of such meetings at mutually acceptable times.
- 22.2.5 The pupil shall not be returned to the bargaining unit member's class during the period of suspension without the bargaining unit member's concurrence.
- 22.2.6 The pupil shall not be placed in another regular class during the period of suspension. If the pupil is assigned to more than one class per day, this section shall apply only to classes scheduled during the same time as the class from which the pupil was suspended.

### **22.3 Longer Term Pupil Suspension**

- 22.3.1 A bargaining unit member may also refer a pupil for suspension from school for up to five (5) days to the principal (or her/his designee) for any acts enumerated in Education Code section 48900, including, but not limited to, those set forth in 22.2.1 of this Article.
- 22.3.2 In the event a pupil is so referred, the principal (or her/his designee) shall immediately schedule a conference with the pupil, the bargaining unit member, and the principal for purposes of carrying out obligations under Education Code 48901 unless this conference is bypassed under the "emergency situation" of Education Code section 48911(c).
- 22.3.3 Except for good and sufficient reason to the contrary established at the hearing, the referral of the bargaining unit member will result in the suspension requested.
- 22.3.4 The District shall provide required notices regarding the suspension to the pupil's parents or guardians or to the governing board.
- 22.3.5 The bargaining unit member may require the pupil to complete any assignment or test missed during the suspension.

### **22.4 Extended Pupil Suspension or Expulsion**

- 22.4.1 A bargaining unit member may seek a longer period of suspension and/or expulsion for pupils as permitted by law including Education Code section 48910, 48915, and other related sections.
- 22.4.2 In the event a bargaining unit member seeks a longer period of suspension, she/he will be entitled to attend all hearings, conferences, or other such meetings scheduled in order to reach a decision in the matter. Bargaining unit members shall be entitled to representation in such meetings.

## **TOPIC: PUPIL TRANSPORTATION**

### **22.5 Pupil Transportation**

- 22.5.1 No bargaining unit members shall be requested or required to transport pupils in private vehicles.
- 22.5.2 Should the District request or require that a unit member transport a pupil or pupils in a

vehicle owned by the District, the District shall provide full primary liability coverage for any liability which may occur during such assignment. Unit members shall be provided with documentation of primary liability coverage which shall be carried in the vehicle during such assignment.

## **TOPIC: SPECIALIZED HEALTH CARE PROCEDURES**

### **22.6 Specialized Health Care Procedures**

- 22.6.1 Qualified and trained nurses shall be the only bargaining unit members to provide and conduct necessary specialized health care procedures including, but not limited to, dispensing medication, catheterizations, crede', diapering, injections, ileostomies, colostomies, gastrostomies, tracheostomy, suction, oxygen administration, gavage feeding, and draining.
- 22.6.2 No other bargaining unit members shall be requested or required to perform such specialized health care.
- 22.6.3 The District shall comply with all Education Code and Title V provisions so that unit members may work and provide specialized health care in a safe and appropriate environment.
- 22.6.4 The District will provide rubber gloves, mouth to mouth breathers, and facilities to wash with hot water and antiseptic soap to any bargaining unit member who may come in contact or be expected to come in contact with bodily fluids.
- 22.6.5 The District shall indemnify and hold harmless from all liability any unit member who performs health care services.
- 22.6.6 The District shall provide malpractice liability insurance for bargaining unit members covering the rendering of or failure to render specialized health care services, medical treatment, or the furnishing or dispensing of drugs or medication.

## **TOPIC: ASBESTOS REMOVAL**

### **22.7 Asbestos Removal**

- 22.7.1 The District acknowledges that the presence of asbestos in District facilities poses a serious health hazard for all employees and pupils and agrees to eliminate this hazard where it is present as a matter of highest priority.
  - 22.7.1.1 The District agrees to continue to comply or immediately comply with all Federal, State, and local requirements regarding asbestos, including, but not limited to, the Federal Asbestos Hazard Emergency Response Act (AHERA), which are currently applicable and/or those which may become applicable or be enacted during the term of this Agreement.
  - 22.7.1.2 The District will notify the Association of any meeting regarding asbestos and a representative of the Association may attend and



participate in any such meeting.

- 22.7.2 The District agrees that the following inspection and reinspection requirements of AHERA have been and will continue to be met, or if they have not yet been met, will be met immediately upon the ratification of this Agreement.
- 22.7.2.1 All school buildings, either owned or leased by the District, will be inspected by a licensed and accredited inspector, including a visual inspection of all asbestos-containing building materials (ACBM), an assessment of all friable asbestos containing materials (ACM) and bulk sampling of all ACBM. A current copy of all licenses, registrations, and accreditation certificates of all personnel involved will be furnished the Association immediately upon request. Inspection shall cover all areas within the building including but not limited to ceilings and walls, hallways, gymnasiums, support beams and columns, cafeterias, shop areas, pipes, and boiler areas.
- 22.7.2.2 All bulk samples will be submitted to a National Bureau of Standards accredited laboratory for analysis. The laboratory must validate the results in writing to the District within thirty (30) days of the sample submittal. The District shall provide the Association with a copy of the laboratory results within five (5) days of receipt.
- 22.7.2.3 An assessment of each inspection, reinspection, and sample analysis must be made by the inspector. Each assessment will be dated, signed, and include the inspector's accreditation number. The District shall provide the Association with a copy of the assessment within five (5) days of receipt.
- 22.7.2.4 Surveillance will be performed and appropriately documented every six (6) months by trained personnel as required by AHERA to locate and identify any changes in the condition of any asbestos and to recommend specific containment measures. The District shall provide the Association with a copy of all documentation and recommendations within five (5) days of receipt.
- 22.7.2.5 An annual reinspection shall be performed and documented as required by AHERA. The District shall provide the Association a copy of the documentation within five (5) days of receipt.
- 22.7.3 Bargaining unit members in each affected building shall be notified at least once each year of all inspections, corrective actions, planned, or ongoing surveillance activities. Documentation of this notification will be retained at both the school site and the District office and a copy will be provided the Association at the same time it is disseminated to Bargaining Unit Members.
- 22.7.4 The District office will adopt a "management plan" as required by AHERA and will make it available to each school site for inspection by school site bargaining unit members.
- 22.7.4.1 A copy of each such plan will be delivered to the Association.

- 22.7.4.2 The District will submit and implement the management plan as required by AHERA.
- 22.7.4.3 No bargaining unit member will be required to serve in any capacity as compliance officers and/or inspectors, or perform abatement tasks.
- 22.7.4.4 The District will take all necessary actions to immediately abate any and all friable asbestos hazards by the safest method to protect each employee's health, safety and welfare.
- 22.7.4.5 No bargaining unit member will be permitted in any area where the abatement process is occurring unless adequately protected.
- 22.7.5 Warning labels will be affixed immediately adjacent to any and all friable and non-friable ACBM and ACM located in or around any school building. The warning label will include the following:
  - 22.7.5.1 Warning that friable ACBM was not removed but only encapsulated.
  - 22.7.5.2 Warning that ACBM exists but has been abated.
  - 22.7.5.3 All warning labels will continue to remain visible until the ACBM is removed.
- 22.7.6 If friable asbestos is found in any District facility, any current or past bargaining unit member will be entitled to one (1) physical examination each year thereafter for the purpose of testing for asbestos-related illness, to be performed by a doctor of the employee's choice.
- 22.7.7 Any sick leave taken in connection with asbestos related illness shall be unlimited and not deducted from the bargaining unit member's accumulated sick leave.

**TOPIC: SCHOOL AND PERSONAL PROPERTY LIABILITY COVERAGE**

**22.8 School and Personal Property Liability Coverage**

- 22.8.1 The District shall protect bargaining unit members from the loss of personal property while acting in the discharge of their duties. The District shall fully reimburse bargaining unit members for such losses resulting from any property being lost, stolen, damaged, soiled, or destroyed.
- 22.8.2 The District shall provide bargaining unit members with written authority to take pupils on a field trip. Written authority shall mean that the trip is a school-sponsored activity with the District liable for any personal injuries, deaths, or damage to personal or real property arising during the course of such a trip.

## **TOPIC: ASSAULT**

### **22.9 Assault**

- 22.9.1 Unit members shall immediately report cases of assault suffered by them in connection with their employment to their principal or immediate supervisor, who shall immediately report the incident to the police. Such information shall immediately be forwarded to the Superintendent. The Superintendent shall comply with any reasonable request from the unit member for information in the possession of the District relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the unit member, police and courts.
- 22.9.2 The District shall provide inservice training on a voluntary basis to unit members seeking training relating to subduing assaultive pupils, breaking up pupil fights, and using conflict intervention skills.
- 22.9.3 The District shall reimburse unit members for any and all costs incurred as a result of assault, including repairing or replacing personal property which may have been damaged or destroyed, and for all related medical costs not covered under insurance benefits.
- 22.9.4 In the event that criminal or civil charges are brought against unit members in connection with an assault, the District shall either provide legal counsel to act in the unit member's defense or shall reimburse the unit member for legal fees incurred in securing their own defense.
- 22.9.5 The District shall provide full support, including legal and other assistance, to unit members who may be assaulted while in performance of their duties.
- 22.9.6 The District shall pursue legal action against a pupil or the pupil's parent or guardian if a unit member's person or property is injured or damaged by the willful misconduct of the pupil which occurs during the course and scope of employment.
- 22.9.7 When absence or disability arises out of or from assault, unit members shall suffer no loss in wages, benefits or leaves.

## **TOPIC: PUBLIC COMPLAINTS**

This provision guarantees that employees will be notified in writing of all public complaints. This gives the employee a chance to respond or to eliminate the complaint from district records if it is unjustified, or if improved performance has corrected the situation. Many times complaints received by the administration are used to intimidate and evaluate employees. Employees are entitled to receive written notice of such complaints, have the right to respond in writing and have such complaints eliminated from district records if they are unjustified. In addition parent complaints channeled through this procedure may prevent parent harassment of teachers.

### **22.10 Public Complaints**

- 22.10.1 No negative and/or unsatisfactory evaluation, assignment, discipline, dismissal, or other adverse action shall be predicated upon complaints, information or material of a derogatory or critical nature which has been received by the District from pupils, parents,

District employees, public agency, and/or the public unless the following procedures have been followed:

- 22.10.1.1 Any public complaint about a unit member shall be reported to the unit member by the administrator receiving the complaint, within five (5) days of receipt, if the complaint may be placed in the unit member's file or used against the unit member.
  - 22.10.1.2 Should the involved unit member believe the allegations in the public complaint warrant a meeting, the immediate supervisor shall attempt to schedule a meeting between the member and the complainant. At the request of the unit member, Association representative(s) may be present at the meeting. If the complainant refuses to attend the meeting, the complaint shall neither be placed in the unit member's personnel file nor utilized in any evaluation, assignment, or disciplinary or dismissal action against the unit member.
  - 22.10.1.3 If the matter is not resolved at the meeting to the satisfaction of the complainant, complainant may reduce the complaint to writing and submit the original to the unit member, with a copy to the unit member's immediate supervisor. The unit member shall be given time during the duty day, without salary deduction, to review the complaint and prepare responsive comments. If the unit member believes the complaint is false and/or based on hearsay, a grievance may be initiated to determine the validity of such complaint. If no written complaint is received, the matter shall be dropped.
- 22.10.2 Complaints which are withdrawn, shown to be false, or are not sustained by the grievance procedure shall neither be placed in the unit member's personnel file nor utilized in any evaluation, assignment, or disciplinary or dismissal action against the unit member.
- 22.10.3 All information or proceedings regarding any complaint shall be kept confidential by the District.

## **TOPIC: NOTICE OF CRIMINAL HISTORY**

### **22.11 Notice of Criminal History**

- 22.11.1 The district shall inform any teacher or counselor in a supervisory or disciplinary position over a student when the district has information that the student has done any of the following:
  - 22.11.1.1 The student has been expelled from another school, and the reason for the expulsion.
  - 22.11.1.2 The student has been taken into custody or convicted for crime(s) against the property, students, or personnel of the district.

22.11.1.3 The student has been 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.

22.11.1.4 During the three previous school years, a pupil has engaged in, or is reasonably suspected to have engaged in, the following conduct at school, while going to or from school, or during a school sponsored activity:

- a) Causing, attempting, or threatening physical injury to another;
- b) Possessing, selling, or otherwise furnishing a firearm, knife, or other dangerous object.
- c) Possessing, using or selling illegal drugs, alcohol, or drug paraphernalia;
- d) Committing or attempting to commit robbery or extortion;
- e) Damaging or attempting to damage school property;
- f) Stealing or attempting to steal school or private property;
- g) Committing an obscene act or engaging in habitual profanity or vulgarity;
- h) Possessing, offering, arranging or negotiating to sell, any drug paraphernalia;
- i) Disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties;
- j) Knowingly receiving stolen school or private property.

22.11.2 Any such required information shall be provided within 48 hours after the student is assigned to the teacher or counselor or within 48 hours after the information is received by the District, whichever is earlier.

22.11.3 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.