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Education Review of Selected 1972 California Legislation

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Education

Education; tax credit for parents sending children to private schools

Revenue and Taxation Code Chapter 2.5 (commencing with §17065) Part 10, Division 2 (repealed); Chapter 2.5 (commencing with §17065) Part 10, Division 2(new).

AB 1724 (McCarthy); STATS 1972, Ch 1260
(Effective December 20, 1972)

Chapter 1260 allows a tax credit under the Personal Income Tax Law for payments by individuals for the cost of educating dependents in private schools having grades kindergarten through 12. The credit is determined by a progressive schedule, but not to exceed \$125 for each dependent, and applies to the computation of taxes for taxable years beginning after December 31, 1971.

COMMENT

Chapter 1260 differs from the tax "voucher system" of private school financing where the parents of each school age child attending a private school participating in the program receive an equal "scholarship" in the form of a voucher. The child presents the voucher to his participating school in full payment of a tuition charge. The school then redeems the voucher for its face amount [See Comment, *The Use of Public Funds by Private Schools via Educational Vouchers: Some Constitutional Problems*, 3 PAC. L.J. 90, 93 (1972)]. It should be noted that under this system, the government makes a direct payment to the private school, and this, from a constitutional standpoint, is the principal difference between a "voucher" and a "tax credit" system.

Article IX, Section 8 of the California Constitution presents a limit to the acceptability of a "voucher system" which does not appear to exist with the use of a "tax credit" system, in that it provides that no public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools. A "tax credit" system seems to avoid this provision because money is neither paid directly to the school nor, in fact, appropriated at all.

A state constitutional problem common to both systems arises in the context of Section 25 of article XIII of the California Constitution which prohibits the Legislature from making gifts of public money or things of value to any individual, municipal, or other corporation. However, the California Supreme Court has held that funds used for a public purpose are not a gift within the meaning of Section 25 of article XIII, and that the determination of what constitutes a public purpose is a matter left to the sound discretion of the Legislature, and the Legislature's judgment is not to be disturbed by the courts so long as it has a *reasonable basis* [County of Alameda v. Janssen, 16 Cal. 2d 276, 281, 106 P.2d 11, 14 (1940)]. The obvious reasonable basis for either system would be that the primary benefit is to the children, and that since the tax credit or voucher is available to the parents of every school age child who chooses to be educated in a private school, they are in effect being used for a public purpose by enhancing the general welfare [Comment, *The Use of Public Funds by Private Schools via Educational Vouchers: Some Constitutional Problems*, 3 PAC. L.J. 90, 94 (1972)].

Since the First Amendment to the U.S. Constitution has been held applicable to the states through the Fourteenth Amendment [Murdock v. Pennsylvania, 319 U.S. 105 (1942)], it must be determined whether the "tax credit" system meets minimum requirements for maintaining the separation of church and state.

In *Lemon v. Kurtzman* [403 U.S. 602 (1971)] the U.S. Supreme Court announced that a statute must have a secular legislative purpose; its principal or primary effect must be one that neither advances nor inhibits religion, and the statute must not foster an excessive entanglement with religion. In *Lemon* the Court struck Pennsylvania and Rhode Island legislation which provided a salary supplement for teachers at non-public *elementary* schools. However, in *Tilton v. Richardson* [403 U.S. 672 (1971)] the Court held that the use of federal funds for building construction at colleges and universities controlled by religious denominations was not a violation of the First Amendment's "establishment clause." In *Tilton* the court distinguished aid to religious elementary schools from aid to religious colleges on the grounds that elementary school children are more impressionable and the elementary parochial schools have a more religious atmosphere than colleges. In *Board of Education v. Allen* [392 U.S. 236 (1968)] the Court placed some emphasis on whether or not the religious school was aided directly or indirectly.

In light of the above, does Chapter 1260 meet U.S. Constitutional requirements? It is first necessary to determine whether Chapter 1260

has a valid secular purpose. In Section 1 of Chapter 1260 it is stated that the purpose of the act is to afford to parents and guardians of children in grades kindergarten through 12 state income tax relief when they, in exercising their right of educational choice for their children, relieve the state's taxpayers of the public costs of educating such children.

It is interesting to note that the tax credit is limited to a maximum of \$125. This limit appears to strengthen the tax savings-secular purpose argument in that the figure of \$125 is below the per capita variable cost of educating a child in the public school system. Therefore, the state, by offering an incentive to parents to enroll their children in private school, realizes a savings in that it is less expensive to allow the parents the tax credit than to pay for the child's entire education.

In *Walz v. Tax Commission* [397 U.S. 664 (1970)] the Court upheld a New York property tax exemption for real or personal property used exclusively for religious, educational or charitable purposes. The Court found that although a tax exemption necessarily gives rise to some entanglement it would not be excessive [397 U.S. 664, 666 (1970)]. In the case of a tax credit to parents sending their children to private school, there would seem to be less entanglement since the exemption is given to the parent rather than the religious organization. As mentioned earlier, a "tax credit" system does not involve a direct payment of public funds to private schools as does a "voucher" system. This avoids the direct aid problem discussed in *Board of Education v. Allen*.

A remaining problem is that the "tax credit" system of Chapter 1260 is directed to the elementary school level. As indicated above in *Tilton v. Richardson*, the court will carefully scrutinize any aid which directly or indirectly results in a benefit to elementary parochial schools where the children are more impressionable and the religious atmosphere is greater than at the college level. Thus, even though there appears to be a valid secular purpose, even though benefits to parochial schools will be indirect, and even though entanglement is kept at a minimum, the constitutional validity of Chapter 1260 remains in doubt.

See Generally:

- 1) Comment, *The Use of Public Funds by Private Schools via Educational Vouchers: Some Constitutional Problems*, 3 PAC. L.J. 90 (1972).

Education; higher education—residency

Education Code §§22515-22519, 22800, 22805-22818, 22835-22841, 22845-22847, 22850-22863, 22865 (new); §§23054-

23059, 23753.2, 23755, 23755.1, 23755.5, 23756, 23758, 23758.05, 23758.1, 23758.3, 23761, 25505, 25505.1, 25505.2, 25505.9 (repealed); §§20201, 23754, 23754.2, 23754.3, 25505.7, 25505.8 (amended).

AB 1165 (Chappie); STATS 1972, Ch 837

AB 524 (Ryan); STATS 1972, Ch 876

AB 666 (Greene); STATS 1972, Ch 1100

Chapter 1100 has been enacted to provide uniform student residency requirements for the University of California, the State University and Colleges, and the California Community Colleges. Previously, separate code sections existed for each of these systems.

Article 1 of this Act states that it is the intent of the Legislature that the public institutions of higher education shall apply uniform rules, as set forth in Chapter 7 (commencing with §22800) of the Education Code, in determining whether a student shall be classified as a resident or nonresident.

Article 2 defines various terms used within this Act. To be a resident, one must be a student who has residence, pursuant to Article 5 (*infra*), in the state for more than one year immediately preceding the residence determination date. The residence determination date is that date immediately preceding the initiation of a semester, quarter, or term established by the governing boards to determine a student's residence. "Governing board" means the Regents of the University of California, the Trustees of California State University and Colleges, or the Board of Governors of the California Community Colleges.

Article 3 prescribes a procedure for classification of students. Each student shall be classified as a resident or nonresident at the University of California or California State Universities and Colleges, or a district resident, nondistrict resident, or nonresident at a California Community College. Each student enrolled or applying for admission to such institutions shall provide such information and evidence of residency as deemed necessary by the governing board to determine his classification. The governing board shall adopt rules and regulations for determining a student's classification and for establishing procedures for review and appeal of that classification.

Article 4 provides that a nonresident shall be required, except as otherwise provided in Sections 23754-23754.3 (*infra*), to pay, in addition to other fees required by the institution, nonresident tuition. Such tuition shall be uniform within each type of institution, and the

governing board shall adopt rules relative to the calculation of the amount and method of such payments.

Article 5 contains the basic rules of determination of student residence. These rules are essentially the same rules for residency as set forth in Sections 243 and 244 of the Government Code.

Various exceptions to the determination of student residency are specified in Article 6 (§§22850-22859.5), and miscellaneous provisions are contained in Article 7.

Pursuant to Article 8, the governing boards shall adopt appropriate rules and regulations to insure the orderly implementation of this Act, and to insure consistent application of residency requirements among all institutions.

Chapter 1100 amends Section 23754 of the Education Code by deleting the last paragraph, which provided that no admission fee or tuition fee could be required of any nonresident student who was a full-time employee, or child or spouse of a full-time employee of the California State Colleges. Chapter 1100 also makes technical changes in Sections 23754, 23754.2, and 23754.3 to make these sections applicable to the California State Universities and Colleges, rather than State Colleges; a change in name only.

Chapters 837, 876, and 1100 amend Section 25505.8 by deleting the tuition exemption for nonresidents who are military personnel or the dependents of military personnel. This section has also been amended to require a district to obtain approval of the Board of Governors of the California Community Colleges before contracting with a state, the federal government, a foreign government, or any agency thereof, for payment of all or part of a nonresident student's tuition fee. Furthermore, this section now provides that the nonresident tuition fee shall be set by the governing board of *each community college district*, and shall represent the amount per student enrolled *in the specific district* (rather than the amount per student enrolled in community colleges in all districts of the state, as specified prior to amendment) which is expended by the district (rather than all districts). Technical changes in the formula for calculation of the per-student rate and per-unit rate for nonresidents on less than full-time basis are made in conformity with the changes specified above.

Chapter 837 adds Chapter 1.6 (commencing with §22515) to the Education Code to encourage interstate attendance agreements. Section 22515 states that the Legislature recognizes that existing community

colleges in California may benefit from a more heterogeneous enrollment in certain curricula and that additional enrollment may often be added with little or no increase in the total operational cost of a given curriculum. Therefore, the Legislature encourages California community college districts and the Board of Governors of the California Community Colleges to include the educational needs of, and facilities available in, territories adjacent to California in their planning and to make use of those needs and facilities to the extent possible in the conduct of community college education. The Board of Governors of the California Community Colleges is authorized to enter into an interstate attendance agreement with another state for the exchange of residents, on a one-for-one basis, for the purposes of instruction. Pursuant to Section 22518, if the governing board of a community college district elects to participate in such an interstate attendance agreement, it may waive, as a condition to such participation, all or part of the nonresident tuition required by Section 25505.8 (*supra*) in accordance with the terms of that interstate agreement. Such waiver shall apply only to students attending the community college pursuant to said agreement.

COMMENT

Section 22812 defines "resident" as a student who has residence in the state *for more than one year immediately preceding the residence determination date*. A practitioner who is concerned with the constitutionality of such a one year residency requirement should review the decisions in *Shapiro v. Thompson* [394 U.S. 618 (1969) (hereinafter cited as *Shapiro*)] and *Kirk v. Board of Regents of the Univ. of California* [273 Cal. App. 2d 430, 78 Cal. Rptr. 260 (1969) (hereinafter cited as *Kirk*)].

Kirk upheld the residency requirement for tuition free education at a state university, distinguishing such requirement from that in *Shapiro*. *Shapiro* involved the immediate and pressing need for the preservation of the life and health of persons unable to live without public assistance, whereas *Kirk* involved the attainment of higher education, which could not be equated with the need for food, clothing and shelter. Since free higher education does not constitute such a fundamental aspect of basic survival and subsistence, its denial would not be a consideration of sufficient magnitude as to discourage or prohibit interstate travel [Vaughn v. Bower, 313 F. Supp. 37, 41 (D. Ariz. 1970)].

There have been other cases dealing with the same durational residence requirement, and all have been consistent with *Kirk* [See, e.g., Starns v. Malkerson, 326 F. Supp. 234 (D. Minn. 1970); Clarke v.

Redeker, 259 F. Supp. 117 (S.D. Iowa 1966); *Landwehr v. Regents of the University of Colorado*, 156 Colo. 1, 396 P.2d 451 (1964); *Arizona Board of Regents v. Harper*, 108 Ariz. 223, 495 P.2d 453 (1972); *but see* Comment, *Constitutional Law, Equal Protection, State University's One-Year Waiting Period Requirement to Attain Residence Status for Tuition Payment Does Not Violate Fourteenth Amendment*, 24 ALA. L.R. 147 (1971) (a criticism of these cases and a contention that the courts have wrongly interpreted *Shapiro*)].

See Generally:

- 1) Case Note, *Constitutional Law: The Equal Protection Clause and Durational Residency Requirements for Tuition Purposes at State Universities*, 19 J. PUB. L. 139 (1970).

Education; commercial term papers

Education Code §§22530-22535 (new).

AB 230 (Keysor); STATS 1972, Ch 183

Support: Board of Trustees of the California State Universities and Colleges

Chapter 1.7 (commencing with §22530) has been added to Division 16.5 of the Educational Code, regarding preparation, sale, and distribution of term papers and other academic materials.

Section 22530 prohibits any person from preparing, offering to prepare, causing to be prepared, selling, or distributing any term paper or other written material for a fee or other compensation, which he knows or should reasonably have known is to be submitted by any other person for academic credit at any public or private college or other institution of higher learning in this state. Section 22531 prohibits solicitation for any of the above purposes.

Section 22532 authorizes the courts to grant such relief as is necessary to enforce the provisions of this chapter, including the issuance of an injunction. Actions for an injunction may be brought in the name of the State of California upon their own complaint or upon the complaint of any person, public or private college, or other institution of higher learning, pursuant to §22533. Section 22534 provides that these provisions (§§22532, 22533) are not exclusive, however, and in no way limit or diminish the rights of any party against any person in connection with violation of any of the aforementioned prohibited acts.

Section 22535 defines "person" as used in this chapter, to include any individual, partnership, corporation, or association. This section also defines "prepare" for purposes of this chapter as to put into

condition for intended use, and specifically excludes the mere typing or assembling of papers and the mere furnishing of information or research.

Education; parental notice for student activities

Education Code §§10921-10925 (new).

AB 1468 (Fong); STATS 1972, Ch 1078

Chapter 1078 adds Article 10 (commencing with §10921) to Chapter 1 of Division 9 of the Education Code. Section 10921 requires school districts at the beginning of the first semester or quarter of the regular school term to notify the parent or guardian of minor pupils regarding their right to exclude the pupil from specified school activities. Section 10923 requires the parent to sign the notice and return it to the school. Signature of the notice is an acknowledgement by the parent or guardian that he has been informed of his rights but does not indicate that consent to participate in any particular program has either been given or withheld. [To consent to a pupil's participation in such activities or to request a pupil's exclusion generally requires submission of a written statement, *see* CAL. EDUC. CODE §§1086, 8506, 8701, 11704, 11753.1, 11822, 11825, 11853].

The activities for which the notice specified in Article 10 is required are: religious activities (§1086); sex education (§8506); health, family life, and sex instruction which conflicts with religious training and belief (§8701); immunization (§11704); administration of prescribed medication (§11753.1); physical examinations (§11822); visual examinations (§11825); and medical-hospital insurance programs for pupils (§11853).

Article 10 also provides that if any of the above-named activities are to be undertaken during the forthcoming school term, the notice must state that fact as well as give the approximate dates when the activities will occur. The school district is prohibited from undertaking any of these activities with respect to a particular pupil unless the parent or guardian has been informed of such action pursuant to this article or has received separate special notification.

Education; drug and venereal disease instruction

Education Code §§1091, 1096 (amended); §§1091.1, 8506.1, 8507 (new).

AB 71 (Fong); STATS 1972, Ch 226

AB 359 (Vasconcellos); STATS 1972, Ch 1343

Opposition: Society for the Preservation of the American Family

Expands a school district's power to offer venereal disease education; changes parental notice and consent requirements for venereal disease and drug education.

Section 8507 has been added to the Education Code to empower the governing board of any school district maintaining elementary or secondary schools to offer instruction in venereal disease education, with the assistance of the State Department of Education, at a grade level to be determined by the governing board of the school district. This program will not limit any rights of a parent specified in §8701 of the Education Code (health instruction, family life instruction, or sex education which conflicts with religious or personal moral beliefs).

Section 1091 of the Education Code allows a governing board to contract with a private firm for the purpose of providing drug education to the pupils of the district. This section has been amended to allow the board to contract for venereal disease instruction as well.

Section 1096 has been amended to provide that no pupil may participate in venereal disease or drug education programs, conducted pursuant to §1091, without prior written notification to his parents or guardian. Previously this section required written *consent* of the parent before undertaking drug education.

Sections 1091.1 and 8507 now provide for identical notice and consent requirements for drug education and venereal disease education. The parent or guardian of each pupil enrolled or to be enrolled in such a class must be notified, in writing, of the program at least 15 days prior to its commencement. The notice must advise the parent or guardian of his right to inspect the textbooks, audiovisual aids, and any other instructional material to be used, and of his right to request that his child not attend any such class. No pupil may attend a class in drug or venereal disease education if a written request that he not attend is received by the school from the parent or guardian. The request may be withdrawn at any time.

Section 1091.1 further provides that if a firm has contracted with the school district to furnish drug or venereal disease education, it must comply with the above requirements, and willful noncompliance shall constitute a material breach of contract by the firm.

Section 8506.1 has been added to provide that the provisions of §8506, dealing with sex and family life education, shall not apply to drug

education classes or venereal disease education classes conducted pursuant to §§1091 and 8507.

COMMENT

Because the Legislature found that the incidence of venereal disease in the state has reached epidemic proportions, it felt a strong need for effective education to control the dimensions of this problem [A.B. 71 CAL. STATS. 1972, c. 226, §1]. Apparently the Legislature desires to remove venereal disease education from some of the restrictions and burdens associated with sex education [CAL. EDUC. CODE §8506]. The major obstacles to such instruction under §8506 were the requirement of parental consent, and the removal of certification of teachers for knowing and willful violations of §8506.

Education; good cause for suspension from school

Education Code §10601.6 (new); §10601.5 (amended).

AB 409 (MacDonald); STATS 1972, Ch 164

Section 10601.5 of the Education Code has been amended to delete an exception to the principal's power to suspend a student for good cause, and to reduce the maximum suspension pursuant to this section from 10 to 5 days. Formerly, §10601.5 excepted from the principal's power to suspend, a cause found in §10603 (based on use, sale, or possession of narcotics or hallucinogenic drugs).

Section 10601.6 states that *good cause* for a suspension as used in §10601 (suspension by teacher), and §10601.5 (suspension by principal), includes, but is not limited to, offenses which are enumerated in §10602.

COMMENT

Section 10603 of the Education Code was amended in 1969 [CAL. EDUC. CODE §10603, *as amended*, CAL. STATS. 1969, c. 941, at 1884] to add the school principal to the list of persons authorized to suspend students in cases involving narcotics or hallucinogenic drugs. This change made the exception in §10601.5 invalid.

Apparently §10601.6 was added to the Education Code as a result of a recent federal case which discussed whether or not the elements of §10602 were exclusive [Baker v. Downey City Board of Education, 307 F. Supp. 517 (C.D. Cal. 1969)]. It was held that they were not exclusive based on an earlier opinion of the attorney general [48 OPS. ATT'Y GEN. 4, 7 (1966)].

Education; pupil expulsion procedure

Education Code §10608 (amended).

AB 1943 (Biddle); STATS 1972, Ch 831

Education Code §10608 provides that when a pupil is expelled from school, the parent or guardian of the pupil may appeal to the county board of education which shall hold a hearing thereon and render its decision. This section has been amended to require the county board of education to notify the school district governing board of the time and place of such hearing, and either the governing board or its appointed designee may appear and present testimony at such hearing. Section 10608 continues to provide that the decision of the county board of education shall be final and binding upon the parent or guardian and the governing board expelling the pupil.

Education; special education—admission committee representation

Education Code §§6803.3, 6902.055 (new).

SB 670 (Zenovich); STATS 1972, Ch 382

Section 6803.3 has been added to the Education Code to allow a parent or guardian to have his child represented at a meeting of an admission committee established by a school district or county superintendent of schools, when the child is being evaluated for placement in a program for the physically handicapped. Such representative may be a physician, optometrist, psychologist, social worker, or teacher (whether certificated or not), and may assist the admission committee in its determination with respect to the pupil, but shall have no decision-making power as to any determination made by the admission committee. The representative may be an employee of the school district.

Section 6902.055 has been added to give the parent or guardian the same rights as above with respect to placement in a program for mentally retarded pupils by an admission committee formed pursuant to §6902.05.

See Generally:

- 1) CAL. EDUC. CODE §§6800 *et seq.*, 6900 *et seq.*
- 2) 5 CAL. ADMIN. CODE §§3400 *et seq.*, 3600 *et seq.*

Education; emergency transportation of students

Education Code §1009.5 (amended).

SB 1119 (Gregorio); STATS 1972, Ch 334

Prior to amendment, Education Code §1009.5 provided that no

governing board of a school district shall require any student or pupil to be transported for any purpose or for any reason without the written consent of the parents or guardian.

Chapter 334 adds a provision that this section shall not apply to the transportation of a student or pupil in an emergency arising from illness or injury to the student or pupil.

COMMENT

It should be noted that Education Code §1009.5 has been construed to do no more than prohibit a school district from compelling students, without parental consent, to use means of transportation furnished by the school district; the statute does not prohibit the board of a school district from assigning a student to a particular school without parental consent, even if such school is beyond the reasonable walking distance of the home. [San Francisco Unified School Dist. v. Johnson, 3 Cal. 3d 937, 479 P.2d 669, 92 Cal. Rptr. 309 (1970), *cert. denied*, 401 U.S. 1012 (1971)].

See Generally:

- 1) 2 PAC. L.J., REVIEW OF SELECTED 1970 CALIFORNIA LEGISLATION 475 (1971).

Education; mentally retarded minors

Education Code §6902.085 (amended).

AB 437 (Dunlap); STATS 1972, Ch 798

Section 6902.085 of the Education Code concerns the placement of a minor in a special education program for the mentally retarded. The section has been amended to clarify procedures for psychological evaluation of a minor whose primary home language is not English.

Section 6902.085 now requires the psychological evaluation to be conducted in the minor's primary home language by a credentialed school psychologist fluent in the language of the minor; or if such person is not available, an interpreter, trained in the application of evaluation techniques and procedures, must be provided to assure effective communication between the minor and the psychologist administering the test.

Education; pupil medical information

Education Code Article 2.5 (commencing with §12020), Chapter 5,

Division 9 (new).

AB 1501 (Duffy); STATS 1972, Ch 747

Article 2.5 (commencing with §12020) has been added to the Education Code to require that the parent or legal guardian of any school pupil on a continuing medication regimen for a nonepisodic condition inform the school nurse or other designated school employee of (1) the medication being taken, (2) the current dosage and (3) the name of the supervising physician.

With the consent of the parent or legal guardian of the pupil, the school nurse may communicate with the physician and may counsel with school personnel regarding possible effects of the drug on the child's physical, intellectual and social behavior and behavioral signs and symptoms of adverse side effects, omission or overdose.

The superintendent of each school district is responsible for informing the parents of all pupils of the requirements of this section.

Education; liability for pupil conduct

Education Code §13557.5 (new).

AB 1326 (Chappie); STATS 1972, Ch 979

Chapter 979 adds §13557.5 to the Education Code to provide that, notwithstanding any other provision of this code, no school district, city or county board of education, county superintendent of schools, or any officer or employee of such district or board shall be responsible or in any way liable for the conduct or safety of any pupil of the public schools at any time when such pupil is *not* on school property, *unless* such district, board, or person has: (1) undertaken to provide transportation for such pupil to and from the school premises; (2) undertaken a school-sponsored activity off the premises of such school; or (3) has otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances.

Section 13557.5 further states that in the event of such a specific undertaking, the district, board, or person shall be liable or responsible for the conduct or safety of any pupil only while such pupil is or should be under the immediate and direct supervision of any employee of such district or board.

COMMENT

Education Code §13557 provides that every teacher in the public schools shall hold pupils to a strict account for their conduct *on the way*

to and from school, on the playgrounds or during recess. School authorities have a duty to supervise conduct of children *on school grounds* at all times and to enforce those rules and regulations necessary to their protection [Dailey v. Los Angeles Unified School District, 2 Cal. 3d 741, 470 P.2d 360, 87 Cal. Rptr. 376 (1970)].

Prior to the addition of §13557.5 to the Education Code, school district responsibility for pupil conduct and safety while *off* school grounds was unclear; in general, the district or its employees were not responsible in such cases unless teacher liability could be established under §13557 for pupils going to and from school [35 OPS. ATT'Y GEN. 109, 110 (1960)]. Apparently, §13557.5 was added to specifically exempt public school officers and employees from responsibility and liability for conduct and safety of pupils while pupils are *not* on school property (including "on the way to and from school") unless certain circumstances exist; i.e., the school district in some way assumes the responsibility or fails to exercise reasonable care.

Education; school district contracts

Education Code §15962.5 (new); §§15961, 15962 (amended).
SB 932 (Burgener); STATS 1972, Ch 940

Chapter 940 amends §§15961 and 15962 of the Education Code to provide that a school district official invested by a governing board with the power to contract (power to contract in general, §15961; authority to purchase supplies, materials, apparatus and equipment, §15962) shall be personally liable to the school district employing him for any and all moneys of said district paid out as a result of *malfeasance in office*. Prior to amendment, §§15961 and 15962 provided such personal liability for moneys paid out on any contract in violation or disregard of any provision of these sections.

Chapter 940 deletes provisions in the above sections which allowed the school district official to insure himself against such liability with any insurance company authorized to do business in the state, and which authorized the governing board to make the cost of insurance secured by a school district official against such liability a proper charge against school district funds.

Section 15962.5 has been added to the Education Code to provide that the governing board of any school district with an average daily attendance of not less than 60,000 may authorize its district superintendent, or such person as he may designate, to expend up to \$100 per transaction for work done, compensation for employees or consultants, and

purchases of equipment, supplies or materials. Ratification by the governing board shall not be required with respect to transactions entered into pursuant to §15962.5. In the event of malfeasance in office, the school district official invested with this authority shall be personally liable for any and all moneys of the district paid out as a result of such malfeasance.

See Generally:

- 1) CAL. EDUC. CODE §939.

Education; administrative advisers

Education Code §1016.6 (new); §§945, 1016 (amended).
SB 423 (Carpenter); STATS 1972, Ch 346

Chapter 346 has expanded the flexibility of school districts with regard to their legal representation. Section 945 of the Education Code has been amended to allow *any* school district to secure the services of an administrative adviser. Formerly, only school districts with an average daily attendance of 40,000 students or more could hire an administrative adviser. An administrative adviser is a lawyer whose duties include giving administrative advice to district personnel and assisting the legal counsel in preparation and conduct of school district litigation. Section 1016 has been amended to include the administrative adviser as one authorized to prepare and conduct school district litigation.

Section 1016.6 has been added to the Education Code to allow a school district to supplement their legal services by contracting with the district attorney's office or the county counsel's office for additional services, as an alternative to contracting with private counsel or using an administrative adviser.

Education; hiring for classified service

Education Code §13582.2 (new).
SB 1225 (Burgener); STATS 1972, Ch 589

Section 13582.2 has been added to the Education Code to prohibit a school district from adopting or maintaining any rule or regulation which requires a candidate for a position in the classified service [*See* Chapter 3 (commencing with §13580), Division 10 of the Education Code] to be a resident of the district, become a resident of the district, or maintain residency within the district. In addition, such districts

may not grant preferential points or other preferential treatment to those candidates or employees who are residents of the district. This section does not apply to restricted positions as provided for in Sections 13581.2 or 13581.5.

Chapter 589 contains a legislative declaration that the public school system is the property of all its citizens, and that all qualified candidates for positions in the classified service, regardless of residence, should be granted the opportunity to compete for and obtain such positions based solely on merit and fitness.

Education; classified school employees—notice of layoff

Education Code §13583.7 (new).

SB 539 (Alquist); STATS 1972, Ch 429

Sponsor: California School Employees Association

Prior to Chapter 429, there was no requirement that *classified* school employees be given advance notice of a layoff. Chapter 429 adds §13583.7 to the Education Code to provide that when classified positions must be eliminated at the end of any school year as a result of the *expiration of a specially funded program*, and classified employees will be subject to layoff for lack of funds, the employees to be laid off at the end of such school year must be given written notice on or before May 29, informing them of their layoff effective at the end of such school year and of their displacement rights, if any, and reemployment rights. If the termination date of any specially funded program is other than June 30 (the end of a school year), such notice must be given not less than 30 days prior to the effective date of their layoff.

If classified employees are subject to layoff for lack of work as a result of a *bona fide reduction or elimination of the service* being performed by any department, Chapter 429 provides that affected employees shall be given notice of layoff not less than 30 days prior to the effective date of layoff, and informed of their displacement rights, if any, and reemployment rights.

The written notices discussed above need not be given in order to layoff classified employees for lack of funds in the event of an actual and existing financial inability to pay salaries or for lack of work resulting from causes not foreseeable or preventable by the governing board.

This section expressly applies to districts that have adopted the merit system (Education Code §13701 *et seq.*).

COMMENT

“Certificated person” is defined in Education Code §12908 as one who holds a certificate, credential, or life diploma which licenses the holder to engage in the school service designated by such document. A “classified employee,” as defined by Education Code §321(c), means an employee of a school district employed in a position not requiring certification qualifications. The provisions relating to classified employees appear at §§13580-13777.

Chapter 429 extends to classified school employees similar rights to layoff notification as exists for certificated school employees. However certificated employees are given a longer period of notice and notice must be given in all cases. Education Code §13443 provides that *certificated* employees have the right to advance notice that their service will not be required for the ensuing school year. This notice is required to be given no later than May 15. Section 13443 further provides that the superintendent of the district or his designee shall give written notice to the governing board and the employee of his recommendation that the employee be given notice that his services are no longer required. This first notice must be given no later than March 15, subject to a minor exception.

A point of inquiry concerns the portion of Chapter 429 which provides for layoff without notice in cases involving unforeseen circumstances beyond the school board's control, which implies that in the absence of such circumstances a classified employee may not be laid off if he has not received the prescribed notice. It should be noted that §13443(h) provides that if a *certificated* employee is not given notice that his services will not be required, the employee shall be deemed employed for the ensuing school year. It is also not entirely clear whether a notice of layoff to a classified employee which is defective in that it does not properly inform the employee of his displacement rights, if any, and reemployment rights would preclude layoff.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, REVIEW OF 1965 CODE LEGISLATION 109.

Education; school employment discrimination—sex

Education Code §13274, 13732 (amended).
 SB 470 (Alquist); STATS 1972, Ch 769

Section 13274 of the Education Code provides that governing boards of school districts shall employ for *positions requiring certifi-*

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cates (e.g., teachers [CAL. EDUC. CODE §13115], school administrators [CAL. EDUC. CODE §13116], and medical personnel [CAL. EDUC. CODE §13293 *et seq.*]) only persons who possess the qualifications prescribed by law [CAL. EDUC. CODE §13274; 18 OPS. ATT'Y GEN. 249 (1951)].

This section has been amended to make it against the public policy of the state to refuse or fail to employ a person as a certificated school district employee because of the *sex* of that person. Prior to amendment, only such discrimination on the basis of race, color, creed or national origin was prohibited by this section.

Section 13732 of the Education Code, which relates to *classified* employees of a school district [CAL. EDUC. CODE §13580 *et seq.*], has also been amended to provide that no questions relating to *sex* shall be asked of any applicant, or any candidate whose name has been certified for appointment, nor shall any discrimination be exercised therefore. Section 13732 continues to provide that no questions relating to political or religious opinions or affiliations, race, color, national origin or ancestry, or marital status, shall be asked of such applicant. Any person who wilfully or through culpable negligence violates §13732 is guilty of a misdemeanor (§13755).

See Generally:

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §154 (7th ed. 1960).
- 2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1965 CODE LEGISLATION 30.
- 3) Colley, *Civil Actions for Damages Arising Out of Violations of Civil Rights*, 17 HAST. L.J. 189 (1965-66).

Education; misconduct investigation—certified employees

Education Code §13121 (amended).

AB 1766 (Ryan); STATS 1972, Ch 507

Section 13121 of the Education Code delineates procedures to be followed when there have been allegations of misconduct made against a certified school employee, and there is to be a Committee of Credentials meeting or hearing at which the application or credential of the employee is to be considered. Prior to amendment, this section allowed an employee *to inspect* the portion of the investigation that constituted a basis for the original or supplemental allegations. Section 13121 has been amended to further provide that these records may be inspected *and copied* by the employee *and his attorney*.

Education; discovery rights in administrative hearings to dismiss teachers

Education Code §13413 (amended).

AB 1153 (Maddy); STATS 1972, Ch 1013

Support: California Teachers Association

Under the Stull Act [CAL. STATS. 1971, c. 361, at 720] a permanent or regular employee may challenge his dismissal by a school district at a hearing before the Commission of Professional Competence, which operates within the provisions of the Administrative Adjudication Act [CAL. GOV'T CODE §§11500-11529]. Government Code §11507.6 delineates available discovery procedures under the Administrative Adjudication Act.

Prior to the Stull Act, a permanent or regular employee could challenge his dismissal before a superior court judge with all civil discovery procedures available to him [See CAL. EDUC. CODE §§13401-13470]. Chapter 1013 amends Education Code §13413 to make available to such employees all discovery procedures which were formally available in the civil action even though the hearing remains administrative in character. In all cases, discovery must be completed prior to one week before the date set for the hearing.

COMMENT

Deposition and discovery rules for civil actions are set forth in Code of Civil Procedure §§2016-2036. Discovery under Government Code §11507.6 is not as broad as it is in civil proceedings. For example, under Code of Civil Procedure §2016(b), it is provided that a party may seek discovery of any nonprivileged matter that is relevant to the subject matter involved in a pending matter, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It need not be shown that the material will be admissible as evidence so long as it appears reasonably calculated to lead to the discovery of admissible evidence. However, Government Code §11507.6 specifically delineates those tangible things which may be inspected and copied, and further provides that they must be either admissible in evidence or the other party must propose to offer them in evidence.

See Generally:

- 1) 3 WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §§123, 124 (7th ed. 1960), (Supp. 1969).

**Education; higher education employees—
unemployment insurance**

Unemployment Insurance Code §§1471-1474 (amended); §1475 (new).

AB 221 (Z'berg); STATS 1972, Ch 1003

AB 1140 (Z'berg); STATS 1972, Ch 1012
(Effective August 17, 1972)

Chapter 1003 has been enacted to provide that employees of the University of California and of the California State Universities and Colleges shall have unemployment compensation benefits on the same terms and conditions as other state employees. This chapter further provides two alternate methods for computation of benefits for those employees who cannot qualify for maximum allowable benefits such employees to receive the higher benefit amount computed under the two methods.

Chapter 1012 appropriates \$191,000 to the Department of Human Resources Development to implement the increases in unemployment insurance coverage found in Chapter 1003.

In enacting these chapters, the Legislature declared that this legislation was necessary because layoffs in state institutions of higher education are imminent, and that a lack of employment benefits for state higher education employees is detrimental to morale, causes a deterioration in the quality and quantity of services, and is a deterrent to the recruitment of qualified candidates for employment [A.B. 221, CAL. STATS. 1972, c. 1003, §12; A.B. 1140, CAL. STATS. 1972, c. 1012, §10].

Education; Winton Act—management positions

Education Code §13085.5 (new).

AB 1357 (Dent); STATS 1972, Ch 1108

Section 13085.5 has been added to the Education Code to require school district governing boards to annually and publicly identify a group of certificated positions as management positions.

Section 13085.5 further provides that no person serving in a management position shall be represented by any certificated employee organization or council established pursuant to Section 13085 of the Education Code. Any person serving in a management position shall have the right to represent himself individually or by a management employee organization in his employment relationship with the public

school employer. Also, no certificated employee organization or council established pursuant to §13085 of the Education Code shall have any authority to meet and confer on any benefit or compensation paid to such persons.

Section 13085.5 provides that no position shall be identified as a certificated management position for the purposes of the Winton Act unless it satisfies the following requirements:

(a) The position is one whose primary duties are other than teaching.

(b) The primary duty of the position shall be direct supervision over certificated employees.

See Generally:

- 1) Note, *Collective Bargaining and The California Public Teacher*, 21 STAN. L. REV. 340 (1968).

Education; certificated employee council

Education Code §13085 (amended).

SB 625 (Beilenson); STATS 1972, Ch 211

Section 13085 of the Education Code has been amended to provide that in the event that there is *more than one* "employee organization" in a county [CAL. EDUC. CODE §13081(a)] representing certificated employees of either the *county superintendent of schools* or the *county board of education*, all such employee organizations shall be represented by a single certificated employee council. In such cases, the *board of education* is deemed, for the purposes of meeting and conferring, the public school employer of all such employees and shall meet and confer with the representatives of such employee organizations through the single employee council. Chapter 211 further specifies that §13085, as amended, shall apply notwithstanding the provisions of §13082 (rights of public school employees), §13083 (rights of employee organizations), and §13081(b) (defining "public school employer") of the Education Code.

COMMENT

Prior to the enactment of Chapter 211, §13085 provided for consolidation of all employee organizations representing certificated employees into a single certificated employee council for the purposes of meeting and conferring with a public school employer. However, pursuant to §13081(b) (defining public school employer) both the *superintendent* and the *board of education* are "public school employers"

within the contemplation of the Education Code. Therefore it was possible to construe the requirement of a single certificated employee council imposed by §13085 as allowing two certificated employee councils—one meeting and conferring with the superintendent and one meeting and conferring with the board of education. Therefore, the apparent effect of Chapter 211 is to preclude such a possibility by amending §13085 to state that as between the superintendent and the board of education, the board of education shall be deemed the “public school employer” for the purpose of meeting and conferring with the single certificated employee council.