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Education

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Education; notification of suspension

Education Code §10607.8 (new); §10601.5 (amended).
SB 1057 (Stull); STATS 1973, Ch 219

Section 10607.8 has been added to the Education Code to require that whenever a pupil is suspended from school, the parent or guardian must be notified of such action. Any notification to a pupil's parent or guardian concerning the suspension of the pupil shall be signed by the school principal or his designee. Previously, Section 10601.5 only required the principal to notify the governing board or the superintendent of the district.

See Generally:

- 1) CAL. EDUC. CODE § 10601 *et seq.* (suspension or expulsion).

Education; probationary teachers' hearings

Education Code §20904.2 (new); §13443 (amended).
AB 632 (Berman); STATS 1973, Ch 1016

Section 13443 of the Education Code entitles a probationary certificated school district employee, as defined in Section 13334, to request a hearing to determine if there is cause for not reemploying him for the ensuing year. The section requires a hearing officer to include in his decision findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and pupils of the district. A copy of the proposed decision must be delivered to the governing board which makes the final determination relative to termination of the employee's service.

Prior to the enactment of Chapter 1016, the section expressly forbade the hearing officer from issuing a determination of the sufficiency of the cause or a recommendation as to the disposition. As amended, the section *requires* the hearing officer to include in his report such determinations as to sufficiency and recommendations for disposition. However, the governing board shall not be bound by any such determinations or recommendations in making a final decision relative to the cause, and the court will not be so bound in any

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future litigation involving the issues decided. The section also provides that a copy of the proposed decision of the hearing officer shall be delivered to the employee in addition to delivery to the governing board.

See Generally:

- 1) CAL. EDUC. CODE §§13403-13441 (dismissal of employees).

Education; solicitation on school premises

Education Code §9021 (amended).

AB 1407 (Sieroty); STATS 1973, Ch 907

Section 9021 of the Education Code has been amended to provide that nothing in the section shall be construed as prohibiting the solicitation of pupils of a public school on school premises by pupils of the same school for any otherwise lawful purpose. Section 9021 of the Education Code provides that during school hours and within one hour before or after school hours pupils of the public schools shall not be solicited on school premises by teachers or others to subscribe or contribute to the funds of, to become members of, or to work for any organization not directly under the control of the school authorities, unless: (1) the organization is a nonpartisan, charitable organization organized for charitable purposes by an act of Congress or under the laws of the state; (2) the purpose of the solicitation is nonpartisan and charitable; and (3) the solicitation has been approved by the county board of education or by the governing board of the school district in which the school is located.

COMMENT

A school policy based on Education Code Section 9021 requiring administrative approval of student publications was declared patently unconstitutional as a prior restraint on speech by a United States District Court [Poxon v. Board of Education, 341 F. Supp. 256 (E.D. Cal. 1971)]. In this case plaintiff-students were denied permission to circulate a non-school-sponsored newspaper without administrative approval. This amendment has removed the possibility of interpreting the code section as allowing policies which require administrative approval for student publications and thereby result in an unconstitutional prior restraint on a pupil's right to free speech.

In commenting on the right to free speech on high school campuses, the United States Supreme Court has stated, "First Amendment rights, applied in light of the special characteristics of the school environment,

are available to teachers and students. It can hardly be argued that either teachers or students shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" [Tinker v. Des Moines School District, 393 U.S. 503, 506 (1969)].

See Generally:

- 1) Bugg, *Constitutional Law—Public School Authorities Regulating the Style of a Student's Hair*, 47 N.C.L. REV. 171 (1969).
- 2) Denno, *Mary Beth Tinker Takes the Constitution to School*, 38 FORD. L. REV. 35, 49-51 (1970).

Education; transfer of school district territory

Education Code §§2366.3, 2366.5 (new); §§2365, 2366 (amended).

AB 674 (Dixon); STATS 1973, Ch 1018

Support: State Department of Education

Requires increased consideration of effect on racial or ethnic integration of schools when proposed transfer of territory from one district to another is being evaluated; requires State Board of Education to adopt guidelines for use in determining the effect on racial or ethnic integration of schools affected; creates appeal procedure.

When a petition to transfer territory from an elementary, unified, or community college district to another district of the same kind has been transmitted to the county committee on school district organization pursuant to Article 3 (commencing with §2361) of the Education Code, the county committee shall under Section 2365 prepare a report and recommendation. Section 2365 has been amended to provide that the report shall indicate the opinion of the committee as to: (1) whether the proposed transfer would adversely affect the school district organization of the county; (2) whether it is compatible with any master plans approved by the State Board of Education; and (3) how the proposed transfer will affect racial or ethnic integration of the schools of the districts affected. The report may include other pertinent matter which the county committee desires to bring to the attention of the State Board of Education, board of supervisors, or county board of education, as the case may be (Section 658 permits the board of supervisors to transfer the functions specified in Sections 2365 and 2366 to the county board of education). Previously, a report made pursuant to Section 2365 indicated the committee's opinion as to (1) and (2) above, and (3) whether the proposed transfer would result in racial integration in the schools of the district affected by the transfer.

As amended, Section 2366 provides that if the county committee finds that the proposed transfer is compatible with the master plan of the county and would not adversely affect racial or ethnic integration of the schools of the districts affected, the petition and report shall be transmitted to the county board of supervisors or county board of education, as the case may be, by the county superintendent of schools. If the county committee finds that the proposed transfer is incompatible with the master plan of the county or will adversely affect racial or ethnic integration of the schools of the districts affected, the report and petition shall be transmitted to the State Board of Education by the county superintendent of schools. Prior to amendment, Section 2366 only concerned compatibility with the master plan of the county, not the effect on racial or ethnic integration.

Section 2366.3 has been added to direct the State Board of Education to adopt guidelines which may be used by county committees in making their determination of whether a transfer of territory would adversely affect racial or ethnic integration of the schools of the districts affected. Section 2366.5 has been added to allow any person questioning the finding of the county committee (pursuant to §2366) that the proposed transfer of territory will not adversely affect the racial or ethnic integration of the schools of the districts affected to appeal a decision made upon such a finding. The appeal shall be made to the State Board of Education within 30 days and shall be based upon factual and statistical evidence. If the State Board of Education denies the appeal, the decision of the county board of supervisors or the county board of education shall stand. If the State Board of Education approves the appeal, the county board of supervisors or the county board of education shall transmit a copy of its proceedings to the State Board of Education within 30 days after receipt of notice. The State Board of Education shall review the transcript and consider all factors involved. The State Board of Education may affirm the decision of the county board of supervisors or the county board of education; or if it appears that inadequate consideration was given to the effect of the transfer on integration of the schools of the districts affected, it shall direct the county board of supervisors or the county board of education to reconsider its decision and for this purpose to hold another hearing.

See Generally:

- 1) CAL. EDUC. CODE art. 3 (commencing with §2361) (transfer of territory from one elementary or unified district to another).