



1-1-1993

Education

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>



Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Education*, 24 Pac. L. J. 819 (1993).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol24/iss2/22>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Education

Education; bilingual teacher credentialing

Education Code §§ 44475, 44476, 44477, 44478, 44478.5, 44479, 44480, 44480.5, 44481 (repealed); §§ 44253.5, 44253.6 (repealed and new); §§ 44232, 44253.1, 44253.2, 44253.3, 44253.4, 44253.8, 44253.9 (new); §§ 44220, 44225, 44235.1, 44270.1 (amended); Government Code § 11126 (amended).

AB 2987 (Campbell); 1992 STAT. Ch. 1050

Under prior law, the Commission on Teacher Credentialing (Commission)¹ granted certificates of bilingual-crosscultural competence to persons who provide instruction to children whose native language is other than English and who are non or limited-English speaking.² Chapter 1050 clarifies the requirements for a bilingual-crosscultural competence certificate by distinguishing between a certificate for instruction of limited-English proficient (LEP) students in English³ and a certificate for instruction of non and limited-English speaking students in a language other than English.⁴ A certificate for instruction of LEP students in English

1. See CAL. EDUC. CODE § 44225(a)-(r) (amended by Chapter 1050) (establishing the powers and duties of the Commission).

2. 1990 Cal. Legis. Serv. ch. 829, sec. 1, at 3167 (West) (amending CAL. EDUC. CODE § 44253.5) (repealed and enacted by Chapter 1050). The minimum qualifications for a certificate of bilingual-crosscultural competence were a valid teaching credential, bilingual certification in English and a language other than English, competency in teaching both languages, and competency in the culture and heritage of the student whose language is one other than English. 1976 Cal. Stat. ch. 1010, sec. 2, at 2384 (enacting CAL. EDUC. CODE § 44253.6) (repealed and enacted by Chapter 1050).

3. See CAL. EDUC. CODE § 44253.3(a)(1)-(2) (enacted by Chapter 1050) (authorizing the certificate holder to provide instruction for English language development and specially designed content instruction delivered in English to LEP students); *id.* § 44253.2(a) (enacted by Chapter 1050) (defining instruction for English language development); *id.* § 44253.2(b) (enacted by Chapter 1050) (defining specially designed content instruction delivered in English).

4. *Id.* § 44253.4(a)(3) (enacted by Chapter 1050); see *id.* § 44253.2(c) (enacted by Chapter 1050) (defining content instruction delivered in the primary language). The Commission must initially issue certificates for languages spoken by the largest number of LEP students. *Id.* § 44253.4(e) (enacted by Chapter 1050). The Commission also grants a separate certificate for persons who are holders of an appropriate credential, certificate, authorization, or permit and serve limited-English speaking pupils in English. *Id.* § 44253.7 (West Supp. 1992). Compare Rachel F. Moran, *The Politics*

requires a valid California teaching credential,⁵ passage of one or more examinations by the Commission,⁶ and completion of at least six semester units, or nine quarter units, of coursework in a second language.⁷ A certificate for instruction of LEP students in a language other than English requires a valid California teaching credential⁸ and passage of one or more examinations by the Commission.⁹

Under prior law, the Commission appointed an Executive Secretary to assume all the delegable duties and powers of the Commission.¹⁰ Chapter 1050 provides for the appointment of an Executive Director to assume those duties, and allows the Commission to hold closed sessions for matters related to the recruitment, appointment, employment, and removal of the director.¹¹

PGT

of Discretion: Federal Intervention in Bilingual Education, 76 CAL. L. REV. 1249, 1249 (1988) (stating that the federal government endorses programs that rely heavily on native-language instruction) with Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 CAL. L. REV. 321, 323 (1987) (stating that, in contrast with the focus on requirements for a certificate, waivers to those requirements are often allowed due to the shortage of qualified bilingual teachers); 71 Op. Cal. Att'y Gen. 9, 9 (1988) (concluding that when a teacher is assigned to a position that requires non-English instruction, the teacher is not required to hold a credential that authorizes such other-than-English instruction). Chapter 1050 also increases the requirements for the attainment of an administrative service credential so that an applicant for the credential must complete two years of successful experience in a full time administrative position in a public or private school of equivalent status while holding a preliminary administrative credential. CAL. EDUC. CODE § 44270.1(a)(2) (enacted by Chapter 1050).

5. See CAL. EDUC. CODE § 44253.3(b)(1) (enacted by Chapter 1050) (describing other credentials or permits that may substitute for the valid teaching credential requirement).

6. See *id.* § 44253.3(b)(2) (enacted by Chapter 1050) (requiring passage of one or more examinations that the Commission determines necessary).

7. *Id.* § 44253.3(b)(1)-(3) (enacted by Chapter 1050).

8. See *id.* § 44253.4(b)(1) (enacted by Chapter 1050) (describing other credentials or permits that may substitute for the valid teaching credential requirement).

9. *Id.* § 44253.4(b)(1)-(2) (enacted by Chapter 1050). Examinations administered by the Commission should demonstrate a teacher's competency in the knowledge and skill necessary for effective teaching of LEP students. *Id.* § 44253.5(a) (enacted by Chapter 1050); see *id.* § 44253.5(c)(1)-(6) (enacted by Chapter 1050) (describing the required scope and content of such examinations).

10. 1990 Cal. Legis. Serv. ch. 341, sec. 1, at 1360 (West) (amending CAL. EDUC. CODE § 44220) (enacted by Chapter 1050).

11. CAL. EDUC. CODE § 44220(a)-(c) (amended by Chapter 1050); see CAL. GOV'T CODE § 11126(aa) (amended by Chapter 1050) (allowing the Commission to hold closed sessions for matters relating to the Executive Director's employment).

Education; charter schools

Education Code §§ 47600, 47601, 47602, 47603, 47605,
47606, 47607, 47610, 47611, 47612, 47615 (new).
SB 1448 (Hart); 1992 STAT. Ch. 781

Under existing law, school districts and county boards of education govern the operation of public elementary and secondary schools.¹ Chapter 781 establishes a procedure for the creation of charter schools which will operate independently of the laws governing school districts.² The procedure requires a petition for the establishment of a charter school, a petition which contains specific conditions and descriptions of the charter school, and governing body approval of the charter.³ Chapter 781 limits the number of potential

1. CAL. EDUC. CODE § 35010(a)-(b) (West Supp. 1992); *see id.* (establishing that each school district must be under the control of a board of school trustees or a board of education, and that each governing board shall prescribe and enforce rules not inconsistent with law, or with rules prescribed by the State Board of Education).

2. *Id.* § 47605(a)-(g) (enacted by Chapter 781); *id.* § 47610 (enacted by Chapter 781) (providing that a charter school must comply with the provisions of its charter petition, but is otherwise exempt from laws governing school districts); *see id.* § 47612(a)-(c) (enacted by Chapter 781) (stating that charter schools are subject to the Superintendent of Public Instruction's (Superintendent) decisions on the apportionment of charter school funds); *cf.* MINN. STAT. § 120.064 (1992) (establishing a procedure which authorizes a maximum of eight charter schools in the state of Minnesota). *See generally* James S. Liebman, *Voice, Not Choice*, 101 YALE L.J. 259, 310-312 (1991) (reviewing JOHN E. CHUBB AND TERRY M. MOE, *POLITICS, MARKETS, AND AMERICA'S SCHOOLS* (1990)) (stating that shared decisionmaking allows parents, the most interested constituents, to have an active role in school reform, in decisions previously reserved to a district's office, and in shaping each school's mission); Ann Bancroft, *A Plan for 'Alternative' Schools*, S.F. CHRON., Feb. 12, 1992, at A13; *New teaching concept urged*, UPI, July 2, 1988, AM cycle (reporting the endorsement of charter schools by the president of the American Federation of Teachers).

3. CAL. EDUC. CODE § 47605(a)-(d) (enacted by Chapter 781); *see id.* § 47607(a) (enacted by Chapter 781) (providing five year charter periods, and the procedures for charter renewal); *id.* § 47607(b)(1)-(4) (enacted by Chapter 781) (allowing revocation of a charter upon a violation of the charter provisions, failure to meet pupil outcome levels set in the charter, failure to comply with generally accepted methods of fiscal management, or violation of any provision of law). No later than 30 days from the receipt of a petition to establish a charter school, the school district must have a public hearing to review the provisions of the charter and determine employee and parental support for the petition. *Id.* § 47605(b) (enacted by Chapter 781). Every charter must describe measurable pupil outcomes that will be used to measure the extent to which students have attained the school's educational goals. *Id.* § 47605(b)(1) (enacted by Chapter 781). Every charter must also describe the following: (1) The method of measuring student progress; (2) the governance structure of the school; (3) qualifications required for employees at the school; (4) procedures to ensure health and safety of the students at the school; (5) means by which the school will achieve a racial and ethnic balance

charter schools in California to one hundred,⁴ and allows a school district to convert all of its schools to charter schools.⁵ Chapter 781 further states that school districts cannot require their employees to be employed at a charter school, and cannot require any pupil enrolled in the school district to attend a charter school.⁶ Additionally, Chapter 781 provides that the funding for charter schools will be equivalent to the funding level the charter school would have received before the charter.⁷

PGT

Education; child care and development programs

Education Code §§ 8282, 8282.1, 8282.2, 8282.4 (new); §§ 8235, 8236 (amended).
SB 1811 (Bergeson); 1992 STAT. Ch. 814
(Effective September 21, 1992)

among its pupils; (6) procedures for admissions, suspensions, and expulsions; (7) procedures for annual audits; (8) the manner by which staff may receive retirement benefits; (9) attendance alternatives for students who do not choose to attend charter schools; and (10) the rights of any district employee to work at the charter school and return to the district. *Id.* § 47605(b)(2)-(12) (enacted by Chapter 781). The charter must state that the school will be nonsectarian, will not charge tuition, will not discriminate against any student on the basis of ethnicity, national origin, gender, or disability, and will not determine admission according to the place of residence of the pupil or whether the pupil's parent or guardian resides within the state. *Id.* § 47605(d) (enacted by Chapter 781).

4. *Id.* § 47602(a) (enacted by Chapter 781). No more than ten charter schools will be operated in any single school district. *Id.* No charter will be granted to authorize the conversion of a private school into a charter school. *Id.* § 47602(b) (enacted by Chapter 781).

5. *Id.* § 47606(a) (enacted by Chapter 781). A school district may convert all of its schools to charter schools if fifty percent of the teachers in the district sign the charter petition, the petition satisfies the requirements of § 47605(b)-(f) of the Education Code, an alternative attendance program is established for students who choose not to attend charter schools, and the petition is approved by joint action of the Board and Superintendent. *Id.* § 47606(a)(1)-(2), (b) (enacted by Chapter 781).

6. *Id.* § 47605(e)-(f) (enacted by Chapter 781).

7. *Id.* § 47612 (a)(1)-(3) (enacted by Chapter 781).

Under existing law, the Superintendent of Public Instruction (Superintendent)¹ administers state preschool programs that provide specified activities² for eligible children³ who are three to five years old.⁴ Prior law mandates that first priority for receiving state preschool services be given to eligible four-year-old children seeking part-day services, then to eligible three-year-old children seeking part-day services, and finally to four-year-old children seeking full-day services.⁵ Chapter 814 is an urgency measure that immediately requires agencies that are funded by the state preschool program to give first priority to recipients of child protective services⁶ for children who are neglected or abused, or who are at risk of being neglected or abused.⁷ Chapter 814 states that service priority is then given to eligible four-year-old children⁸ before eligible three-year-

1. See CAL. EDUC. CODE § 33111 (West 1990) (requiring the Superintendent to execute the policies of the State Board of Education (Board) under general rules and regulations adopted by the Board); *id.* § 33112(a)-(g) (West Supp. 1992) (stating the duties of the Superintendent).

2. See *id.* § 8235 (amended by Chapter 814) (mandating that preschool programs provide activities that aid in educational development, health services, social services, nutritional services, parent education and participation, evaluation, and staff development).

3. See *id.* § 8236(a)(1) (amended by Chapter 814) (defining eligible children as those children currently eligible for the state preschool program); *id.* § 8263(a)(1)-(2) (West Supp. 1992) (specifying requirements for eligibility in federal and state subsidized child development services).

4. *Id.* § 8235 (amended by Chapter 814); see generally Robin Abcarian, *U.S. Role in Daycare: New Funds, New Hope, The Child-Care Dilemma: A Five Part Series*, L.A. TIMES, May 12-16, 1991, at E1 (providing a discussion of current child care options and issues facing child care provision in the United States).

5. 1991 Cal. Legis. Serv. ch. 758, sec. 3, at 2987 (West) (amending CAL. EDUC. CODE § 8236(a)); see *id.* (amending CAL. EDUC. CODE § 8236(b)) (allowing funds to be allocated to full-day child development programs for eligible three-year-old children after the funding priorities of Education Code § 8236(a) are met).

6. See CAL. GOV'T CODE § 26229 (West 1988) (providing authority to the board of supervisors of a county having a population in excess of 6,000,000 persons to establish departments or offices regarding the protective services for juveniles).

7. CAL. EDUC. CODE § 8236(b)(1) (amended by Chapter 814). Children will receive priority service upon written referral from a legal, medical, or social service agency. *Id.* If an agency cannot provide service to a child in this first priority category, the agency must refer the child's parent or guardian to a local resource and referral agency for assistance in locating services for the child. *Id.*

8. See CAL. EDUC. CODE § 8236(a)(4) (amended by Chapter 814) (defining four-year-old children as children who have their fourth birthday on or before December 2nd of the fiscal year in which they are enrolled).

old children.⁹ Further, under Chapter 814, grants for the expansion of state preschool programs must first take into account each service agency's geographical criteria¹⁰ and headquarter location,¹¹ and then give priority to agencies that serve the highest percentage of four-year-old children.¹²

PGT

Education; child care and development services--program director

Education Code § 8360.1 (repealed and new); §§ 8244, 8360.2, 8360.3 (new); §§ 8208, 8360 (amended).
AB 2879 (Polanco); 1992 STAT. Ch. 533

9. *Id.* § 8236(b)(2) (amended by Chapter 814); *see id.* (requiring each agency that provides state preschool services to certify to the Superintendent that enrollment priority is being given to four-year-old children); *id.* § 8236(a)(5) (amended by Chapter 814) (defining three-year-old children as those who have their third birthday on or before December 2nd of the fiscal year in which they are enrolled). *See generally* 42 U.S.C. § 9835(d) (1988) (establishing that the federal Head Start childcare program, which is completely independent from the state preschool program, must assure that no less than ten percent of the total number of enrollment opportunities are available for children with disabilities); *id.* than one year of Head Start services to children from age three to the age of compulsory school attendance).

10. *See* CAL. EDUC. CODE § 8289(a)-(c) (West Supp. 1992) (establishing procedures for the State Department of Education to follow that account for geographic location and promote equal access to preschool services across the state).

11. *See* CAL. CODE REGS. tit. 5, § 18000(b)(1)-(2) (1990) (defining headquarterd); *id.* § 18002(d)(2) (1990) (providing reviewing preference to grant applicants that are headquarterd in a service delivery area); *id.* § 18000(g) (defining service delivery area as the community, geographic area, or political subdivision specified by the Child Development Division of the State Department of Education when offering funds for the expansion of preschool programs through a Request for Applications).

12. CAL. EDUC. CODE § 8236(d)(2) (amended by Chapter 814); *see id.* § 8236(d)(3)(A)-(B) (amended by Chapter 814) (providing that programs that receive expansion funding must prioritize their services so first priority service will be given to children who are receiving child protection services, or who are at risk of abuse or neglect, and second priority service will go to eligible four-year-old children).

Existing law empowers the Superintendent of Public Instruction (Superintendent)¹ to contract with certain agencies² to provide child care and development services³ pursuant to the Child Care and Development Act.⁴ Chapter 533 mandates that any entity operating child care and development programs⁵ that provide direct services⁶ to children at two or more sites, must employ a program director.⁷ Under Chapter 533, a program director is required to possess either a regular children's center supervision permit,⁸ a regular children's center instructional permit,⁹ a master's degree,¹⁰ or a public school administrative or supervision credential.¹¹ Chapter 533 further

1. See CAL. EDUC. CODE §§ 33111, 33112 (West 1990 & Supp. 1992) (specifying the duties of the Superintendent of Public Instruction).

2. See *id.* § 8208(c) (amended by Chapter 533) (specifying agencies that may contract to provide child care and development services).

3. See *id.* § 8208(j) (amended by Chapter 533) (defining child care and development services).

4. *Id.* § 8203.5 (West Supp. 1992). The Child Care and Development Act is intended to provide comprehensive and cost effective child care and development services for children to age fourteen and their parents. *Id.* §§ 8201, 8202 (West Supp. 1992).

5. See *id.* § 8208(h) (amended by Chapter 533) (defining child care and development programs).

6. See *id.* § 8244(a) (enacted by Chapter 533) (specifying programs that provide direct services).

7. *Id.*; see *id.* § 8244(b)(1)-(3) (enacted by Chapter 533) (defining program director and specifying the responsibilities of the position); *cf.* CAL. CODE REGS. tit. 22, §§ 101215, 101315 (1991) (specifying the qualifications and duties of child care and day care center directors). The program director may also serve as the site supervisor at one of the program sites. CAL. EDUC. CODE § 8244(c) (enacted by Chapter 533); see *id.* § 8208(aa) (amended by Chapter 533) (defining site supervisor).

8. See *id.* § 8360.1(f) (enacted by Chapter 533) (specifying that a children's center supervision permit requires possession of a current elementary school teaching credential, six units in administration and supervision of early childhood education or development, and either twelve units in early childhood education or development, or two years of experience in child care and development).

9. See *id.* § 8360(b) (amended by Chapter 533) (specifying that a children's center instructional permit requires possession of an elementary school teaching credential and either twelve units in early childhood education or development, or two years of experience in child care and development).

10. See *id.* § 8360.1(c)-(d) (enacted by Chapter 533) (requiring that the master's degree be in early childhood education or development, or that a regular children's center instructional permit be held in addition to a master's degree in an unrelated field).

11. *Id.* § 8360.1 (enacted by Chapter 533); see *id.* § 8360.1(e) (enacted by Chapter 533) (specifying that twelve units in early childhood education or development, or at least two years of experience in early childhood education, is required in addition to any administrative or supervision credential). Education Code § 8306.1 shall remain in effect only until January 1, 1996. *Id.* § 8360.1(g) (enacted by Chapter 533). Beginning July 1, 1996, program directors employed by an

provides that any person serving as a teacher or program director in a child care and development program that provides services to severely handicapped children,¹² must possess a regular children's center supervisory or instructional permit, or be currently employed as a teacher or program director.¹³ The Superintendent, however, may waive specific qualification requirements for program directors.¹⁴

TKT

Education; community colleges--nonresident tuition

Education Code § 76140 (amended).
SB 2000 (Leslie and Presley); 1992 STAT. Ch. 1236

Under existing law, community college districts¹ are required to

entity operating child care and development programs at two or more sites, shall possess a children's center supervision permit or be granted a waiver by the Superintendent. *Id.* § 8360.1(a) (enacted by Chapter 533). *Cf.* OR. REV. STAT. § 418.905 (1991) (enumerating the qualifications for program director of a Cooperative Network Child Care and Extended Neighborhood program).

12. *See* CAL. EDUC. CODE § 8208(g) (amended by Chapter 533) (defining severely handicapped children as including children with autism, blindness, and mental retardation).

13. *Id.* § 8360.3 (enacted by Chapter 533). A teacher of severely handicapped children must hold a California special education credential or have completed specified college coursework and work experience. *Id.* § 8360.3(a) (enacted by Chapter 533). A program director must possess a California special education credential or have completed specified college coursework or have been employed as a teacher or program director for severely handicapped children prior to January 1, 1993. *Id.* § 8360.3(b)-(c) (enacted by Chapter 533).

14. *Id.* § 8244(d) (enacted by Chapter 533). The requirements for program director may be waived only if the applicant satisfies the requirements for site supervisor and is either working towards receiving a children's center supervision permit or is employed in a location that makes continuing education impracticable. *Id.* § 8244(d)(1)-(2) (enacted by Chapter 533). *See id.* § 8208(aa) (amended by Chapter 533) (defining site supervisor).

1. *See* CAL. EDUC. CODE § 70900 (West 1989) (creating a postsecondary education system consisting of community college districts known as the California Community Colleges); *id.* §§ 74150-74170 (West 1989 & Supp. 1992) (setting forth procedures for formation of new community college districts); *id.* § 74000 (West Supp. 1992) (declaring that the existing master plans for school district organization of each county are to be used as the basis for future reorganization of districts, and that all territory of a state is to be included within a community college district; however if the territory is located within a county where the residents account for less than 350 units of average daily attendance, the territory may be annexed within a community college district); *id.* §§ 74130-

charge a tuition fee to nonresident students² unless the district borders on another state and has an average daily attendance of fewer than 500 students.³ Chapter 1236 eliminates this mandatory tuition fee for districts with less than 1,500 full-time equivalent students (FTES), and is within ten miles of another state which has a reciprocity⁴ agreement with California governing student attendance and fees.⁵ Chapter 1236 allows a district within ten miles of another

74149 (West 1989 & Supp. 1992) (setting forth the procedures for annexation of nondistrict territory to an existing community college district). *See generally id.* §§ 74000-74673 (West 1989 & Supp. 1992) (setting forth the regulations governing district reorganization and formation).

2. *See id.* § 68018 (West 1992) (defining nonresident student as a student who has not resided in the state for more than one year immediately preceding the residence determination date); *id.* § 68062 (West 1989) (setting forth the rules for determining one's place of residence).

3. *Id.* § 76140(a), (i) (amended by Chapter 1236); *see id.* § 68050 (West 1992) (requiring nonresident students to pay nonresident tuition in addition to other required fees); *id.* § 68130 (West 1992) (authorizing governing boards to waive nonresident tuition); *id.* § 68051 (West 1992) (granting the governing board of each district the authority to regulate the method of calculating nonresident tuition); *id.* § 68062 (West 1992) (establishing the rules for determining the place of residence of a student); *id.* § 76143 (West 1992) (specifying circumstances under which residence outside the state may be disregarded for the purpose of determining residency status); *see also* Gurfinkel v. Los Angeles Community College Dist., 121 Cal. App. 3d 1, 6, 175 Cal. Rptr. 201, 203, (1981) (upholding the constitutionality of nonresident tuition requirements of community colleges because the fundamental right to an education extends only from kindergarten through grade 12, and therefore, does not unconstitutionally burden the right to an education). Classification of students as residents or nonresidents is not arbitrary and bears a rational relation to a legitimate state object or purpose. *Id.* at 9, 175 Cal. Rptr. at 205. The durational residency requirement is not an absolute classification because presentation of sufficient evidence may overcome the presumption of nonresidence. *Id.*, at 10, 175 Cal. Rptr. at 206. *Cf.* Vlandis v. Kline, 412 U.S. 441, 453 (1973) (holding that a Connecticut statute which permanently and irrebuttably classifies specified students as nonresidents is void under due process grounds).

4. *See* BLACK'S LAW DICTIONARY 1270 (6th ed. 1990) (defining reciprocity as mutuality). Reciprocity is used to describe the relation existing between two states where each of them gives the residents of the other certain privileges, on the condition that its own residents shall enjoy similar privileges at the hands of the latter state. *Id.*

5. CAL. EDUC. CODE § 76140(i) (amended by Chapter 1236); *see id.* § 66803 (West 1992) (authorizing a college district to waive all or part of the tuition requirements for nonresidents under California Education Code § 76140 if the district participates in an interstate attendance agreement); *see also* Tuition Increase, Budget Cuts Approved By State Board For Community Colleges, PR Newswire Association, Inc., July 11, 1991, available in LEXIS, Nexis Library, PR Newswire File (describing the reciprocity agreement between Minnesota, Wisconsin, North Dakota, and South Dakota, and noting that tuition for nonresident students from outside the reciprocity zone is twice as much as the standard tuition); Representative Supports Reciprocity, PROPRIETARY TO THE UNITED PRESS INTERNATIONAL 1987, (Wisconsin) February 16, 1987, AM cycle, at Regional News section (describing the similarity between an income tax reciprocity agreement and a tuition reciprocity agreement, and noting that the difference in costs of resident and nonresident tuition is paid by the home state of a nonresident student). *But see* George Boosey, UPI, Feb. 10, 1983, available in LEXIS, Nexis Library, UPI File (reporting that the obligation of the state to make up the difference

state granting reciprocity and having between 1,500 and 3,001 FTES, to exempt up to 100 nonresident FTES from the mandatory tuition fees and report them as resident FTES.⁶ Any student granted this exemption will be assessed a fee of forty-two dollars (\$42) per course unit.⁷

DTF

Education; conditions for student recovery of tuition funds

Education Code §§ 94342, 94343 (amended).
AB 2880 (Polanco); 1992 STAT. Ch. 1258

The Student Tuition Recovery Fund exists to relieve or mitigate economic losses suffered by any California resident who is a student of an approved educational institution.¹ Existing law provides for payment from the fund to a student who enrolled in an institution, prepaid tuition, and suffered a loss resulting from the institution's closure,² a decline in the quality of education, or an inability to collect a judgment against the institution.³ Chapter 1258 authorizes

in tuition costs for its residents who attend out-of-state schools within the reciprocity zone is a financial burden because there is a larger number of Minnesota students attending out-of-state schools than nonresidents attending Minnesota schools). *See* CAL. EDUC. CODE § 84501 (West Supp. 1992) (defining "community college average daily attendance" as full-time equivalent student (FTES) as that term is defined by regulations adopted by the Board of Governors of the California Community Colleges); *id.* § 84750(a)-(j) (West Supp. 1992) (describing the method by which full-time equivalent students are computed).

6. CAL. EDUC. CODE § 76140(j),(k) (amended by Chapter 1236).

7. *Id.* § 76140(k) (amended by Chapter 1236).

1. CAL. EDUC. CODE § 94342(a) (West Supp. 1992). The Student Tuition Recovery Fund consists of a degree-granting postsecondary educational institution account and a vocational educational institution account. *Id.*

2. *See id.* § 94342(a)(1) (West Supp. 1992) (defining closure).

3. *Id.* § 94342(a) (amended by Chapter 1258). If the student obtained a judgment against the institution and certifies that it cannot be collected after diligent collection efforts, the student may be eligible for relief under the tuition recovery program. *Id.* § 94342(a)(2) (amended by Chapter 1258). Students entitled to payment are required to file an application within one year of receiving notice of their rights under the tuition recovery program. *Id.* § 94342(d)(1)(F) (amended by Chapter 1258). The Council for Private Postsecondary and Vocational Education must pay or deny the claim within

payment if the institution fails to pay refunds or charges on behalf of a student to a third party, fails to pay or reimburse loan proceeds, or fails to provide materials paid for by the student.⁴ Chapter 1258 also increases the amount of payment from the fund.⁵ Under Chapter 1258, the council may reduce the total amount of monetary recovery from the tuition fund by the value of the benefit of the education obtained by the student before the institution closes.⁶ In addition,

60 days of receiving a completed application for payment. *Id.* § 94342(e) (amended by Chapter 1258); see George Ramos, *School a 'Rip-Off,' Pupils Say: Students Paid Up To \$1,000 For Nursing Assistant Course That Cost \$45 Elsewhere*, L.A. TIMES, Sept. 29, 1991, part B, col. 6 (stating that refunds to over 200 students have yet to be made by trade school that was forced to refund tuition for nursing course, but which can continue to offer English as a Second Language courses).

4. CAL. EDUC. CODE § 94342(a)(1) (amended by Chapter 1258). To address the growing problem of vocational institutions capitalizing on the immigrant market by offering inferior ESL or trade programs at inflated prices, Chapter 1258 requires that a greater balance remain in the vocational institution account to meet the claims of students which currently are exhausting the fund. Telephone interview with Debra Ortiz, Consultant to Assembly member Richard Polanco, (May 23, 1992) (notes on file at the *Pacific Law Journal*); see CAL. EDUC. CODE § 94343 (amended by Chapter 1258) (specifying the balances which must be maintained in both the vocational account and the degree-granting postsecondary educational account).

5. *Id.* § 94342(f) (amended by Chapter 1258). Under existing law, the amount of the claim cannot exceed the tuition and cost of equipment and related materials, including interest on student loans used to pay for tuition and materials. *Id.* Chapter 1258 authorizes the council to pay the greater of either the total guaranteed student loan debt incurred in connection with attending the institution, or the total of the student's tuition, the cost of course-related equipment and materials, and the amount the institution collected and failed to pay third parties on behalf of the student for license fees or any other purpose. *Id.* Chapter 1258 additionally includes all interest and collection costs on all student loan debt incurred in attending the institution. *Id.* If the council pays the claim, the amount of the payment must be the total amount of the student's economic loss, notwithstanding the amount to which the student would have been entitled after a voluntary withdrawal. *Id.* § 94342(f)(4) (amended by Chapter 1258); cf. ARIZ. REV. STAT. ANN. § 32-3072 (1991) (providing for student tuition recovery fund to from which persons injured by a private postsecondary education institution ceasing operation can recover an amount not to exceed the actual damages sustained); OKLA. STAT. tit. 70, § 21-201 (1992) (providing for recovery from the student tuition recovery fund when due to a member school's closure the student can no longer continue his or her education, and no viable alternative for restitution is available, as determined by the board). The board may notify students of the availability of equivalent training at another school, but cannot require a student to attend this other school in lieu of receiving a refund of prepaid tuition. *Id.* § 21-201(c).

6. CAL. EDUC. CODE § 94342(f)(2) (amended by Chapter 1258). If the council makes any reduction, it must notify the claimant in writing at the time the claim is paid, of the basis of its decision, and provide a brief explanation of the reasons for the reduction. *Id.* Chapter 1258 prohibits a reduction if the student did not receive adequate instruction to obtain the training, skills, experience, or employment to which the instruction was represented to lead, or if the credit the student received is not transferable to other institutions approved by the council. *Id.* § 94342(f)(3) (amended by Chapter 1258).

Chapter 1258 provides that the director of the council may negotiate for the full compromise or write-off of student loan obligations.⁷

LES

Education; English as a second language instruction

Education Code § 94316.28 (new).
AB 3524 (Polanco); 1992 STAT. Ch. 330

Existing law addresses the problem of educational fraud in private postsecondary institutions¹ by establishing minimum standards² and prohibiting false, deceptive, misleading, or unfair statements, acts, or recruitment activities.³ Chapter 330 subjects

7. *Id.* § 94342(g)(1) (amended by Chapter 1258). The director of the council may also pay the claim, but only if such payment would satisfy the student's entire loan obligation. *Id.* § 94342(g)(2) (amended by Chapter 1258). In addition, the council may delay the payment of a claim pending the resolution of its attempt to obtain a compromise or write-off of the claimant's student loan obligation. *Id.* § 94342(g)(3) (amended by Chapter 1258). However, the council must immediately pay the claim in the event any adverse action is taken against the student, including the commencement of a civil or administrative action, tax offset, the enforcement of a judgment, or the denial of any government benefit. *Id.*

1. *See* CAL. EDUC. CODE § 94316.2(j) (West Supp. 1992) (defining private postsecondary educational institution).

2. *See id.* § 94316 (West Supp. 1992) (setting forth the Maxine Waters School Reform and Student Protection Act of 1989). The Act protects students and reputable institutions, assures appropriate state control of business and operational standards, assure minimum standards for educational quality, prohibit misrepresentations, require full disclosures, prohibit unfair dealing and protect student rights. *Id.* § 94316(d); *see id.* § 94316.1 (West Supp. 1992) (listing the educational institutions the Act applies to); *id.* § 94316.05(b) (West Supp. 1992) (stating that the legislative intent is to establish: (1) incentives to reduce student dropouts; (2) minimum fiscal standards; (3) minimum standards for admission based on student's ability; and (4) minimum standards of institutional accountability for course completion and student employment in the occupations or job titles for which training is represented to lead).

3. *Id.* § 94316.3(a)-(l) (West Supp. 1992). Violations may result in civil or criminal liability. *Id.* § 94316.3(c) (West Supp. 1992); *see* Paul Lieberman, *Trade School Loses Its Accreditation*, L.A. TIMES, Nov. 14, 1991, pt. B, at 3, col. 1 (describing the "bait and switch" tactics of an Encino-based chain of trade schools, occurring when the school lured persons to their facilities by advertising well-paying jobs requiring no experience, informing the applicants that they were unqualified for the position, and then referring them to their expensive trade school for the necessary "training"); Jason DeParle, *Trade Schools Near Success As They Lobby for Survival*, N.Y. TIMES, Mar. 25, 1992, pt.

schools offering instruction in English as a second language (ESL) to the same standards and regulations.⁴

Chapter 330 requires that students demonstrate an adequate proficiency in English by passing an oral and written test prior to enrolling in any educational service taught in English.⁵ Chapter 330 also requires students who have completed ESL instruction and are taking courses taught in English at the same institution to pass a proficiency test prior to enrollment.⁶ Under Chapter 330, if an institution offers ESL instruction to a student in connection with an employment-oriented course that requires licensure awarded after the passage of an exam offered in English, the institution must give the student a test to determine if he or she can comprehend English at the level in which the exam is offered.⁷

A, at 1, col. 1 (describing the fraud and federal aid abuses occurring at proprietary trade schools in the late 1980s, with evidence that the schools existed only to collect federal student aid); *see also* Kenneth Cooper, *U.S. Threatens to Bar 225 Schools From Student Aid*, WASH. POST, July 18, 1991, pt. 1, at 12 (citing for-profit trade schools as those with the highest loan default rate, and acknowledging the need to protect students from "sham schools").

4. CAL. EDUC. CODE § 94316.28(b)(c) (enacted by Chapter 330). Chapter 330 requires that schools offering ESL courses be licensed or approved by the Council for Private Postsecondary and Vocational Education. *Id.* § 94316.28(b) (enacted by Chapter 330); *see id.* § 94311 (granting the Council for Private Postsecondary and Vocational Education authority to license or approve private postsecondary educational institutions). Private postsecondary institutions are required to comply with California Education Code § 94316, if it is applicable. *Id.* § 94311(a)(12). The apparent intent of the Legislature is to reduce the amount of fraud existing in the vocational education business, including schools offering ESL programs. Telephone interview with Debra Ortiz, Consultant to Assembly member Richard Polanco, (May 23, 1992), notes on file at the *Pacific Law Journal*; *see* Lee May, *Alien Law Puts Strain on English Classes*, L.A. TIMES, Feb. 25, 1987, pt. 1, at 16, col. 1 (describing the crowding effect the English proficiency immigration requirement has had on the available ESL programs, with private courses costing as much as \$5,000.); Anthony Millican, *The South Bay's Growing Immigrant Population Has Brought A Boom In English As A Second Language Classes*, L.A. TIMES, Feb. 22, 1991, pt. B, at 3, col. 2 (analyzing the growing immigrant population's need for the ESL courses).

5. CAL. EDUC. CODE § 94316.28(d) (enacted by Chapter 330). Chapter 330 also requires proficiency testing prior to enrollment in a course designed to enable students to use existing skills in pursuit of an occupation. *Id.* § 94316.28(f) (enacted by Chapter 330).

6. *Id.* § 94316.28(e) (enacted by Chapter 330). The institutions must retain all test and answer records for five years. *Id.* § 94316.28(j) (enacted by Chapter 330); *cf.* FLA. STAT. ch. 233.0695 (1991) (requiring students enrolled in postsecondary adult vocational programs to demonstrate mastery of basic skills, including English language, which is appropriate for the occupational program in which they are enrolled, and providing that if any student is found to lack a minimal level of basic skill, he or she will be referred to a structured program of basic skill instruction).

7. *Id.* § 94316.28(g) (enacted by Chapter 330). The test is given after the students complete the ESL training. *Id.*

If the proficiency tests required under Chapter 330 demonstrate that an enrolled student has not become adequately proficient in the English language, the institution offering the ESL instruction must fully refund the student's tuition or permit the student to reenroll at no charge.⁸

LES

Education; expulsion for possession of firearms

Education Code § 48915 (amended).
AB 678 (Boland); 1992 STAT. Ch. 16

Prior law did not require a principal or superintendent of schools to recommend expulsion¹ of a pupil who possessed a firearm² at school or at a school activity off school grounds, if the principal or superintendent found and reported to the governing board (board)³ the particular circumstances indicating that expulsion was inappropriate.⁴

Under Chapter 16, the principal or superintendent must immediately suspend⁵ any pupil who possesses a firearm, and

8. *Id.* § 94316.28(h) (enacted by Chapter 330). Refunds must be made within 30 days. *Id.* Subdivision (h) applies to California Education Code § 94316.28(d)-(g). *Id.* Chapter 330 does not apply to grantees funded under § 1672 of Title 29 of the United States Code. *Id.* § 94316.28(i) (enacted by Chapter 330).

1. *See* CAL. EDUC. CODE § 48925(b) (West Supp. 1992) (defining expulsion as the removal of a student from the immediate or general supervision and control of school personnel).

2. *See* CAL. PENAL CODE § 12001(b) (West 1989) (defining firearm as any device used as a weapon which uses an explosive force to propel a projectile from a barrel).

3. *See* CAL. EDUC. CODE § 78 (West 1978) (defining governing board to be the board of school trustees). The board referred to is that of the school district. *Id.* § 48915.1(a) (West Supp. 1992).

4. 1987 Cal. Stat. ch. 383, sec. 2, at 1530-31 (amending CAL. EDUC. CODE § 48915). Furthermore, an expulsion for the possession of a firearm was discretionary with the board, even though the principal or superintendent recommended the action. *Id.*

5. CAL. EDUC. CODE § 48925(d) (West 1989) (defining suspension as the temporary removal of a student from school for "adjustment purposes"); *see also* *Goss v. Lopez*, 419 U.S. 565, 582 (1975) (stating that the immediate suspension of a student whose presence endangers the lives of others does not violate due process).

recommend the pupil's expulsion to the board.⁶ The board is required to either expel the pupil or refer the pupil to an alternative education program if both the board and the principal or superintendent confirm that: (1) The pupil was in knowing⁷ possession of a firearm; (2) the possession was verified by a school employee; and (3) the pupil had no reasonable cause to possess the firearm.⁸

COMMENT

Chapter 16 requires the mandatory expulsion of any student whose possession of a firearm is confirmed by school district officials.⁹ Mandatory expulsion rules have been held to comport with constitutional requirements for substantive due process when they are rationally related to a legitimate state interest.¹⁰ Chapter 16 probably meets this constitutional standard, since removal of firearms from schools furthers the state's interests in ensuring student and faculty

6. CAL. EDUC. CODE § 48915(b) (amended by Chapter 16).

7. See CAL. PENAL CODE § 7 (West 1989) (defining knowing as knowledge of the existence of the acts which constitute a violation of the law but not necessarily the knowledge that the acts were unlawful).

8. CAL. EDUC. CODE § 48915(b)(1)-(3) (amended by Chapter 16).

9. *Id.*

10. See *New Jersey v. T.L.O.*, 469 U.S. 325, 339-40 (1985) (recognizing the substantial interest of school officials in maintaining discipline in response to the increasing levels of school violence and disorder); *Mitchell v. Board of Trustees*, 625 F.2d 660, 664-65 (5th Cir. 1980) (allowing the strict enforcement of school rules when they are rationally related to the legitimate interest of student safety); see also *Mitchell v. Board of Trustees*, 625 F.2d 660, 665 (5th Cir. 1980) (approving a Mississippi mandatory expulsion rule because the school has an obligation to provide a safe environment for students); *C.J. v. Sch. Bd.*, 438 So. 2d 87, 87 (Fla. 1983) (allowing a Florida mandatory expulsion rule even while recognizing the pupil's very strong property interest in an education). See generally Annotation, *Expulsion, Dismissal, Suspension, or other Discipline of Student of Public School, College, or University as Violating Due Process Clause of Federal Constitution's Fourteenth Amendment: Supreme Court Cases*, 88 L. Ed. 2d 1015 (1989) (analyzing the constitutional issues involved in the expulsion of high school students); see also *Board of Educ. v. Pico*, 457 U.S. 853, 864 (1982) (acknowledging a legitimate and substantial community interest to inculcate students with respect for authority and traditional values); *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 507 (1969) (stating that the school board has the authority, tempered by constitutional safeguards, to control the conduct of students); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (stating that the local school board, rather than the court system, is the proper venue for disciplinary actions). Studies show that almost three percent of high school juniors surveyed had taken a handgun to school, and gunfire is now the second leading cause of death for Americans ages 15-19. *Gunfire Deaths of Teens Rise*, SACRAMENTO BEE, June 10, 1992, § A, at 6, col. 1.

safety.¹¹ However, depriving a student of the right to an education without a fundamentally fair procedure to determine whether possession of a firearm occurred, raises a question of adequate procedural due process.¹²

The United States Supreme Court held in *Goss v. Lopez*¹³ that in order to satisfy procedural due process, a temporary suspension from school requires, at a minimum, giving the student notice of the charges and an opportunity to be heard if the student denies the charges.¹⁴ *Goss* also suggests that more formal procedures may be required for an extended deprivation such as expulsion.¹⁵ The Court did not, however, specify the extent of such procedures.¹⁶

In *Mathews v. Eldridge*,¹⁷ decided one year after *Goss*, the Supreme Court adopted a three-part test to analyze procedural due process questions when a government action infringes upon an individual's liberty or property interests.¹⁸ To determine the adequacy of procedures, courts must balance the nature of the individual's interest, the government's interest, and the probability that the procedure in question may result in an erroneous deprivation.¹⁹

Although Chapter 16 meets the *Goss* standard for a suspension by expressly requiring the principal or superintendent to give the

11. See CAL. EDUC. CODE § 48915(b) (amended by Chapter 16).

12. *Goss v. Lopez*, 419 U.S. 565, 573-74 (1975); see *Slayton v. Pomona Unified Sch. Dist.*, 161 Cal. App. 3d 538, 549, 207 Cal. Rptr. 705, 713 (1984) (stating that the right to an education deserves the same guarantees of protection as any other legal right).

13. 419 U.S. 565 (1975).

14. *Id.* at 584; see *Slayton v. Pomona Unified Sch. Dist.*, 161 Cal. App. 3d 538, 550, 207 Cal. Rptr. 705, 713 (1984) (stating that the 1977 California Education Code revisions concerning disciplinary actions were in response to *Goss*); see also *Review of Selected 1977 California Legislation*, 9 PAC. L.J. 505, 507 (1978) (reviewing the histories of California Education Code §§ 48900 and 48915).

15. *Goss*, 419 U.S. at 583.

16. *Id.* The expulsion procedure under prior California law was the same for the possession of firearms, knives, explosives, and other dangerous objects. 1987 Cal. Stat. ch. 383, sec. 2, at 1530-31 (amending CAL. EDUC. CODE § 48915). The law provided for timely notice, opportunity to be heard, right to counsel, production of evidence, and findings of fact. 1990 Cal. Legis. Serv. ch. 1231, sec. 2, at 3-6 (West) (amending CAL. EDUC. CODE § 48918). These procedures still apply to expulsions for the possession of knives, explosives, and other dangerous objects. CAL. EDUC. CODE §§ 48900, 48918 (West 1989); *id.* § 48915(c) (amended by Chapter 16).

17. 424 U.S. 319 (1976).

18. *Id.* at 347.

19. *Id.*

student notice and an opportunity to be heard, the validity of the expulsion procedure is less certain.²⁰ Under prior law, all expulsion proceedings afforded the student heightened procedural protections including the requirement for a formal hearing, special rules for admissibility of evidence, representation by counsel, inspection of documents, and confrontation of witnesses.²¹ Existing law still requires these procedures for all expulsions except where the student is accused of possessing a firearm.²² Chapter 16 distinguishes between the possession of firearms and any other weapon or dangerous object by enacting a separate expulsion procedure for firearms.²³ Expulsions under Chapter 16 do not require a formal hearing, and may be based solely on evidence of the possession which is supplied, interpreted, and confirmed by school employees.²⁴ As a result, the mandatory expulsions required by Chapter 16 may not provide adequate procedural due process under the *Mathews* balancing formula.²⁵

Students subject to a state's compulsory education law have substantial property and liberty interests in a public education.²⁶ The

20. CAL. EDUC. CODE § 48915(b) (amended by Chapter 16) (requiring the suspension to proceed pursuant to California Education Code § 48911). Before a student is suspended, a conference must be held to notify the student of the reasons for the disciplinary action and allow an opportunity to be heard. *Id.* § 48911(b) (West Supp. 1992). However, a student may be suspended immediately if the principal determines that an emergency situation exists. *Id.* § 48911(c) (West Supp. 1992). If the student is suspended without a conference, both the pupil and his parent shall be notified of the right to return to school for a conference. *Id.*

21. 1987 Cal. Stat. ch. 383, sec. 2, at 1530-31 (amending CAL. EDUC. CODE § 48915).

22. CAL. EDUC. CODE § 48900 (West Supp. 1992); *id.* § 48915 (amended by Chapter 16).

23. *Id.* § 48915(b) (amended by Chapter 16).

24. *Id.* § 48915(b)(1)-(3) (amended by Chapter 16); *see Franklin v. District Sch. Bd.*, 356 So. 2d 931, 932 (Fla. 1978) (holding that unsubstantiated hearsay may supplement evidence but not support an expulsion). *But see Tasby v. Estes*, 643 F.2d 1103, 1106 (5th Cir. 1981) (holding that the admission of an administrator's hearsay evidence in a disciplinary hearing does not violate due process); *Racine Unified Sch. Dist. v. Thompson*, 321 N.W.2d 334, 337 (Wis. 1982) (holding due process is met even though some of the evidence is hearsay supplied by the school employees).

25. *Mathews v. Eldridge*, 424 U.S. 319, 344-48 (1976). *See generally* James W. McMasters, Comment, *Mediation: New Process for High School Disciplinary Expulsions*, 84 Nw. U. L. REV. 736, 746-759 (1990) (discussing and applying the *Mathews* three-part test to high school expulsions).

26. *Goss v. Lopez*, 419 U.S. 562, 573-74 (1975). California has a compulsory education law that applies to persons ages six to eighteen. CAL. EDUC. CODE § 48200 (West 1989); *see Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969) (asserting that students do not relinquish their constitutional rights while on school grounds). *But cf. New Jersey v. T.L.O.*, 469 U.S. 325, 340-42 (1985) (reaffirming that the rights of students in a school atmosphere are not coextensive with those of adults outside the school environment); *C.J. v. Sch. Bd.*, 438 So. 2d 87, 87 (Fla. 1983)

primary governmental interests are administrative efficiency, disciplinary effectiveness and student safety.²⁷ The violation confirmation process under Chapter 16, however, appears to offer less protection against an erroneous deprivation of rights than the formal hearing still required to expel a student for any reason other than firearm possession.²⁸ Therefore, the absence of an express requirement for an expulsion hearing with the concomitant evidentiary and adversarial procedures, may allow school officials to circumvent the minimum standards of due process.²⁹

Notwithstanding the government's strong safety interest, an expulsion under Chapter 16 may violate the Due Process Clause of the Fourteenth Amendment by depriving a pupil of a government-granted entitlement without a fundamentally fair procedure.³⁰

BCM

(approving an expulsion for possession of a weapon despite acknowledging the student's property interest in an education).

27. See *McMasters*, *supra* note 25 at 746-59 (discussing and weighing the issues in determining the proper procedural due process for expulsions of high school students).

28. CAL. EDUC. CODE § 48915(b)(1)-(3) (amended by Chapter 16); *id.* § 48918 (West 1989) (prescribing rules for expulsion procedures including timely notice, opportunity to be heard, right to counsel, inspection of documents, and admissibility of evidence). There is little uniformity between the states regarding procedural due process requirements for expulsions. See, e.g., MD. EDUC. CODE ANN. § 7-304(c)(4) (1989) (allowing right to counsel, examination of witnesses, and requiring an opportunity to be heard); MASS. ANN. LAWS ch. 76, § 17 (West 1982) (requiring only the constitutional minimum of an opportunity to be heard); MINN. STAT. ANN. § 127.31 (West 1979) (requiring a hearing, and allowing right to counsel, prior examination of records, cross-examinations and the presentation of evidence); WIS. STAT. ANN. § 120.13(1)(c) (West 1991) (requiring a hearing with a parent or guardian present); WYO. STAT. § 21-4-305(d) (1991) (requiring a special hearing); *Newsome v. Batavia Local Sch. Dist.*, 842 F.2d 920, 924-26 (6th Cir. 1988) (disallowing introduction of new evidence in a hearing closed to the student); *Brewer v. Austin Indep. Sch. Dist.*, 779 F.2d 260, 263 (5th Cir. 1985) (denying extensive trial-type procedures to high schoolers).

29. CAL. EDUC. CODE § 48915(b)(1)-(3) (amended by Chapter 16); see *supra* note 16 (describing the different expulsion procedures for firearm possession under prior and existing California laws). An expulsion under existing law for the possession of knives, explosives, and other dangerous objects still requires the board to hold a hearing and make a finding, based on substantial evidence, that a possession occurred. *Id.* § 48916(c) (amended by Chapter 16); *id.* § 48918(h) (West Supp. 1992); see *John A. v. San Bernardino City Unified Sch. Dist.*, 33 Cal. 3d 301, 307, 654 P.2d 242, 246, 187 Cal. Rptr. 472, 476 (1982) (defining substantial evidence as the kind of evidence that reasonable persons would rely upon in the conduct of serious affairs).

30. See *Mathews v. Eldridge*, 424 U.S. 319, 347 (1976); *Goss v. Lopez*, 419 U.S. 565, 573-74 (1975).

Education; fingerprinting of public recreation employees

Education Code § 10911.5 (new).

AB 2986 (Campbell); 1992 STAT. Ch. 1097

Existing law provides for the licensure of child day care facilities.¹ As a condition of licensure, existing law requires specified employees of day care facilities² to provide their employers with fingerprints for the purposes of acquiring a criminal record summary.³ Existing law exempts certain public recreation programs⁴ from these requirements.⁵ Existing law also allows the public recreation programs provided to children under four years and

1. CAL. HEALTH & SAFETY CODE § 1596.80 (West 1990) (stating that no person, firm, partnership, association, or corporation shall operate, establish, manage, conduct, or maintain a child day care facility in California without a current valid license).

2. See *id.* § 1596.70 (West Supp. 1992) (defining child day care facility as a facility which provides nonmedical care to children under eighteen years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on a less than twenty-four hour basis). Child day care facilities also include day care centers and family day care homes. *Id.*

3. *Id.* § 1596.871(a) (West Supp. 1992). Fingerprints are required of the applicant for a day care license and the following persons: (1) Adults responsible for the direct supervision of staff; (2) persons, other than a child, residing in the facility; (3) persons providing care and supervision to the children; (4) staff or employees who have frequent and routine contact with children; (5) chief executive officers, or like persons, responsible for the operation of the facility if the applicant is a firm, partnership, association, or corporation; and (6) additional officers of the governing body of the applicant or other persons with a financial interest in the applicant if such persons exercise substantial influence over the operation of the facility. *Id.* § 1596.871(b) (West Supp. 1992). Persons who are not required to supply fingerprints are adult volunteers or staff employed for less than ten days per month, provided they are under constant supervision by fingerprinted adults, and employees under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the Commission on Teacher Credentialing and are currently credentialed. *Id.* § 1596.871(b)(7)-(8) (West Supp. 1992); cf. OR. REV. STAT. § 418.820(1) (1987) (providing that the Children's Services Division may require persons who are operators, staff, employees, residing on the day care facility premises, or are on the facility premises for significant periods of time when children are present to provide fingerprints for nationwide criminal record checks).

4. See CAL. HEALTH & SAFETY CODE § 1596.792(g) (West Supp. 1992) (defining public recreation program).

5. *Id.* Public recreation programs provided to children over four years and nine months of age for under thirteen hours per week or for over twelve hours per week for no more than twelve weeks per year in duration are exempt. *Id.* § 1596.792(g)(1) (West Supp. 1992). Also exempt are public recreation programs provided to children under four years and nine months of age or less that run twelve hours per week or less and that are twelve weeks or less in duration. *Id.* § 1596.792(g)(2) (West Supp. 1992).

nine months of age to enroll children in consecutive sessions throughout the year.⁶

Under Chapter 1097 public recreation program employers⁷ must require each present employee having direct contact with minors⁸ to immediately submit one set of fingerprints to the Department of Justice⁹ for the purpose of obtaining a criminal record summary.¹⁰ Similarly, each new employee must submit one set of fingerprints to the Department of Justice on or before the first day of employment.¹¹ Chapter 1097 also requires the Department of Justice

6. *Id.* In order for these children to participate in consecutive sessions, the public recreation program must run twelve hours per week or less and less than twelve weeks in duration. *Id.* The public recreation program must not allow children to enroll in a combination of sessions which total more than twelve hours per week for each child. *Id.*

7. See CAL. EDUC. CODE § 10911.5(b) (enacted by Chapter 1097) (defining public recreation employer as a public recreation program that is exempt from licensure pursuant to § 1596.792 of the Health and Safety Code).

8. See CAL. CIV. CODE § 25 (West 1982) (defining minors as all persons under eighteen years of age).

9. See CAL. GOV'T CODE §§ 15000-15006 (West Supp. 1992) (describing the composition and organization of the California Department of Justice).

10. CAL. EDUC. CODE § 10911.5(a), (c) (enacted by Chapter 1097); see *id.* § 44237(b) (West Supp. 1992) (stating that the Department of Justice shall furnish a criminal record summary which shall contain only arrests resulting in a conviction and arrests pending final adjudication); cf. S.C. CODE ANN. § 23-3-130 (Law. Co-op. 1977) (providing that the South Carolina Law-Enforcement Division shall disseminate upon request, criminal history conviction records to the State Department of Social Services for personnel of child day care facilities). See generally Bruce Beezer, *School District Liability for Negligent Hiring and Retention of Unfit Employees*, 56 EDUC. L. REP. 1117 (1990) (Westlaw Law Review Database) (providing a review of case law illustrating the cause of action for negligent hiring, the effects of immunity for school officials, the scope of school officials' liability and duty to care for students); Richard Fossey, Comment, *Child Abuse Investigations in the Public Schools: A Practical Guide for School Administrators*, 69 EDUC. L. REP. 991 (1991) (Westlaw Law Review Database) (examining the theories of liability that have been pursued against public school administrators and school districts in lawsuits alleging child abuse by a school employee including theories of negligent hiring, negligent supervision, civil rights violations, duty to warn, and respondeat superior); Michele Fuetsch & John H. Lee, 2 *Molestation Cases Prompt Fingerprinting*, L.A. TIMES, Nov. 16, 1989, at B3 (describing the plans of the city of Los Angeles to implement fingerprinting of part-time day care workers, recreation workers, and volunteers in response to a molestation incident by two part-time employees, and expressing concerns on the potential liability of the city); Brian Fuller, *Civil Liberties in Poor Shape*, UPI, Oct. 4, 1986, available in LEXIS, Nexis Library, UPI (describing the American Civil Liberties Union's characterization of rules requiring fingerprinting for day care employees as an invasion of one's civil liberties); Cindy McAfee, *Fingerprinting Like the 'Mark of the Beast'*, UPI, May 22, 1985, available in LEXIS, Nexis Library, UPI (stating that although the costs of fingerprinting may be prohibitive, its primary value is in discouraging such people from seeking employment).

11. CAL. EDUC. CODE § 10911.5(a) (enacted by Chapter 1097).

to furnish a criminal record summary to the public recreation program employer.¹²

BED

Education; freedom of speech on campus

Education Code §§ 66301, 48950, 94367 (new).
SB 1115 (Leonard); 1992 STAT. Ch. 1363

Under existing case law, the First Amendment extends freedom of speech to all persons.¹ Existing law also provides that because public secondary schools and public institutions of postsecondary education are limited public forums, speech by postsecondary students can be regulated to a greater degree than speech in other public forums.² Existing statutory law states that students in public high schools have First Amendment rights to freedom of speech except when the speech incites students to engage in unlawful acts, violates school regulations or disrupts the orderly operation of the

12. *Id.* § 10911.5(c) (enacted by Chapter 1097). The criminal record summary shall contain only arrests resulting in conviction and arrests pending final adjudication. *Id.* The Department of Justice may charge a reasonable fee not to exceed the actual costs incurred by the department. *Id.* § 10911.5(e) (enacted by Chapter 1097).

1. U.S. CONST. amend. I, § 1 (stating that Congress shall pass no law abridging freedom of speech, or press, or the right of people to peaceably assemble).

2. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266-67 (1988) (holding that a school is considered a limited public forum and can be regulated to a greater extent than other public places). *But see Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 513 (1969) (holding that freedom of speech is not confined to either "a telephone booth or the four corners of a pamphlet," and should be extended to a school campus). In *Tinker*, the Court stated that the free speech rights of students are subject to reasonable time, place and manner restrictions; the same restrictions placed on any other speech. *Id.* at 513. The court stated that if the conduct of the student "materially disrupts class work or involves substantial disorder or invasion of the rights of others, he is, of course, not immunized by the constitutional guarantee of freedom of speech". *Id.* A student, therefore, had the right to speak on behalf of unpopular causes as long as it is not done in such a way so as not to create substantial disorder in the school. *Id.* In *Hazelwood*, the Court extended the *Tinker* decision by stating that a school need not tolerate speech that conflicts with its basic educational mission. *Hazelwood*, 484 U.S. at 266. See generally Jeffrey D. Smith, Comment, *High School Newspapers and the Public Forum Doctrine: Hazelwood School District v. Kuhlmeier*, 74 VA. L. REV. 843 (discussing the *Hazelwood* case, the history leading up to that decision, and its effect on the public forum doctrine).

school.³ Chapter 1363 provides that public and private secondary⁴ and post-secondary educational institutions may not enforce any rule that subjects a student to disciplinary sanctions⁵ if the student is engaged in conduct or speech that is protected by either the California Constitution⁶ or the First Amendment of the United States Constitution if such conduct or speech would have occurred off campus.⁷

EB

Education; health instruction

Education Code § 33041 (new); § 51202 (amended).
SB 1561 (Watson); 1992 STAT. Ch. 1065

3. CAL. EDUC. CODE § 48907 (West Supp. 1992); *cf.* COLO. REV. STAT. § 22-1-120 (1992) (specifying that students have the right of free speech except for expression which is obscene, libelous, slanderous, defamatory, violates school regulations or disrupts the orderly operation of the school). *See generally* *Leeb v. Delong*, 198 Cal. App. 3d 47, 60, 243 Cal. Rptr. 494, 502 (1988) (holding that school officials are free to censor speech that they reasonably believe to be slander or libel).

4. *See* CAL. EDUC. CODE § 52 (West Supp. 1992) (designating secondary schools as high schools, technical schools, and adult schools).

5. *See id.* § 48900(a)-(f) (West Supp. 1992) (stating the grounds for suspension and expulsion).

6. *See* CAL. CONST. art. I, § 2 (stating that every person can write or publish his or her sentiments on all subjects, speak freely, and that a law may not restrain or abridge the liberty of speech or press); *cf.* *Bright v. Los Angeles Unified Sch. Dist.*, 18 Cal. 3d 450, 455, 556 P.2d 1090, 1093, 134 Cal. Rptr. 639, 642 (1976) (holding that a student's right to free speech needs to be balanced with the obligations of school administrators to control the school and discipline the students).

7. CAL. EDUC. CODE § 48950(a) (enacted by Chapter 1363). This does not apply if the secondary or postsecondary educational institution is controlled by a religious organization, and if that speech is not consistent with the religious tenets of the organization. *Id.* § 48950(c) (enacted by Chapter 1363). *See generally* *Thomas v. Board of Educ.*, 607 F.2d 1043, 1050 (2d Cir. 1979) (holding that a school could not discipline a student for off-campus distribution of a newspaper on student life).

Existing law requires the course of study¹ for grades one through twelve to include instruction on public health and safety.² Chapter 1065 requires the State Board of Education (Board)³ to include as part (f) the course of study for students twelve to eighteen years old, guidelines on the relationship between the health of a newborn and proper health practices during pregnancy.⁴ Chapter 1065 also requires the Board to include instructional guidelines recognizing that

1. See CAL. EDUC. CODE § 51014 (West 1989) (defining course of study).

2. *Id.* §§ 51202 (amended by Chapter 1065), 51210-51212, 51220-51228 (West 1978); see *id.* § 51050 (West 1989) (establishing that the governing boards of school districts must enforce the courses of study adopted by the State Board of Education); *id.* § 51017 (West 1989) (defining governing board).

3. See *id.* § 33000 (West 1978) (establishing a State Board of Education); *id.* § 33031 (West 1978) (creating the Board's power to adopt rules and regulations for its own government, its appointees and employees, and for schools of the state excepting the University of California, the California State University, and the California Community Colleges).

4. *Id.* § 33041(a) (enacted by Chapter 1065). It is not the race or age of adolescents that causes adverse health consequences during pregnancy, but the lack of access to prenatal care. Ruth Coker, *An Equal Protection Analysis of United States Reproductive Health Policy: Gender, Race, Age, and Class*, 2 DUKE L.J. 324, 335 (1991). Adolescents would have healthier pregnancies than older women if they received adequate prenatal care. *Id.* See generally L. Rachel Eisenstein, *Prenatal Health Care: Today's Solution to the Future's Loss*, 18 FLA. ST. U.L. REV. 467, 472 (1991) (stating that nationally, pregnant teens are the least likely age group to receive early and continuous prenatal care, and because of this are more likely to have problems than pregnant women in their twenties or thirties); Alice Kahn, *The Politics of Chastity*, S.F. CHRON., Feb. 6, 1992, at D3 (reporting that American teenagers have the highest youth pregnancy rate in the industrial world); Lynn Smith, *Orange County Teen Pregnancy Rates Showing a Relentless Rise*, L.A. TIMES, May 7, 1992, at A1 (indicating that a major problem with teenage pregnancies is babies with low birth weights due to a lack of prenatal care); Jean Merl, *Getting Volunteers Involved*, L.A. TIMES, Jan. 18, 1991, at A3 (stating that California has the second highest teenage pregnancy rate in the nation for 15 to 19-year-olds, and describing how educators turn to the community for help in preventing students from failing in school).

violence is a public health issue and a learned condition that is preventable through education and community intervention.⁵

CLR

Education; Holocaust and slavery study requirement

Education Code § 51226.3 (new); § 51220 (amended).
AB 3216 (Katz); 1992 STAT. Ch. 763

Under existing law, the curriculum for grades seven through twelve must incorporate the study of social sciences, including human rights issues with particular attention to the inhumanity of genocide.¹ Chapter 763 requires that the curriculum include study of the Holocaust.² Chapter 763 further dictates that the curriculum

5. CAL. EDUC. CODE § 33041(b) (enacted by Chapter 1065). *See generally* Franklin E. Zimring, *Legal Perspectives on Family Violence*, 75 CAL. L. REV. 521, 525-526 (1987) (examining family violence and stating that murder, incest, and the imminent threat to the life or health of a child trigger the law's willingness to penetrate family life because family privacy considerations are outweighed by other important public goals); Anne C. Roark, *Poverty, Violence Haunt State's Youths*, L.A. TIMES, March 23, 1992, at A3 (discussing a study that finds California teenagers have an increasing death rate due to violence, and are more vulnerable than ever to crime and pregnancy); Miriam Shuchmen, *Psychological Help for Children in Urban Combat*, N.Y. TIMES, Feb. 21, 1991, at B9 (discussing domestic violence as a public health issue); *Addressing School Violence*, BOSTON GLOBE, Dec. 13, 1990, at 26 (writing that violence will continue unless it is dealt with as a public health issue, and that schools cannot operate in a vacuum while violence affects every other aspect of life).

1. CAL. EDUC. CODE § 51220(b) (amended by Chapter 763). Instruction in the social sciences which provides an understanding of the Holocaust may draw upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology. *Id.*

2. *Id.*; *see* WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY 678 (1989) (defining the Holocaust as the systematic mass extermination of European Jews in Nazi concentration camps prior to and during World War II); *cf.* ILL. ANN. STAT. ch. 122, para. 27-20.3 (Smith-Hurd 1992) (requiring that every public elementary school and high school include a unit of instruction in its curriculum studying the Holocaust, and stating that the study of the Holocaust is a reaffirmation of the commitment never to permit the occurrence of another Holocaust); NEV. REV. STAT. ANN. §§ 233G.010-233G.040 (Michie 1991) (establishing the Governor's Advisory Council on Education Relating to the Holocaust, and stating that the Council shall develop programs for the education of children and adults on issues relating to the Holocaust); N.C. GEN. STAT. §§ 143B-216.20 (1991) (establishing the Council on the Holocaust whose purpose is to prevent future atrocities similar to the Holocaust by developing a program of education and observance of the Holocaust); S.C. CODE

include study of slavery.³ Chapter 763 requires that the State Department of Education⁴ incorporate age-appropriate materials developed by private sources that deal with human rights violations, genocide, slavery, and the Holocaust into publications that provide examples of curriculum resources for teacher use.⁵

BED

Education; notification of policy on sexual harassment

Education Code § 212.6 (new); § 48980 (amended).
AB 2900 (Archie-Hudson); 1992 STAT. Ch. 906

Existing law prohibits discrimination on the basis of sex¹ by any educational institution² that receives state financial assistance³ or

ANN. § 1-29-10 (Law. Co-op. 1991) (creating the Council on the Holocaust which shall work in conjunction with the State Department of Education to develop an educational program to prevent future atrocities similar to the Holocaust). *See generally* John Dart & Lanie Jones, *Anti-Semitic Incidents Set a Record*, L.A. TIMES, February 7, 1991, at A3 (citing statistics provided by the Anti-Defamation League which report that anti-Jewish vandalism such as arson, bombings, cemetery desecrations and swastika daubings rose 72% over the last year, and that California is the second leading state in the United States in anti-Jewish incidents); Daniel Goleman, *As Bias Crime Seems to Rise, Scientists Study Roots of Racism*, N.Y. TIMES, May 29, 1990, at C1 (describing the increase of hate crimes in general, and stating that most of the perpetrators are in their teens or twenties).

3. CAL. HEALTH & SAFETY CODE § 51220(b) (enacted by Chapter 763). *See generally* Anthony Flint, *Multiculturalism Flap Trickles Downward; Some Say Its a Luxury U.S. Schools Can't Afford*, BOSTON GLOBE, Oct. 6, 1991, at A26 (describing critics' arguments that, due to lower scores on english and math, teaching multiculturalism should not be a primary concern, and expressing counterarguments which state that a diverse curriculum would enhance performance because the subjects would have greater cultural immediacy for the diverse student body); Denise Hamilton, *Gruesome Lessons; Students End the Year By Reading First Person Accounts By Slaves*, L.A. TIMES, June 18, 1992, at J1 (describing the use of original sources to teach about slavery as it was felt by persons enslaved instead of teaching slavery as simply a causal factor of the Civil War and that it was morally wrong).

4. *See* CAL. EDUC. CODE §§ 33030-33040 (West 1987 & Supp. 1992) (enumerating the powers and duties of the State Board of Education).

5. CAL. EDUC. CODE § 51226.3(a) (enacted by Chapter 763).

1. *See* CAL. EDUC. CODE § 212 (West Supp. 1992) (defining sex as the quality of being male or female).

2. *See id.* § 210 (West Supp. 1992) (defining educational institutions as extending from preschools to post-secondary institutions, both private and public).

enrolls students who receive state student financial aid.⁴ The institution must publish materials outlining the civil remedies available to a person complaining of sexual discrimination.⁵

Chapter 906 expands existing law by requiring each educational institution in California to include in its regular policy statement, a written policy on sexual harassment⁶ describing the institution's

3. See *id.* § 213 (West Supp. 1992) (defining state financial assistance as aid appropriated or administered by the state including land grants, tax rebates, and services rendered by state personnel).

4. *Id.* §§ 200, 220 (West Supp. 1992); see *id.* § 230 (West Supp. 1992) (describing examples of discriminatory practices including denial of benefits, denial of equivalent opportunity, exclusion from participation, and sexual harassment); *id.* § 214 (West Supp. 1992) (defining state student financial aid as aid appropriated or administered by the state including grants, loans, scholarships, and wages). Some religious and military institutions as well as some scholarship and admissions procedures in certain post-secondary institutions are exempt from the discrimination prohibition of Education Code § 220. *Id.* §§ 221, 222, 225-227 (West Supp. 1992).

5. *Id.* § 262.3(a) (West Supp. 1992). Damages are available for various causes of action including tortious wrongful discharge and intentional infliction of emotional distress. *Rojos v. Kliger*, 52 Cal. 3d 65, 70-71, 801 P.2d 373, 389, 276 Cal. Rptr. 130, 146 (1990); *Alcorn v. Ambro Eng'g, Inc.*, 2 Cal. 3d 493, 497, 468 P.2d 216, 218, 86 Cal. Rptr. 67, 82 (1970); Annotation, *Recovery of Damages as Remedy for Wrongful Discrimination Under State or Local Civil Rights Provisions*, 85 A.L.R. 3d 351 (1978 & Supp. 1992); Francis M. Dougherty, Annotation, *Damages Recoverable for Wrongful Discharge of At-Will Employee*, 44 A.L.R. 4th 1131 (1986 & Supp. 1992). Punitive damages may be available under civil, but not administrative remedies. *Dyna-Med, Inc. v. Fair Employment & Hous. Comm'n.*, 43 Cal. 3d 1379, 1404, 743 P.2d 1323, 1339, 241 Cal. Rptr. 67, 82 (1987); see CAL. CIV. CODE § 3294(a) (West Supp. 1992) (allowing punitive damages in special circumstances). Injunctive relief is also allowed. *Koire v. Metro Car Wash*, 40 Cal. 3d 24, 28, 707 P.2d 195, 196, 219 Cal. Rptr. 133, 134 (1985); *Burks v. Poppy Const.*, 57 Cal. 2d 463, 470, 370 P.2d 313, 317, 20 Cal. Rptr. 609, 613 (1962); see CAL. CIV. PROC. CODE § 526 (West 1979) (enumerating instances in which an injunction may be granted).

6. See CAL. EDUC. CODE § 212.5 (West Supp. 1992); CAL. CODE REGS. tit. 2, §§ 7286.5(f)(3), 7287.6(b), 7291.1(f)(1) (1992); 29 C.F.R. § 1604.11(a) (1992) (defining sexual harassment as unwelcome physical or verbal sexual conduct that: (1) Makes submission to the conduct a condition of the person's employment; (2) makes the person's submission to or rejection of the conduct a basis for employment decisions concerning the person; or (3) creates an intimidating, offensive, or hostile work environment). A stated legislative intent of Chapter 906 is to reaffirm existing law which considers sexual harassment as a form of discrimination based on sex. CAL. EDUC. CODE § 212.6(a) (enacted by Chapter 906); see *id.* § 230 (West Supp. 1992) (including sexual harassment in the enumeration of prohibited practices under Education Code § 220); see also *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 64 (1986) (considering sexual harassment to be a form of sexual discrimination); *Peralta Community College Dist. v. Fair Employment & Hous. Comm'n.*, 52 Cal. 3d 40, 44-45, 801 P.2d 357, 359, 276 Cal. Rptr. 114, 116 (1982) (defining sexual harassment as verbal, physical, or sexual behavior which is directed toward a person because of their gender). A prima facie case to support a hostile environment claim must allege and prove that: (1) The complainant was a member of a protected group; (2) the conduct was unwelcome by the complainant; (3) the harassment was based on sex; and (4) the harassment was severe enough so as to unreasonably interfere with the complainant's work performance. Sara L. Johnson, Annotation, *When is Work Environment Intimidating, Hostile, or Offensive, So as to Constitute Sexual Harassment in*

reporting procedures and all remedies available.⁷ Copies of the policy shall be provided to all faculty, administrative and support staff, new employees, and to new students and their parents.⁸ A copy

Violation of Title VII of Civil Rights Act of 1964, as Amended (42 U.S.C.S. §§ 2000e et seq.), 78 A.L.R. FED. 252, 254 (1991). Despite the grievous and pervasive nature of sex discrimination, there are concerns that the expansion of the definition of sexual harassment is merely an attempt to coerce "politically correct" thought. See Katherine Kersten, *What Do Women Want; A Conservative Feminist Manifesto*, HERITAGE FOUNDATION POL'Y REV., Spring 1991, at 4 (stating that the University of Minnesota harassment policy prohibits "callous insensitivity to the experience of women"); *Schools Target Sex Harassment; Prohibit Acts Among Students*, WASHINGTON TIMES, Sep. 10, 1992, § B, at 1, col. 1 (describing a high school policy that prohibits flirting and comments concerning a person's body or clothing).

7. CAL. EDUC. CODE § 212.6(b)-(c) (enacted by Chapter 906). The policy must describe the state, federal, and institutional remedies available. *Id.* § 212.6(c) (enacted by Chapter 906). An institution may be directly or vicariously liable for the harassment of students by faculty if it fails to publicize its discrimination policy. 34 C.F.R. § 106.9(a) (1991); Ronna G. Schneider, *Sexual Harassment and Higher Education*, 65 TEX. L. REV. 525, 563 (1987). Redress for employment discrimination may come through both judicial and administrative avenues. CAL. GOV'T CODE § 12993 (West 1992); 42 U.S.C. 2000(e)-2(a) (1992). Administrative remedies are meant to supplement and not circumvent other forms of relief for discrimination. *Rojos v. Kliger*, 52 Cal. 3d 65, 74, 801 P.2d 373, 377, 276 Cal. Rptr. 130, 135 (1990); *State Personnel Bd. v. Fair Employment & Hous. Comm'n.*, 39 Cal. 3d 422, 431, 703 P.2d 354, 359, 217 Cal. Rptr. 16, 21 (1985); see *Brown v. Superior Court*, 37 Cal. 3d 477, 486, 691 P.2d 272, 277, 208 Cal. Rptr. 724, 729 (1984) (stating that a victim of employment discrimination may plead statutory, tort, and contract causes of action). Title IX of the Education Amendments of 1972 provides remedies for victims of sexual discrimination by educational institutions that receive federal financial assistance. 20 U.S.C. § 1681 (1992); *Cannon v. University of Chicago*, 441 U.S. 677, 680, 696 (1979). Federal financial assistance may include student loans, grants, construction funds, and the sale or lease of federal property at a reduced cost. 45 C.F.R. § 86.2(g) (1992). Sexual harassment is considered a form of sex discrimination giving rise to a cause of action under Title IX. Pamela W. Kernie, Comment, *Protecting Individuals From Sex Discrimination: Compensatory Relief Under Title IX of the Education Amendments of 1972*, 67 WASH. L. REV. 155, 158 (1992). A violation of Title IX may result in the termination of federal funds for the offending institution. 20 U.S.C. § 1682 (1992); 34 C.F.R. § 100.8 (1992). The complainant may also have a private cause of action. *Franklin v. Gwinnett County Pub. Sch.*, 112 S. Ct. 1028, 1058 (1992); *Cannon*, 441 U.S. at 717.

8. CAL. EDUC. CODE § 212.6(f) (enacted by Chapter 906); *id.* § 212.6(e) (enacted by Chapter 906) (requiring new students to receive the institution's written policy on sexual harassment as it applies to students); *id.* § 48980(f) (amended by Chapter 906) (requiring that the parent or guardian of each minor student be given a copy of the school district's policy on sexual harassment as it applies to students); cf., e.g., MINN. STAT. §§ 127.46, 135A.15 (1991) (requiring each school board to adopt and disseminate a written policy on sexual harassment that applies to students, teachers, administrators and other school employees); WIS. STAT. § 38.12 (1991) (requiring school districts to provide students with written information defining sexual harassment, describing the penalties for such conduct, and explaining the rights of victims).

must also be displayed in a prominent place on campus and in each of the institution's publications that pronounce the institution's rules, regulations, procedures, or standards of conduct.⁹

BCM

Education; pupils--employment and work permits

Education Code §§ 49112, 49116 (amended); Labor Code §§ 1297, 1391 (amended).
AB 662 (Campbell); 1992 STAT. Ch. 1189

Under prior law, minors aged fourteen years or older could work outside of school hours for up to four hours a day, or twenty hours per week, when school was in session, and up to forty-eight hours per week when school was not in session.¹ Chapter 1189 conforms state law to stricter federal standards² by allowing fourteen and fifteen year olds to work only three hours per day, or a total of eighteen hours per week, when school is in session, and forty hours per week when school is not in session.³ Minors ages sixteen or seventeen can

9. CAL. EDUC. CODE § 212.6(d)-(g) (enacted by Chapter 906); *see id.* § 212.6(d) (enacted by Chapter 906) (defining prominent location as an area where the rules, regulations, and procedures of the institution are posted).

1. 1989 Cal. Stat. ch. 866, sec. 1, at 302 (amending CAL. EDUC. CODE §§ 49112(a), 49116(b)). Under prior law, while school was in session, minors could work between the hours of 5:00 a.m. and 10:00 p.m., and until 12:30 a.m. preceding a nonschool day. 1987 Cal. Stat. ch. 386, sec. 4, at 115 (amending CAL. LAB. CODE § 1391); *see* CAL. LAB. CODE § 1391(b) (amended by Chapter 1189) (defining schoolday as any day in which a minor is required by law to attend school for 240 minutes or more). Employment of fourteen or fifteen year olds is also restricted to the hours between 7:00 a.m. and 7:00 p.m., except during summer breaks, when minors may work until 9:00 p.m. *Id.* § 1391(a)(1) (amended by Chapter 1189).

2. *See* 29 U.S.C. §§ 212, 213 (1992) (enumerating federal child labor law provisions).

3. CAL. EDUC. CODE §§ 49112(a), 49116(a) (amended by Chapter 1189); *see* CAL. LAB. CODE § 1391 (a)(1) (providing that no minor fifteen years of age or younger shall be employed more than eight hours in one day, or more than forty hours in one week, or before 7:00 a.m. or after 7:00 p.m., except that from June 1 through Labor Day, a minor age fifteen or younger may work the hours authorized by this section until 9:00 p.m.); *cf.* KY. REV. STAT. ANN. § 339.230 (Baldwin 1992) (prohibiting minors ages fourteen to seventeen from working in any place of employment for more than the number of days per week, or for more than the number of hours per day that the

continue to work four hours per day when school is in session, and up to eight hours on a schoolday which is immediately prior to a non-schoolday.⁴ Chapter 1189 exempts newspaper carriers from these provisions.⁵ Prior law limited the hours minors ages sixteen or seventeen could work in an agricultural occupation to no more than six hours per day or up to twenty hours per schoolweek.⁶ Chapter 1189 deletes the twenty hour per week limitation by restricting only the hours minors ages sixteen or seventeen can work per schoolday to six, without limiting the weekly total.⁷

LES

commissioner of workplace standards determines to be hazardous or injurious to the life, health, safety or welfare of such a minor, and allowing the commissioner to make the regulations more but not less restrictive than the federal standards promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act); see Paul Sweeny, *Child Labor Problems Are Getting Worse*, NEWSDAY, Nov. 30, 1990, at 137 (describing instances of child labor violations, and advocating stricter enforcement of labor laws); Kay Kusumoto, *Probe Continues in Teen's Job Death-State Looking Into Possible Violation of Child-Labor Law*, SEATTLE TIMES, July 26, 1991, at D1 (reporting on a teenager killed in construction accident while operating heavy machinery); Elizabeth Rhodes, *Risky Business—More Than A Minor Offense? Abuses Of Child Labor Laws Are More Common Than You Think, Say Some Watchdogs*, SEATTLE TIMES, Apr. 29, 1990, at K1 (examining the physical dangers working students face, and the large task state and federal inspectors have in enforcing child labor laws); Kevin Sullivan, *Five Businesses in R.I. Face Child-Labor Fines*, PROVIDENCE J.-BULL., Mar. 16, 1990, § A, at 1 (describing a case of five Rhode Island businesses which faced fines totaling \$28,000 as a result of a nationwide crackdown by the United States Labor Department on child-labor law violations).

4. CAL. EDUC. CODE § 49112(a), (c) (West Supp. 1992).

5. *Id.* § 49112(d) (amended by Chapter 1189). This provision should have no practical effect since newspapers typically contract with carriers instead of directly employing them in order to avoid employment standards. CALIFORNIA SENATE FLOOR ANALYSIS OF AB 662, at 2 (Mar. 11, 1992).

6. 1989 Cal. Stat. ch. 866, sec. 2, at 302 (amending CAL. EDUC. CODE § 49116(b)).

7. CAL. EDUC. CODE § 49116(c) (amended by Chapter 1189); cf. N.Y. EDUC. LAW § 3226 (Consol. 1992) (requiring for minors aged fourteen or fifteen, a farm work permit authorizing employment in farm service, which contains evidence of age, written parental or guardian consent, and a certificate of physical fitness).

Education; sex offenses--mandatory leave of absence for certificated employees

Education Code §§ 44010, 44011 (amended).
AB 3368 (Umberg); 1992 STAT. Ch. 272

Existing law designates the type of sex offenses and controlled substance¹ offenses for which public school employees may be disciplined or have their credentials revoked.² Chapter 272 expands the definitions of sex offense and controlled substance offense as they apply to public school employees, to include certain public offenses which demonstrate a degree of moral turpitude.³

Under existing law, sex offenses include rape,⁴ statutory rape,⁵ sodomy,⁶ oral copulation,⁷ annoying or molesting children,⁸ and

1. See BLACK'S LAW DICTIONARY 329 (6th ed. 1990) (defining controlled substance as any drug whose availability is restricted by law, including narcotics, stimulants, depressants, hallucinogens, and marijuana).

2. CAL. EDUC. CODE §§ 44010-44011 (amended by Chapter 272).

3. *Id.* §§ 44010-44011 (amended by Chapter 242). See ASSEMBLY COMMITTEE ON EDUCATION, REPORT OF AB 3368, at 2 (1992) (noting that the Commission of Teacher Credentialing, the sponsor of AB 3368, believes that credentialed individuals should be role models, and that conviction of any of the specified public offenses are conclusive proof of moral turpitude sufficient to warrant mandatory revocation of credentials); BLACK'S LAW DICTIONARY 1517 (6th ed. 1990) (defining moral turpitude as a vague term which generally means anything done contrary to justice, honesty, modesty, or good morals, and implies something immoral in itself, regardless of its being punishable by law). It is also commonly defined as an act of baseness, vileness, or depravity in the private and social duties contrary to the accepted and customary rule of right and duty between man and man. *Id.*

4. See CAL. PENAL CODE § 261(a) (West Supp. 1992) (defining rape as an act of sexual intercourse accomplished with a person other than the spouse of the perpetrator, under specified circumstances). Duress, as used in § 261(a)(2) of the California Penal Code, means a direct or implied threat of force, violence, danger, hardship, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. *Id.* § 261(b) (West Supp. 1992). Menace, as used in § 261(a)(2) of the California Penal Code, means any threat, declaration, or act which shows an intention to inflict injury upon another. *Id.* § 261(c) (West Supp. 1992).

5. In California, unlawful sexual intercourse is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, where the female is under the age of 18 years. CAL. PENAL CODE § 261.5 (West 1988); see BLACK'S LAW DICTIONARY 1412 (6th ed. 1990) (defining statutory rape as the unlawful sexual intercourse with a female under the age of consent which may be 16, 17, or 18 years of age, depending upon the state statute).

6. See CAL. PENAL CODE § 286(a) (West Supp. 1992) (defining sodomy as sexual conduct consisting of contact between the penis of one person and the anus of another person). Any sexual penetration, however slight, is sufficient to complete the crime of sodomy. *Id.* See *Bowers v.*

other specified prohibited conduct.⁹ Existing law relating to public elementary and secondary school employees, defines public offenses as causing the penetration of the genital or anal openings of another person by a foreign object, the sexual exploitation of a child,¹⁰ employing a minor in the sale or distribution¹¹ of obscene matter¹²

Hardwick, 478 U.S. 186 (1986), *reh'g denied*, 478 U.S. 1039 (1986) (finding that there is no fundamental right to engage in homosexual sodomy).

7. See CAL. PENAL CODE § 288a(a) (West 1992) (defining oral copulation as the act of copulating the mouth of one person with the sexual organ or anus of another person).

8. See *id.* § 647.6 (West 1988) (prohibiting the annoyance or molestation of children).

9. CAL. EDUC. CODE § 44010 (amended by Chapter 272); see CAL. PENAL CODE § 243.4(a)-(c) (West Supp. 1992) (defining sexual battery); *id.* § 647(a)-(i) (West Supp. 1992) (defining disorderly conduct); *id.* § 266 (West Supp. 1992) (prohibiting enticement for purposes of prostitution and procurement by false pretenses); *id.* § 267 (West 1988) (prohibiting abduction of a minor for prostitution); *id.* § 285 (West 1988) (prohibiting incest); *id.* § 288 (West Supp. 1992) (prohibiting lewd or lascivious acts involving children under the age of 14). See generally *In re Paul C.*, 221 Cal. App. 3d 43, 48-52, 270 Cal. Rptr. 369, 371-75 (1990) (*review denied* 1990) (holding that a minor under the age of 14 may still be held responsible for conduct in violation of California Penal Code § 288, provided the state proves lewd and lascivious intent and that the minor knew the wrongfulness of his or her conduct as required by California Penal Code § 26, which presumes that a child under age 14 is incapable of committing crime).

10. See BLACK'S LAW DICTIONARY 239 (6th ed. 1990) (defining child); CAL. PENAL CODE § 11165(a) (West Supp. 1992) (defining child as a person under the age of 18 years); *cf.* *People v. Thomas*, 53 Cal. App. 3d 854, 857-58, 135 Cal. Rptr. 644, 646 (1977) (holding that a child is the same as a minor, as used in § 25 of the California Civil Code, because the person's chronological age is the only logical criterion for determining whether the victim of a crime is a child); see CAL. CIV. CODE § 25 (defining a minor as any person under the age of 18 years of age).

11. See CAL. PENAL CODE § 311(d) (West Supp. 1992) (defining distribute).

12. See *id.* § 311(a) (West Supp. 1992) (defining obscene matter as matter which, taken as a whole, depicts or describes sexual conduct in a patently offensive way, but which lacks serious literary, artistic, political, or scientific value). When the matter is designed for deviant sexual groups, the appeal of the matter is to be judged with reference to the intended recipient group. *Id.* § 311(a)(1) (West Supp. 1992). Where matter is being commercially exploited for the sake of its prurient appeal, a conclusion that it lacks serious literary, artistic, political or scientific value is justifiable. *Id.* § 311(a)(2) (West Supp. 1992). In determining whether the matter lacks serious value, the fact that the defendant knew that persons under 16 years of age were depicted engaging in sexual conduct can be considered in making that determination. *Id.* § 311(a)(3) (West Supp. 1992). See *Miller v. California*, 413 U.S. 15, 20 (noting that the specific judicial meaning of obscene material is derived from *Roth v. United States*, 354 U.S. 476 (1957), which stated that obscene material is that which deals with sex); *Roth v. United States*, 354 U.S. 476, 487 (1957) (establishing that obscene matter is matter which has a tendency to excite lustful thoughts). The applicable standard for judging obscenity is whether the average person in today's society would interpret the dominant theme of the material, taken as a whole, to appeal to prurient interests. *Id.* at 488-89; *Ginzburg v. United States*, 383 U.S. 463, 470 (1966) (affirming a lower court finding that publications which stressed the unrestricted expression of sex were within the *Roth* standard of obscene matter); see also *Sebago, Inc. v. City of Alameda*, 211 Cal. App. 3d 1372, 1377-79, 259 Cal. Rptr. 918, 923-25 (1989) (holding that a city zoning ordinance restricting the location of public vending racks for an adult-oriented newspaper was unconstitutional on its face, and since the newspaper was neither obscene, nor harmful to minors, the

or production of pornography, distributing or exhibiting¹³ harmful matter¹⁴ to a minor,¹⁵ or producing, distributing, or exhibiting obscene matter depicting a minor involved in sexual conduct.¹⁶ Chapter 272 expands the definition of sex offense to include the above public offenses.¹⁷

Existing law relating to public elementary and secondary school employees includes within the definition of controlled substance offense specified acts pertaining to unlawful use, possession, and sale of controlled substances.¹⁸ Also included within the definition of controlled substance offenses are unlawful acts involving the use of minors, agreement to unlawfully sell or transport controlled substances, opening or maintaining a place for trafficking controlled substances, forging or altering a prescription for a narcotic drug, and possession for sale of phencyclidine (PCP).¹⁹ Chapter 272 expands

city was enjoined from enforcing the ordinance).

13. See CAL. PENAL CODE § 311(f) (West Supp. 1992) (defining exhibit).

14. See *id.* § 313(a) (West Supp. 1992) (defining harmful matter as matter which, when taken as a whole in light of contemporary standards, the average person would find appeals to the prurient interest). The matter must depict or describe sexual conduct, in a patently offensive way which lacks serious literary, artistic, political, or scientific value for minors. *Id.*

15. See *id.* § 313(g) (West Supp. 1992) (defining minor as a natural person under 18 years of age).

16. *Id.* § 289(a)-(m) (West Supp. 1992) (prohibiting penetration of genital or anal openings by a foreign object); § 311.2(b) (West Supp. 1992) (prohibiting distribution of matter depicting sexual conduct by a minor); § 311.3(d)-(e) (West 1988) (prohibiting sexual exploitation of a child); § 311.4(a)-(f) (West 1988) (prohibiting employing or using minors to perform prohibited acts involving obscene matter or pornography); § 313.1(a)-(g) (West Supp. 1992) (prohibiting the distribution or exhibition of harmful matter to a minor); see *id.* § 311.3(a)-(b)(6) (West 1988) (defining sexual exploitation of a child). See also *People v. Cantrell*, 7 Cal. App. 4th 523, 553, 9 Cal. Rptr. 2d 188, 218 (1992) (affirming the conviction of a photographer of contributing to the delinquency of a minor, annoying or molesting a child under 18 years of age, committing a lewd act on a child under 14, and sexual filming of a minor, all of which occurred over a six year period of time).

17. CAL. EDUC. CODE § 44010(a) (amended by Chapter 272).

18. *Id.* § 44011(a)-(d) (amended by Chapter 272). See CAL. HEALTH & SAFETY CODE §§ 11350(a), 11377 (West Supp. 1992) (specifying which substances are controlled substances under this section, and prohibiting unlawful possession of controlled substances formerly classified as narcotics and restricted dangerous drugs); *id.* § 11550(a) (West 1988) (prohibiting unlawful use of controlled substances); *id.* §§ 11352, 11379 (West Supp. 1992) (prohibiting the transportation, importation or sale of controlled substances formerly classified as narcotics and restricted dangerous drugs).

19. CAL. HEALTH & SAFETY CODE §§ 11353, 11354, 11380 (West 1988) (prohibiting the use of minors to violate laws involving controlled substances formerly classified as narcotics or restricted dangerous drugs); *id.* §§ 11355, 11382 (West 1988) (prohibiting the agreement to unlawfully sell or transport controlled substances formerly classified as narcotics or restricted dangerous drugs); *id.* § 11366 (West 1988) (prohibiting the opening or maintenance of any place for the unlawful sale, giving

the definition of controlled substance offense to include the transportation, sale or distribution of marijuana by or to a minor.²⁰

Under existing law, the governing board of a school district is required to place an employee charged with a sex offense on compulsory²¹ leave of absence,²² and is authorized to place an employee charged with a substance offense on compulsory leave of absence.²³ Existing law also prohibits any school district from employing or retaining a person convicted of a sex offense or controlled substance offense.²⁴ Chapter 272 incorporates the above expanded definitions of sex offense and controlled substance offense

away, or use of controlled substances); *id.* § 11368 (West 1988) (prohibiting the forging or alteration of prescriptions for any narcotic drugs); *id.* § 11378.5 (West 1988) (prohibiting the possession for sale of phencyclidine).

20. CAL. EDUC. CODE § 44011(a) (amended by Chapter 272); *see* CAL. HEALTH & SAFETY CODE § 11361(a)-(b) (West 1988) (prohibiting the transportation, sale, or distribution of marijuana).

21. *See* BLACK'S LAW DICTIONARY 287 (6th ed. 1990) (defining compulsory as being involuntary, or coerced by legal process or by force of statute).

22. *See* CAL. EDUC. CODE § 44940 (West 1988) (limiting the time for a compulsory leave of absence resulting from a sex offense charge to not more than 10 days after the date of the entry of the judgment in the proceedings); BLACK'S LAW DICTIONARY 891 (6th ed. 1990) (defining leave of absence as the temporary absence from employment with the intent to return, during which time pay and seniority are not normally affected).

23. CAL. EDUC. CODE § 45304(a)-(c) (West Supp. 1992); *see* *Hutton v. Pasadena City Schs.*, 261 Cal. App. 2d 586, 591-92, 68 Cal. Rptr. 103, 106 (1968) (holding that a school district which had placed an employee on compulsory leave of absence was not authorized to pay him for his loss of wages because they had not adopted a rule authorizing such payment). Even though the district had the power to adopt such a rule, payment for lost wages without such a rule constituted a gift of public funds in violation of the California Constitution. *Id.* at 592, 68 Cal. Rptr. at 107. *See also* *Ex-Principal Convicted of Sex Abuse - Judge Calls Moffat Case 'Shocking, Ugly'*, CHI. TRIB., Mar. 24, 1987, at DU, 1, available in LEXIS, Nexis Library, Chicago Tribune File (discussing the conviction of a former high school principal for sexually abusing former high school students). The former principal had been receiving his full annual salary due to the school board's failure to comply with the requirement for a pre-suspension hearing. *Id.*

24. CAL. EDUC. CODE § 44836 (West Supp. 1992); *see id.* § 45123(d) (West Supp. 1992) (declaring that the governing board of a school district may employ a person convicted of a controlled substance offense if it is determined that the person has been rehabilitated for at least five years, and granting the governing board the power to determine the type and manner of presentation of evidence of rehabilitation as well as the power to make the final determination as to whether or not the person has been rehabilitated); *John R. v. Oakland Unified Sch. Dist.*, 48 Cal. 3d 438, 441, 769 P.2d 948, 949, 256 Cal. Rptr. 766, 767 (1989) (holding that a school district which employed a junior high school math teacher cannot be held vicariously liable under the doctrine of respondeat superior for the teacher's sexual molestation of a 14-year-old student who was at the teacher's apartment in an officially sanctioned program). *See generally* Paul W. Thurston, *Dismissal of Tenured Teachers in Illinois: Evolution of a Viable System*, U. ILL. L. REV. 1, 49-57 (1990) (discussing the success of the Illinois Educational Reform Act of 1985 Teacher Reform Act, and how it has led to dismissal of teachers for sexual misconduct, despite their tenured status).

into these regulations pertaining to compulsory leaves of absence, employment, and retention of persons charged with, or convicted of, sex or controlled substance offenses.²⁵

Existing law requires the Commission on Teacher Credentialing (Commission),²⁶ the State Board of Education,²⁷ and a county board of education²⁸ to revoke any certificate or credential which it has issued if the holder is convicted of a sex offense or controlled substance offense.²⁹ Existing law also requires the Commission to deny an application for the issuance or renewal of a teaching credential by an applicant who has been convicted of a sex offense or controlled substance offense.³⁰ Chapter 272 incorporates the expanded definitions of sex offense and controlled substance offense into the above regulations pertaining to teaching credentials.³¹

DTF

25. CAL. EDUC. CODE §§ 44010(a)-(j), 44011(a)-(d) (amended by Chapter 272).

26. *Id.* § 44210(a)-(h) (West Supp. 1992) (creating the Commission on Teacher Credentialing).

27. *See* CAL. CONST. art. IX, § 7 (directing the Legislature to provide for a state board of education and for county boards of education); CAL. EDUC. CODE § 33000 (West 1978) (authorizing the Governor to appoint a 10 member State Board of Education, subject to the consent of two-thirds of the Senate).

28. *See* CAL. CONST. art IX, § 7 (directing the Legislature to provide for a state board of education and for county boards of education); CAL. EDUC. CODE § 1000 (West 1978) (setting forth the methods for establishment of the county board of education).

29. CAL. EDUC. CODE §§ 44425, 44436 (West Supp. 1992); *see* *Di Genova v. State Board of Educ.*, 45 Cal. 2d 255, 263, 288 P.2d 862, 867 (1958) (holding that, upon revocation of teaching credentials by the State Board of Education for conviction of sex offenses, a local school board may dismiss the sex offender without notice of hearing because a school district may not employ a non-credentialed individual in a position for which a credential is a prerequisite).

30. CAL. EDUC. CODE § 44346(a)(2)-(3) (West Supp. 1992).

31. *Id.* §§ 44010(a)-(j), 44011(a)-(d) (amended by Chapter 272).

Education; special education for students with learning disabilities

Education Code § 48212 (repealed); §§ 56503, 56507 (repealed and new); §§ 56041, 56138, 56337.5, 56345.1, 56500.3, 56504.5, 56505.1, 56508, 56731, 56339 (new); §§ 41851.2, 48911, 48912, 48915.5, 56026, 56100, 56171, 56321, 56341, 56344, 56364, 56500.1, 56500.2, 56501, 56502, 56505, 56601 (amended).
AB 2773 (Farr); 1992 STAT. Ch. 1360

Under prior law, the governing board¹ of a public school had authority to exclude any student from attending regular classes whose mental or physical disability was deemed to be adverse to the welfare of other students.² Chapter 1360 repeals the statute conferring that authority.³

Under existing law, a pupil assessed⁴ as suffering from a specific learning disability⁵ is eligible for special education⁶ and related

1. See CAL. EDUC. CODE §§ 35160-35182 (West 1978 & Supp. 1992) (describing the powers and duties of school district governing boards).

2. 1976 Cal. Stat. ch. 1010, sec. 2, at 3561 (enacting CAL. EDUC. CODE § 48212); see *Abella v. Riverside Sch. Dist.*, 65 Cal. App. 3d 153, 165, 135 Cal. Rptr. 177, 185 (1976) (prohibiting a school district from excluding a student from attending class when no consideration had been given to whether the student's attendance was inimical to the welfare of other students); cf. COLO. REV. STAT. ANN. § 22-33-106(2)(b) (1988) (providing that it is grounds for expulsion or suspension if a student has a mental or physical disability or a disease which is malevolent to the welfare of other students). See generally 48 Cal. Ops. Att'y Gen. 4, 5 (1966) (stating that a student may be suspended or expelled for behavior hostile to the welfare of other students even if the behavior occurs off school grounds).

3. 1992 Cal. Stat. ch. 1360, sec. 2, at ____ (repealing CAL. EDUC. CODE § 48212).

4. See CAL. EDUC. CODE §§ 56320-56329 (West 1989 & Supp. 1992) (outlining the assessment procedure).

5. See *id.* § 56338 (West 1989) (defining specific learning disability); 20 U.S.C.A. § 1401(a)(15) (West Supp. 1992) (including dyslexia within the definition of children with specific learning disabilities).

6. See CAL. EDUC. CODE § 56031 (West 1989) (defining special education). See generally *id.* §§ 56000-56885 (West 1989 & Supp. 1992) (delineating the provisions, goals, and procedures of the state's special education program).

services.⁷ Chapter 1360 provides that a pupil evaluated as dyslexic is also entitled to special education and related services.⁸

Chapter 1360 further mandates that a pupil whose academic achievement is adversely influenced by a suspected or diagnosed attention-deficit disorder (ADD) or attention-deficit hyperactivity

7. *Id.* § 56337 (West 1989). Section 56337 sets forth specific eligibility criteria for concluding that a pupil has a learning disability. *Id.*; see CAL. CODE REGS. tit. 5, § 3030(j) (1992) (providing more specific eligibility criteria for determining the existence of a learning disability).

8. CAL. EDUC. CODE § 56337.5 (enacted by Chapter 1360). The diagnostic criteria for dyslexia is set forth in the Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised (DSM-III-R) under the heading of developmental reading disorder. DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 43-44 (3d. ed. rev. 1987). As many as eight percent of school-age children suffer from this disorder. *Id.* at 44. In spite of the diagnostic criteria advanced by DSM-III-R, there is still disagreement regarding the etiology and definition of dyslexia. Council on Scientific Affairs, *Dyslexia*, 261 JAMA 2236, 2239 (1989). Prognoses are typically most favorable if the child's condition is diagnosed before the age of eight. *Id.* Compare Gerald S. Coles, *Reading Disability in Children*, 265 JAMA 725, 725 (1991) (contending that there is no evidence suggesting that reading problems in children are due to a neurological disorder) with Michele L. Fitzpatrick, *Colored Glasses Reveal the Light of Understanding*, CHI. TRIB., May 10, 1992, Tempo Southwest at 1 (reporting a recent study which suggests that dyslexia may be the result of a physical difference in the brain cells controlling the way a person sees). Reading through colored lenses has been effective in ameliorating symptoms in many dyslexics. *Id.*

disorder (ADHD) and meets certain specified eligibility requirements⁹ is qualified to receive special education services.¹⁰

WDC

Education; student financial aid--loan assumptions

Education Code §§ 69300, 69301, 69302, 69310, 69311, 69312, 69320, 69330, 69340 (new); 69274 (amended).
AB 3449 (Becerra); 1992 STAT. Ch. 1305

9. See CAL. EDUC. CODE § 56339(a) (enacted by Chapter 1360) (specifying the eligibility requirements which must be satisfied in order for a child with ADD or ADHD to receive special education benefits).

10. *Id.* DSM-III-R establishes diagnostic criteria for attention-deficit hyperactivity disorder (ADHD). DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 50-53 (3d. ed. rev. 1987). However, DSM-III-R does not provide separate diagnostic criteria for attention-deficit disorder (ADD) without hyperactivity. *Id.* Attention-deficit hyperactivity disorder is the most common dysfunction reported by elementary schools. Virginia S. Cowart, *Attention-Deficit Hyperactivity Disorder: Physicians Helping Parents Pay More Heed*, 295 JAMA 2647, 2647 (1988). Although 95% of children with ADHD are stunted in their academic achievement, about half of those children attend regular education classes despite the fact that recent research indicates ADHD is a physiologically based disorder. Linda Saslow, *Helping Hyperactive Children Fit In*, N.Y. TIMES, Oct. 20, 1991, § 12LI at 8. Historically, schools have viewed ADHD as a psychological disorder, and have largely left the costs of intervention up to the parents. Jamie Talan, *Focus on Learning Disabilities*, NEWSDAY, Sept. 26, 1989, at 11. There is no federal legislation requiring schools to provide special education services to children with attention-deficit disorders. Shirley Barnes, *Attention Deficit: Its Treatment Stirs Debate-Parents Need, Get Support*, CHI. TRIB., Mar. 24, 1991, Tempo Lake, at 3. However, a recent federal enactment provides for the United States Secretary of Education to enter into contracts or cooperative agreements for the establishment of centers which would organize and distribute information regarding children with attention-deficit disorders. U.S.C.A. § 1441(f)(1) (West Supp. 1992). See generally Melvin L. Cohen, et al., *Parent, Teacher, Child: A Trilateral Approach to Attention Deficit Disorder*, 149 AM. J. DIS. CHILD 1229 (1989) (advocating the treatment of ADHD through a multimodal approach of behavioral modification, family therapy, and educational modifications in addition to drug therapy); Sally E. Shaywitz, et al., *Concurrent and Predictive Validity of the Yale Children's Inventory: An Instrument to Assess Children With Attentional Deficits and Learning Disabilities*, 81 PEDIATRICS 562 (1988) (discussing the development of the Yale Children's Inventory (YCI) as a tool to aid in the classification of children with learning disabilities and attention-deficit disorders); Terry Stancin, et al., *Reported Practices of Pediatric Residents in the Management of Attention-Deficit Hyperactivity Disorder*, 144 AM. J. DIS. CHILD 1329 (1990) (presenting results of a study designed to shed light on the diagnostic, referral, and treatment practices of pediatric residents encountering patients with ADHD).

Under existing law, the Health Manpower Policy Commission (Commission)¹ is required to establish standards for various family practice training programs.² Chapter 1305 includes osteopathic³ medical programs within the family practice programs overseen by the Commission.⁴

Existing law grants the Commission the authority to determine specific areas of the state where there is a shortage of primary care family physicians.⁵ Under Chapter 1305, the Commission is authorized to assume the principal amount of the loan obligations for full-time medical students who: (1) Agree to enter a primary care residency in California; (2) provide primary care medical services for a minimum of three consecutive years upon completion of residency; and (3) treat patients who are receiving public assistance.⁶ Chapter

1. See CAL. EDUC. CODE § 69273(a)-(c) (West 1989) (creating the Health Manpower Policy Commission).

2. *Id.* § 69274(b) (amended by Chapter 1305) (establishing standards for family practice training programs, family practice residency programs, postgraduate osteopathic medical programs in family practice and primary care physician's assistants, and programs that train specified primary care nurse practitioners).

3. See BLACK'S LAW DICTIONARY 1101 (6th ed. 1990) (defining osteopathy as a system of complete medical practice based on the maintenance of proper relationships among the various parts of the body through manipulative therapy, drugs, surgery, x-ray, and all other accepted therapeutic methods in the treatment of disease and injury). The mechanism by which the musculoskeletal system, via the nervous and circulatory systems, interacts with all body organs and systems in both health and disease is given special attention. *Id.* Doctors of Osteopathy diagnose and treat musculoskeletal disorders through palpation and appropriately applied manipulative procedures. *Id.*

4. CAL. EDUC. CODE § 69274(b)(2) (amended by Chapter 1305).

5. *Id.* § 69274(a) (West 1989); *id.* § 69274(a) (amended by Chapter 1305); see *id.* § 69302(d) (enacted by Chapter 1305) (defining primary care physician as a physician who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of patient care, and for initiating referral for care by other specialists). A primary care physician shall be a board-certified or board-eligible general internist, general pediatrician, general obstetrician-gynecologist, or family physician. *Id.* § 69302(d) (enacted by Chapter 1305).

6. *Id.* §§ 69311(a)-(b), 69312(a)-(b) (enacted by Chapter 1305); cf. NEB. REV. STAT. § 71-5650(1)-(3) (1991) (providing for full loan forgiveness for primary care physicians or psychiatry practitioners who agree to serve one year for each year of education for which a loan is received in designated medical profession shortage areas of most critical need, and forgiveness of fifty percent of the outstanding loan principal for primary care physicians or psychiatry practitioners who serve in designated medical profession shortage areas which are not among the areas of most critical need); N.M. STAT. ANN. § 21-22-6E (1992) (providing a formula for loan forgiveness for each year that a loan recipient practices as a licensed physician or physician assistant in areas not adequately served by medical practitioners as follows: For the first year served, forty percent of the principal and all interest accrued is forgiven; for the second and third years served, thirty percent of the principal and all interest accrued is forgiven); TEX. EDUC. CODE ANN. § 61.539(a)-(b) (1991) (granting authority to medical school governing boards to set aside two percent of tuition charges, and mandating that

1305 gives priority to those applicants agreeing to serve for a minimum of three consecutive years in a medically underserved designated shortage area.⁷ Recipients who agree to serve in areas not designated as underserved areas must provide five consecutive years of service.⁸ Under Chapter 1305, the use of state funds for this loan assumption program is prohibited, and the Director of the Office of Statewide Health Planning and Development must certify that sufficient private funds are available prior to implementation of this program.⁹ Chapter 1305 does not apply to students at the University of California unless the Regents of the University of California adopt a resolution making these requirements applicable.¹⁰

DTF

Education; student safety records

Education Code § 67380 (amended).
AB 3739 (Nolan); 1992 STAT. Ch. 886

the amount is to be set aside for repayment of student loans of physicians serving in economically depressed or rural medically underserved areas of the state); TENN. CODE ANN. § 49-4-703(a)(4) (1991) (providing medical or osteopathic students with a credit of five thousand dollars (\$5,000) toward payment of loan-scholarship received for each year of continuous service in areas designated as physician shortage areas). Compare Beth Schwinn, *Bills Address Rural Health Care Problems*, STATES NEWS SERVICE, May 10, 1991, available in LEXIS, Nexis Library, States News Service File (discussing the problems of rural health care, and how several proposed measures are designed to cure the shortage of doctors in rural areas) with M.P. McQueen, *53 Scholarship-Winning Docs Sued; They refused to relocate for assignments*, NEWSDAY, Nov. 29, 1991, at 19 (reporting on the situation in which the federal government is suing at least 53 doctors in New York City for refusing to work wherever the government assigned them under a government program that paid their medical school tuition). See generally CAL. EDUC. CODE § 69301(a)-(d) (enacted by Chapter 1305) (declaring that the combination of high debt from student loans and low reimbursement for primary care practices is creating a shortage in the number of primary care physicians practicing in California).

7. CAL. EDUC. CODE § 69312(a) (enacted by Chapter 1305); see *id.* § 69302(c)(1)-(3) (enacted by Chapter 1305) (defining medically underserved designated shortage area).

8. *Id.* § 69312(b)(3) (enacted by Chapter 1305).

9. *Id.* § 69340(a)-(c) (enacted by Chapter 1305).

10. *Id.* § 69330 (enacted by Chapter 1305).

Existing law compels the governing board of each community college district,¹ the Trustees of the California State University,² the Board of Directors of Hastings College of the Law,³ and the Regents of the University of California⁴ to assemble records in regard to campus security⁵ and to make those records available upon request of any student, employee, or applicant for admission.⁶ Chapter 886 makes the above provisions applicable to any postsecondary institution with full-time enrollment of 1,000 or more students that receives public funds for student financial assistance.⁷ Chapter 886 additionally requires that officials at each of the above described campuses make only the records of certain crimes⁸ available to the media, and requires those records to be made available within two business days.⁹

STL

1. See CAL. EDUC. CODE §§ 70900-87000 (West 1989 & Supp. 1992) (establishing community colleges).

2. See *id.* §§ 89000-90500 (West 1989 & Supp. 1992) (establishing the California State University system).

3. See *id.* §§ 92200-92215 (West 1989 & Supp. 1992) (establishing Hastings College of the Law).

4. See *id.* §§ 92000-92690 (West 1989 & Supp. 1992) (establishing the University of California system).

5. See *id.* § 67380(a)(1) (amended by Chapter 886) (requiring the compilation of specified criminal and noncriminal activity in public safety records).

6. *Id.* § 67380(a)(3) (amended by Chapter 886); see *Nolan Bill to Make College Campuses Safer Passes Assembly*, BUSINESS WIRE, June 15, 1990, at 1 (discussing the legislation which enacted California Education Code § 67380). The information must be made available within two business days. Cal. Educ. Code § 67380(a)(3) (amended by Chapter 886). See generally *End the Cover-up of Campus Crime*, USA TODAY, Mar. 14, 1991, at 12A (discussing the withholding of information regarding crimes on college campuses); Paula Schwed, *Student Editors Battle Campus Brass for Records*, USA TODAY, Dec. 6, 1990, at 11A (discussing student editors' attempts to disseminate information on campus crime); Pat Ordovensky, *The Twin Fears of Campus Crime*, USA TODAY, Sept. 28, 1990, at 1A (discussing retribution for discussing security problems on college campuses).

7. CAL. EDUC. CODE § 67380(a),(d) (amended by Chapter 886); cf. DEL. CODE ANN. tit 14, § 9003 (1991); MD. CODE ANN., EDUC. § 13-201 (1991); W. VA. CODE § 18B-1-8a (1991) (requiring the assembling of campus security records).

8. See CAL. EDUC. CODE § 67380(a)(1) (amended by Chapter 886) (listing the criminal activity that is required to be made available).

9. *Id.* § 67380(a)(3) (amended by Chapter 886).

Education; suspension or expulsion of pupils for sexual harassment

Education Code § 48900.2 (new); §§ 48900, 48915 (amended).

SB 1930 (Hart); 1992 STAT. Ch. 909

Under existing law a pupil may be suspended or expelled if the pupil has engaged in behavior which is harmful to other students.¹ Chapter 909 includes sexual harassment² in the list of behavior for which a pupil may be suspended or expelled.³

Under existing law a school district, upon recommendation by the superintendent or principal, may order a student expelled for specified behavior when no feasible means of correction exists, or the

1. CAL. EDUC. CODE § 48900(a)-(l) (amended by Chapter 909); *see id.* (prohibiting behavior such as physically harming another, robbery, extortion, theft, vandalism, receiving stolen property, engaging in obscene acts, disrupting school, defying school authorities, and possessing, selling, or using a controlled substance, firearm, knife or explosive); *id.* § 48915(a)(1)-(4) (amended by Chapter 909) (providing that a superintendent must, unless the particular circumstances warrant expulsion inappropriate, recommend expulsion for specified behavior including physical injury to another person, possession of dangerous weapons or explosives, unlawful sale of controlled substances, and robbery or extortion); *id.* § 48911(b) (West Supp. 1992) (entitling a student to a conference with school authorities before being suspended); *Goss v. Lopez*, 419 U.S. 565, 572-76 (1975) (holding that students have a right to due process under the Fourteenth Amendment when suspended from school without a hearing); *Garcia v. Los Angeles County Bd. of Ed.*, 123 Cal. App. 3d 807, 807-08, 177 Cal. Rptr. 29, 30 (1981) (holding that a pupil may be expelled for being a danger to others if alternative means of correcting the pupil's behavior are not feasible).

2. *See* CAL. EDUC. CODE § 48900.2 (enacted by Chapter 909) (specifying that sexual harassment exists when, in the eyes of a reasonable person of the same gender, the conduct would have a negative impact on academic performance or create an intimidating, hostile, or offensive school setting); *id.* § 212.5(a)-(d) (West Supp. 1992) (defining sexual harassment as involving the unwelcome sexual advances, requests for sexual favors, or any other visual, verbal, or physical conduct of a sexual nature made by someone from or in the work or educational setting under specified conditions). *See generally* CATHERINE MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979) (discussing how sexual harassment affects womens' academic performance and work).

3. CAL. EDUC. CODE § 48900.2 (enacted by Chapter 909); *cf.* MINN. STAT. § 127.46 (1992) (describing Minnesota's sexual harassment policy for school pupils). *See generally* David Rosenberg, *Racist Speech, The First Amendment, and Public Universities: Taking a Stand on Neutrality*, 76 CORNELL L. REV. 549 (1991) (discussing how sexual harassment rules may conflict with freedom of speech in schools and colleges); Susan Ellicott, *Schools Outlaw Sexist Jokers*, THE TIMES, Feb. 28, 1992, at Features (describing how some school districts in Minnesota have implemented new policies against sexual harassment in high schools following two separate law suits that were settled with the district which involved sexual harassment of one pupil towards another).

student is a continuing danger to the other students.⁴ Chapter 909 would add sexual harassment to the specified behavior for which a student can be expelled.⁵

EB

Education; temporary or substitute employee deemed probationary employee

Education Code § 44954 (repealed and new); § 44918 (amended).
SB 1281 (Alquist); 1992 STAT. Ch. 336

Under existing law, any substitute¹ or temporary employee² who works seventy-five percent of the district's school days,³ and has

4. CAL. EDUC. CODE § 48915(c)(1)-(2) (amended by Chapter 909); *see id.* § 48900(a)-(l) (amended by Chapter 909) (specifying the behavior for which a student may be expelled).

5. *Id.* § 48915(c) (amended by Chapter 909).

1. *See* CAL. EDUC. CODE § 44917 (West 1978) (defining substitute employees as those employed to fill positions which require certification of regularly employed persons absent from service).

2. *See id.* § 44919(a)-(b) (West 1978) (defining temporary employees as those who are employed to serve from day to day during the first three school months of a school year to teach classes that will not exist after three months or to perform any other duties which do not last longer than the first three months of school, or as those employed to serve in a limited assignment supervising athletic activities as long as the assignment was first made available to teachers already employed in the district).

3. *See id.* § 44918(a) (amended by Chapter 336) (stating that the days worked must be 75 percent of the days that the regular schools of the district were maintained in that school year); *id.* § 41420(a) (West 1978) (establishing that a school district must maintain a minimum of 175 school days in order to receive an average daily attendance apportionment from the State School Fund); *id.* § 46200(b) (West Supp. 1992) (stating that a year-round school which offers less than 180 days of instruction may be subject to a reduction of the base revenue limit per unit of average daily attendance); *see also* California Sch. Employee Ass'n v. Trona Joint Unified Sch. Dist., 70 Cal. App. 3d 592, 598, 138 Cal. Rptr. 852, 855 (1977) (holding that Saturdays and Sundays could not be counted in determining whether employees of the district were classified employees); Centinela Valley Secondary Teachers Ass'n v. Centinela Valley Union High Sch. Dist., 37 Cal. App. 3d 35, 43, 112 Cal. Rptr. 27, 32 (1974) (holding that a certified teacher, who signed a contract to teach on a substitute basis the first semester for one teacher and for another teacher the second semester had not attained probationary status because she had not taught classes which would have been taught by one person absent from service for 75 percent of the school year).

performed the duties normally required of a certificated employee of the district, will be considered as having served a complete year as a probationary employee if the employee is hired the following year as a probationary employee.⁴ Chapter 336 requires the school district to reemploy the employee to fill any vacant positions in the school district unless the employee has been released.⁵ Chapter 336 additionally provides that an employee who has been released and then retained as a substitute or temporary employee for two consecutive years, will be given first priority for the following year to fill a vacant position at the grade level or subject matter the employee taught during either of the two years.⁶

Prior law allowed governing boards of school districts to dismiss temporary employees for certificated positions at their pleasure.⁷ Chapter 336 allows the board to dismiss such an employee at the pleasure of the board if the employee has not worked seventy-five percent of the regular school days of the district.⁸ If the employee has served the required number of days, the board may dismiss the employee if the employee is notified before the end of the school year of the district's decision not to reelect the employee for the next year.⁹

CLR

4. CAL. EDUC. CODE § 44918(a) (amended by Chapter 336); *see id.* § 44915 (West 1978) (classifying probationary employee).

5. *Id.* § 44918(b) (amended by Chapter 336); *see id.* § 44954 (enacted by Chapter 336) (stating when governing boards of school districts may release temporary employees).

6. *Id.* § 44918(c) (amended by Chapter 336); *see id.* (stating that the substitute or temporary employee must also have worked 75 percent of the working days of the school district and performed the duties normally required of a certificated employee of that district); *Kalamaras v. Albany Unified Sch. Dist.*, 226 Cal.App. 3d 1571, 1576-77, 277 Cal. Rptr. 577, 580 (1991) (holding that § 44918 requires only that the temporary employee functions as a certificated employee rather than a classified employee).

7. 1976 Cal. Stat. ch. 1010, sec. 2, at 3449 (enacting CAL. EDUC. CODE § 44954).

8. CAL. EDUC. CODE § 44954(a) (enacted by Chapter 336).

9. *Id.* § 44954(b) (enacted by Chapter 336).

