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Education

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Education

Education; children with exceptional needs

Education Code §§ 8250.5, 56244 (new); §§ 8208, 8250, 8468.5 (amended).

SB 2194 (Morgan); 1990 STAT. Ch. 1596

Existing law empowers the Superintendent of Public Instruction (Superintendent) to enter into contracts for child care and development programs for children.¹ Under prior law, the Superintendent shall establish programs for children with exceptional needs² and provide for equal access to those programs.³ In order to ensure that children with exceptional needs were given equal access to child care and development programs, prior law also required the Superintendent to establish alternate appropriate placements.⁴ Chapter 1596 mandates that eligible children with exceptional needs must be given equal access to all child care and development programs.⁵ Under Chapter 1596, alternate appropriate placements⁶ must be used to provide additional access to child care and development programs.⁷ Furthermore, Chapter 1596 prohibits a contractor who provides a service under a general care contract, a campus child care contract, a migrant child care contract, or an alternative payment child care

1. CAL. EDUC. CODE § 8203.5 (West Supp. 1990). *See id.* § 8208(h) (amended by Chapter 1596) (definition of "child care and development programs").

2. *See id.* § 8208(l) (amended by Chapter 1596) (definition of children with exceptional needs).

3. 1984 Cal. Stat. ch. 1604, sec. 3, at 5660 (amending CAL. EDUC. CODE § 8250(a)).

4. 1984 Cal. Stat. ch. 1604, sec. 3, at 5660 (amending CAL. EDUC. CODE § 8250(b)).

5. CAL. EDUC. CODE § 8250(a) (amended by Chapter 1596).

6. *See id.* § 8250(b) (amended by Chapter 1596) (alternate appropriate placements include self-contained programs and innovative programs which utilize the least restrictive environments).

7. *Id.* § 8250(b) (amended by Chapter 1596). The Superintendent may develop these programs to serve children of up to 21 years of age who have exceptional needs. *Id.*

contract from denying services to an eligible child based on that child's disability.⁸

Existing law provides a priority schedule for enrollment of children into child care or development programs beginning with those children in families of the lowest income levels.⁹ Chapter 1596 allows the Superintendent to waive the order of acceptance of children in special populations to allow the agencies to properly care for children with exceptional needs.¹⁰ Additionally, Chapter 1596 imposes upon the Superintendent the duty to provide staff development to child care center staff and family day care providers in order to improve service to children with exceptional needs.¹¹

GJK

Education; pupils with exceptional needs-- suspension and transfer

Education Code §§ 48911, 48912, 48915.5, 48917, 56325
(amended).

AB 3880 (Farr); 1990 STAT. Ch. 1234

8. *Id.* § 8250.5 (enacted by Chapter 1596). The listed contractors, whether a public or private agency, must offer a full range of services for children from infancy to 14 years of age during any part of a day in centers and child care homes. *Id.* § 8208(h) (amended by Chapter 1596). The contractor may deny services to the child on the basis of that child's disability if five percent or more of the enrolled children receiving subsidized child care and development services are children with exceptional needs. *Id.* § 8250.5 (enacted by Chapter 1596).

9. *Id.* § 8468.5(a) (amended by Chapter 1596) (schedule of enrollment for child care and development).

10. *Id.* § 8468.5(d) (amended by Chapter 1596). The legislature recognizes the efforts that have been made to provide special education services, child care and development programs for children with exceptional needs and seeks to continue these by furthering their development and allowing easier access into the programs. 1990 Cal. Stat. ch. 1596, sec. 1, at ____.

11. CAL. EDUC. CODE § 56244 (enacted by Chapter 1596) (the Superintendent shall perform this function to the extent allowed by federal and state funds).

Under existing law, the governing board of a school district (board) may suspend pupils for specified acts¹ for a maximum of twenty days.² While the board is processing the suspension of a pupil, the superintendent of the district may extend the suspension of a student by a principal³ until such time as the board has rendered a decision in the action.⁴ Chapter 1234 limits suspension of an individual with exceptional needs⁵ to a maximum of ten days unless the individual's parent or guardian agrees to, or a court orders, a longer suspension.⁶

Under existing law, the board must base its decision to expel a pupil with previously identified exceptional needs upon certain determinations made by an individualized education team (team).⁷ Chapter 1234 clarifies existing law by requiring the team to base its determinations on the results of a comprehensive pre-expulsion education assessment, conducted in accordance with specified federal guidelines,⁸ and reorganizes and clarifies procedural components of this provision to comport with this change.⁹

1. See CAL. EDUC. CODE § 48900(a)-(l) (West Supp. 1990) (specifying acts for which suspension or expulsion may be recommended by the principal or superintendent).

2. *Id.* § 48912(a) (amended by Chapter 1234). See *id.* § 48903 (West Supp. 1990) (setting maximum expulsion of 20 days, or a maximum of 30 days for adjustment purposes if a student has transferred).

3. See *id.* § 48911 (amended by Chapter 1234) (provision relating to a principal's authority to suspend a pupil).

4. *Id.* § 48911(g) (amended by Chapter 1234).

5. See *id.* § 56026 (West 1989) (definition of individuals with exceptional needs).

6. *Id.* § 48911(g), (i) (amended by Chapter 1234).

7. *Id.* § 48915.5 (amended by Chapter 1234). See *id.* § 48915.5(a)(1)-(3) (amended by Chapter 1234) (requiring that a decision to expel to be preceded by a team meeting, in which findings by the team show the student's misconduct was not caused by, or a direct manifestation of, the pupil's identified disability, and that the pupil had been appropriately placed at the time of the misconduct).

8. See *id.* § 48915(e) (amended by Chapter 1234) (requiring the pre-expulsion educational assessment be conducted in accordance with section Title 34, section 104.35 of the Code of Federal Regulations). Title 34, section 104.35 describes procedures applicable to recipients of federal money for education, requiring tests and other evaluation procedures for persons with special educational needs to be validated for the specific purpose for which they are used, administered by trained personnel, tailored to assess a specific areas of educational need, selected and administered to accurately measure a student's aptitude or achievement level. 34 C.F.R. § 104.35 (1989).

9. *Id.* 48915.5 (amended by Chapter 1234). See *id.* § 48915.5(b) (amended by Chapter 1234) (specifying that all federal and state procedural safeguards apply to proceedings to expel pupils, with specified exceptions). See also 1990 Cal. Stat. Ch. 1234, sec. 6, at ____ (stating the intent of legislature that changes effected by Chapter 1234 are to make state law conform to the requirements of federal law).

Under existing law, a board may suspend enforcement of an expulsion order for up to one year.¹⁰ Chapter 1234 provides that the board's criteria for suspending enforcement of an expulsion order must be applied equally to all pupils, including those with exceptional needs.¹¹

TDB

Education; sexual assault on campus--victim support services

Education Code §§ 67385, 67386, 94385 (new).
AB 3098 (Roybal-Allard); 1990 STAT. Ch. 423

Although the California Supreme Court has held that postsecondary educational institutions¹ have a duty to exercise due care to protect students from reasonably foreseeable assaults occurring on campus,² existing law does not require these campuses to provide support systems or treatment to victims of sexual assault.³ Chapter 423 mandates that specified postsecondary

10. *Id.* § 48917 (amended by Chapter 1234).

11. *Id.*

1. See CAL. EDUC. CODE §§ 94302(s) (West Supp. 1990) (definition of private postsecondary educational institution); 66010 (West 1989) (definition of public higher education).

2. *Peterson v. San Francisco Community College Dist.*, 36 Cal. 3d 799, 804, 685 P.2d 1193, 1194, 205 Cal. Rptr. 842, 843 (1984). See generally Annotation, *Liability of University, College, or Other School for Failure to Protect Student From Crime*, 1 A.L.R. 4th 1099 (1980) (state and federal cases where courts have determined whether educational facilities may be held liable in tort for failure to protect students from intentional crimes).

3. See A.C. Res. 46, 1987-1988 Reg. Sess. (copy on file at *Pacific Law Journal*) (legislative request to postsecondary learning institutions to implement programs to assist rape victims and publicize occurrences of rape on campus). One university has implemented procedures for responding to sexual assault involving students. See *UCLA Procedures for Responding to Sexual Assault Cases Involving Students* (rev. ed. Apr. 1990) (unpublished manuscript) (copy on file at *Pacific Law Journal*). See also M. KOSS & M. HARVEY, *THE RAPE VICTIM, CLINICAL AND COMMUNITY APPROACHES TO TREATMENT* (1987) (statistics show that college students are a high risk group for the crime of rape, with as many as 25% of college women reporting forceful attempts at sexual assault by their dates).

Education

educational institutions⁴ must adopt and implement written procedures and protocol⁵ to ensure that students, faculty, and staff who are victims of sexual assault⁶ committed on campus will receive information and treatment.⁷

NJH

4. See CAL. EDUC. CODE § 67385(a) (enacted by Chapter 423). The Trustees of the California State Universities, the Board of Directors of Hastings College of Law, the Board of Governors of California Maritime Academy, the governing board of each community college district, and the Regents of the University of California must implement the specified procedures and protocol. *Id.* The provisions of Chapter 423 do not apply to the Board of Directors of Hastings College of Law or the Regents of the University of California unless the Board and the Regents adopt resolutions making the provisions applicable. *Id.* § 67386 (enacted by Chapter 423). Private postsecondary educational and vocational institutions must also implement the procedures and protocol. *Id.* § 94385(a) (enacted by Chapter 423).

5. See *id.* §§ 67385(b), 94385(b) (enacted by Chapter 423). The procedures and protocol must contain: (1) The institution's policy regarding sexual assault on campus; (2) the personnel and services available to assist the victim; (3) the reporting requirements and procedures for keeping the victim informed of the status and results of any student disciplinary proceeding against the assailant; (4) information regarding options available to the victim, including initiation of criminal or civil prosecution; and (5) procedures for ensuring confidentiality and appropriate handling of any requests for information from the press, concerned students, and parents. *Id.*

6. See *id.* §§ 67385(d), 94385(c) (enacted by Chapter 423) (definitions of sexual assault).

7. *Id.* §§ 67385, 94385 (enacted by Chapter 423). Chapter 423 also requires procedures to be implemented for assaults occurring upon off-campus grounds or at facilities maintained by the institution, or upon grounds or facilities maintained by affiliated student organizations. *Id.* § 67385(a) (enacted by Chapter 423). See generally A. ADAMS & G. ABARBANEL, SEXUAL ASSAULT ON CAMPUS: WHAT COLLEGES CAN DO (published by the Rape Treatment Center, Santa Monica Hospital Medical Center) (1988) (report describing programs and policies that can be implemented by postsecondary institutions to reduce the incidence of sexual assaults on campuses and to respond to the victims of these crimes).