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Education

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Education

Education; course content of sex education

Education Code § 51533 (amended).
SB 224 (Hughes); 1993 STAT. Ch. 328

Existing law requires that all public elementary, junior high, and senior high school classes teaching sex education emphasize that abstinence from sexual intercourse is the only protection that is 100% effective against unwanted teenage pregnancies and sexually transmitted diseases, including AIDS.[1] Existing law also requires that the material and instruction be age appropriate.[2]

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1. CAL. EDUC. CODE § 51553(a) (West Supp. 1993); *see* Baker v. Los Angeles Herald Examiner, 42 Cal. 3d 254, 258, 721 P.2d 87, 89, 228 Cal. Rptr. 206, 207 (1986) (discussing parents' thoughts on educating their children about sex or deferring that education to the schools), *cert. denied*, 479 U.S. 1032 (1987); *id.* at 258, 721 P.2d at 88-89, 228 Cal. Rptr. at 207 (stating that more parents are relinquishing their traditional roles as primary sex educators because of heightened timidity or the weakening of the family unit); *see also* CAL. EDUC. CODE § 67390 (West Supp. 1993) (setting forth the findings and declarations of the Legislature on rape awareness programs on college campuses); Mark Barnes, *Toward Ghastly Death: The Censorship of AIDS Education*, 89 COLUM. L. REV. 698, 699 (1989) (arguing that understanding the significance of AIDS education as a public health measure is particularly important because AIDS education programs have become subject to content-based restrictions on portrayals of sexual and drug-related activity); Judie Brown, *Just Teach Abstinence*, U.S.A. TODAY, June 8, 1993, at 12A (arguing that most schools have become places where sexual gratification is increasingly the most important item in the curriculum); Tom Hess, *They Call This Abstinence?*, FOCUS ON THE FAMILY CITIZEN, May 18, 1992, at 1 (quoting W. Reyn Archer, M.D., Deputy Assistant Secretary for Population Affairs for the U.S. Dept. of Health and Human Services in Washington, D.C., stating that when schools say they will teach an 'abstinence-based' curriculum, they also discuss foreplay, or what they call 'outercourse'); *id.* (quoting Debra Haffner, executive director of the Sex Information and Education Council of the United States who, during a speech to parents, defined outercourse as a concept that sexuality educators use among themselves to describe alternatives to sexual intercourse). *But see* Ware v. Valley Stream High Sch. Dist., 550 N.E. 2d 420, 422 (N.Y. 1989) (concluding that the AIDS curriculum implemented by the New York State Commissioner of Education may violate the plaintiffs' First Amendment freedom of religion rights); *Frances E. Olsen, The Myth of State Intervention in the Family*, 18 U. MICH. J.L. REF. 835, 860 (1985) (commenting that the state intrudes into the parent-child relationship and rewards neglectful parents by distributing birth control information which encourages parents to neglect their child's sex education). *See generally* Proclamation No. 6326, 27 WEEKLY COMP. PRES. DOC. 1184 (Aug. 22, 1991) (designating a specific week as National Campus Crime and Security Awareness Week in response to Congress passing the Student Right-to-Know and Campus Security Act); *id.* (stating that the purpose of this program was to increase awareness of campus crime and ways to prevent it in every academic community in America).

2. CAL. EDUC. CODE § 51553(b)(1) (West Supp. 1993); *see* Ginsberg v. New York, 390 U.S. 629, 659-61 (1968) (Douglas, J., dissenting) (providing views from parents who stated that, while they had no objection to sex education, it should not be taught until age 12 for girls, and age 15 for boys); *see also* 1992 CONFERENCE OF DELEGATES OF THE LAWYERS' CLUB OF SAN DIEGO ON SEX EDUCATION CLASSES: COURSE CRITERIA (Apr. 7, 1992) (copy on file with the *Pacific Law Journal*) (advocating that date rape and unwanted sexual advances are problems which need to be addressed at the elementary, junior high, and senior high school levels, as appropriate); *id.* (stating that merely advising pupils not to make unwanted physical sexual advances is insufficient to deter such conduct).

Chapter 328 requires these schools to include in the course material instruction concerning prevention of unwanted sexual advances[3] and to include information about sexual assault, including date rape.[4]

Chapter 328 also requires that the material inform students of methods of preventing date rape,[5] the potential legal consequences of date rape,[6] and that it is wrong to exploit or take advantage of another person.[7]

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3. *See* CAL. EDUC. CODE § 212.5 (West Supp. 1993) (defining unwanted sexual advances as a form of sexual harassment); *see also* People v. Malone, 47 Cal. 3d 1, 37, 762 P.2d 1249, 1270, 252 Cal. Rptr. 525, 546 (1988) (defining an unwanted sexual advance as an unwanted touching or threat to touch an intimate body part), *cert. denied*, 490 U.S. 1095 (1989).

4. CAL. EDUC. CODE § 51553(b)(10) (amended by Chapter 328); *see id.* (describing sexual assault as verbal, physical, and visual, including, but not limited to, nonconsensual sexual advances, nonconsensual physical sexual contact, and rape by an acquaintance); Deborah S. v. Diorio, 583 N.Y.S.2d 872, 876 (1992) (citing Laurie Marie M. v. Jeffrey T. M., 159 A.D.2d 52, 58 (N.Y. 1990) for the authority that the term date or acquaintance rape means physically or emotionally forced sexual intercourse by a previously known friend); *see also Diorio*, 583 N.Y.S.2d at 877 (citing William Celis III, *Agony on Campus: What is Rape?* N.Y. TIMES, Jan. 2, 1991, at A1, B8 as identifying date or acquaintance rape as non-consensual sex between dates or acquaintances which is a form of male assault rather than female error); *cf.* ILL. ANN. STAT. ch. 105, para. 27-9.1(b)(8) (Smith-Hurd 1993) (requiring that the sex education curriculum for grades 6 through 12 include information on date rape). *See generally* People v. Salazar, 144 Cal. App. 3d 799, 804 n.1, 193 Cal. Rptr. 1, 3 n.1 (1983) (noting that because date rape is underreported, accurate statistics are scarce); Tanja H. v. Regents of the Univ. of Cal., 228 Cal. App. 3d 434, 440, n.1, 278 Cal. Rptr. 918, 922, n.1 (1991) (acknowledging that the statistics, which show the problem of date rape on college campuses is widespread, were not relevant for the court to review when it was determining liability for a rape); *Diorio* 583 N.Y.S.2d at 876-78 (discussing date or acquaintance rape); Tom Hess, *They Call This Abstinence?*, FOCUS ON THE FAMILY CITIZEN, May 18, 1992, at 1 (quoting W. Reyn Archer, M.D., Deputy Assistant Secretary for Population Affairs for the U.S. Dept. of Health and Human Services in Washington, D.C. stating that the schools say that intercourse is not a good behavior for adolescents, but the schools are willing to heat up the kids to the moment of passion, and then suggest that they just say 'no'; and that philosophy does not work); Julie Newman, *Alienation Keeps Date Rape Victims in the Dark*, PHOENIX GAZETTE, Mar. 24, 1993, at C6 (discussing date rape and providing tips on its prevention); Susan Orenstein, *And on Teen-agers' Rights, Too*, THE RECORDER, Apr. 26, 1993, at 2 (providing information on an educational booklet for teenagers which discusses reproductive rights and date rape).

5. *See* CAL. EDUC. CODE § 51553(b)(10) (amended by Chapter 328) (stipulating that some ways of preventing date rape are exercising good judgment and avoiding behavior that impairs good judgment).

6. *See* CAL. PENAL CODE § 243.4(d) (West Supp. 1993) (providing that if a person touches an intimate part of another, against the other's will, and for the specific purpose of sexual arousal, the person is guilty of misdemeanor sexual battery); *id.* § 243.4(f)(1) (West Supp. 1993) (defining intimate part as the sexual organ, anus, groin, or buttocks of any person, and the breast of a female); *see also* ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF SB 224, at 2 (June 30, 1993) (stating that the purpose of the bill is threefold: (1) To teach students to recognize and avoid potentially dangerous situations; (2) to avoid drugs that can affect decision making; and (3) to understand the criminal consequences of making unwanted sexual advances).

7. CAL. EDUC. CODE § 51553(b)(10) (amended by Chapter 328); *see id.* § 44806 (West 1993) (stating that each teacher should try to impress upon students' minds the principles of morality and truth).

Education; expulsion for possession of firearms

Education Code § 48915.7 (new); § 48915 (amended).
SB 1198 (Hart); 1993 STAT. Ch. 1256

Prior law stated that a principal or the superintendent of schools must recommend a student's expulsion if the student was found in possession of any firearm[1] that is of no reasonable use at school.[2] Upon receiving the recommendation for expulsion, the governing board[3] may order the student to be expelled.[4]

Chapter 1256 provides that a student found in possession of a firearm at school or at a school activity off school grounds will be immediately suspended[5] by the principal or superintendent and that a recommendation for expulsion will be given to the governing board.[6] Chapter 1256 requires that the student be expelled by the governing board upon confirmation that

1. *See* CAL. PENAL CODE § 12001(b) (West Supp. 1993) (defining firearm as any instrument designed to be used as a weapon, from which a projectile is expelled through a barrel by an explosion or other form of combustion).

2. 1992 Cal. Legis. Serv. ch. 909, sec. 3, at 3639 (amending CAL. EDUC. CODE § 48915); *see id.* (stating that if the principal or superintendent finds that expulsion is inappropriate, and so reports this to the governing board, then no recommendation need be made); *cf.* CONN. GEN. STAT. ANN. § 10-233d (West 1986 & Supp. 1993); LA. REV. STAT. ANN. § 17:416 (West 1982 & Supp. 1993); NEV. REV. STAT. § 392.467 (1991) (describing expulsion procedures). *See generally* Lusk v. Triad Community Unit, 551 N.E.2d 660, 661 (Ill. App. Ct. 1990) (holding that expulsion for possession of a gun at school is not arbitrary, unreasonable, capricious, or oppressive).

3. *See* CAL. EDUC. CODE § 78 (West 1978) (defining the governing board as the board of school trustees, and the city and county boards of education).

4. 1992 Cal. Legis. Serv. ch. 909, sec. 3, at 3639 (amending CAL. EDUC. CODE § 48915).

5. *See* CAL. EDUC. CODE § 48925(d) (West Supp. 1993) (defining suspension as removal of a student from continuing instruction for adjustment purposes); *see also id.* § 48911 (West Supp. 1993) (setting forth the general procedure for a suspension).

6. *Id.* § 48915(b) (amended by Chapter 1256); *see id.* § 48918 (West Supp. 1993) (explaining the procedure for expulsion); *see also* Goss v. Lopez, 419 U.S. 565, 582 (1975) (maintaining that due process is not violated by an immediate suspension of a student who endangers the lives of others).

the student knowingly[7] possessed the weapon and possession of the weapon was verified by an employee of the school district.[8]

SVB

Education; school districts; pupil attendance alternatives

Education Code § 48980 (amended).
AB 369 (O'Connell); 1993 STAT. Ch. 1296
(Effective October 11, 1993)

Education Code §§ 35160.5, 48209.1, 48209.7, 48209.9, 48209.11, 48209.14 (amended).
AB 1310 (Alpert); 1993 STAT. Ch. 915

Education Code §§ 48209, 48209.1, 48209.2, 48209.3, 48209.4, 48209.5, 48209.6, 48209.7, 48209.9, 48209.10, 48209.11, 48209.12, 48209.13, 48209.14, 48209.15, 48209.16 (new).
AB 19 (Quackenbush); 1993 STAT. Ch. 160

Existing law requires every student who is subject to compulsory full-time education[1] to attend the school in which the residency of that

7. *See* CAL. PENAL CODE § 7(5) (West 1988) (defining knowing as knowledge of the existence of acts or omissions that constitute a violation of the law).

8. CAL. EDUC. CODE § 48915(b)(1)-(2) (amended by Chapter 1256); *see id.* § 48915(b) (amended by Chapter 1256) (providing that the governing board may, as an alternative to expelling the student, refer the student to an alternative education program); *id.* § 48915.7 (enacted by Chapter 1256) (declaring that it is the intent of the Legislature that if community school opportunities exist, any student found in possession of a firearm at school or a school activity off school grounds should be expelled by the governing board and be enrolled in the community school); *see also id.* § 48915(e) (amended by Chapter 1256) (providing that a student who is authorized to be in possession of a firearm by a teacher, school administrator, or principal is not subject to the requirements of this section). *See generally* Carlos V. Lozano, *School Districts Search for Ways to Stem Rising Tide of Violence*, L.A. TIMES, Mar. 22, 1993, at B1 (describing the rise of violence in Ventura County school districts and offering solutions to the problem).

1. *See* CAL. EDUC. CODE § 48200 (West 1993) (mandating that every person between the ages of 6 and 18 is subject to compulsory full time education, unless otherwise exempted); Fischler v. Municipal Court, 233 Cal. App. 2d 780, 782-83, 43 Cal. Rptr. 882, 883 (1965) (granting the state a right, with reasonable exceptions, to compel minors to attend public school).

student's parent or guardian is located.[2] Existing law, however, allows for the admission of students residing in another school district pursuant to a joint agreement of the governing boards (Board)[3] of the districts.[4]

Chapter 915 authorizes the Board to unilaterally accept interdistrict transfers from a school district of residence[5] to a school district of choice.[6] Chapters 160 and 915 set forth the procedure and the requirements for the transfer.[7] Chapters 160 and 915 also provide for

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2. CAL. EDUC. CODE § 48200 (West 1993); *see id.* § 48204(a)-(f) (West 1993) (providing that the residency requirement is met if: (1) A student is placed within the boundaries of the school district in a licensed children's institution, foster home, or family home; (2) interdistrict attendance has been approved for a student, pursuant to California Education Code § 46600; (3) a child resides within the boundaries of the school district, and whose parent or legal guardian is relieved of responsibility through emancipation; (4) a student's parents have established the residence of the student within the boundaries of the school district, provided that the home is properly licensed; (5) a student resides in a state hospital located within the boundaries of the school district; or (6) an elementary school student's parent or legal guardian is employed within the boundaries of the school district); *see also* Anselmo v. Glendale Unified Sch. Dist., 124 Cal. App. 3d 520, 523, 177 Cal. Rptr. 427, 428-29 (1981) (holding that it was not unconstitutional to deny the child of nonimmigrant, nonresident parents the right to attend a public school). *But see* Plyler v. Doe, 457 U.S. 202, 230 (1982) (holding that for a state to deny children the free public education that it offers to those children residing in its borders, there must be a substantial state interest, which was not shown in a statute prohibiting illegal aliens access to public schools). *See generally* Andrew S. Hughes, Comment, *Education Lost: The Homeless Children's Right to Education*, 30 SANTA CLARA L. REV. 829, 830 (1990) (observing that the problem for homeless children in the public school system is determining whether the student "resides" within the school district).

3. *See* CAL. EDUC. CODE § 78 (West 1978) (defining governing board as a board of school trustees, or a city and county board of education).

4. *Id.* § 46600 (West 1993); *see* Myers v. Arcata Union High Sch. Dist., 269 Cal. App. 2d 549, 563, 75 Cal. Rptr. 68, 76 (1969) (finding that when a student was issued a permit by his district of residence to transfer to another district and the other district enrolled the student, the district of choice had complied with the agreement); *see also* CAL. EDUC. CODE § 46601(a) (West 1993) (providing that if the board fails to approve the transfer under specified procedures, the person having legal custody of the student may appeal to the county board of education in the district of residence).

5. *See* CAL. EDUC. CODE § 48209(b) (enacted by Chapter 160) (defining school district of residence as the school district that a student would be directed to attend, unless otherwise provided by this article).

6. *Id.* § 48209.1(a) (enacted by Chapter 160/amended by Chapter 915). Chapter 160 will become inoperative as of July 1, 2001, and will be automatically repealed on January 1, 2000. *Id.* § 48209.16 (enacted by Chapter 160); *see id.* § 48209(a) (enacted by Chapter 160) (defining school district of choice as a school district for which a resolution is in effect pursuant to section 48209.1(a)). *See generally* James B. Egle, Comment, *The Constitutional Implications of School Choice*, 1992 WIS. L. REV. 459, 472-509 (discussing various constitutional obstacles in implementing school choice programs); *Open Enrollment Provides New Opportunities for Students*, UPI, Jan. 1, 1992, *available in* LEXIS, Nexis Library, UPI File (quoting Ohio State Superintendent of Public Instruction Ted Sanders as saying that an open enrollment program allowing transfers between adjacent school districts has made schools offer quality programs and enhance productivity in order to attract students); Laurel Shaper Walters, *A Choice of Choice Plans*, CHRISTIAN SCI. MONITOR, Mar. 11, 1991, at 12 (describing four general categories of programs that offer parents a choice in where their child goes to school); *Options for Integration*, HARTFORD COURANT, May 6, 1993, (Editorial) at C14 (describing different methods of desegregating schools, including allowing students to choose their own schools).

7. CAL. EDUC. CODE §§ 48209.5, 48209.6, 48209.10(a) (enacted by Chapter 160); *id.* §§ 48209.1(a), 48209.7, 48209.9, 48209.11 (enacted by Chapter 160/amended by Chapter 915); *see id.* § 48209.1(a) (enacted by Chapter 160/amended by Chapter 915) (providing that the Board must, by resolution, determine the number of transfers it will allow and ensure that students are admitted in a random, unbiased manner); *id.* § 48209.5 (enacted by Chapter 160) (providing that a school district of choice may employ existing entrance criteria if

certain instances where a school district may refuse to accept the transfer.[8] Chapter 160 provides that school districts adopting these provisions will have certain duties and obligations.[9] Chapters 160 and 915 specifically state that it is the intent of the Legislature that parents be informed of these opportunities of choice, regardless of ethnicity, primary language, or literacy.[10]

Existing law requires the Board to notify student's parents at the beginning of the school year of their various statutory rights and responsibilities.[11] Chapter 1296 requires that the Board additionally advise the parents of the local attendance options available.[12]

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these are uniformly applied to all applicants); *id.* § 48209.6 (enacted by Chapter 160) (providing that priority for attendance shall be given to siblings of children already enrolled); *id.* § 48209.7 (enacted by Chapter 160/amended by Chapter 915) (providing that a school district of residence may set a limit to the number of students transferring out based on the number of students in the district); *id.* § 48209.9(a)-(d) (enacted by Chapter 160/amended by Chapter 915) (describing the application procedure for transfer); *id.* § 48209.10(a) (enacted by Chapter 160) (providing that when a district accepts a student the district must accept any completed coursework, attendance, and other academic progress already completed by the student); *id.* § 48209.11(a)-(c) (enacted by Chapter 160/amended by Chapter 915) (providing that the average daily attendance of the student will be credited to the district of choice pursuant to California Education Code § 46607 and that state aid is to be so apportioned); *cf.* OHIO REV. CODE ANN. § 3313.98 (Anderson 1990 & Supp. 1992); WIS. STAT. ANN. § 121.85 (West 1991 & Supp. 1993) (describing transfer programs between school districts).

8. CAL. EDUC. CODE §§ 48209.3, 48209.4, 48209.10(b) (enacted by Chapter 160); *id.* § 48209.1(b) (enacted by Chapter 160/amended by Chapter 915); *see id.* § 48209.1(b) (enacted by Chapter 160/amended by Chapter 915) (providing that either district may prohibit the transfer if the transfer would negatively impact a court ordered desegregation plan, a voluntary desegregation plan, or the racial and ethnic balance of the district); *id.* § 48209.3(a) (enacted by Chapter 160) (providing that a school district of choice may prohibit a transfer that would require the district to create a new program, but may not prohibit the transfer based on the additional cost of educating the student in excess of the amount of additional state aid received as a result of the transfer); *id.* § 48209.4 (enacted by Chapter 160) (providing that a student within the attendance area of the school district may not be displaced by a transferring student); *id.* § 48209.10(b) (enacted by Chapter 160) (providing that the school district of choice may revoke a transfer if the student is recommended for expulsion).

9. *Id.* §§ 48209.12, 48209.13 (enacted by Chapter 160); *id.* § 48209.14 (enacted by Chapter 160/amended by Chapter 915); *see id.* § 48209.12 (enacted by Chapter 160) (providing that upon request a school district of choice will provide transportation assistance within the district for transfer students); *id.* § 48209.13 (enacted by Chapter 160) (providing that upon request each school district will make information regarding its policies and programs available to any person); *id.* § 48209.14(a) (enacted by Chapter 160/amended by Chapter 915) (providing that each school district will keep an accounting of all requests made for alternative attendance transfers).

10. *Id.* § 48209.15(a) (amended by Chapter 160). *See generally* Thomas D. Elias, *School Choice Hoax: Proposal Would Shortchange Poor, Fragment Society*, L.A. DAILY J., Apr. 13, 1992, at 6 (suggesting that competition between schools would lead to further segregation and would not improve the educational quality for the poor); *Not by Choice Alone*, WASH. POST, Oct. 21, 1989 (Editorial) at A24 (arguing that giving parents a choice in schools is not enough to improve the school system).

11. CAL. EDUC. CODE § 48980(a) (amended by Chapter 1296).

12. *Id.* § 48980(g) (amended by Chapter 1296); *see id.* (providing that the notification shall include all options for meeting residency requirements, programmatic options offered within the local attendance area, any special programmatic options available on both interdistrict and intradistrict bases, procedures for application for alternative attendance areas, an application form from the district for requesting a change of attendance, a description of the appeals process, and an explanation of other attendance options available).

Existing law requires the Board of each school district to adopt rules and regulations establishing school district policies as a condition for the receipt of school apportionments from the State School Fund.[13] Chapter 915 requires each Board to also establish a policy allowing open enrollment for intradistrict transfers.[14] Chapter 915 provides that the school district will provide transportation assistance on an equal basis for all students as a prerequisite for funding.[15]

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13. *Id.* § 35160.5(a) (amended by Chapter 915); *see id.* § 14000 (West Supp. 1993) (stating that the legislative intent behind public school support is to assure that adequate funding exists for schools).

14. *Id.* § 35160.5(c)(1) (amended by Chapter 915); *see id.* § 35160.5(c)(2)(A) (amended by Chapter 915) (providing that school districts shall retain the authority to maintain racial and ethnic balance among their schools); *id.* § 35160.5(c)(2)(B) (amended by Chapter 915) (providing that the selection policy for requests in excess of the school's capacity may not be based on academic or athletic performance, but must be random and unbiased; and that the board shall determine the school's capacity); *id.* § 35160.5(c)(2)(C) (amended by Chapter 915) (providing that no pupil currently residing in the attendance area of a school will be displaced by students transferring into the school from outside the attendance area); *cf.* UTAH CODE ANN. § 53A-2-213(1)(a) (Supp. 1993) (providing that the school board will allow students that reside in the district to attend any school within the district); VA. CODE ANN. § 22.1-269.1(A) (Michie Supp. 1993) (providing that the Board of Education will create regulations for the voluntary participation of school divisions in programs to allow open enrollment to students); WASH. REV. CODE ANN. § 28A.225.270 (West Supp. 1993) (requiring that each school district in the state implement a policy allowing intradistrict enrollment options). *See generally* Ruben Navarrette Jr., *The Idea That May Eat Neighborhood Schools; Education: Without Reform That Distinguishes Individual Schools, Parents Will Choose Not What Their Children Study, But With Whom They Study*, L.A. TIMES, Sept. 27, 1992, at M2 (opining that the freedom to choose schools within a district will have the effect of further dividing children along racial and economic lines); Thomas Toch et al., *The Perfect School*, U.S. NEWS & WORLD REP., Jan. 11, 1993, at 46 (commenting that well-designed intradistrict plans, unlike other types of school choice plans, are an improvement to schools, and help motivate students and teachers); *School Choice Initiatives Expand in 1992*, Heritage Found. Reports, Apr. 1993, at 1 *available in* LEXIS, Nexis Library, Heritage Found. Reports File (finding that school choice legislation during the 1992 session was introduced in 34 states).

15. CAL. EDUC. CODE § 35160.5(c)(3) (amended by Chapter 915). The assistance will be made available only upon demonstration of the financial need of the parent or guardian. *Id.*

Education; remedies for private postsecondary institutions

Education Code §§ 94307, 94308 (new); §§ 94302, 94310, 94311, 94315, 94331 (amended).
SB 418 (Morgan); 1993 STAT. Ch. 1061

Existing law regulates private postsecondary educational institutions[1] by specifying prohibited activities that constitute violations.[2] Remedies under existing law authorize students to initiate actions against violating institutions but do not extend the same power to the Council for Private Postsecondary and Vocational Education (Council).[3] Chapter 1061 expands the existing remedies by granting the Council the power to bring an action for equitable relief.[4] Chapter 1061 provides exceptions to the provisions

1. *See* CAL. EDUC. CODE § 94302(w) (amended by Chapter 1061) (defining private postsecondary educational institution as any natural person or business entity doing business in California that provides instruction, training, or education to pupils beyond the age of compulsory high school attendance and charges tuition or fees).

2. *Id.* § 94320 (West Supp. 1993); *see id.* (listing those activities that are prohibited). Some of the activities prohibited include operating without approval, engaging in false, deceptive or misleading advertising, promising or guaranteeing employment, or falsely advertising that the institution is accredited. *Id.*

3. *Id.* § 94321(b) (West Supp. 1993); *see id.* (authorizing a student to bring an action against an institution for failure to perform its legal obligations entitling the student to damages, equitable relief, any other relief provided by the article, and reasonable attorney fees); *id.* § 94321(g) (West Supp. 1993) (allowing students to assign their cause of action to the Council or to any state or federal agency that guaranteed the student's loan); *id.* § 94302(l) (West Supp. 1993) (defining council as the Council for Private Postsecondary and Vocational Education established pursuant to California Education Code § 94304); *id.* § 94304(b) (West Supp. 1993) (establishing the procedures governing the Council for Private Postsecondary and Vocational Education); *see also* Lachman v. Cabrillo Pac. Univ., 123 Cal. App. 3d 941, 945-46, 177 Cal. Rptr. 21, 23-24 (1981) (holding that students seeking money damages and injunctive relief for fraud and breach of contract under the Education Code are not required to exhaust their administrative remedies before resorting to civil remedies).

4. CAL. EDUC. CODE § 94307 (enacted by Chapter 1061); SENATE COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 418, at 2 (April 13, 1993) (declaring that equitable relief available under Chapter 1061 may include restitution, temporary restraining orders, appointment of a receiver, and a preliminary or permanent injunction).

regulating private postsecondary education to institutions that exclusively offer short-term seminar[5] training.[6]

SMK

Education; school dress codes—gang related apparel

Education Code § 35183 (new); § 35294.1 (amended).
AB 980 (Allen); 1993 STAT. Ch. 435

Under existing law, California public schools[1] must develop a safety plan[2] in cooperation with law enforcement, community leaders, parents, pupils, teachers, and administrators addressing identified safety concerns.[3]

Chapter 435 provides that school districts[4] may adopt reasonable dress code regulations, prohibiting gang-related apparel, which are necessary for health and safety purposes.[5] Chapter 435 further provides that school

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5. *See* CAL. EDUC. CODE § 94302(y)(1)(a)-(b) (amended by Chapter 1061) (defining short-term seminar training as a program offering fifty (50) hours or less of instruction for tuition of $500 or less or programs designed to provide continuing education for licensing requirements); *id.* § 94302 (y)(2)(a)-(c) (amended by Chapter 1061) (providing exceptions to the definition of short-term seminar training for institutions that offer instruction to prepare for exams or award units for purposes other than continuing education).

6. *Id.* § 94315(b) (amended by Chapter 1061) (excepting institutions that offer short-term seminar training from the regulating provisions of the Education Code with the exception of §§ 94307, 94316.3, 94320, 94321, and 94336); *see also id.* § 94315(a) (amended by Chapter 1061) (requiring institutions that exclusively operate short-term seminar training to file annually with the Council all advertisements and promotional materials, and a declaration by an owner providing specified information).

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1. *See* CAL. EDUC. CODE § 50 (West 1978) (defining public school).

2. *See id.* § 35294 (West Supp. 1993) (defining safety plan as a plan to develop strategies aimed at the prevention of crime and violence on school campuses).

3. *Id.*

4. *See id.* Yreka Sch. Dist. v. Siskiyou Sch. Dist., 227 Cal. App. 2d 666, 670, 39 Cal. Rptr. 112, 115 (1964) (defining school district as an agency of the state for the local operation of the state school system).

5. CAL. EDUC. CODE § 35183 (enacted by Chapter 435); *see* Jeglin v. San Jacinto Unified Sch. Dist., 827 F. Supp. 1459, 1461 (C.D. Cal. 1993) (holding that the maintenance of an education system is a compelling interest and when enacting regulations which abridge students' First Amendment rights, school officials must justify their regulation by showing facts which lead the officials to forecast a substantial or material interference with school activities). In *Jeglin*, the school district enacted regulations prohibiting students from wearing clothing with writing, pictures, or logos which identified a professional or college sports team. *Id.* at 1460; *see Yreka*, 227 Cal. App. 2d at 670, 39 Cal. Rptr. at 115 (stating that a school district may exercise only those powers granted by statute); *see also* ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 980, at 1 (April 14, 1993) (stating that the intent of the author is to keep students from fighting over gang apparel); 68 AM. JUR. 2D *Schools* § 264 (1993) (discussing school regulations governing the wearing of armbands and buttons by students); *id.* § 265 (1993) (discussing school dress and grooming regulations); *cf.* LA. REV. STAT. ANN. § 17:416.7 (West Supp. 1993) (authorizing school districts to adopt dress codes); Baughman v. Freienmuth, 478 F.2d 1345, 1351 (4th Cir. 1973) (holding that secondary school students' First Amendment rights may be reasonably restrained if there is precise criteria spelling out what is forbidden); Harper v. Edgewood Bd. of

safety planning may include a definition of "gang-related apparel," which could reasonably be determined to threaten the health and safety of the school environment, and may prohibit the apparel on the school campus and at school sponsored activities.[6]

AMP

Education; student discipline methods

Education Code § 48900.6 (new).
AB 1714 (Umberg); 1993 STAT. Ch. 212

Educ., 655 F. Supp. 1353, 1355 (S.D. Ohio 1987) (upholding a school regulation forbidding students from attending the prom dressed as members of the opposite sex); Wallace v. Ford, 346 F. Supp. 156, 161-62 (E.D. Ark. 1972) (stating that students' constitutional right to govern their clothing is subject to the school's right to enact regulations to carry out its mission, and finding that since carefully drawn regulations which promote health and safety are permissible, a school's prohibition of tight skirts or pants was valid); Scott v. Board of Educ., 305 N.Y.S.2d 601, 605 (1969) (finding that a dress code, which prohibited girls from wearing slacks, did not violate the students' First Amendment rights). *But see* Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) (holding that students maintain their First Amendment rights while in the school environment and that a prohibition of black armbands worn by students was unconstitutional); Sigma Chi Fraternity v. George Mason Univ., 773 F. Supp. 792, 794 (E.D. Vir. 1991) (finding that the university violated the fraternity's First Amendment rights by disciplining it for a contest where the fraternity members dressed as ugly women); Copeland v. Hawkins, 352 F. Supp. 1022, 1025 (E.D. Ill. 1973) (finding a school regulation that prohibited males from having long hair violated the students' constitutional rights); *Wallace*, 346 F. Supp. at 165 (holding that a school regulation requiring prior approval for slogans, pictures, or emblems on clothing was unconstitutional).

6. CAL. EDUC. CODE § 35294.1(a)(4) (amended by Chapter 435); *see* Hartzell v. Connell, 35 Cal. 3d 899, 903, 679 P.2d 35, 38, 201 Cal. Rptr. 601, 604 (1984) (finding an activity is school sponsored where school personnel handle preparations, including arrangements for facilities and ticket sales); *see also* Olesen v. Board of Educ., 676 F. Supp. 820, 822 (N.D. Ill. 1987) (finding that a school district's anti-gang policy which prohibited the display of any gang symbol was not a violation of free speech and expression where a male was prohibited from wearing an earring which was prohibited under the policy). *See generally* Comment, *The Right to Safe Schools: A Newly Recognized Inalienable Right*, 14 PAC. L.J. 1309 (1983) (discussing the Right to Safe Schools provision of the California voter-enacted Victim's Bill of Rights); Geoff Boucher, *Hot, Hip & Happening: High Life a Weekly Forum for High School Students; Board OKs Dress Code for Schools*, L.A. TIMES, Aug. 1, 1991, at E3 (reporting on a Southern California school board which requires each school within its district to create a dress code to eliminate gang symbols on school campuses); Lorna Fernandes, *Schools Score a Uniform Success; Education: Optional New Outfits Counteract Gang Apparel on Some Inglewood Campuses, Giving Students a Sense of Unity and Pride*, L.A. TIMES, Feb. 4, 1993, at B3 (describing an experimental program in Los Angeles where students are given the option of wearing uniforms to school in an effort to eliminate gang attire); Christy Scattarella, *Girls Attack Boy, Steal Jacket Prized by Gangs -- Kids in Status Clothes Called 'Walking Targets'*, SEATTLE TIMES, Nov. 19, 1991, at C2 (describing an attack on a boy in order to steal his jacket). *But see* Sue Burrell, *Crime, Dress Codes, and the Schoolhouse Door*, THE RECORDER, Feb. 12, 1992, at 8 (criticizing the Oakland School District's dress code restrictions aimed at gang clothing, in that it will not effectively prevent gang violence).

Existing law enumerates specific circumstances under which a student can be suspended from school.[1] Chapter 212 gives discretion to an administrator,[2] in lieu of suspension, to require a student to perform community service[3] on school grounds during nonschool hours.[4]

CCA

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1. CAL. EDUC. CODE § 48900 (West 1993); *see id.* (listing specific circumstances under which a superintendent or principal of a school may suspend a student from a public school); *id.* § 48900.2 (West 1993) (listing additional reasons which justify suspending a student); *id.* § 48900.5 (West 1993) (specifying limitations and exceptions to imposing suspension as a punishment).

2. *See* CAL. EDUC. CODE § 48900.6 (enacted by Chapter 212) (specifying administrator as the principal of a school, the principal's designee, or the superintendent of schools as individuals covered under the section).

3. *See id.* § 48900.6 (enacted by Chapter 212) (defining community service to be work performed on school grounds in the areas of outdoor beautification, campus betterment, and teacher or peer assistance programs); *see also* Steirer v. Bethlehem Area Sch. Dist., 987 F.2d 989, 991 (3d Cir. 1993) (stating the purpose of community service is to help students gain life skills, to learn about the significance of providing services to their communities and to acquire a sense of pride and worth as they understand and appreciate the functions of community organizations), *cert. denied*, 114 S. Ct. 85 (1993).

4. CAL. EDUC. CODE § 48900.6 (enacted by Chapter 212); *see* Betts v. Board of Educ., 466 F.2d 629, 633 (7th Cir. 1972) (prescribing certain procedural protections to be afforded by school boards before they may discipline a student by expulsion or suspension); Board of Educ. v. School Comm., 612 N.E.2d 666, 670 (Mass. 1993) (noting that the state legislature limited the disciplinary powers of the school committees, prohibiting corporal punishment and requiring school committees to publish rules of conduct for students); Kubany v. School Bd., 818 F. Supp. 1504, 1504 (M.D. Fla. 1993) (stating that a principal has the discretion to recommend a ten-day suspension with a recommendation for expulsion or may suspend the student for five days in an out-of-school suspension); UWM Post, Inc. v. Univ. of Wis., 774 F. Supp. 1163, 1167 (E.D. Wis. 1991) (reporting that the University of Wisconsin put a student on probation for a semester and required him to perform 20 hours of community service because the student yelled vulgar epithets); Berry v. School Dist. of Benton Harbor, 515 F. Supp. 344, 380 (W.D. Mich. 1981) (stipulating that the use of suspension or expulsion should be limited to a last resort and the use of effective alternatives should be explored); *In re* Lorenza M., 212 Cal. App. 3d 49, 58, 260 Cal. Rptr. 258, 264 (1989) (acknowledging that community service as a punishment for stealing a car was one of the least restrictive sanctions available and because the defendant refused to complete the sentences she was properly sentenced to the California Youth Authority facility); *see also* SENATE COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 1714, at 1 (June 23, 1993) (proclaiming that in some cases, community service provides a more productive and appropriate punishment than suspension or expulsion); *cf.* 23 U.S.C.A. § 410(f)(5)(B)(i)(I), (II) (West Supp. 1993) (stating that persons convicted of a first violation of alcohol-impaired driving, in addition to a mandatory driver's license suspension, shall be assigned 100 hours of community service or receive a minimum sentence of 48 hours of imprisonment); FLA. STAT. ANN. § 230.2316(13) (West Supp. 1993) (listing programs which provide positive alternatives to out-of-school suspension including community service work assignments); OHIO REV. CODE ANN. § 3313.661(B) (Anderson Supp. 1993) (authorizing that a superintendent to require a pupil to perform community service in conjunction with, or in place of, a suspension or expulsion or the superintendent may impose a community service requirement beyond the end of the school year in lieu of applying the suspension or expulsion into the following year); Woodard v. Los Fresnos Indep. Sch. Dist., 732 F.2d 1243, 1245 (5th Cir. 1984) (stating that school regulations permit parents to choose the appropriate punishment for their minor children). *See generally* Goss v. Lopez, 419 U.S. 565, 581 (1975) (ruling that a student facing suspension from school for 10 days or less, is ordinarily entitled to notice and an opportunity to be heard in accordance with the Due Process Clause of the Fourteenth Amendment); Sweet v. Childs, 518 F.2d 320, 321 (5th Cir. 1975) (interpreting the holding in *Goss* by stating that there are recurring situations in which due process procedures are not required).

Education; teacher credentialing

Education Code §§ 44265.7, 44265.8, 44265.9 (new); §§ 44203, 44250, 44253 (amended).
AB 1273 (Eastin); 1993 STAT. Ch. 859
(Effective October 5, 1993)

Existing law provides that the Commission on Teacher Credentialing (Commission)[1] may not issue any credential[2] to any person to serve in the public schools unless that person passes a basic skills proficiency test.[3] Chapter 859 requires the commission to issue a two-year nonrenewable preliminary specialist instruction[4] credential, or a two-year services credential with a specialization in pupil personnel services,[5] to any prelingually deaf applicant[6] upon medical or other appropriate professional verification, provided the candidate has met the minimum requirements.[7] Such applicants are exempted from the typical statutory requirements.[8]

Chapter 859 requires the Commission to adopt criteria to verify the proficiency of those applicants who obtain their credentials by the prior

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1. *See* CAL. EDUC. CODE § 44210 (West 1993) (creating the Commission on Teacher Credentialing); *id.* § 44225 (enumerating the powers and duties of the Commission).

2. *See id.* § 44002 (West 1993) (defining credential as a document issued by the State Board of Education or the Commission for Teacher Preparation and Licensing, authorizing a person to perform the service specified in the credential).

3. *Id.* § 44252(b) (West 1993); *see id.* (providing that the person must demonstrate proficiency in basic reading, writing, and mathematics skills in the English language); *id.* § 44830(b) (West 1993) (providing that no school district may initially hire a certificated person unless that person has passed the basic skills proficiency test or is otherwise exempt).

4. *See id.* § 44256(c) (West 1993) (defining specialist instruction as any specialty requiring advanced preparation or special competence).

5. *See id.* § 44266 (West 1993) (setting forth the requirements for a service credential with a specialization in pupil personnel services); *id.* (authorizing the holder of a service credential with specialization in pupil personnel services to perform the service designated on the credential).

6. *See id.* §§ 44265.7(d), 44265.8(c) (enacted by Chapter 859) (defining prelingually deaf person as one having suffered a hearing loss prior to age three that prevents the processing of linguistic information through hearing, with or without amplification).

7. *Id.* §§ 44265.7(a), 44265.8(a) (enacted by Chapter 859); *see id.* § 44265.7(b)(1)-(6) (enacted by Chapter 859) (listing the minimum requirements for the specialist credential as including baccalaureate degree, completion of a professional preparation program, knowledge of various methods of teaching reading, study of alternative methods of developing English language skills, completion of a subject matter program, and knowledge of the provisions of the United States Constitution); *id.* § 44265.8(a) (enacted by Chapter 859) (providing that the applicant of the pupil personnel services credential must meet the requirements of § 44266). These credentials are solely for the purpose of educating or counseling deaf or hearing-impaired students. *Id.* §§ 44265.7(a), 44265.8(a) (enacted by Chapter 859).

8. *Id.* §§ 44265.7(c), 44265.8(b) (enacted by Chapter 859); *see id.* (providing that these applicants are exempt from the requirements of §§ 44252 and 44830(b)).

two provisions.[9] The school that employs such holders shall form a panel[10] that will verify the proficiency of these holders using the criteria promulgated by the Commission.[11] Upon verification of proficiency the Commission will issue the appropriate credential.[12]

SVB

9. *Id.* § 44265.9(a) (enacted by Chapter 859); *see* Michael Rosenfeld et al., Pursuing Equity in Licensing and Certification Examinations: What We Have Learned in the Process of Developing a Test for Teaching Deaf and Hard of Hearing Students 2 (Apr. 12, 1993) (unpublished paper presented to the American Educational Research Association) (copy on file with the *Pacific Law Journal*) (stating that the licensing of deaf or hearing-impaired teachers is important because these individuals serve as role models for deaf or hearing-impaired students); *see also* COMMISSION ON TEACHER CREDENTIALING, COMMISSION ANALYSIS OF AB 1273, at 6 (March 17, 1993) (copy on file with the *Pacific Law Journal*) (noting that deaf applicants have great difficulty in passing the California Basic Educational Skills Test, and that the cumulative passing rate for these individuals was in the 21st percentile for the years 1985-90).

10. *See* CAL. EDUC. CODE § 44265.9(c) (enacted by Chapter 859) (providing that the panel shall consist of a school administrator, a parent of a deaf or hearing-impaired child, and a teacher who holds a credential authorizing service to deaf or hearing-impaired students).

11. *Id.* § 44265.9(b) (enacted by Chapter 859); *see* ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 1273, at 2-3 (May 5, 1993) (suggesting that Chapter 859 aims to make credentialing easier for deaf and hearing-impaired applicants, thereby alleviating the shortage of teachers for deaf and hearing-impaired students). *But see* Carlos Alcala, *Blind, Deaf Advocates Blast Teacher Credential Changes*, SACRAMENTO BEE, Jan. 8, 1993, at B4 (reporting that opponents of Chapter 859 feel that the measure puts unqualified teachers in positions of teaching deaf and hearing-impaired students).

12. CAL. EDUC. CODE § 44265.9(e) (enacted by Chapter 859).