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Education

University of the Pacific; McGeorge School of Law

Education

Education; policy regarding sex discrimination

Education Code Chapter 5 (commencing with §91) (new).
SB 1466 (Moscone); STATS 1974, Ch 182

Chapter 182 provides that it shall be a state policy that classes in elementary and secondary schools, and in community colleges, shall be conducted without regard to sex of the pupils enrolled. Except for sex education classes, as stipulated in Education Code Section 8506, enrollment may not be prohibited on the basis of sex. Conversely, no class may be made mandatory for one sex if it is not made mandatory for the other. Physical education activities, if required of one sex, must be made available to the other. Finally, the student's sex must not be a factor in determining the guidance to be rendered by a counselor to the student in matters of vocational training or educational and career opportunities.

COMMENT

Indicative of the kind of practice chapter 182 is designed to curb is the continuing requirement, in some school districts, that males enroll in shop courses while females enroll in home economics courses. Under the new provisions, school districts will have to eliminate the requirement altogether or allow the student to fulfill a "vocational" requirement by taking *either* shop or home economics [Interview with Mary Bourdette, Legislative Coordinator, State Department of Education, Sacramento, Cal., Oct. 2, 1974].

It is noteworthy that the office of the State Superintendent of Public Education, while possessing persuasive powers, cannot strictly order the districts to implement these policies. In those cases where a district conducts itself in violation of this statute, enforcement may depend more on a suit for injunctive relief brought by a student who has been discriminatorily denied access to a course than on any action by the State Superintendent.

Education; weapons seizure in public schools

Penal Code §626.10 (new).
AB 124 (Deddeh); STATS 1974, Ch 103

Support: Attorney General; California District Attorneys' and Peace Officers' Association; California School Employees' Association; California Taxpayers' Association

The addition of section 626.10 to the Penal Code makes it a misdemeanor for anyone who is not a police officer, police agent, or a member of the armed services to possess a dirk, dagger, knife with a blade that locks or is longer than 3.5 inches, or any unguarded razor on the grounds of any public school offering instruction in any of the grades K through 12. Chapter 103 provides for two exceptions to this: (1) anyone who has possession of such a weapon with the permission of teachers or administrative employees for use in a school sponsored activity is not subject to the provisions of section 626.10; and (2) employees possessing such weapons within the scope of their employment. In addition, section 626.10 permits any certified or classified employee of a public school (teachers or administrators) to seize any of the above weapons from anyone on the premises of the school if they know or have reasonable cause to know that the person is prohibited from bringing such weapons onto school grounds.

COMMENT

On its face, chapter 103 appears to raise fourth amendment problems of admissibility of evidence obtained from search and seizures made pursuant to the new provisions. California case law, however, has dealt with the special school official-student relationship, and has excepted it partially from fourth amendment proscriptions.

In re Donaldson [269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969)] established that a school official was not a government official within the meaning of the fourth amendment, but rather stood *in loco parentis* towards the student. Notwithstanding that exception, there exist restrictions on a school official in his conduct of searches. *In re Christopher W.* [29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973)] suggested a two-pronged test for admissibility of evidence obtained pursuant to a search and seizure of a student by a school official. First, the search must be within the scope of the school official's duties. Second, any search must be reasonable under the facts and circumstances of the case.

Chapter 103 enumerates the weapons which may be seized, and so delineates the scope of the school official's duties. Thus where one of the enumerated weapons is the subject of a search, only a search and seizure unreasonable under the facts and circumstances of the case

would enable a defendant to bar introduction of the evidence under the fourth amendment.

See Generally:
1) CAL. EDUC. CODE §§10601-10608 (suspension and expulsion).
2) Donoghoe, *Emerging First and Fourth Amendment Rights of the Student*, 1 J. LAW AND EDUC. 449 (1972).

Education; public records

Education Code §§ 10756, 10760, 10761 (new); §10751 (amended).
SB 1845 (Stull); STATS 1974, Ch 1229
AB 3886 (Kapiloff); STATS 1974, Ch 1142
Support: State Department of Education; California Trial Lawyers' Association; California Federated Teachers

A pupil's parent or guardian must now be given immediate access to all of the pupil's records during regular hours of the school day under the newly amended version of Education Code Section 10751. Chapter 1229 also amends this code section to prohibit the editing or withholding of any requested information, and to permit the parent or guardian to read the material personally. Related amendments to the same section expand the list of organizations which may receive pupil records on request to include recruiting officers of the National Guard, and both active and reserve units of the armed services.

In addition, chapter 1229 adds Education Code Section 10760, which provides that where a pupil's parent or guardian believes that the pupil's file contains information which is inaccurate, unsubstantiated, incompetent, or otherwise erroneous, a request may be made to the superintendent of schools to remove the information. Upon receipt of such a request, the superintendent must meet within 30 days with the parent or guardian and the certificated employee (generally a teacher) who recorded the information, for the purpose of determining the accuracy of the record. If the record is determined to be inaccurate, the superintendent must order it expunged; if it is adjudged to be accurate, the parent or guardian may appeal the ruling to the school board of the district. Where an appeal is undertaken, the school board must convene a closed session hearing with the parent or guardian and the certificated employee in attendance. The decision of the board is final and must be kept confidential for one year, after which it is to be destroyed unless the parent or guardian has initiated legal proceedings involving the records. Should the board, upon appeal, rule in

favor of the superintendent, or should the parent or guardian decline to appeal a superintendent's ruling, the parent or guardian may nonetheless submit written objections to the ruling, and such objections are to be included in the pupil's records until the objectionable information is removed.

The addition of Education Code Section 10761 grants the school board or district superintendent (depending on the stage of appeal) the power to appoint a committee composed of a principal from a school other than the one where the records are kept, a certificated employee, and a disinterested parent which shall make recommendations to the superintendent or school board concerning the accuracy of the records.

Finally, section 10756 is added to the Education Code and provides that a pupil's parent or guardian may file in the pupil's cumulative record a written statement concerning any disciplinary action taken against the pupil, where that disciplinary action has also been recorded. There is apparently no restriction on the nature or content of the statement which may be filed, save that it concern the disciplinary action.

COMMENT

Prior to the enactment of chapter 1229, a minor's parent or guardian had no statutory means by which the records of the minor could be challenged as to their correctness. Previously, the records could be examined during school hours (§10757), but the minor's parent or guardian was unable to request that alleged errors be corrected, a right that chapter 1142 now grants.

Education; dismissal hearing discovery

Education Code §13413 (amended).
AB 4092 (Berman); STATS 1974, Ch 856

Education Code Section 13413 provides that a certificated school district employee who receives notice of the governing board's intentions to dismiss him may demand a hearing from a Commission on Professional Competence, such hearing to be commenced within 60 days of the demand. The section further states that both parties shall enjoy a right of discovery, and that discovery shall be completed prior to one week before the date set for hearing.

Formerly, section 13413 failed to provide a remedy for a party denied his right of full discovery. As amended the section entitles a party

denied discovery to file a motion in the superior court of the county wherein the hearing is to be held, and thereafter to avail himself of remedies delineated in Code of Civil Procedure Section 2034.

Under section 2034 the court may issue an order directing disclosure of the information sought. If disclosure is thereafter refused, the court may act in any of the following modes against the party refusing disclosure: (1) issue a contempt citation; (2) order that matters concerning which discovery is denied be regarded as established in favor of the moving party; (3) prohibit the disobedient party from raising in evidence items of testimony; (4) strike all or any part of the pleadings of the disobedient party; (5) dismiss the action or proceeding, or any part thereof; (6) enter a judgment by default against the disobedient party; or (7) order the disobedient party to pay reasonable expenses and attorney's fees of the moving party.

The further effect of the amendment of section 13413 is to allow the process of full discovery to be completed, even where statutorily fixed time limits might otherwise be construed to require commencement of the hearing prior to that completion. The following sections, then, are expressly rendered inoperative in those situations where their application would deny the right of full discovery provided for under section 13413: Education Code Section 13413 itself (hearing must be commenced within 60 days of employee's request); Government Code Chapter 5 (commencing with §11500) (time limits for filing written requests for discovery after accusation has been filed with the agency); and Code of Civil Procedure Article 3 (commencing with §2016) (dealing with various time limits for obtaining evidence and interrogatories prior to the hearing).

See Generally:

1) WITKIN, CALIFORNIA EVIDENCE, *Enforcement of Right to Discovery* §§1016-1023 (2d ed. 1966), (Supp. 1972).
2) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 343 (1972).

Education; extent of discovery prior to dismissal hearing

Education Code §§13483.05, 13483.30 (amended).
AB 1313 (Maddy); STATS 1974, Ch 105
Support: California Federation of Teachers

Chapter 105 affects the right of discovery of parties in proceedings convened to consider dismissal or penalization of community college certificated employees. Formerly, Education Code Sections 13483.05 (proceedings conducted by an arbitrator) and 13483.30 (proceedings conducted by an administrative hearing officer) provided that the

proceedings should be conducted pursuant to the provisions of the Administrative Adjudication Act [CAL. GOV'T CODE §§11500-11529] and that the parties should only enjoy the limited right of discovery extended under those provisions. As amended, sections 13483.05 and 13483.30 confer on the parties the broader discovery rights enjoyed by parties to a civil action brought in a superior court, and embodied in Code of Civil Procedure Sections 2016-2036.

COMMENT

The effect of this amendment is to broaden the right of discovery enjoyed by the parties to proceedings convened to consider the dismissal or penalization of community college employees. The narrower right, formerly extended in these cases by Government Code Section 11507.6, limited discovery to statements, reports, and other things which were directly and clearly connected to the proceedings or subject matter at hand. The right conferred by the amendment is less restrictive. Under Code of Civil Procedure Section 2016(b), a party may seek discovery of any nonprivileged matter that is relevant to the subject matter involved in a pending action, including existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, as well as the identity and location of persons having knowledge of relevant facts. It need not be shown that the material will be admissible as evidence so long as it appears reasonably calculated to lead to the discovery of admissible evidence.

What is crucial here, then, is that the Code of Civil Procedure authorizes depositions and interrogatories designed not only to elicit relevant facts themselves, but also to establish the very existence or nonexistence of documents, persons, or things which might possibly divulge those relevant facts. The scope of discovery enjoyed by a party is thus substantially extended under the Code of Civil Procedure into areas which were formerly forbidden under the Government Code.

See Generally:
1) WITKIN, CALIFORNIA EVIDENCE, *Discovery and Production of Evidence* §§938-1067A (2d ed. 1966), (Supp. 1972).
2) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 459 (1973).

Education; professional competency hearings

Education Code §13520.5 (new).
SB 2178 (Stull); STATS 1974, Ch 450
Support: California School Boards Association; California Teachers Association; California Federation of Teachers

Chapter 450 has added section 13520.5 to the Education Code to provide that certificated employees of a school district may not be penalized for taking time off to serve on a professional competency commission. Section 13520.5 specifically prohibits the employee's school district from considering the time served on such a commission as time off, and prevents the district from deducting from an employee's salary an amount equal to that either actually paid to a substitute, or that which would have been paid to a substitute had one been hired to replace the employee during the time served on a competency commission.

COMMENT

Commissions on professional competency are convened to pass judgment on certificated school employees sought to be dismissed for reasons of immoral or unprofessional conduct, dishonesty, incompetency, evident unfitness for service, or persistent violation of or refusal to obey the school laws of the state or the reasonable regulations of the State Board of Education or the district's governing board. A school employee, sought to be dismissed, may select one member of the commission and that member must have at least five years experience in the specific educational function of the accused (§13413). Usually, the selected member is also a school employee.

This amendment represents a reaction to the practice engaged in by several districts of refusing to pay a selected member for the time taken off from school to serve on the Commission, and even of charging to the member the cost of hiring a substitute. The newly added section flatly prohibits such practices.

Education; temporary custody of truant minors

Education Code §§12405, 12406, 12407 (amended).
AB 2769 (Dixon); STATS 1974, Ch 257

Prior to the enactment of chapter 257, an attendance supervisor, peace officer, or school officer was required to arrest any child who was subject to compulsory education, found away from home, and reported as truant. Such arrest was required to be made within the county, city, city and county, or school district. Chapter 257 has amended Education Code Section 12405 to permit such officials the option of assuming temporary custody of the minor, rather than performing an actual arrest.

Education Code Section 12406 previously required an arresting officer to turn a truant over to his parents, guardian, or school, or, if the pupil had been declared an habitual truant, to the probation officer of the county having jurisdiction. As amended, this obligation falls on any person assuming temporary custody of the truant, as well as on any person making an arrest. Similarly, Education Code Section 12407 has been amended to impose upon those assuming temporary custody, as well as on those making arrests, the duty of reporting the matter to proper school authorities and to the truant's parent or guardian. It would appear that this change in existing law constitutes an effort to replace arrest with temporary custody, and so prevent a minor from acquiring an arrest record. If he does acquire an arrest record, access to that record is restricted to those persons enumerated in Education Code Section 10751.

Education; penal institution education services

Education Code §25429.5 (new); Penal Code §§2054.5, 2079.5 (new); §2054 (amended).
AB 814 (Dixon); STATS 1974, Ch 1436
(*Effective July 1, 1975*)

Newly added Education Code Section 25429.5 initiates a one year pilot program authorizing the governing board of any community college to contract to provide educational services, courses, or programs to inmates in penal institutions under the jurisdiction of either the Department of Corrections or the California Youth Authority. Inmate attendance shall not be part of a district's average daily attendance (which is used to compute the amount of state aid to which a district is entitled). Where a community college district enters into such a contract, a report must be filed with the Board of Governors of the California Community Colleges prior to November 1, 1975, indicating the scope and nature of the contracts entered into pursuant to Penal Code Section 2079.5.

Section 2079.5 is added to the Penal Code and permits superintendents or wardens of facilities under the jurisdiction of either the Department of Corrections or the Department of Youth Authority to contract with a community college district to provide educational services, courses, or programs for inmates. Such agreements may be made only with the approval of the department director. Both the Department of Corrections and the Department of Youth Authority must report to the legislature prior to March 15, 1976, on the nature and scope of all con-

tracts entered into pursuant to this section, including suggestions as to improvements which could be made in inmate education.

Where a contract is entered into, the department having jurisdiction over the penal facility (either the Department of Corrections or the Department of Youth Authority) is required under newly added Penal Code Section 2054.5 to compensate the community college district for costs attributable to the program. Reimbursement of the districts will extend to the costs of salaries and welfare benefits of certificated school employees in the program, books furnished by the district, and administrative expenses incurred.

All provisions of chapter 1436 become operative July 1, 1975, and cease to have effect on June 30, 1976.

COMMENT

This legislation serves as a companion measure to long-standing enactments authorizing the Director of Corrections to contract for instruction of inmates by local school districts or private schools [CAL. PEN. CODE §2054] and authorizing local school districts to enter into these contracts [CAL. EDUC. CODE §819]. There is no comparable authorization for the Youth Authority to enter into contracts with local school districts, apparently because the Youth Authority is mandated to organize a division of instruction within each of its facilities [CAL. WELF. & INST. CODE §1120], such divisions to be subject to the approval of the State Superintendent of Public Instruction.