McGeorge Law Review

Volume 7 | Issue 1 Article 22

1-1-1976

Education

University of the Pacific; McGeorge School of Law

Education

Education; corporal punishment

Education Code §§10854, 10855 (amended).
AB 1267 (Egeland); STATS 1975, Ch 995

Section 10854 of the Education Code previously required the governing board of a public school district to adopt rules and regulations authorizing teachers, principals, and other certificated personnel to administer reasonable corporal or other punishment to pupils when such action was deemed an appropriate corrective measure. Section 10855 of the Education Code, however, prohibited corporal punishment from being administered to educationally handicapped, physically handicapped, or mentally retarded pupils without the prior written consent of the pupil's parent or guardian. Section 10855 now prohibits school districts from administering corporal punishment to *any* pupil without the prior written approval of the pupil's parent or guardian. Such approval is valid for the school year in which it is submitted, but may be withdrawn by the parent or guardian at any time. Section 10854 now provides that school boards *may* adopt rules and regulations authorizing reasonable corporal punishment in cases where parental approval has been obtained. If a school district does adopt such a policy, Section 10855 requires that the board notify parents at the beginning of the school year that corporal punishment will not be administered without prior written approval.

COMMENT

Previously corporal punishment was justified on the common law theory that the teacher was *in loco parentis*, in place of the parent, with respect to the child, and that the parent had expressly or impliedly delegated the privilege of discipline to the teacher. A more modern rationale was that the teacher had an inherent right to inflict reasonable corporal punishment in order to maintain classroom discipline [Note, *California Schoolteachers' Privilege to Inflict Corporal Punishment*, 15 HAST. L.J. 600, 601 (1964)]. Criminal penalties and tort liability could result, however, if the privilege was exceeded [1 WITKIN ,CALIFORNIA CRIMES, *Defenses* §247 (1963) (Supp. 1969); RESTATEMENT (SECOND) OF TORTS §150 (1965)].

According to a report on the administration of corporal punishment

in California public schools during 1972 to 1973, supplied by the Department of Education at the request of the Legislature, seven percent of California school districts (of the 92 percent which responded to the survey) had adopted rules and regulations forbidding the use of corporal punishment, whereas the vast majority of the districts authorized its use by district policy. Corporal punishment was reported by these latter districts to have been administered 46,022 times during the school year, mainly at the intermediate and junior high school grade levels. Many of the districts also reported that the use of corporal punishment, although authorized, was discouraged. Most of the districts did not require permission of parents before corporal punishment was administered, but many districts, in practice, did obtain prior parental permission and did not administer such punishment if the parent refused to give consent [CAL. STATE DEP'T OF EDUC., REPORT ON THE ADMINISTRATION OF CORPORAL PUNISHMENT IN THE CALIFORNIA PUBLIC SCHOOLS FOR THE SCHOOL YEAR 1972-73 (1974)].

Thus, it appears that many school districts will be affected by the new prohibition against corporal punishment either because they now will have to obtain parent approval before administering such punishment or because they will have to substitute other types of punishment such as detention and suspension for previously authorized corporal punishment. Additionally, it appears that corporal punishment may not be administered even *with* parental approval unless the school board has adopted a policy regulating such punishment.

See Generally:

1) Wheeler, *Toward a Theory of Limited Punishment: An Examination of the Eighth Amendment*, 24 STAN. L. REV. 838 (1972).

Education; pupil disciplinary procedures

Education Code §10608 (repealed); §§10605.1, 10608, 10609, 10609.1, 10609.2, 10609.3, 10609.4 (new); §10609 (renumbered); §§966, 967, 11251, 12103 (amended).
AB 1770 (Hart); STATS 1975, Ch 1253

Under prior law, governing boards of school districts were authorized to hold executive sessions to consider the expulsion, suspension, or discipline of a pupil, unless the pupil or his or her parent or guardian made a written request for a public hearing within 48 hours after receipt of notice that a hearing was to be held [CAL. STATS. 1963, c. 629, §2, at 1517]. Chapter 1253 now makes it a requirement, rather than an option, for the board to hold a closed session (except in the case of expulsion) unless the parent has requested that the hearing be made pub-

lic, if a public hearing would lead to dissemination of information in violation of provisions of the Education Code regarding the privacy of pupil records [CAL. EDUC. CODE §967; *see* REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION, this volume at 429 (Education; pupil records)]. Additionally, if a public meeting is held pursuant to a parental request, any discussion regarding a student other than the one who has requested the public meeting or for whom such meeting has been requested must be held in a closed session if the right to privacy of the other student might be in jeopardy.

Chapter 1253 also revises and expands the procedures for expulsion of pupils by requiring school boards to adopt specified procedures. Previously, limited procedures regarding student expulsion were set forth in Section 10608, including a requirement that the parent or guardian be allowed to appeal a decision of the local board to the county board of education. A hearing could then be held by the county board, and their decision was final [CAL. STATS. 1972, c. 831, §1, at 1478]. Section 10608 now requires school boards to grant a hearing to determine whether the pupil should be expelled and to give the pupil and his or her parent or guardian written notice of the hearing and the charges against the pupil upon which the proposed expulsion is based. A record of this hearing is to be maintained. Additionally, the hearing is to be conducted in closed session, unless the pupil or his or her parent or guardian requests a public meeting. Final action is required to be taken at a public meeting and written notice of the right to appeal to the county board of education is to be given to the pupil or his or her parent or guardian (§10608). Such an appeal may be made within 30 days following the decision of the board through procedures which are delineated in Sections 10609.1 through 10609.4.

Additionally, Section 10605.1 now allows a school board which has voted to expel a pupil to suspend the enforcement of the expulsion for a period of not more than one full semester in addition to the balance of the semester in which the board voted to suspend the student. Further, this section authorizes the board to assign the student to a rehabilitation program, which is to include individualized learning opportunities, as a condition of the suspended expulsion.

See Generally:

1) Boone, *Expulsion in Public High Schools—Due Process a Decade After Dixon*, 8 SAN DIEGO L. REV. 333 (1971).

Education; searches of student dormitory rooms

Penal Code §626.11 (new).

SB 1153 (Presley); STATS 1975, Ch 867

Chapter 867 has added Section 626.11 to the Penal Code to make evidence seized by state university, state college, or community college personnel inadmissible in an administrative disciplinary proceeding if such evidence is obtained in violation of the guarantees against unreasonable searches and seizures or rights to privacy provided for in the California or United States Constitutions. This provision applies to evidence seized by a teacher, official, employee, or governing board member or by any person acting under such person's direction or with his or her consent in a student dormitory owned or operated by any public college or university which is rented or leased to any student.

Before the enactment of Chapter 867, officials of educational institutions could search student dormitories and seize items found, without warrants and based on less than probable cause [Donoghoe, *Emerging First and Fourth Amendment Rights of the Student,* 1 J. LAW AND EDUC. 449 (1972)]. Although case law has been inconsistent in applying a standard for searches and seizures involving students, evidence has generally been admissible if the search was found to be reasonable when the school's duty to maintain discipline and order was balanced against the constitutional rights of students [*Id.*].

Section 626.11 also makes inadmissible in administrative proceedings evidence which is seized by school personnel if entry into the student's room is without consent and the items seized are not related to the purpose of the search, even though the student's constitutional rights have not been violated. This provision would apparently exclude evidence constitutionally permitted under the "plain view doctrine," thus prohibiting the admission of evidence which is inadvertently found during lawful searches (including searches pursuant to warrants, probable cause, or exceptional circumstances, such as in emergencies or in "hot pursuit" of suspects, when warrants are not required).

Section 626.11 also makes void as contrary to public policy any provision in a lease or rental agreement between a student and a public post-secondary educational institution, whereby the student waives his or her constitutional right to be free from unreasonable searches and seizures or right to privacy. A legislative finding and declaration that students in school as well as out of school are "persons" under the Constitution has additionally been made, which requires that the state respect the fundamental rights of students, including the right to privacy and "other related rights." However, since Chapter 867 is only made applicable to administrative disciplinary proceedings, it appears that evi-

dence based on less than probable cause still may be admitted in judicial proceedings if seized by school officials and turned over to law enforcement authorities, as long as the court finds that the search was conducted within the scope of the school official's duties and the seizure of the evidence was reasonable [*See* In re Christopher W., 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973)].

See Generally:
1) 6 PAC. L.J., REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION 306-07 (1975) (weapons seizure in public schools).

Education; pupil records

Education Code §§1037, 22504.5, 25422.8, Article 6 (commencing with §10751) (repealed); Chapter 1.5 (commencing with §10931); Chapter 1.5 (commencing with §25430) (new); §967 (amended). SB 182 (Stull); STATS 1975, Ch 816

Prior to the enactment of Chapter 816, provisions of the Education Code placed restrictions on access to pupil records, making such access possible only under judicial process or to specified classes of persons [CAL. STATS. 1974, c. 1229, §1, at]. Parents or guardians were also given the right to inspect pupil records [CAL. STATS. 1969, c. 1321, §1, at 2665] and to request the removal of information [CAL. STATS. 1974, c. 1229, §2, at]. Chapter 816, which is patterned after the Family Educational Rights and Privacy Act of 1974 [20 U.S.C. §1232g (1970)], has expanded the provisions of the Education Code regarding parental access to and the confidentiality of pupil records. Education Code Section 10940 now gives parents of current or former pupils an "absolute right" to access to any and all pupil records of their children which are maintained by public elementary and secondary schools or school districts, and the editing or withholding of any such records is prohibited. Additionally, school districts must now adopt procedures for inspection and review of records during regular school hours, with access to be granted no later than five days after the request is made. Chapter 816 has also reenacted previously existing procedures for challenge and removal of information which is found to be inaccurate or unsubstantiated (§§10941-43). "Pupil records" now comprise information maintained by a school district or required to be maintained by any employee in the performance of his or her duties which is recorded by *any* means, except informal notes related to a pupil which are kept in the sole possession of the school officer or employee (§10932(b)). "Access" means a personal inspection and review of a record by a par-

ent, an accurate copy of a record, or an oral communication of the record to a parent (§10932(e)).

The intent of the legislature, as specifically stated in Section 10931, is to insure the continuance of federal education funds, by complying with the Family Educational Rights and Privacy Act of 1974 [20 U.S.C.A. §1232g (1974)]. This Act denies federal funds to institutions which do not give parents the right to inspect their children's files and which have policies allowing records to be released to persons other than educational officials, without parental consent.

In order to determine who has the right of access to records, Section 10944 now categorizes some records as "directory information" (data such as a student's name, address, participation in sports, and dates of school attendance) which may be released to virtually anyone, provided that notice is given at least annually to parents of the categories of information which the school plans to release and to whom it is to be released. However, the pupil's parent may notify the school not to release such information. Information not designated as "directory" may not be released without parental consent or a judicial order. However, pursuant to Section 10947, numerous exceptions are made to allow access to records by school officials, parents of dependent 18 year old pupils, appropriate persons in connection with an emergency, agencies in connection with a student's application for financial aid, accrediting associations, and organizations conducting studies for education agencies. Such educational studies must not involve personal identification of students or their parents, other than to representatives of the organizations, and such information must be destroyed when no longer needed for the purpose for which the study is being conducted.

Pursuant to Section 10945 school districts are also allowed to provide statistical data, if no pupil is identified by such data, to public agencies or entities, private nonprofit colleges and universities, and educational research and development organizations when such action would be in the best educational interest of the pupil. Any person also may have access to pupil records if the parent or guardian of the pupil has given written consent for the release of information concerning his or her child (§10946). The recipient of such information is required to be notified that the transmission of the information to others is prohibited and the consent notice is to be permanently filed with the pupil's record (§10946). Information concerning a student also is to be furnished in compliance with a court order, although parents and students are to be notified in advance, if possible within the time requirements of the judicial order (§10948). School districts are required to notify par-

ents in writing (insofar as is practicable in the language spoken in the parents' home) of their rights under Chapter 1.5 (commencing with §10931) of the Education Code. This must be done upon the date of the pupil's enrollment and thereafter at the beginning of the school year (§10934).

Chapter 816 has also amended provisions of the Education Code regarding the holding of disciplinary hearings in order to comply with the new requirements regarding pupil records [*See* REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION, this volume at 426 (Education; pupil disciplinary procedures)]. Under previous law, the governing board of a school district was allowed to hold executive or closed sessions to consider the expulsion, suspension, or other discipline of a pupil if a public hearing would lead to the disclosure of information in violation of provisions requiring records to be kept confidential [CAL. EDUC. CODE §10751, as amended, CAL. STATS. 1974, c. 1229, §1, at]. Before calling such an executive session the board was required to notify the pupil and his or her parent or guardian, and unless a request for a public hearing was made within 48 hours after receipt of the notice, the session could be closed. Education Code Section 967, as amended by Chapter 816, keeps these same procedures for parental requests for a public meeting. An executive session may now be held, however, not only in regard to disciplinary actions, but in *any* action in connection with any pupil in the school district if a public hearing would violate the newly enacted Sections 10944 and 10947 which further limit access to pupil records.

Chapter 816 makes separate provision in Sections 25430 through 25430.18 for records of community college districts. These provisions are substantially the same as those applicable to public elementary and secondary schools, except that students, rather than parents, are granted the right to access to records (§25430.8) and to challenge the content of records (§25430.10). Additionally, several types of information are excluded from the definition of "student records," including information provided by a student's parent relating to financial aid or scholarships, or information maintained by professionals, (including physicians and psychiatrists), which is used in connection with treatment of the student and is not accessible to anyone other than persons providing such treatment (§25430.1).

See Generally:

1) 6 PAC. L.J., REVIEW OF SELECTED 1974 LEGISLATION 308-09 (1975) (access to pupil records and right of parent or guardian to challenge the accuracy of such records).

Education; scholastic aptitude tests

Education Code 12821.5 (new).
AB 283 (Brown); STATS 1975, Ch 460

Existing statutes require the administering of achievement and physical performance tests as part of the statewide testing program. Aptitude (I.Q.) testing was eliminated from the statewide testing program in 1972 [CAL. STATS. 1972, c. 930, §15, at 1678], but individual school districts could choose to continue to administer such tests for their own purposes. Section 12821.5 of the Education Code, as amended by Chapter 460, now prohibits school districts from administering *any* standardized group test which provides or attempts to provide a single measure of general scholastic aptitude of a pupil, except to place a student in a special educational program for mentally gifted minors or for the purpose of determining eligibility for scholarships, grants, or other awards relating to post-secondary education. Additionally, aptitude tests may be administered for research purposes provided that the school district has a group testing plan which has been approved by the Superintendent of Public Instruction and which complies with specified requirements.

Chapter 460 will apparently affect "tracking," or placement of students in schools or classes based on aptitude tests. Tracking has been criticized because it causes students to be placed in classes based on racially and culturally biased intelligence tests thereby often resulting in segregation of minority students. Group tests are supposedly more biased than individual tests because of the lack of contact between the individual student and the tester [Sorgen, *Testing and Tracking in Public Schools*, 24 HAST. L.J. 1129, 1142-48 (1973)]. Placement in classes for the mentally retarded is not affected by this legislation, however, because provisions of the Education Code (§6902.085) already require individual testing by psychologists for such placement.

See Generally:
1) 5 CAL. ADMIN. CODE §1040 *et seq.* (physical performance testing); §1050 (reading achievement testing); §3800 *et seq.* (Mentally Gifted Minors program).
2) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 452 (1973).
3) Note, *Equal Protection and Intelligence Classifications*, 26 STAN. L.R. 647 (1974).

Education; smoking in public high schools

Education Code §10602.5 (new); §10602 (amended).
SB 171 (Gregorio); STATS 1975, Ch 65

Support: Association of California School Administrators; California Federation of Teachers; California Teachers Association
Opposition: American Cancer Society; California Parent-Teachers Association

Under previous law the use or possession of tobacco by a student on a high school campus was prohibited and constituted good cause for suspension or expulsion. Only school boards of community colleges were allowed to adopt rules and regulations permitting the smoking and possession of tobacco on community college campuses by pupils over 18 years of age [CAL. EDUC. CODE §10602]. Section 10602.5 has been added to the Education Code to provide that school boards *may* adopt rules and regulations permitting the smoking and possession of tobacco on the campus of a community college or *high school*, or while such pupils are off such campuses under the authority of school personnel. If school boards do not choose to adopt such rules and regulations, however, smoking or possession of tobacco on school premises will still constitute good cause for suspension or expulsion.

School boards which do choose to allow smoking and possession of tobacco by high school students are limited by the provisions of Section 10602.5. Accordingly, they may not adopt rules and regulations which allow students to smoke in any classroom, or enclosed facility which students are required to occupy or which is customarily occupied by nonsmoking students. In addition, Section 10602.5 requires school boards to take all steps which they deem practical to discourage high school students from smoking.

Previously, a violation of the absolute prohibition against smoking could result in suspension of a student for not more than five school days [CAL. EDUC. CODE §10601.5], and could contribute to a student's eventual expulsion from his or her regular high school since students suspended for more than 20 days in a school year were required to be transferred to another high school for adjustment purposes, an opportunity school or class, or a continuation education school or class [CAL. EDUC. CODE §10607.5].

Apparently the new provisions will allow school boards to designate portions of high school campuses as "smoking areas," where smoking will be permitted, as an alternative to policing students suspected of smoking and suspending violators. According to Senator Arlen Gregorio, author of the legislation, suspension was formerly the normal punishment for violation of the smoking ban, and such violations were prob-

ably the largest single cause of suspension in public high schools [Press Release, Senator Arlen Gregorio, April 24, 1973].

See Generally:

1) CAL. EDUC. CODE §5950 *et seq.* (continuation education classes), §6500 *et seq.* (opportunity schools, classes, and programs).
2) 5 CAL. ADMIN. CODE §§5530 (moral supervision of students), 301 (duties of pupils, including the duty to refrain from use or possession of tobacco).
3) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 450 (1973) (good cause for suspension).