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Education

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Education

Education; application of school-related assistance programs to probation departments, nonresidential boot camps

Education Code §§ 47700, 47701, 47703, 47710 (amended); Welfare and Institutions Code §§ 856, 893, 940, 941, 1820.47 (amended).
SB 604 (Rosenthal); 1995 STAT. Ch. 72

Existing law provides for the establishment of public schools within juvenile rehabilitation facilities¹ and the creation of boot camps² as a specialized type of juvenile reform facility, as well as providing for programs to assist county offices of education with funding and other resources for educational activities within juvenile camps, ranches, and boot camps.³ One program authorizes the Department of the Youth Authority⁴ to select three counties to receive federally-funded financial assistance for their juvenile facility educational programs.⁵ Program proposals submitted by counties must contain an evaluation component assessing educational and vocational achievement of enrolled offenders, and programs operated within boot camps are given preference in the selection process.⁶ Under existing law, the statutes establishing the financial assistance program for the benefit of schools and programs targeting juvenile offenders become operative only if California receives federal funds for that purpose.⁷

Existing law authorizes boot camps to contract with the Military Department⁸ for planning and technical assistance, training of personnel, and implementation of innovative projects and career guidance.⁹

1. See CAL. WELF. & INST. CODE § 856 (amended by Chapter 72) (authorizing counties to establish schools in juvenile halls, juvenile houses, day centers, juvenile ranches, and juvenile camps); see also CAL. EDUC. CODE § 47703 (amended by Chapter 72) (providing for administration of educational programs operated within county facilities for juvenile offenders).

2. See CAL. WELF. & INST. CODE § 1820.45(a)(1)-(3) (West Supp. 1995) (authorizing the development of boot camps, either as part of or separate from juvenile ranches, camps, and forestry camps, to provide the same services as the ranches and camps, but with greater emphasis on physical conditioning and teamwork taught within a highly-structured program modeled on military training).

3. CAL. EDUC. CODE § 47700 (amended by Chapter 72); see *id.* (establishing a financial assistance program for operation of school activities in juvenile camps, ranches, and boot camps, with funds to be disbursed according to county population and in response to proposals submitted by counties).

4. See CAL. WELF. & INST. CODE § 1710 (West 1984) (defining the "Department of the Youth Authority" as a part of the California Youth and Adult Correctional Agency).

5. CAL. EDUC. CODE § 47701 (amended by Chapter 72).

6. *Id.*

7. 1994 Cal. Legis. Serv. ch. 1255, sec. 3, at 6472 (enacting CAL. EDUC. CODE §§ 47700-47705, 47710).

8. See CAL. MIL. & VET. CODE § 51 (West 1988) (defining the "Military Department" to include the Adjutant General, California National Guard, State Military Reserve, California Cadet Corps, and Naval Militia).

9. CAL. WELF. & INST. § 1820.47 (a)-(d) (amended by Chapter 72).

Existing law also provides for the establishment by counties, at county expense, of twenty-four hour schools for children who are not properly cared for or supervised by their parents or guardians, or who are in need of special training and discipline to prevent them from becoming subject to the supervision of the juvenile court.¹⁰

Chapter 72 extends the scope of the Department of the Youth Authority's financial assistance program to include school activities operated by probation departments, and it includes nonresidential boot camps along with residential boot camps as programs eligible to receive various forms of educational, job-training, and character-building support.¹¹ Additionally, Chapter 72 broadens the assessment criteria for program evaluation required by the Department of the Youth Authority for funding assistance proposals by permitting a county to include other measurable factors in addition to offenders' educational and vocational training achievements.¹²

Chapter 72 expands the options available to counties in providing for minors who are unsupervised or in need of special training and discipline by allowing counties to establish nonresidential boot camps on the same terms and for the same purposes as permitted for the establishment of twenty-four hour schools.¹³ Finally, Chapter 72 narrows the federal funding condition which will permit the Department of the Youth Authority's financial assistance program to become operative by specifying that the federal money be targeted for funding of programs operated by probation departments.¹⁴

10. CAL. EDUC. CODE § 48600 (West 1993); *see id.* (authorizing establishment of 24-hour schools); *id.* § 48607 (West 1993) (providing for admission of minors from 8 to 16 years of age in need of special supervision or training, and for assignment of pupils to 24-hour schools by county or district superintendents, with parent permission).

11. *Id.* § 47700 (amended by Chapter 72); *see id.* (adding county probation departments as potential recipients in addition to county offices of education, and specifying that boot camps may be either residential or nonresidential); *see also id.* § 47701 (amended by Chapter 72) (providing that the preference in program selection for federal financial assistance extended to boot camps applies as well to nonresidential boot camps); *id.* 47703 (amended by Chapter 72) (permitting educational programs to be administered by the county office of education in probation facilities as well as within county juvenile facilities); CAL. WELF. & INST. CODE § 856 (amended by Chapter 72) (specifying nonresidential as well as residential boot camps as permissible sites for public schools); *id.* § 893(a) (amended by Chapter 72) (authorizing counties with populations of five million or more to establish special education schools within nonresidential as well as residential boot camps); *id.* 1820.47 (amended by Chapter 72) (providing that nonresidential as well as residential boot camps, established for nonserious and nonviolent offenders as well as young, first-time offenders, are eligible to contract with the Military Department for specified types of program support).

12. CAL. EDUC. CODE § 47710 (amended by Chapter 72).

13. CAL. WELF. & INST. CODE § 940 (amended by Chapter 72); *see id.* (authorizing establishment of 24-hour schools and nonresidential boot camps by county boards of supervisors); *id.* § 941 (amended by Chapter 72) (placing both 24-hour schools and nonresidential boot camps under the management and control of probation officers).

14. 1995 Cal. Legis. Serv. ch. 72, sec. 10, at 187.

COMMENT

The purpose of Chapter 72 is to clarify the fact that county probation departments and nonresidential boot camps are eligible for various existing forms of support, including federal financial assistance which may become available through the Department of the Youth Authority.¹⁵ It is hoped that access to such support will permit probation departments to establish nonresidential boot camps as an economic alternative to full-time incarceration of juvenile offenders.¹⁶ Creation and support of another rehabilitation option short of probation-camp placement corresponds to the recommendations of the Little Hoover Commission, which called for a renewed emphasis on rehabilitation and expanded options, especially for counties without juvenile halls or camps, which may explain the commission's support for the enactment of Chapter 72.¹⁷ While the concept of nonresidential boot camps is new and experiments are few, the idea has demonstrated appeal in terms of cost, and some initial reported results have been promising.¹⁸

Dan Johannes

15. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 604, at 2 (June 6, 1995).

16. *See id.* (stating the author of the bill's belief that the bill permits the creation of nonresidential boot camps, and that such nonresidential facilities would be more appropriate and cost-effective for nonviolent offenders than probation camps).

17. *See id.* (citing as background the determination of the Little Hoover Commission that the accountability of youthful offenders would be promoted by greater local control and an expanded continuum of options); *see also* Mareva Brown, *A Cry for Justice in Youth Authority Sentencing*, SACRAMENTO BEE, Nov. 11, 1994, at A1 (pointing out that unavailability of less drastic sentencing options in poor and rural counties tends to undermine rehabilitative goals by channeling nonviolent offenders into youth prisons).

18. Paul McKay, *The Youngest Boot Camp*, HOUS. CHRON., Mar. 20, 1994 (Tex. Mag.), at 6; *see id.* (reporting high early marks from school officials for an in-school boot camp for 12- to 14-year-old delinquents operated jointly by the school district and county juvenile probation); *id.* (noting that the program, which occupies the juveniles for 13 hours per day, including time spent integrated into regular junior high classrooms, and which requires parental participation, is expected to deal with 50 juveniles at a cost of only \$89,000 the first year); *Money for Safe Streets*, SACRAMENTO BEE, Feb. 28, 1994, at B12 (mentioning a nonresidential boot camp as one component of a recommended local crime prevention program to be funded by the city).

Education; extended day care—grants

Education Code §§ 58750, 58751, 58752, 58753, 58754, 58755 (new and repealed); § 8278 (amended).

AB 442 (Alpert); 1995 STAT. Ch. 775

Existing law establishes programs to provide child care to school-age children and allows the Superintendent of Public Instruction¹ to enter into local agreements for extended day care services.²

Chapter 775 requires the Superintendent of Public Instruction to disperse two separate grant programs, the After School Violence Prevention Grants, and planning and operational grants.³ Local education agencies may collaborate with nonprofit organizations, private child care providers, park and recreation agencies and other public agencies in applying for these grants.⁴ An applicant for either of the grants must include in their program certain core elements.⁵

Chapter 775 requires the Superintendent of Public Instruction to award three Afterschool Violence Prevention Grants, totaling \$99,000 each, to local education

1. See CAL. EDUC. CODE § 33112 (West 1993) (setting forth duties of the Superintendent of Public Instruction).

2. *Id.* § 8485 (West 1994); *see id.* (allowing school districts to establish a program for child supervision before and after school); *see also id.* § 8462 (West 1994) (requiring the Superintendent of Public Instruction to enter into local private or public contractual agreements for delivery of extended day care services); *id.* (West 1994) (requiring the Superintendent of Public Instruction to develop standards for the implementation of cost effective quality extended day care programs that are competitive with local private market rates); *id.* § 8463 (setting forth factors which the Superintendent of Public Instruction may consider in determining the quality of the program including, but not limited to, transportation to and from the school, diversity of the student population, and use of community resources); *id.* § 8488 (West 1994) (providing 250 grants up to \$4000 each for schools that elect to establish a child supervision program); *cf.* 42 U.S.C.A. §§ 9871, 9872(a), 9874(a), (b) (West Supp. 1995) (allocating \$13,000,000, in 1995, for distribution to states in amounts according to relative population, for school-age child care services, and referral systems for child care); *id.* § 9875(a) (West Supp. 1995) (setting forth requirements for application for these funds); CAL. CODE REGS. tit. 5, § 18002 (1990) (setting forth requirements and procedures the Child Development Division must follow in reviewing contractor applications for child care facilities); *id.* § 18006 (1990) (prioritizing school districts for day care funding giving highest priority to districts with homeless pupils); *id.* §§ 18203(c), 18205, 18207 (1990) (setting forth staff qualifications for day care programs for Program Director, Site Supervisor, and Teacher Aides).

3. *Id.* §§ 58753, 58754 (enacted by Chapter 775).

4. CAL. EDUC. CODE § 58751(a) (enacted by Chapter 775); *see id.* (defining "applicant" as a local education agency that may or may not collaborate with other public and private agencies); ASSEMBLY FLOOR, COMMITTEE ANALYSIS of AB 442, at 1 (June 2, 1995).

5. *Id.* § 58752(a) (enacted by Chapter 775); *see id.* § 58752(a) (requiring applicants to include the following in their programs: (1) culturally appropriate activities accommodating pupil interest and needs which may include homework clinics, reading tutorials, study skills workshops, library research, computer and technology workshops, etc.; (2) a safe supervised and healthy environment; (3) planning that makes parents or guardians an integral part of the program; (4) cooperation with community organizations including recreation departments, youth organizations, athletic groups, libraries and other youth-serving agencies; and (5) encouragement for pupils with special needs to participate); *id.* § 58752(b) (enacted by Chapter 775) (requiring applicants to agree, as a condition of receiving any grants, to maintain statistical data on suppression of gang activity, school attendance rates, program attendance, and the change in the crime rate in the community since the program was created or extended).

agencies⁶ that operate or plan to operate extended day care programs for students in grades six to nine.⁷ Applicants for Afterschool Violence Prevention Grants must meet certain criteria as follows: they must enlist in the program older pupils and adult volunteers, afterschool snacks must be served, it must be demonstrated that the program is needed to prevent violence, and information on juvenile crime statistics must be provided.⁸ Grants are then awarded according to priority which is based on specified criteria.⁹

Chapter 775 further requires the Superintendent of Public Instruction to administer a planning grant program and award ten grants of up to \$10,000 each to local education agencies to plan and operate extended schoolday programs.¹⁰ Applicants for planning grants must show a need for an extended schoolday program, and need for additional planning.¹¹ Applicants for operational grants must show readiness to begin operation or to expand an existing extended schoolday program.¹² Recipients of the planning or operational grants must match grant funds with state, or local funds, but not with fees collected directly from participant pupils.¹³

Chapter 775 will remain in effect until January 1, 1999.¹⁴

COMMENT

The Legislature has officially recognized the need for day care services, especially in low income areas.¹⁵ There are currently two million schoolage

6. See *id.* § 58751(b) (enacted by Chapter 775) (defining "local education agency" as school districts, county superintendents of schools, or a consortium of those entities).

7. *Id.* § 58753(a), (c) (enacted by Chapter 775); *id.* § 58753(c) (enacted by Chapter 775) (requiring grants to be awarded in amounts of \$33,000 per year for a period of three years).

8. *Id.* § 58753(a) (enacted by Chapter 775).

9. *Id.* § 58753(b) (enacted by Chapter 775); see *id.* (giving preference to programs that are located in a high juvenile crime rate area where there are few or no activity programs serving students in grades six through nine, and the local education agency collaborates with neighborhood organizations, civic organizations, and recreation and parks personnel in the development of extended schoolday programs).

10. *Id.* § 58754(b), (g) (enacted by Chapter 775); see *id.* § 58754(g) (enacted by Chapter 775) (allocating five grants for elementary schools and five for junior high or middle schools).

11. *Id.* § 58754(b) (enacted by Chapter 775).

12. *Id.* § 58754(c) (enacted by Chapter 775).

13. *Id.* § 58754(d) (enacted by Chapter 775); see *id.* (requiring applicants to provide not less than four dollars for matching each dollar of the total amount of the grant from any combination of state or local moneys available to the local agency, the dollar value of any services or resources provided to the extended schoolday program by a local agency or other local governmental agency, or funds or the dollar value of services provided by business or local community organizations); *id.* § 58754(e) (enacted by Chapter 775) (allowing applicants to charge participating pupils a fee, based on their ability to pay, but denying applicants the use of those fees for matching purposes).

14. *Id.* § 58755 (enacted by Chapter 775).

15. *Id.* § 58750(g) (enacted by Chapter 775); see *id.* (recognizing that although adolescents face some risks because of growing independence, those who live in poverty areas face a higher level of risk, but have a lower level of personal and social support than adolescents from more affluent families); see also Lynell George, *A Step Up in Life*, L.A. TIMES, June 11, 1995, at E1 (stating that an extended schoolday program helped a woman go back to school and get off Aid to Families with Dependant Children (AFDC), and that if families do not have safe child care, they cannot move out into the working world); *id.* (stating, however, that

children in California who are unsupervised before or after school.¹⁶ Many young adolescents are exposed to criminal behavior and live in neighborhoods where the fear of violence pervades their daily lives during a time in their life when they will make initial decisions about alcohol, drug use, and gang involvement.¹⁷ Currently, there are approximately 2000 gangs in California with an estimated total of 175,000 to 200,000 members.¹⁸

Chapter 775 is an effort to reduce violence, vandalism, and crime, while promoting the educational mission of public schools by supplementing the operation and expansion of California's inadequate day care services.¹⁹

Michael A. Guiliana

the Republican-backed contract with America will cut a non-profit child care provider's budget by 82%); Ron Powell & Dayna L. Fried, *Vargas Defends After-School Program Manager's Plan to Slash Budget Called Harmful*, SAN DIEGO UNION-TRIB., May 5, 1995, at B3 (quoting Juan Vargas, San Diego City Councilman, stating that spending money on after-school programs is a good investment that helps young people sidestep the kind of trouble that leads to crime); *id.* (quoting a 12-year-old pupil participating in a San Diego after-school program stating that some of his friends who are not in an after-school program are tagging); *cf.* FLA. STAT. ANN. § 228.0617(1) (West Supp. 1995) (declaring that the Florida State Legislature recognizes the need for safe supervision and care of children attending public school programs before and after school as an intervention strategy against child abuse, accidents, emotional trauma, and delinquency).

16. CAL. EDUC. CODE § 58750(a) (enacted by Chapter 775); *see* ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 442, at 2 (Apr. 5, 1995) (finding that two million California students are "latch-key" kids who receive no supervision during non-school hours, which endangers the health and safety of the children as well as the crime rate of the community because of the increased opportunity for vandalism and gang violence).

17. CAL. EDUC. CODE § 58750(e), (f) (enacted by Chapter 775); *see* Janine DeFao, *Spreading the Word on Gangs*, SACRAMENTO BEE, June 25, 1995, at B1 (quoting Sergeant Bob Riserdorf, Sacramento Sheriff's Department, in his explanation that kids join gangs because they are bored, all their friends are in the gang, for protection, or to learn something); Lily Dizon, *Out of Harm's Way*, L.A. TIMES, June 6, 1995, at A3 (quoting a teen newly enrolled in a teen center as stating that once inside the center, she did not feel that she was in danger, or fear was controlling her, but had other things to focus on); *id.* (stating that the center is a place where the kids can study, and shut the door on gangs); John Yantis, *Mesa Police Turn Up Heat on Gangs*, ARIZ. REPUBLIC/PHOENIX GAZETTE., Apr. 11, 1994, at 1 (quoting an 18 year-old gang member as stating that the only way gangs are going to stop is if there is something in the community to keep the kids occupied).

18. *Schools Get Anti-Gang Manual to Combat Problem*, BC CYCLE, Mar. 18, 1994; *see id.* (quoting the California Department of Justice's estimate of gang members in California); *see also* Bob Blattner, *State's Police Seek Ways to Gang up on Criminal Rings*, SACRAMENTO BEE, Aug. 25, 1994, at B3 (quoting California State Attorney General Dan Lungren as declaring that the infamous Los Angeles gangs, the Crips and Bloods, flourished in the Los Angeles gang wars and are now present in 123 cities in 33 states); DeFao, *supra* note 12 (stating that there are approximately 70 gangs in Sacramento, with 5000 to 7000 members); Susan Steinberg, *Breaking up the Old Gang*, L.A. TIMES, Feb. 9, 1995, at J3 (quoting Los Angeles Police Department's Captain Glen Weaver as stating that the 18th Street gang may have up to 30,000 members in Southern California).

19. CAL. EDUC. CODE § 58750(h), (i) (enacted by Chapter 775); *see id.* § 58750(b) (enacted by Chapter 775) (finding by the Legislature that California's extended schoolday programs are not adequate to provide before-and-after-school child care for all of California's school-age children); *see also* Kathryn H. Anderson, et. al., *The Effect of Deviance During Adolescence on the Choice of Jobs*, 60 S. ECON. J. 341 (1993) (concluding that people who behaved anti-socially during adolescence are more likely to be unemployed or if they do attain employment, less likely to be employed in either a good white-collar or better-paying blue-collar job); *id.* (finding that if policy initiatives can reduce anti-social behavior problems in adolescents, employment outlooks will improve).

Education; grounds for dismissal of a permanent employee

Education Code §§ 44662, 44932, 44934, 44938 (amended).
AB 729 (Davis); 1995 STAT. Ch. 392

Prior law established that the governing board of each school district was required to evaluate and assess certificated employee competency as it reasonably related to a variety of factors.¹ Chapter 392 amends prior law to require the governing board of each school district to establish standards of expected pupil achievement at each grade level in every area of study.²

Chapter 392 amends prior law and provides for the governing board of each school district to evaluate and assess certificated employee performance rather than incompetency.³

Chapter 392 sets forth a variety of causes for which a permanent employee may be dismissed.⁴ Some of the reasons are as follows: (1) immoral or unprofessional conduct,⁵ (2) commission, aiding, or advocating the commission

1. 1983 Cal. Stat. ch. 498, sec. 29, at 2069 (amending CAL. EDUC. CODE § 44662(b)); *see id.* (specifying that the board must evaluate and assess employee competency as it reasonably relates to the following: (1) the progress of expected pupil achievement at each grade level in each area of study; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities); *see also* CAL. EDUC. CODE § 44660 (West 1993) (declaring that it is the intent of the Legislature that governing boards establish a uniform system of evaluation and assessment of the performance of all certificated personnel within each school district of the state); *id.* § 44662(e) (amended by Chapter 392) (stating that nothing in California Education Code § 44662 will be construed as in any way limiting the authority of school district governing boards to develop and adopt additional evaluation and assessment guidelines or criteria); 1983 Cal. Stat. ch. 498, sec. 29, at 2070 (amending CAL. EDUC. CODE § 44662(c)) (stating that the board of each school district must establish and define job responsibilities for those certificated noninstructional personnel, including, but not limited to, supervisory and administrative personnel, whose responsibilities cannot be evaluated appropriately under the provisions of Education Code § 44662(b), and must evaluate and assess the competency of such noninstructional certificated employees as it reasonably relates to the fulfillment of those responsibilities); *id.* (amending CAL. EDUC. CODE § 44662(d)) (providing that the evaluation and assessment of certificated employee competence cannot include the use of publishers' norms established by standardized tests).

2. CAL. EDUC. CODE § 44662(a) (amended by Chapter 392).

3. *Id.* § 44662(b) (amended by Chapter 392); *see id.* § 44662(c) (amended by Chapter 392) (providing that the governing board of each school district must establish and define job responsibilities for certificated noninstructional personnel, including but not limited to, supervisory and administrative personnel, whose responsibilities cannot be evaluated appropriately under the provisions of California Education Code § 44662(b) and who must evaluate and assess the performance of those noninstructional certificated employees as it reasonably relates to the fulfillment of those responsibilities).

4. *Id.* § 44932(a) (amended by Chapter 392).

5. *See id.* § 44938(c) (West 1993) (defining "unprofessional conduct" as conduct specified as a cause for dismissal or suspension in California Education Code §§ 44932 and 44933 and does not include any other cause for dismissal specified in California Education Code § 44932); *see also id.* § 44933 (West 1993) (providing that a permanent employee may be dismissed or suspended on grounds of unprofessional conduct consisting of acts or omissions other than those specified in California Education Code § 44932, but any such charge must specify instances of behavior deemed to constitute unprofessional conduct); Board of Educ. v. Swan, 41 Cal. 2d 546, 553, 261 P.2d 261, 266 (1953) (holding that the violation of a teacher's oath as prescribed by the school code justifies revocation of one's credentials and constitutes unprofessional conduct), *cert. denied*, 347 U.S. 937 (1954); Perez v. Commission on Professional Competence, 149 Cal. App. 3d 1167,

of acts of criminal syndicalism,⁶ (3) dishonesty,⁷ (4) evident unfitness for service,⁸ (5) having a physical or mental condition unfitting him or her to instruct or associate with children, or (6) a variety of other specified causes.⁹ Prior law

1174, 197 Cal. Rptr. 390, 395 (1983) (defining the phrase "unprofessional conduct" as indicating unfitness to teach); *Palo Verde Unified Sch. Dist. v. Hensey*, 9 Cal. App. 3d 967, 971, 88 Cal. Rptr. 570, 573, (1970) (noting that the fact that the term "unprofessional conduct" has not been defined by statute authorizing the dismissal of a teacher does not render it void for uncertainty); *Board of Trustees v. Hartman*, 246 Cal. App. 2d 756, 763, 55 Cal. Rptr. 144, 148-149 (1966) (holding that the term "immoral" has been defined as "that which is hostile to the welfare of the general public and contrary to good morals" and stating that "[i]mmorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness"); *id.* (noting that wilful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare will also constitute immoral conduct); *Board of Trustees v. Owens*, 206 Cal. App. 2d 147, 157, 23 Cal. Rptr. 710, 717 (1962) (noting that the trial court enjoys a great deal of discretion when determining whether the precise facts presented constitute "unprofessional conduct"). *See generally* 56 CAL. JUR. 3D *Schools* § 437 (1980) (discussing unprofessional conduct).

6. *See* CAL. EDUC. CODE § 44932(a)(2) (amended by Chapter 392) (noting that existing law defines "syndicalism" by reference to provisions of law which have been repealed).

7. *See* *Bassett Unified Sch. Dist. v. Commission on Professional Competence*, 201 Cal. App. 3d 1444, 1453, 247 Cal. Rptr. 865, 870 (1988) (holding that the lower court's finding that a teacher acted dishonestly when she took sick leave benefits from one school district while working at another school district and college, was supported by substantial evidence).

8. *See* *Morrison v. State Bd. of Educ.*, 1 Cal. 3d 214, 229, 461 P.2d 375, 386, 82 Cal. Rptr. 175, 186 (1969) (holding that the determination of unfitness to teach is to be based on the following objective standards: (1) the likelihood that the conduct may have adversely affected students of fellow teachers; (2) degree of such adversity anticipated; (3) proximity or remoteness in time of the conduct; (4) type of teaching certificate held by the party involved; (5) extenuating or aggravating circumstances surrounding the conduct; (6) praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) likelihood of the recurrence of the questioned conduct; and (8) extent to which disciplinary action may inflict an adverse impact upon the constitutional rights of the teacher involved or other teachers).

9. CAL. EDUC. CODE § 44932(a) (amended by Chapter 392); *see id.* § 44932(a)(7)-(12) (amended by Chapter 392) (specifying the six other causes for which a permanent employee may be dismissed as follows: (1) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her; (2) conviction of a felony or of any crime involving moral turpitude; (3) violating California Education Code § 51530 or participating in conduct specified in California Government Code § 1028; (4) violating any provision in § 7001, or § 7007 of the California Education Code; (5) knowing membership by the employee in the Communist Party; and (6) having an alcohol or other drug abuse problem which makes the employee unfit to instruct or associate with children); *see also* *Pasadena Unified Sch. Dist. v. Commission on Professional Competence*, 20 Cal. 3d 309, 313 n.5, 572 P.2d 53, 55 n.5, 142 Cal. Rptr. 439, 441 n.5 (1977) (stating that while California Education Code § 44932 by its terms is limited to permanent employees, the statute also applies to probationary employee dismissals that occur during the school year); *Woodland Joint Unified Sch. Dist. v. Professional Competence Commission*, 2 Cal. App. 4th 1429, 1442-1443, 4 Cal. Rptr. 2d 227, 234-235 (1992) (concluding that the Legislature examined the terms "physical or mental condition unfitting a teacher to instruct," "incompetency," and "evident unfitness for service," and that the Legislature must have intended each ground for dismissal to refer to some act or omission not necessarily included in any of the others, otherwise the statute would be redundant); *id.* at 1443, 4 Cal. Rptr. 2d at 235 (providing that a physical or mental condition which makes a teacher unfit to instruct could refer to physical weakness or disease, or mental deterioration); *Board of Directors v. Mroz*, 295 N.W.2d 447, 448 (Iowa 1980) (holding that inadequate maintenance of discipline during class, excessive and ineffective use of films, ineffective classroom teaching, and failure to improve and cooperate with school administrators who tried to assist in correcting the deficiencies constituted just cause under Iowa law and would allow for the dismissal of a permanent teacher); *cf.* IOWA CODE ANN. § 279.27 (West 1988) (providing that a teacher may be discharged at any time during the contract year for just cause); LA. REV. STAT. ANN. § 17:443(A) (West 1982) (stating that a permanent teacher may only be removed upon written and signed charges of willful neglect of duty, or incompetency or dishonesty, or of being a member of or contributing to any group, organization,

provided that an employee may be dismissed for incompetency.¹⁰

With respect to prior law the governing board of any school district could not act upon any charges of incompetency unless it acted in accordance with specific provisions.¹¹

Prior law also required that any written statement of charges of unprofessional conduct or incompetency were to specify instances of behavior and the acts or omissions constituting the charge so that the teacher would be able to prepare his or her defense.¹²

movement or corporation that is by law or injunction prohibited from operating in the state of Louisiana, and then only if found guilty after a public or private hearing by the school board of the parish or city, as the case may be, at the option of the teacher); *id.* § 17:443(A) (West 1982) (providing that at least 20 days in advance of the date of the hearing, the superintendent, with approval of the school board, must furnish the teacher with a copy of the written charges); MINN. STAT. ANN. § 125.12(6) (West 1994) (stating the conditions under which a contract may be terminated, effective at the close of the school year); MONT. CODE ANN. § 20-4-207(1) (1993) (instructing that the trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of said trustees). *See generally* 56 CAL. JUR. 3D *Schools* § 431 (1980) (discussing the general provisions of the California Education Code with regard to the termination of a teacher); *id.* § 436 (1980) (discussing an employee's dismissal for cause).

10. 1983 Cal. Stat. ch. 498, sec. 51, at 2083 (amending CAL. EDUC. CODE § 44932(a)(4)); *see* Perez v. Commission on Professional Competence, 149 Cal. App. 3d 1167, 1176, 197 Cal. Rptr. 392, 397 (1983) (affirming the dismissal based on incompetency of a teacher whose students and classroom environment could be characterized as plagued with tardiness, inattention, siestas, talking in class, disdain for discipline, reading unrelated paperback books, and "general goofing off"); Kotan v. School Dist., 509 P.2d 452, 456 (Or. 1973) (finding that in the case of principals, incompetency may be exhibited in the incompetent performance of formal administrative duties, or in a failure to maintain discipline among students, or in a failure to maintain a harmonious and effective relationship, free of unwarranted dissension, with the school's teaching personnel); *see also* County Bd. of Educ. v. Oliver, 116 So. 2d 566, 567 (Ala. 1959) (holding that "incompetency" is a relative term which may mean disqualification, inability or incapacity, or may "refer to lack of legal qualifications or fitness to discharge the required duty"). *See generally* J.H. Tigges, Annotation, *What Constitutes "Incompetency" or "Inefficiency" as a Ground for Dismissal or Demotion of Public School Teacher*, 4 A.L.R. 3D 1090 (1965 & Supp. 1994) (discussing various cases relating to incompetency and inefficiency as grounds for dismissal); B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency and Employment*, § 195 (9th ed. Supp. 1994) (providing information regarding incompetency, inefficiency, and unfitness).

11. 1983 Cal. Stat. ch. 498, sec. 57, at 2085 (amending CAL. EDUC. CODE § 44938(b)(1)); *see id.* (stating that the governing board must not act upon any charges of incompetency unless, at least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee charged with incompetency written notice of the charge, noting specific instances of behavior so as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge); *id.* at 2086 (amending CAL. EDUC. CODE § 44938(b)(2)) (providing that the governing board may act during the last one-fourth of the schooldays it has set aside for purposes of computing apportionments during a fiscal year if, prior to the beginning of that time period, the board or its authorized representative has given the employee charged with incompetency written notice of the incompetency, specifying specific instances of behavior so as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge); *see also* Woodland, 2 Cal. App. 4th at 1445, 4 Cal. Rptr. 2d at 236 (explaining that the purpose of the notice requirement set forth in California Education Code § 44938 is to allow a teacher to overcome a charge of incompetency by correcting his or her conduct); *id.* at 1446, 4 Cal. Rptr. 2d at 237 (holding that a school district may not dismiss a permanent certificated employee on charges of unprofessional conduct unless it complies with the notice provision of California Education Code § 44938(a), and any subsequent action taken against the employee is invalid).

12. 1983 Cal. Stat. ch. 498, sec. 53, at 2084 (amending CAL. EDUC. CODE § 44934); *see id.* (providing that the written statement had to state any applicable statutes and rules which the teacher was alleged to have violated, and the statement also was required to set forth the facts relevant to each occasion of alleged unprofessional conduct or incompetency).

Chapter 392 simply amends existing law by replacing the term “incompetency” with “unsatisfactory performance.”¹³ Additionally Chapter 392 deletes a provision of law that was rendered moot by case law.¹⁴

COMMENT

Chapter 392 was enacted in order to enable school district governing boards to dismiss teachers based on a determination of unsatisfactory performance.¹⁵ As noted by the author of Chapter 392, the incompetence standard has been problematic for school districts, their employees, and the courts.¹⁶ The enactment of Chapter 392 simply changes the law to what it was meant to be originally.¹⁷ Although evaluating a teacher’s performance involves the issue of competency, performance is intended to be a broader term and whether a teacher is competent or not is to be considered a small subsection of satisfactory performance.¹⁸

A person has a constitutional right to due process of law.¹⁹ Thus, a continual concern in our education system in California is to keep qualified teachers as educators, and to dismiss those who are not, without violating their right to due

13. CAL. EDUC. CODE §§ 44662(c),(d), 44932(a)(4), 44934, 44938(b),(c) (amended by Chapter 392).

14. Telephone Interview with Kathryn Dresslar, Legislative Aide to Assemblymember Susan Davis (Oct. 6, 1995) (copy on file with the *Pacific Law Journal*). Compare 1983 Cal. Stat. ch. 498, sec. 51, at 2083 (amending CAL. EDUC. CODE § 44932(a)(10)) (stating that a permanent employee may be dismissed for violating California Education Code §§ 7001-7007) with CAL. EDUC. CODE § 44932(a) (amended by Chapter 392) (omitting from California Education Code § 44932(a) the provision which established that a permanent employee could be dismissed for violating California Education Code §§ 7001-7007).

15. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 729, at 1 (Apr. 26, 1995); see *id.* (noting how the South Bay Union School District believes that the change in the California Education Code is needed and long overdue because the public has been demanding the raising of standards for the education of children); see also *id.* at 1-2 (providing that the Parent Teacher Association supports AB 729 because there needs to be “an understanding that continuing employment is dependent on meeting clearly established performance of competence and duality to encourage excellence”).

16. *Id.* at 1; see *Perez*, 149 Cal. App. 3d at 1175, 197 Cal. Rptr. at 396 (concluding that “[i]ncompetency does not invoke subjective analysis of standards of morality or professionalism which vary from individual to individual, dependent on time circumstances or custom”); *Tarquin v. Commission on Professional Competence*, 84 Cal. App. 3d 251, 260, 148 Cal. Rptr. 522, 527 (1978) (finding that “incompetency” may refer to lack of educational qualifications, or to a lack of ability to transmit knowledge to students); see also *Oliver*, 116 So. 2d at 566 (holding that the term “incompetent” is generic term which conveys no information regarding the particular act or omission, or lack of qualification from which to draw the conclusion that the allegedly incompetent individual is incompetent). But see *In re Mulhollen*, 39 A.2d 283, 284 n.2 (Pa. 1944) (noting that when determining whether or note to dismiss an employee for incompetency, the employee must be rated according to an approved rating system which takes into account personality, preparation, technique, and pupil reaction, as set forth in the scoring standards and regulations defined by rating cards of the Department of Public Instruction).

17. Telephone Interview with Kathryn Dresslar, Legislative Aide to Assemblymember Susan Davis on AB 729 (Aug. 9, 1995) (copy on file with the *Pacific Law Journal*); see *id.* (expressing how courts have not been interpreting competency as it relates to a teachers performance).

18. Telephone Interview with Kathryn Dresslar, *supra* note 17.

19. U.S. CONST. amend. V; U.S. CONST. amend XIV; CAL. CONST. Art. 1, § 7(a).

process.²⁰ With the incorporation of the term “unsatisfactory performance” as a standard for dismissing teachers, and no variation in the notice and hearing process, one’s right to due process is still entirely intact.²¹

Laura J. Roopenian

Education; postsecondary education—english proficiency

Education Code §§ 66080, 66081, 66082, 66083 (new).
SB 400 (Haynes); 1995 STAT. Ch. 200

Existing law establishes the need to encourage quality teaching within the public higher education¹ systems of the University of California and the California State University.² Existing law further establishes the need to ensure

20. Telephone Interview with Kathryn Dresslar, *supra* note 17; *see* *Raven v. Oakland Unified Sch. Dist.*, 213 Cal. App. 3d 1347, 1357, 262 Cal. Rptr. 354, 359 (1989) (accordng a due process right in her position to a permanent employee, such as a certified tenured teacher); *see also* *Oakland Unified Sch. Dist. v. Olicker*, 25 Cal. App. 3d 1098, 1111, 102 Cal. Rptr. 421, 430 (1972) (noting that the defendant was afforded due process after being given notice of the charges and proceedings against her and having an opportunity to defend herself before a judicial tribunal conducted in a manner consistent with essential fairness); *Improving Teacher Competence*, N.Y. TIMES, June 10, 1994, at A28 (advocating revisions to the disciplinary procedures which make it difficult to dismiss inferior teachers). *See generally* Maribeth V. Weele, *Why It’s Too Hard to Fire Bad Teachers*, 26 WASH. MONTHLY, Nov. 1994, at 12 (providing some suggestions which would immediately improve the quality of teachers, such as: (1) requiring teachers to take a competency exam or be subject to periodical classroom evaluations in order to assure that teachers keep abreast of changes in the fields they teach; (2) requiring police departments to notify school districts when they learn that they have arrested a school employee for offenses involving sex, violence, or narcotics; (3) depriving fired teachers and principals of their state teaching certificates so they may not be employed by other districts; (4) allowing school boards and unions to negotiate their own dismissal process; and (5) providing avenues such as strong inspector general offices to address corruption).

21. Telephone Interview with Kathryn Dresslar, *supra* note 17; *cf.* Weele, *supra* note 20 (noting how school districts in New York spend an average of about \$200,000 and 476 days on each teacher dismissal hearing, which is often more than it takes to convict someone of a crime).

1. *See* CAL. EDUC. CODE § 66010(a) (West Supp. 1995) (indicating that “public higher education” is any of the following: (1) the California Community Colleges, (2) the California State University, (3) the University of California, and (4) the California Maritime Academy); *see also* CAL. CONST. art. IX, § 9(a) (establishing the University of California as a public trust to be used by the existing corporation known as the Regents of the University of California); CAL. EDUC. CODE § 70900 (West 1989) (creating a postsecondary education system known as the California Community Colleges); *id.* § 89001(a) (West Supp. 1995) (authorizing and listing the institutions of the higher education system known as the California State University). *See generally* CAL. CONST. art. IX, § 5 (noting that the Legislature must provide for a system of common schools); *id.* § 6 (finding that the “Public School System” includes all elementary schools, secondary schools, and state colleges); *id.* § 14 (indicating that the Legislature has the power to provide for the organization of community college districts).

2. CAL. EDUC. CODE § 66052(a), (b) (West Supp. 1995); *see id.* (finding that there is a need for policies to enhance the quality of teaching within the University of California and the California State University system); *id.* (providing that the Legislature intends the University of California and the California State University to adopt and enforce procedures in order to ensure that quality teaching is an essential criterion

that the instructional faculty³ within these public higher education systems be competent.⁴

Chapter 200 requires that members of the instructional faculty at the University of California and the California State University be evaluated for oral and written proficiency in the English language.⁵ Chapter 200 provides that if a member of the instructional faculty is unable to demonstrate proficiency, the person must be required to take measures to improve his or her proficiency.⁶ Chapter 200 also allows each institution to create its own method for determining proficiency of the members of its instructional faculty.⁷

Chapter 200 declares that the proficiency requirement will not apply to the California Community College system and its instructional faculty.⁸

when evaluating faculty for appointment, retention, promotion, or tenure).

3. *See id.* § 66081 (enacted by Chapter 200) (defining "instructional faculty," for purposes of the provisions of Chapter 200, as every member of an institution of public higher education, including graduate teaching assistants, who teach one or more undergraduate credit courses at an institution); *id.* (defining further that "instructional faculty" does not include visiting professors or those members of the faculty who teach courses which are designed to be taught predominantly in a foreign language); *cf.* LA. REV. STAT. ANN. § 17:3388(B) (West Supp. 1995) (defining "instructional faculty" similar to the definition in Chapter 200); S.C. CODE ANN. § 59-103-160(B) (Law. Co-op. Supp. 1994) (defining "instructional faculty" similar to the definition in Chapter 200); TEX. EDUC. CODE ANN. § 51.917(a)(2) (West Supp. 1995) (providing that "faculty members" are any persons who teach a course offered for academic credit by an institution of higher education, including teaching assistance, instructors, lab assistants, research assistants, lecturers, assistant professors, associate professors, and full professors).

4. CAL. EDUC. CODE § 66053 (West Supp. 1995); *see id.* (providing the legislative intent that the instructional faculty at the University of California and the California State University be competent in classroom teaching).

5. *Id.* § 66082(a) (enacted by Chapter 200); *cf.* N.D. CENT. CODE § 15-10-13.1 (1993) (indicating that any professor, instructor, or assistant in a state institution of higher education must exhibit written and verbal proficiency in the English language); PA. STAT. ANN. tit. 24, § 6803 (1992) (indicating that each higher education institution must evaluate its instructional faculty for proficiency in the English language in the classroom by using personal interviews, tests, or other appropriate criteria which effectively evaluates fluency); *id.* § 6804 (1992) (requiring annual certification by each higher education institution as to the proficiency of the instructional faculty); S.C. CODE ANN. § 59-103-160(C)(1) (Law. Co-op. Supp. 1994) (finding that each higher education institution must establish policies to ensure that all faculty whose second language is English possess adequate oral and written proficiency in the English language); *id.* § 59-103-160(C)(2) (Law. Co-op. Supp. 1994) (creating a grievance procedure for students who feel that an instructor does not adequately write or speak the English language); TEX. EDUC. CODE ANN. § 51.917(b) (West Supp. 1995) (providing that the governing board of each higher education institution must establish a program to assist faculty members whose primary language is not English to become proficient in the use of English and also ensure that all other faculty members are proficient in the use of the English language).

6. CAL. EDUC. CODE § 66082(a) (enacted by Chapter 200); *see id.* (indicating that the member of the instructional faculty must improve their skills through courses, workshops, or programs specifically designed for this purpose); *cf.* N.D. CENT. CODE § 15-10-13.1 (1993) (requiring any professor, instructor, or assistant that fails to exhibit written and verbal proficiency to take special remedial training or coursework provided by the institution).

7. CAL. EDUC. CODE § 66082(b) (enacted by Chapter 200).

8. *Id.* § 66083 (enacted by Chapter 200).

COMMENT

In 1987, students of the University of California indicated by survey that teaching assistants at the University lacked oral communication skills and that this particular lack of skill was adversely affecting their undergraduate education.⁹ The results of these surveys prompted the Legislature to enact Assembly Concurrent Resolution (ACR) 41 in an effort to encourage the University of California to enhance communication skills and command of the English language among its teaching assistants.¹⁰

In response to ACR 41, the University of California implemented the Smelser Report in an effort to screen teaching assistants for language proficiency.¹¹ However, the report did not take measures to ensure that members of the faculty at the University of California were proficient in the English language.¹² Chapter 200 focuses primarily on evaluating the oral and written proficiency of the faculty at the University of California and the California State University, but does not focus on communication proficiency.¹³

Supporters of Chapter 200 argue that students have both civil and consumer rights in being able to understand a professor's lecture and that effective communication by the professor is fundamental to the education process.¹⁴ The University of California and the California State University, as primary opponents of Chapter 200, argue that there are provisions already in place to ensure that the faculty are effectively communicating with and teaching the students.¹⁵ Other

9. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 400, at 1-2 (July 14, 1995); cf. Anne Mathews, SALT LAKE TRIB., Jan. 9, 1994, at B1 (indicating that students often complain about the failure of foreign graduate students having a sufficient command of the English language); Bob Sexter, *Illinois Fights Back With Fluency Law; Foreign Teachers Create Language Gap In Colleges*, L.A. TIMES, Sept. 27, 1987, at 1 (Part 1) (reporting an increased number of student complaints regarding the difficulty of understanding the accented and broken English of some foreign teachers). *But cf.* Laurel Shaper Walters, *Students Protest Foreign Accents*, CHRISTIAN SCI. MONITOR, Sept. 15, 1993, at 12 (providing the argument from Leo Lambert, Associate Dean of Syracuse University Graduate School, that the interference with effective communication between students and foreign faculty lies not in a language problem, but in a cultural difference).

10. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 400, at 1-2 (July 14, 1995); see 1987 Cal. Stat. Res. ch. 103, at 5959-61 (suggesting that each campus of the University of California should require all prospective teaching assistants to demonstrate competence in oral communication through an oral exam comparable to the Test of English as a Foreign Language or the Test of Spoken English).

11. ASSEMBLY COMMITTEE ON HIGHER EDUCATION, COMMITTEE ANALYSIS OF SB 400, at 2 (June 27, 1995); see *id.* (noting that in the process of assessing the teaching assistants, nearly 60% were cleared to teach and the remainder were required to take English as a second language courses or were assigned other duties); cf. Mathews, *supra* note 9, at B1 (reporting that the University of Utah requires all international graduate students who want to be teaching assistants to show proof of proficiency in the English language).

12. ASSEMBLY COMMITTEE ON HIGHER EDUCATION, COMMITTEE ANALYSIS OF SB 400, at 2 (June 27, 1995); see *id.* (commenting further that the Smelser Report did not make recommendations for assessing the communication skills of the faculty or teaching assistants).

13. *Id.*

14. Letter from Mauro E. Mujica, CEO, U.S. English, Inc., to Assemblymember Marguerite Archie-Hudson, Chair, Assembly Committee on Higher Education (June 14, 1995) (copy on file with the *Pacific Law Journal*).

15. Letter from Stephen A. Arditti, Director, State Governmental Relations, University of California, to Senator Ray Haynes (Apr. 13, 1995) (copy on file with the *Pacific Law Journal*).

opponents of Chapter 200 contend that it would allow suits by any student that does not like the accent of a faculty member.¹⁶

The provisions of Chapter 200 may not necessarily apply to the University of California except to the extent that the Regents of the University of California make them applicable to the university.¹⁷

Chapter 200 is intended to give students and parents the best public education for their money by ensuring that all of their college instructors have passed a minimum level of oral and written proficiency in the English language.¹⁸

Darrell C. Martin II

Education; revocation or denial of teaching credentials due to insanity

Education Code §§ 44425.5 (new), 44436 (amended).
AB 1029 (Firestone); 1995 STAT. Ch. 140

Under existing law, the Commission on Teacher Credentialing¹ may deny an application to renew or issue a teaching credential to one who falls under any one of a list of categories, such as addiction to controlled substances, acts of moral

16. Letter from Robert J. Gurian, Legislative Advocate, California Faculty Association, to Senator Ray Haynes (Mar. 16, 1995) (copy on file with the *Pacific Law Journal*).

17. See CAL. CONST. art IX, § 9(a) (declaring that the Regents of the University of California have full powers of organization and government, subject only to legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university); see also *Regents of the Univ. of Ca. v. City of Santa Monica*, 77 Cal. App. 3d 130, 135, 143 Cal. Rptr. 276, 279 (1978) (providing that the Regents of the University of California have virtual autonomy in self-governance and policies of internal regulation may enjoy a status equivalent to state statute); 30 Op. Cal. Att'y Gen. 162, 166 (1957) (finding that the University of California is a branch of the state government equal and coordinate with the legislature, the judiciary and the executive); *id.* (finding further that the University of California's power to control and administer its affairs is virtually exclusive).

18. COMMITTEE STATEMENT ON SB 400, ENGLISH PROFICIENCY IN HIGHER EDUCATION, at 1 (copy on file with the *Pacific Law Journal*).

1. See CAL. EDUC. CODE § 44210 (West 1993) (establishing the Commission on Teacher Credentialing which consists of the following members: (1) the Superintendent of Public Instruction or a designee, (2) six practicing teachers from California public elementary and secondary schools, (3) one person who is employed on the basis of a services credential other than an administrative services credential, (4) one member of a school district governing board, (5) four representatives of the public, (6) one school administrator in a California public elementary or secondary school, and (7) one faculty member from a college or university that grants baccalaureate degrees).

turpitude,² mental or physical unfitness to perform duties,³ or conviction of enumerated offenses.⁴ Existing law also requires that the Commission on Teacher Credentialing deny an application for issuance of a credential, or for an application for renewal, if the applicant has been convicted of any sex offense,⁵

2. See 3 B.E. WITKIN & NORMAN L. EPSTEIN, CALIFORNIA CRIMINAL LAW, *Punishment for Crimes* § 1428 (2d ed. 1989) (stating that moral turpitude must be an inherent part of the crime to justify cancellation or suspension of a license due to the conviction) (citing *Lorenz v. Board of Med. Examiners*, 46 Cal. 2d 684, 686, 298 P.2d 537, 538 (1956)).

3. See *Board of Trustees v. Stubblefield*, 16 Cal. App. 3d 820, 826, 94 Cal. Rptr. 318, 322 (1971) (holding that a teacher may be discharged for conduct which indicates a potential for misconduct or which has gained sufficient notoriety so as to impair his on-campus relationships); see also *Morrison v. State Bd. of Educ.*, 1 Cal. 3d 214, 240, 461 P.2d 375, 394, 82 Cal. Rptr. 175, 194 (1969) (upholding an action to revoke a teaching credential as constitutional where the holder of the credential has engaged in conduct which proves his or her unfitness to teach); *Alford v. Department of Educ.*, 13 Cal. App. 3d 884, 889, 91 Cal. Rptr. 843, 846 (1970) (finding that in a proceeding to revoke or deny a credential, the primary inquiry concerns the teacher's fitness to teach and the protection of the pupils influenced by him or her, and that the teacher must be likely to repeat his or her behavior in the future); Amy Pyle, *Legal Dilemma Let Killer Stay as Teacher for Months*, L.A. TIMES, March 7, 1995, at A1 (suggesting that once teachers are hired, removal is problematic because a panel of psychiatrists can rarely agree that someone is unfit to be in a classroom).

4. CAL. EDUC. CODE § 44345 (West 1993); see *id.* (permitting denial of an application or renewal for the following reasons: (1) lack of the qualifications prescribed by law or regulations adopted by the commission, (2) being physically or mentally so disabled as to be rendered unfit to perform, (3) addictive use of intoxicating beverages to excess, (4) addictive use of controlled substances, (5) commission of any act involving moral turpitude, (6) having had a certification document revoked, (7) having intentionally practiced or attempted to practice any material deception or fraud in the application, (8) failing or refusing to produce reasonable evidence of identification or good moral character, or (9) conviction for specified criminal offenses); see *id.* (requiring that any denial pursuant to California Education Code § 44345(a)-(e) must be based upon reasons related to the applicant's fitness to teach or fitness to perform other duties for which the applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform); see also Jeffrey F. Ghent, J.D., Annotation, *Sexual Conduct as Ground for Dismissal of Teacher or Denial or Revocation of Teaching Certificate*, 78 A.L.R. 3d 19, 42 n.13 (1977) (suggesting that criminal misconduct raises the presumption that the teacher is professionally unfit, and this presumption is rebuttable only by clear and convincing evidence of the teacher's fitness); cf. MISS. CODE ANN. § 37-16-4(1), (2) (1972) (maintaining that any teacher who is convicted of violating any test security procedure may have his or her teaching credentials revoked or suspended by the State Board of Education); OHIO REV. CODE ANN. § 3319.31(A)(1) (Anderson 1994) (stating that an application can be denied, revoked, or limited when a person engages in an immoral act, incompetence, negligence, or conduct that is unbecoming to his position); *id.* § 3319.31(A)(2) (Anderson 1994) (adding that suspension or revocation can result from convictions for such crimes as felonies, violent offenses, theft offenses, or drug offenses).

5. See CAL. EDUC. CODE § 44010 (West Supp. 1995) (setting forth enumerated sex offenses, such as any offense involving lewd and lascivious conduct); Richard Lee Colvin, *Teachers Who Fail and Keep Teaching*, L.A. TIMES, June 4, 1995, at A1 (reporting on a Ventura teacher, who taught learning-disabled students, taped a student to her chair, regularly had students sit in his lap, made comments about their bodies, pulled a chair out from under one, and suggested that his students were stupid); Pascale Le Draoulec, *When Teachers Betray Trust*, SAN DIEGO UNION-TRIB., Oct. 25, 1992, at A1 (Part I) (reporting on a case where a 17-year-old girl kept lingerie in her locker as a gift from a band teacher who liked her to wear it when they had sex on campus); *id.* (stating further that any who experience this type of sexual encounter will suffer varying degrees of trauma); *id.* (arguing that most sexual misconduct cases never get reported and many teachers never get arrested since victims do not want to testify or school administrators do not want to endure any social pressure from removing teachers); *id.* (suggesting that sexual exploitation of students is the most despicable and damaging form of professional misconduct); Le Draoulec, *When Teachers Betray Trust*, SAN DIEGO UNION-TRIB., Oct. 26, 1992, at A1 (Part II) (reporting that teachers usually focus on students with low self-esteem because they are more susceptible to the teacher's compliments and advances); *id.* (stating that because the seduction is mental and there is rarely any physical force, the teacher feels justified in continuing the behavior).

or controlled substance offense,⁶ or if that person has been determined to be a sexual psychopath.⁷

Chapter 140 expands these categories and requires the Commission on Teacher Credentialing to deny an application for issuance or renewal of a credential if the applicant has been found to be insane through a criminal proceeding by a federal court, a court in California, or a court in any other state.⁸

Existing law requires the Commission on Teacher Credentialing to revoke the credential of any person convicted of a sex offense or controlled substance offense.⁹ Existing law also requires that the revocation of the credential will be final without possibility of reinstatement if the conviction is for a felony sex offense or a felony controlled substance offense in which an element of the controlled substance offense is either the distribution to, or use of, a controlled substance by a minor.¹⁰

Chapter 140 requires the Commission on Teacher Credentialing to revoke all credentials held by any person found to be insane by a federal court, a court in this state, or a court in any other state.¹¹ Chapter 140 makes the revocation of the credential final without possibility of reinstatement if the conviction is for a felony sex offense, or for controlled substance offenses in which an element of the offense is either distribution or use of the controlled substance by a minor.¹² Chapter 140 also makes the revocation final without possibility of reinstatement if the conviction is for murder¹³ and in response to the charge, the holder of the credential is found to be insane by a federal court or a court in this or any other state.¹⁴ However, Chapter 140 allows issuance of a credential to a person found to be insane through a criminal proceeding if the commission determines that the person has been rehabilitated for at least five years.¹⁵

6. See CAL. EDUC. CODE § 44011 (West 1993) (defining categories of controlled substance offenses).

7. *Id.* § 44346(a)(1) (amended by Chapter 140); see 1967 Cal. Stat. ch. 1667, sec. 37 at 4116 (enacting CAL. WELF. & INST. CODE § 6300) (defining "sexual psychopath" as a mentally disordered sex offender); *id.* (defining "mentally disordered sex offender" as any person who by reason of mental defect, disease, or disorder, is predisposed to the commission of sexual offenses to such a degree that he is dangerous to the health and safety of others).

8. CAL. EDUC. CODE § 44346(a)(4) (amended by Chapter 140); see *id.* § 44346(b) (amended by Chapter 140) (permitting the issuance or renewal of a teaching credential if the applicant has obtained a certificate of rehabilitation and pardon, and if his or her probation has been terminated and the information or accusation has been dismissed).

9. *Id.* § 44425 (West Supp. 1995); see *id.* § 44426 (West 1993) (stating that a determination as a sexual psychopath suffices as grounds for revocation); see also Draoulec, *supra* note 5, at A1 (Part I) (estimating that of 220,000 teachers in California in 1992, 145 lost their licenses between 1985 and 1990 after being convicted of some type of sexual misconduct with a student).

10. CAL. EDUC. CODE § 44425 (West Supp. 1995).

11. *Id.* § 44425.5 (enacted by Chapter 140).

12. *Id.*

13. See CAL. PENAL CODE § 187(a) (West 1988) (defining "murder" as the unlawful killing of a human being, or a fetus, with malice aforethought).

14. CAL. EDUC. CODE § 44425.5 (enacted by Chapter 140).

15. *Id.* § 44346(d) (amended by Chapter 140).

COMMENT

Chapter 140 was created to ensure that persons who have been found to be insane or who have been convicted of murder cannot become or remain a teacher.¹⁶ Chapter 140 was drafted in response to a case in which a Los Angeles teacher was allowed to teach children even though he had been an admitted killer but had been found not guilty by reason of insanity.¹⁷ Chapter 140 helps to prevent these situations and to protect students from dangerous people who are still able to teach because they have been found not guilty by reason of insanity.¹⁸

Tyson Shower

Education; schoolbuses—unauthorized entry

Education Code § 39842 (new).
SB 83 (O'Connell); 1995 STAT. Ch. 175

Under existing law, the governing board¹ of a school district is authorized to provide for the transportation of pupils to and from school.² Existing law also authorizes the governing board of a school district to provide schoolbuses³ to transport persons for purposes of community recreation,⁴ and to transport district

16. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 1029, at 2 (Apr. 19, 1995); see Pyle, *supra* note 3 (quoting the author of the bill, Assemblymember Brooks Firestone, "You have here two certificates—one being certified criminally insane and the other a teaching credential—and the two do not go together").

17. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 1029, at 2 (Apr. 19, 1995); see Pyle, *supra* note 3 (reporting on a Los Angeles teacher who was permitted to teach children for 10 months after Los Angeles School District officials learned that he was an admitted killer and had been considered sane enough to be discharged by the court in 1982). *But see id.* (noting that the murder occurred 20 years ago).

18. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 1029, at 2 (Apr. 19, 1995); see *id.* (asserting that it is reasonable for parents to expect that teachers convicted of threatening offenses will not be allowed in the classroom).

1. See CAL. EDUC. CODE § 78 (West 1994) (defining a "governing board" as the board of school trustees for a city or county board of education); *id.* § 51017 (West 1989) (describing "governing board" as the county or city board of education empowered with the duty to establish the course of study for that district's schools).

2. *Id.* § 39800 (West 1993); see *id.* § 39820 (West 1993) (allowing the governing board to transport students over the age of three years and nine months to and from public school).

3. See *id.* § 39830 (West 1993) (defining "schoolbus" as a vehicle designed and used for the transportation of students); CAL. VEH. CODE § 545 (West Supp. 1995) (defining "schoolbus" as any motor vehicle used for the transportation of any school pupil at or below the 12th-grade level).

4. See CAL. EDUC. CODE § 10901(d) (West 1994) (defining "community recreation" as recreation under the control of a public authority or any camping or outdoor recreation activity sponsored by a nonprofit organization for the benefit of disadvantaged children).

employees and parents to and from educational activities authorized by the district.⁵

Under existing law, no person may climb upon any vehicle, whether it is at rest or in motion, with the intent to commit any malicious mischief, injury,⁶ or other crime.⁷ Further, it is a misdemeanor under existing law to assault a schoolbus driver, or any passenger on a bus.⁹

Chapter 175 makes it a misdemeanor for any person to board a schoolbus or school pupil activity bus¹⁰—without prior authorization of the driver or other school official—with the intent to commit any crime and then refuse to disembark after being ordered to do so.¹¹ Chapter 175 also authorizes the placement of a notice at the entrance of these buses to warn against unauthorized entry.¹²

COMMENT

Chapter 175 was introduced to help counter the existence of security problems that put both the driver and students at risk.¹³ There have been several incidents of persons entering schoolbuses and assaulting or threatening the driver

5. *Id.* §§ 39835(a), 39837.5 (West 1993).

6. *See* CAL. PENAL CODE § 243(f)(6) (West Supp. 1995) (defining “injury” to mean any physical injury which requires professional medical treatment).

7. CAL. VEH. CODE § 10853 (West 1987); *see id.* § 40000.9 (West 1985) (stating that a violation of California Vehicle Code § 10853 is a misdemeanor where there has been injury or tampering with the vehicle); *cf.* S.D. CODIFIED LAWS ANN. § 22-32-19 (Supp. 1995) (providing that any person who enters a vehicle with the intent to commit a crime is guilty of fourth degree burglary).

8. *See* CAL. PENAL CODE § 240 (West 1988) (explaining that an “assault” is an unlawful attempt, together with the present ability, to a commit a violent injury upon another person).

9. *Id.* § 241.3 (West 1988); *see id.* (providing that a conviction under California Penal Code § 241.3 is punishable by a fine of not more than \$2,000, or incarceration in the county jail for not more than one year, or both).

10. *See* CAL. EDUC. CODE § 39830.1 (West 1993) (defining “school pupil activity” bus as any vehicle, other than a schoolbus, used under a contractual agreement between a school and a common carrier to transport students to or from a school activity).

11. *Id.* § 39842(a) (enacted by Chapter 175); *see id.* (providing that a conviction is punishable by a fine not to exceed \$1000 or imprisonment for up to six months in the county jail, or both).

12. *Id.* § 39842(b) (enacted by Chapter 175); *see also* CAL. CODE REGS. tit. 13, § 1256.5(c)(3) (1995) (providing requirements for the posting of notices on schoolbuses).

13. SENATE COMMITTEE ON CRIMINAL PROCEDURE, COMMITTEE ANALYSIS OF SB 83, at 2 (Mar. 21, 1995); *see* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 83, at 2 (June 26, 1995) (reporting that there have been incidents of drug distribution and assaults on school buses which are intended to be deterred by SB 83).

and students that went unpunished due to loopholes in the law.¹⁴ Chapter 175 is intended to close these loopholes.¹⁵

However, critics contended that Chapter 175 was unnecessary because existing law already provided the intended protections.¹⁶

A. James Kachmar

Education; school districts adjacent to the international border—residency of pupils; augmentation of special education funding

Education Code §§ 48204.5, 48204.6 (new); Revenue and Taxation Code §§ 97.2, 97.3 (amended).
AB 687 (Goldsmith); 1995 STAT. Ch. 309
(Effective August 3, 1995)

Under existing law, a person's ability to attend a California public school is predicated on the person's residency within a California school district.¹ Existing law permits pupils whose actual and legal residence is in a foreign country adjacent to the international border, or whose residence is in a state adjacent to the state border, to attend school in border districts, though such pupils cannot be counted in the district's average daily attendance for apportionment of state funds.² Such a pupil's parents or district of residence are required to reimburse

14. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 83, at 2 (Apr. 27, 1995); *see, e.g.* TRANSCRIPT OF CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION ANNUAL CONVENTION, at 305-6 (Aug. 8-12, 1994) (copy on file with the *Pacific Law Journal*) (providing testimony of a student who was slapped by an individual while the student's parent watched and another incident where a parent boarded a bus to slap a student who was roughhousing with their child); Telephone Interview with Ron Kinney, Head of the Transportation Department for the State Department of Education (June 7, 1995) (notes on file with the *Pacific Law Journal*) (detailing an incident which occurred in May of 1995 in Gilroy, California, where a man boarded a schoolbus and demanded to be driven across town).

15. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 83, at 2 (June 6, 1995). *But see* SENATE COMMITTEE ON CRIMINAL PROCEDURE, COMMITTEE ANALYSIS OF SB 83, at 3 (Mar. 21, 1995) (stating that it is uncertain whether Chapter 175 will make the driver and students any safer); Telephone Interview with Ron Kinney, *supra* note 14 (stating that a sign will probably not deter a person from boarding a bus where that person has already formed a criminal intent).

16. SENATE COMMITTEE ON CRIMINAL PROCEDURE, COMMITTEE ANALYSIS OF SB 83, at 3 (Mar. 21, 1995); *see* CAL. PENAL CODE § 241.3 (West 1988) (providing punishment for the assault of a bus driver or passenger); *id.* § 241.6 (West Supp. 1995) (setting forth the punishment for an assault on a school employee); CAL. VEH. CODE § 10853 (1987) (proscribing the boarding of a vehicle with the intent to commit a crime).

1. CAL. EDUC. CODE § 48200 (West 1993); *see id.* (providing that all persons between the ages of 6 and 18 are subject to compulsory education, and requiring that education be accomplished by attendance at a school within the district in which such person's parent or legal guardian is located).

2. *Id.* §§ 48050-48052 (West 1993); *see id.* § 48050 (West 1993) (permitting school districts to admit pupils who live in adjoining states, provided that the pupil's district of residence pays to the receiving district the equivalent of one unit of average daily attendance, and specifying that the pupil's attendance may not be

the district of attendance for the total cost of the pupil's education, including cost of transportation, use of buildings and equipment, capital outlay, and repayment of bonds.³ Existing law also mandates that each school district must annually verify the names and addresses of each pupil's parents and the residence of each pupil.⁴

Chapter 309 creates a special provision for districts adjacent to the international border, declaring that they may face unique difficulties in verifying pupil residency, outlining the forms of evidence that such districts reasonably should accept to verify residency, and requiring such districts to investigate cases where any employee reasonably believes that parents have provided false or unreliable evidence.⁵ Chapter 309 further provides an appropriation of state funds to assist school districts in San Diego and Imperial Counties with pupil residency verification, but it conditions the allocation of those funds on development by the districts of appeals procedures for pupils who fail to verify residency.⁶

Existing law provides for property tax revenues not allocated to counties, cities, or special districts as a result of specified required reductions to be deposited in each county's Educational Revenue Augmentation Fund,⁷ thereafter to be allocated to school districts, county offices of education, and community college districts.⁸ Chapter 309 provides that any excess funds remaining after the initial allocations have been made from the Educational Revenue Augmentation

included in the computation of the district's average daily attendance); *id.* § 48051 (West 1993) (allowing districts to admit pupils who actually and legally reside in a foreign country adjacent to California, regardless of whether or not the pupil's parents are citizens of the United States); *id.* § 48052 (West 1993) (requiring school boards to levy the full cost of educating a pupil admitted under California Education Code § 48051 on the pupil's parents, and specifying that the pupil is not to be included within the computation of average daily attendance used for the apportionment of state funds).

3. *Id.* §§ 48050, 48052.

4. CAL. CODE REGS. tit. 5, § 432(b)(1)(F) (1992).

5. CAL. EDUC. CODE §§ 48204.5, 48204.6 (enacted by Chapter 309); *see id.* § 48204.6(a) (enacted by Chapter 309) (providing that school districts adjacent to the border may accept various forms of evidence of residence, including but not limited to tax or rent receipts, utility bills, and declarations by the parent or guardian).

6. 1995 Cal. Legis. Serv. ch. 309, secs. 5, 6, at 1516; *see id.* sec. 5, at 1516 (forbidding the county superintendents from allocating Chapter 309 funds to districts which have not developed appeals procedures substantially similar to those adopted by the Mountain Empire Unified School District in 1994); *id.* sec. 6(b), at 1516 (appropriating \$147,575 to the county superintendents of San Diego and Imperial counties for allocation to the districts); *id.* sec. 6(b), at 1516 (declaring the intent of the Legislature that the appropriation be made annually, with the amount adjusted to reflect changes in average daily attendance in the affected districts); *see also* Administrative Regulation 5111 of Mountain Empire Unified School District, sec. 7(A)-(B) (copy on file with the *Pacific Law Journal*) (requiring that the parent or guardian of a student considered for exclusion due to failure of residence must be given notice of the right to a hearing, mandating that the hearing officer must prepare a written decision, and providing that the parent or guardian may appeal the hearing officer's decision to the district's Governing Board).

7. *See* CAL. REV. & TAX CODE § 97(a)(2) (West Supp. 1995) (providing for existence of the Education Revenue Augmentation Fund to receive as deposits amounts not allocated to cities and counties as a result of specified reductions in property tax revenues).

8. *Id.* § 97.2(d)(1)-(3) (amended by Chapter 309).

Fund shall be counted as revenue to augment funding of special education programs, and it directs county auditors to make the required allocations.⁹

COMMENT

The purpose of Chapter 309 is to assist school districts adjacent to the Mexican border in complying with pupil residency requirements by providing for improved documentation by the districts of pupils' residency verification.¹⁰ Impetus for the creation and enactment of Chapter 309 was provided by an audit of Mountain Empire Unified School District conducted by the State Controller which found that the district had received \$1.3 million in overpayments due to failure to verify pupil residency, and also by a subsequent audit which found that six other international border districts lacked appropriate documentation of residency verification procedures.¹¹ The State Controller's audit, which ultimately led to the Mountain Empire District being forced to drop hundreds of non-resident students and pay a \$300,000 fine, was itself prompted by a videotaping by Assemblymember Goldsmith's staff which showed Mountain Empire school buses picking up children at the border and transporting them to district schools.¹²

The anticipated reduction of average daily attendance¹³ in the affected districts is expected to result in savings to the state of at least \$1 million per year.¹⁴ The mandated development of appeals procedures for pupils whose evidence of residency is found to be lacking is a prophylactic measure designed to ensure that such pupils have access to procedural due process before being expelled from the system.¹⁵

9. *Id.* §§ 97.2(d)(4)(B), 97.3(d)(4)(B) (amended by Chapter 309).

10. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 687, at 2 (Apr. 19, 1995); *see id.* (expressing the concern of the author of Chapter 309 over an audit of six San Diego County school districts by the State Controller which found all six lacked appropriate documentation of verification of residency and attributed to that lack of documentation an estimated average daily attendance overpayment to those districts of between \$840,000 and \$2.2 million per year).

11. *Id.* at 2; *see id.* (estimating that overpayments to the six districts audited subsequently amounted to between \$840,000 and \$2.2 million per year).

12. *Paying for Education Bill Would Monitor Border Districts*, SAN DIEGO UNION-TRIB., June 18, 1995, at B6; *see id.* (noting that exposure of the Mountain Empire District's enrollment-inflating practices also led to the district superintendent losing his job); *see also* Lillian S. Leopold, *State to Audit 5 Local Districts for Students' Residency Status*, SAN DIEGO UNION-TRIB., July 8, 1994, at B1 (reporting that 300 students eventually were dropped from the rolls of the Mountain Empire District due to failure to verify residency in the district, and quoting representatives of the five other border districts facing an audit by the state controller's office as expressing confidence that longstanding policies to verify student residency would prove to be adequate).

13. *See* CAL. EDUC. CODE § 46300(a) (West 1993) (defining "average daily attendance" generally as the number of pupils daily engaged in educational activities under the supervision of certificated county or school district personnel).

14. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 687, at 1 (May 17, 1995).

15. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 687, at 1 (June 1, 1995); *see* Telephone Interview with Norm Plotkin, Bill Consultant for Assemblymember Jan Goldsmith on AB 687 (July 5, 1995) (notes on file with the *Pacific Law Journal*) (noting that the requirement that district appeals procedures be modeled

The amendments to the Revenue and Taxation Code were tacked onto the original bill, which dealt only with residency verification requirements in international border school districts, on July 29, 1995 as a part of the bargaining process required to obtain passage of the entire state budget package.¹⁶ The urgency provision which rendered Chapter 309 effective as soon as signed was necessary in order to implement the Budget Act of 1995.¹⁷

Dan Johannes

Education; school facilities construction finance and joint ventures

Education Code §§ 17760, 17761, 17762, 17763, 17764, 17765, 17766 (new).

AB 481 (Goldsmith); 1995 STAT. Ch. 956

Existing law permits school districts to enter into joint ventures¹ for the purpose of using surplus school facilities.² Also, existing law—the Leroy F. Greene School Building Lease-Purchase Law of 1976³—provides funding to school districts for the financing of school facilities.⁴

specifically on that of Mountain Empire Unified School District was included at the insistence of California Rural Legal Assistance); *see also* *Goss v. Lopez*, 419 U.S. 565, 574 (1975) (holding that a student's entitlement to a public education, once it has been extended to the student by the state, is a property interest protected by the Due Process Clause of the Fourteenth Amendment).

16. Telephone Interview with Norm Plotkin, *supra* note 15; *see id.* (noting that there was no relation whatsoever, other than some general connection with education, between the original bill and the Revenue and Tax amendments, and expressing satisfaction that the language of the original bill was left intact and even benefitted by the addition of an urgency clause).

17. 1995 Cal. Legis. Serv. ch. 309, sec. 7, at 1516.

1. *See* CAL. EDUC. CODE § 17760(b) (enacted by Chapter 956) (defining a "joint venture" as two or more persons or organizations working together on a project and having the same legal characteristics as a partnership).

2. *Id.* § 17732.3 (West 1994); *see id.* § 17732.3(a) (West 1994) (providing that in order to use surplus school property, there currently must be no need, nor an expected need for the property, for any school purpose for the next 30 years); *cf.* 92 Op. Ohio Att'y Gen. 16 (1992) (permitting a local board of education to lease currently unused property so long as it cannot be sold advantageously).

3. *See* CAL. EDUC. CODE §§ 17700 (West 1994) (referring to California Education Code §§ 17700-17766 as the Leroy F. Greene State School Building Lease-Purchase Law of 1976); *id.* § 17701(a) (West 1994) (declaring that the reconstruction, remodel, or replacement of inadequate structures used for education is in the best interest of the residents of California and the state of California).

4. CAL. EDUC. CODE § 17701 (West 1994).

Chapter 956 expands existing law to allow school districts to enter into joint ventures with private entities for the construction⁵ of school facilities.⁶ Under Chapter 956, the facilities constructed through a joint venture project must be consistent with educational purposes and activities.⁷

Chapter 956 provides that a school district may apply to the State Allocation Board⁸ for funding for the school facilities portion of the cost of the property⁹ and construction of the facility.¹⁰

In addition, Chapter 956 sets forth the requirements for a school district joint venture request for proposal.¹¹ Chapter 956 also enumerates the requirements for a joint venture agreement.¹²

5. *See id.* § 17702.1 (West 1994) (defining “construction” to include such projects as those which update or replace existing facilities or those which involve the completion of deferred maintenance).

6. *Id.* § 17760(a) (enacted by Chapter 956); *see id.* § 17760(c) (enacted by Chapter 956) (setting forth such characteristics of a joint venture relationship as the joint use of the property on the project site, ground leases or alternative financing arrangements, and a construction agreement whereby the developer assumes responsibility for the design work and building construction and the school district provides the performance and program criteria); *id.* § 17660(d) (enacted by Chapter 956) (establishing that the price for the portion of the project which is funded by the state is determined through a bidding process; under this process all subcontract trade groups are to be included within the bidding for each contract group and the contract will go to the lowest bidder); *see also id.* § 17760(a) (enacted by Chapter 956) (clarifying that a school district acts as an independent entity, and not as an agent of the State Allocation Board, in a joint venture relationship); *id.* § 17764 (enacted by Chapter 956) (requiring that the selection of a design professional as part of a joint venture comply with California Government Code §§ 4525-.9); CAL. GOV'T CODE §§ 4525-.9 (West 1980 & Supp. 1995) (discussing the requirements for contracting with private architecture and engineering firms). *But cf.* 92 Op. Ohio Att'y Gen. 16 (1992) (finding that a joint venture of public and private entities in the ownership of real property violates the Ohio Constitution).

7. CAL. EDUC. CODE § 17760(e) (enacted by Chapter 956).

8. *See id.* § 17705(a)-(e) (West 1994) (enumerating the duties and powers granted to the State Allocation Board, including the ability to fix rates, rents, or costs of projects); *see also id.* § 17704 (West 1994) (providing that the members of the State Allocation Board are to receive reimbursement only for actual and necessary expenses incurred).

9. *See id.* § 17702(e) (West 1994) (defining “property” to encompass either real or personal property).

10. *Id.* § 17761(a)-(c) (enacted by Chapter 956). *But see id.* § 17660(f) (enacted by Chapter 956) (mandating that the cost of any project which is funded under California Education Code §§ 17760-17765 must not exceed the maximum cost allowed for a project funded under California Education Code §§ 17700-17765); *id.* § 17701(b) (West 1994) (declaring that funds allocated for the reconstruction of nonconforming buildings may not exceed 75 percent of the cost of replacing the facility).

11. *Id.* § 17761(d) (enacted by Chapter 956); *see id.* (requiring a request for proposal to include, but not limited to, the following: (1) a specific description of what is to be constructed with an accounting of the costs, (2) identification of the educational uses of the existing building or land as compared to the uses proposed by the joint venture, (3) identification of the current noneducational uses of the property as compared to the uses proposed by the joint venture as well as an assessment of the proposed uses and any applicable governmental zoning or land use restriction, (4) a description of the school district's prospective economic benefit from participating in the joint venture, (5) a description of the school district's prospective educational benefit from participating in the joint venture, and (6) a comprehensive description of the joint venture and its financing).

12. *Id.* § 17762(b) (enacted by Chapter 956); *see id.* (requiring that a joint venture agreement possess the cost that the school district will pay the developer for the project, a detailed description of the project, the timeline for completion of the project, and a provision stating that state liability is nonexistent if funding is unavailable within the four-year period specified in California Education Code § 17763); *see also id.* § 17762(c) (enacted by Chapter 956) (providing that a joint venture agreement may include provisions regarding developer liability for costs exceeding those proposed, an incentive for completing the project under cost and that if any lien is attached to the property, it may only attach to the portion of the project for which state funds

Construction through a joint venture established under Chapter 956 must comply with existing law regarding the construction of school facilities.¹³

Finally, Chapter 956 provides that upon the completion of a joint venture agreement, the agreement is subject to final review by the State Allocation Board.¹⁴

COMMENT

By allowing school districts to enter into joint ventures, Chapter 956 capitalizes on the acumen that exists within the private sector regarding the construction of facilities.¹⁵ In addition, as the need for school facilities is growing and available funding is being depleted, Chapter 956 allows school districts, working in a joint venture, to develop innovative solutions by sharing construction and operating costs of needed facilities.¹⁶

are expended); *id.* § 17763 (enacted by Chapter 956) (noting that the day the State Allocation Board approves the project is the same day as funding eligibility for that project); *id.* (stating that funds may be appropriated any time within the four-year period following the funding eligibility date).

13. *Id.* § 17765 (enacted by Chapter 956); *see id.* (mandating that any design and construction under Chapter 956 must comply with §§ 39140-39159 of the California Education Code); *id.* §§ 39140-39159 (West 1993 & Supp. 1995) (setting forth the construction requirements for educational facilities); *see also id.* § 17766 (enacted by Chapter 956) (requiring that a school district comply with the prevailing wage requirements described in California Labor Code § 1770); CAL. LAB. CODE § 1770 (West 1989) (granting the Director of the Department of Industrial Relations the authority to determine the general prevailing rate of per diem wages for public work); *id.* (noting that payment of per diem wages greater than the general prevailing rate is permissible).

14. *Id.* § 17763 (enacted by Chapter 956); *see id.* (requiring the State Allocation Board to decide whether to fund the joint venture project within 60 days of receipt of the agreement); *id.* (declaring that the date of approval is the same as the date of funding eligibility); *id.* (explaining that although a date of funding eligibility exists, the apportionment of the funding may not occur for up to four years); *see also id.* (specifying that the exact amount of reimbursement is determined at the conclusion of the project and is determined from the actual subcontract trade and bids and other costs determined by California Education Code § 17719.3); *id.* § 17719.3(c) (West 1994) (providing that the board will authorize the expenditure of funds where the contracting of such services is necessary and appropriate to the development or implementation of the project). *But see id.* § 17763 (enacted by Chapter 956) (noting that a decision by the State Allocation Board with respect to whether to fund a project is not an approval or disapproval of the terms and conditions of the joint venture agreement).

15. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 481, at 2 (May 17, 1995); *see* Letter from Dwight Hansen, Legislative Advocate, California Building Industry, to Senate Education Committee (June 8, 1995) (copy on file with the *Pacific Law Journal*) (recognizing that AB 481 will allow the private sector to play a role in implementing a cost-effective school construction process).

16. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 481, at 2 (Mar. 22, 1995); *see id.* (stating that over \$800 million is required to complete school construction projects already approved); *id.* (noting that with the failure of a \$1 billion state general obligation bond in June 1994 and the absence of bond measures on the November 1994 ballot, the program for the construction of school facilities is basically bankrupt); Letter from Dwight Hansen, *supra* note 15 (noting that the growth in the student population is taxing the available resources for providing additional classrooms); *see also* ASSEMBLY COMMITTEE ON APPROPRIATION, COMMITTEE ANALYSIS OF AB 481, at 1-2 (May 17, 1995) (recognizing that with the ability to share financing and the opportunity for incentives, there is the potential for an overall savings to school districts); Deborah Anderluh, *A State of Decay*, SACRAMENTO BEE, July 16, 1995, at A1 (declaring that a statewide crisis exists in that there is a \$2 billion backlog in deferred maintenance and modernization projects in California public schools); *id.* (discussing the general state of disrepair and need for repair in several Sacramento area school districts). *See generally* 95 GEN. ACCT. OFF. REP. 95 (1995) (discussing existing school

Finally, in response to opponent's concerns regarding the threat of liability to the state of California, Chapter 956 exempts the State Allocation Board, its members or agents from liability and adds a provision that no state liability exists if funding for the project is not secured within a four-year period.¹⁷

Pamela J. Keeler

Education; truant students

Education Code § 48260 (amended).
SB 102 (Hughes); 1995 STAT. Ch. 19

Under existing law, a truant is defined as any pupil subject to compulsory full-time education or to continuing education¹ who is absent for a full day without a valid excuse for more than three days in one school year.² In addition, a pupil who is tardy in excess of thirty minutes on each of more than three days in one school year is a truant.³

facilities and their inadequacy in meeting current educational needs as well as the anticipated educational needs for the 21st century).

17. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 481, at 2 (May 17, 1995); *see id.* (stating that AB 481 addressed concerns regarding state liability); *see also* CAL. EDUC. CODE § 17762(b)(4) (enacted by Chapter 956) (requiring that joint venture agreements include a statement which says that state liability will not attach if funding is not secured within four years as provided for in California Education Code § 17763); *id.* § 17763 (enacted by Chapter 956) (declaring that the State Allocation Board is not a party to a joint venture agreement; therefore, it is exempt from liability concerning the approval or disapproval of an agreement); *id.* (entitling the State Allocation Board, its agents, officers, and employees to indemnification for any loss or liability caused by the joint venture); SENATE COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 481, at 2 (July 12, 1995) (noting that Governor Wilson vetoed similar legislation during the 1993-1994 legislative session because the measure was too broad and lacked sufficient fiscal controls, and recognizing that the provisions of AB 481 address Governor Wilson's concerns).

1. *See* CAL. EDUC. CODE § 48432 (West 1993) (requiring the governing board of each high school district and each unified school district establish and maintain special continuation classes); *see also id.* § 48430 (West 1993) (indicating that "continuation schools and classes" must provide the following: (1) opportunity for students to complete the academic courses required to graduate from high school; (2) a program of instruction program emphasizing occupational orientation or a work-study schedule and offers intensive guidance services to pupils; and (3) a program designed to meet the educational needs of each student, including, independent study, regional occupation programs, work study, career counseling, and job placement services, as a supplement to classroom instruction).

2. *Id.* § 48260(a) (amended by Chapter 19).

3. *Id.*; *see id.* (providing that the truant student will be reported to the attendance supervisor or to the superintendent of the school district); *see also id.* § 35026 (West 1993) (specifying that the governing board of any school district with eight or more teachers may employ a district superintendent for one or more schools); *id.* § 48240 (West 1993) (requiring that the Board of Education of any school district or county appoint a supervisor of attendance and such assistant supervisors of attendance as may be necessary to supervise the attendance of pupils in the district or county); *cf.* DEL. CODE ANN. tit. 31, § 301(4) (1985) (specifying that "truancy" or "truant" refers to a pupil enrolled in grades 1 through 12, inclusive, who has been absent from school without a valid excuse, for more than three days or the equivalent thereof during any given school year); KY. REV. STAT. ANN. § 159.150 (Baldwin 1994) (defining a "truant student" as any child who

Chapter 19 expands the definition of when a student may be declared a truant to include a student who is absent from school for more than thirty minutes but less than a full day on three occasions, without a valid excuse.⁴ In addition, a pupil will be classified as a truant if he or she is absent without a valid excuse for three full days in one school year.⁵ With the enactment of Chapter 19, school districts are permitted to combine unexcused absences and tardiness to categorize a pupil as a truant if the pupil is either tardy or absent without an excuse for three days.⁶

COMMENT

Every day, thousands of students are missing from classrooms in California schools.⁷ Truancy can be a gateway to poor academic performance, and it also increases the chance that a young person will become a dropout or even a criminal.⁸ With the enactment of Chapter 19, the definition of truant students has been expanded to include those students who are in class on time, but leave school unexcused for thirty minutes or more during the day.⁹

has been absent for three or more days, or tardy on three or more days); *id.* (stating that any child reported as truant three or more times is a habitual truant, and that being absent for less than half of a school day will only be deemed a tardy).

4. CAL. EDUC. CODE. § 48260(a) (amended by Chapter 19).

5. *Id.*

6. *Id.*; *see id.* § 48260(b) (amended by Chapter 19) (stating that the Legislature intends that school districts not alter the attendance accounting method provided under existing law and, also shall not be obliged to maintain period-by-period attendance accounting).

7. Beth Shuster, *L.A. School Truancy Exacts a Growing Social Price*, L.A. TIMES, June 28, 1995, at A1.

8. B.G. Gregg, *Truancy Teaches Parents Lesson Court Ordered Classes Designed to Improve Child's School Attendance*, CIN. ENQ., June 21, 1995, at C1; *see Shuster, supra note 7* (reporting that widespread truancy is a cause of the following: (1) an alarmingly high dropout rate; (2) rising daytime crime rates; (3) an increasing burden on taxpayers to pay for uneducated youngsters who end up on welfare; and (4) a higher risk of truant children being drawn into behavior involving drugs, alcohol, or violence); *id.* (noting that in 1980 in Los Angeles, 63% of ninth-graders remained in school long enough to get a diploma, but in 1990, that rate dropped to only 52%); *id.* at A3 (citing experts who suggest that it is easier for students to get away with skipping school because of an increase in the number of working and single parents who are rarely home during the day to supervise their children); *id.* (noting that allowing students to leave campus for lunches fosters truancy). *See generally* Dragan Milovanovic, *Adolescent Subcultures and Delinquency*, By Herman Schwendinger and Julia Schwendinger, 76 J. CRIM. L. & CRIMINOLOGY 794, 798 (1985) (asserting that specific delinquent behaviors occur in three phases and the first phase develops during the preteen years and is characterized by incipient forms of criminality in the form of truancy, vandalism, and alcohol abuse).

9. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 102, at 2 (May 25, 1995). *See generally How to Solve Attendance Problems at City Schools*, IND. STAR, July 5, 1995, at A9 (noting the Indianapolis Public Schools superintendent's plans to address student attendance as the following: (1) monthly truancy sweeps of the community, (2) holding students accountable for attendance, (3) seeking the assistance of the business community to ask that they not employ students during school hours or after curfew hours, and (4) asking parent to not allow children to use their home as a haven for youth who have skipped school for the day); Shuster, *supra note 7* (discussing various efforts by school districts to curb truancy rates).

Improving the overall educational level of the community helps to reduce crime rates.¹⁰ Chapter 19 will augment both of these goals by targeting those students who are skipping school.¹¹ Those students who leave school early will not be able to escape the classification as a truant student because of the enactment of Chapter 19, which labels students who are skipping classes as truants.¹²

However, truant students should claim that they cannot be forced to go to school may challenge Chapter 19 pursuant to the Supreme Court decision in *Wisconsin v. Yoder*.¹³ In that case, the Court held that the state does not have the right to impose mandatory education on children when the imposition interferes with other fundamental rights.¹⁴

However, Chapter 19 would easily survive such an attack, for there is no fundamental right to skip school, and the state is advancing significant interests by imposing mandatory education.¹⁵

Tad A. Devlin

10. Debra Elliott-Tenort, *Education Can Reduce Crime, Rout Tells Group*, Com. Appeal, Apr. 27, 1995, at 3B.

11. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 102, at 2 (Mar. 16, 1995); *see id.* (asserting that Chapter 19 is primarily a technical clean-up of SB 1728, which intended to strengthen the laws governing truancy by reducing the number of full day absences it takes to qualify as a truant from four days to three); *id.* (declaring that school districts were questioning the idea of having two separate catalysts, unexcused absences and unexcused tardies, to determine a truant student).

12. *Id.*

13. 406 U.S. 205 (1972).

14. *See id.* at 213 (discussing how the State of Wisconsin attempted to impose mandatory education on Amish children, and noting that the majority of the Wisconsin Supreme court felt that the State failed to make an adequate showing that its interest in establishing and maintaining an educational system was more pervasive than the Amish peoples' right to the free exercise of their religion).

15. *Id.* at 213; *see id.* (indicating that the State has a high responsibility for education of its citizens and may impose reasonable regulations for the control and duration of basic education).

