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Education

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Education

Education; violence in schools

Penal Code §627.11 (repealed); §§627.4, 627.7, 627.8(a) (new); §§241.2, 241.3, 243.2, 243.3, 627, 627.8 (amended).

AB 2480 (Sher); 1984 STAT. Ch 483

AB 2484 (La Follette); 1984 STAT. Ch 395

Chapters 483 and 395, in an effort to reduce violence in schools, increase punishment measures in school violence cases¹ and enable school officials to remove outsiders from school grounds.²

Assault and Battery Committed on School Grounds

Under prior law, an assault or battery committed on teachers, student teachers, school security officers, or school administrators while performing their duties³ was punishable by a fine of \$1,000, one year in prison, or both, if the assailant knew or had reason to know that the victims were performing their official duties. Chapter 483 provides increased punishment to \$2,000, one year in prison, or both, for an assault or battery committed against *any* person on school grounds.⁴

Bus Driver Protection

Prior law provided punishment of one year in prison, \$1,000 fine, or both, for committing an assault or battery on a driver or operator of public transportation.⁵ Existing law provides special protection to drivers or operators of buses, taxicabs, streetcars, cablecars, trackless

1. CAL. PENAL CODE §§241.2, 241.3, 243.3.

2. *Id.* §627.

3. 1982 Cal. Stat. c. 1087, §1, at 5663 (enacting CAL. PENAL CODE §241.2) (provision for assaults). 1982 Cal. Stat. c. 1087, §2, at 5663 (enacting CAL. PENAL CODE §243.2) (provision for batteries).

4. CAL. PENAL CODE §§241.2, 243.2. School is defined as any elementary school, four-year high school, senior high school, adult school, or any branch of an adult school, continuation high school, regional occupational center, evening high school or technical high school. *Id.* See also CAL. EDUC. CODE §25500 (definition of school).

5. 1982 CAL. STAT. c. 172, §§2, 3, at 543 (enacting CAL. PENAL CODE §§241.3, 243.3).

6. CAL. PENAL CODE §§241.2, 243.3.

trolleys, and motor vehicles.⁶ Chapter 483 extends this protection to school bus drivers or operators, and increases the punishment to \$2,000, one year in prison, or both.⁷

Outsiders on School Grounds

Under existing law, an outsider⁸ is not allowed to enter or remain on school grounds during school hours without having registered with the school principal.⁹ Chapter 395 provides that a principal may refuse¹⁰ to register an outsider or may revoke an outsider's registration if the principal or security officer has a reasonable basis for concluding that the outsider's presence or acts would (1) disrupt the school, students, teachers, or other school employees; (2) result in damage to property; or (3) result in the distribution or use of unlawful or controlled substances.¹¹

Failing or refusing to leave school grounds after being requested to do so by the principal or school security officer, entering or remaining on school grounds without registering, or entering or remaining on school grounds after the registration has been revoked is a misdemeanor under Chapter 395, punishable by six months in prison, a \$500 fine, or both.¹² An outsider who has violated Chapter 395 within seven years of a prior conviction or who has been convicted twice is subject to a compulsory jail sentence¹³ and may be fined.¹⁴

7. *Id.* §§241.2, 243.3.

8. *Id.* §627.1 (definition of outsiders).

9. *Id.* §627.2 The outsiders may enter school grounds only to proceed to the principal's office to be registered and must follow the designated route if signs are posted. *Id.*

10. CAL. PENAL CODE §627.4 (principal is defined as the principal or the principal's designee).

11. *Id.* (the principal or security officer may revoke the outsider's registration).

12. *Id.* §627.7

13. The compulsory prison sentence is not less than 10 days and not more than six months in the county jail. *Id.* §627.8.

14. *Id.*

Education; sex discrimination and sexual harassment

Education Code §212.5 (new); §230 (amended).
SB 2252 (Marks); 1984 STAT. Ch 1371

Existing law prohibits discrimination on the basis of sex¹ in any program or activity conducted by an educational institution² receiving

1. CAL. EDUC. CODE §212 (definition of sex for purpose of discrimination).

2. *Id.* §210 (definition of educational institution).

or benefiting from state financial assistance,³ or enrolling students who receive state financial aid.⁴ Discriminatory practices are prohibited in (1) academic programs and activities,⁵ (2) the administration of student financial aid,⁶ (3) athletic programs,⁷ (4) employment practices,⁸ and (5) the application of rules relating to marital or parental status.⁹ Chapter 1371 specifies that sexual harassment is also a form of sex-based discrimination¹⁰ and therefore subject to the prohibitions against sex discrimination in educational institutions.¹¹

Chapter 1371 defines sexual harassment as unwelcome sexual advances,¹² requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature by someone from or in the work or educational setting.¹³ Conduct constitutes sexual harassment when

3. *Id.* §213 (definition of state financial assistance).

4. *Id.* §§200-264 (Sex Equity in Education Act.) In order to receive state financial assistance or student financial aid, an educational institution is required by law to provide assurances to agencies administering state aid that programs and activities will be conducted without discrimination on the basis of sex. *Id.* §250. *See also id.* §214 (definition of state student financial aid).

5. *See id.* §230(a).

6. *See id.* §230(b). The administration of student financial aid that is established by wills, bequests, trusts, or acts of a foreign government and restricted to members of a particular sex is allowed if the overall effect of the aid award does not discriminate on the basis of sex. *Id.*

7. *See id.* §230(c).

8. *See id.* §230(d). This provision includes both students and non-students, academic and nonacademic personnel. Consideration of sex as it relates to a bona fide occupational qualification is not prohibited. *Id.*

9. *Id.* §230(a)-(e). The exclusion of persons from programs, activities or employment because of marital status or pregnancy is discriminatory. *Id.* §230(e). *See also* CAL. GOV'T CODE §12943 (unlawful employment practice for schools to make employment decisions based on pregnancy).

10. Some courts initially rejected claims that sexual harassment constituted sexual discrimination prohibited by the Civil Rights Act of 1964, 42 U.S.C. §2000e. *See* Bryan, *Sexual Harassment as Unlawful Discrimination under Title VII of the Civil Rights Act of 1964*, 14 LOY. L.A.L. REV. 25, 47-54 (1981). *See also* Barnes v. Train, 13 Fair Empl. Prac. Cas. (BNA) 123 (1974) (sexual harassment, though inexcusable, does not evidence an arbitrary barrier to continued employment based on plaintiff's sex) *rev'd sub nom* Barnes v. Costle, 561 F.2d 983 (D.C. Cir. 1977) (sexual harassment is discrimination based on gender because supervisor would not have sought sexual favors from a male, and the request was linked to a condition of employment). In 1979 and 1980, the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP) promulgated regulations specifying that sexual discrimination under Title VII of the Civil Rights Act. 29 C.F.R. §1604.11, 41 C.F.R. §60-20.8. *See generally* Bryan, *supra*, at 39-47 (analysis of sexual harassment as sex-based discrimination).

11. CAL. EDUC. CODE §§230, 230(a), 230(d). *Compare* CAL. GOV'T CODE §§12940, 12960 (prohibiting harassment as discrimination in employment practices). *See Review of Selected 1982 California Legislation*, 14 PAC. L.J. 629 (1983). *See also* 2 CAL. ADMIN. CODE §7287.9 (explanation of harassment as used in CAL. GOV'T CODE §12940).

12. Federal law does not require a showing that plaintiff resisted sexual advances or that resistance caused the loss of tangible job benefits. *Bundy v. Jackson*, 641 F.2d 934, 945-46 (D.C. Cir. 1981). Under federal law, other employees may bring a sex discrimination action if an employee submits to sexual advances and receives benefits denied to the others. 29 C.F.R. §1604.11(g).

13. CAL. EDUC. CODE §212.5. Most cases discuss harassment of women by men, although the legal principles would be equally applicable to harassment of men. Bryan, *supra* note 10, at 25. Under federal law, an employer may be responsible for sexual harassment by a supervisor if the employer has knowledge of it and takes no remedial action. *See* *Tompkins v. Public*

Education

it concurs with the following conditions: (1) submission to the conduct is made an implied or express condition of employment or academic status; (2) employment or academic decisions relating to the individual are based on submission to or rejection of the conduct; (3) the conduct negatively affects the individual's work or academic performance, or creates an intimidating, hostile or offensive work or educational environment; or (4) decisions regarding benefits, services, honors, programs, or activities available through the educational institution are based on submission to or rejection of the conduct.¹⁴

Service Electric and Gas Co., 568 F.2d 1044, 1048 (3rd Cir. 1977). See also EEOC guidelines, 29 C.F.R. §1604.11(d), (e), explicitly holding employer liable for actions of supervisors and managers when employer knows of harassment and fails to take appropriate action. *But see* Miller v. Bank of America, 600 F.2d 211, 213 (9th Cir. 1979) (holding employer responsible regardless of knowledge of harassment by supervisor). See Bryan, *supra* note 10, at 35.

14. CAL. EDUC. CODE §212.5(a)-(c). The definition provided by Chapter 1371 closely parallels the EEOC guidelines, *supra* note 13, §1604.11(a)-(f). See Bryan, *supra* note 10, at 47-54 (analysis of EEOC definition).

Education; suspension and expulsion

Education Code §48900 (amended).

AB 3151 (Sebastiani); 1984 STAT. Ch 536

Existing law provides that a pupil may be suspended or recommended for expulsion from school for acts or conduct¹ related to school activity or attendance.² Under existing law, an unlawful offer, arrangement, or negotiation to sell drug paraphernalia³ is a ground for suspension or an expulsion recommendation.⁴ Chapter 536 provides that unlawful *possession* of drug paraphernalia is a ground for suspension or expulsion recommendation.⁵

1. CAL. EDUC. CODE §48900(a)-(k) (acts and conduct that provide schools with grounds for suspension and expulsion recommendations). See generally *Review of Selected 1982 California Legislation*, 14 PAC. L.J. 621 (1983) (analyzing the grounds and procedures for suspending and expelling students).

2. See CAL. EDUC. CODE §48900. Acts that are properly related to school activity or attendance are those which occur while on school grounds, going to or coming from school, during the lunch period whether on or off the campus, during, or while going to or coming from, a school sponsored activity. *Id.*

3. CAL. HEALTH & SAFETY CODE §11364.5(d) (partial list of items considered to be drug paraphernalia).

4. CAL. EDUC. CODE §48900(j).

5. *Id.*

Comment

In 1982, the California Legislature, in an apparent attempt to curb drug use and to bolster efforts to enforce drug possession laws, expanded police opportunities to arrest and search drug users.⁶ Statutory provisions concerning search and seizure of drug paraphernalia, however, have been held to violate the fourth amendment of the United States Constitution.⁷ In the case of *In re W.*,⁸ the court indicated that a *criminal* drug paraphernalia possession statute might be judged constitutionally infirm based on the fourth amendment, yet, a similar statute that regulates the power and responsibility of school officials to protect the welfare of children might be upheld as constitutional.⁹ Therefore, while the constitutional soundness of many criminal drug paraphernalia possession statutes is not clearly defined, the possession statutes designed to help school officials accomplish their duties do not seem to be in jeopardy.¹⁰

6. See CAL. HEALTH & SAFETY CODE §11364; Note, *Paraphernalia for Marijuana and Hashish Use: Possession Statutes and Indiana's Pipe Dream*, 10 VAL. U.L. REV. 353, 360 (1976).

7. See *Geiger v. City of Eagan*, 618 F.2d 26, 29 (8th Cir. 1980), *Review of Selected 1982 California Legislation*, 14 PAC. L.J. 541 (1983) (discussion of statutes patterned after the Model Drug Paraphernalia Act); see also Note, *Paraphernalia for Marijuana and Hashish Use: Possession Statutes and Indiana's Pipe Dream*, 10 VAL. U.L. REV. 353, 367 (1976) (fourth amendment implications of vague pipe possession statutes). Cf. *In re Donaldson*, 269 Cal. App. 2d 509, 511, 75 Cal. Rptr. 220, 222 (1969) (California appellate decision holding that school officials are not government officials within the meaning of the fourth amendment and, therefore, their actions do not come under the constitutional prohibition against unreasonable search and seizure). See generally Note, *The Constitutionality of Anti-Drug Paraphernalia Laws—The Smoke Clears*, 58 NOTRE DAME LAW. 833, 840-55 (1983) (the constitutionality of anti-drug paraphernalia statutes modeled after the Model Drug Paraphernalia Act).

8. 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1973).

9. See, *In re W.*, 29 Cal. App. 3d at 781, 105 Cal. Rptr. at 777. *But see Jones v. Latexco Independent School Dist.*, 499 F. Supp. 223, 236 (E.D. Texas 1980) (the doctrine of *in loco parentis* does not render the fourth amendment completely inapplicable to school searches, nor does the doctrine strip the students of their constitutional rights).

10. See *supra* notes 6-9 and accompanying text.

Education; private school employees

Education Code §§33191, 44237 (new).

AB 2989 (Bates); 1984 STAT. Ch 1088

Under existing law, the Commission for Teacher Preparation and Licensing¹ may secure information on applicants for state teaching credentials from the Department of Justice (hereinafter referred to

1. This commission is also referred to as the Commission on Teacher Credentialing. CAL. EDUC. CODE §44203. See *id.*, §44210 (stating the composition of the commission).

as Department).² Chapter 1088 requires private elementary and high schools³ to obtain similar information on applicants for teaching positions⁴ from the Department of Justice.⁵ Chapter 1088 specifies that before beginning employment, each new employee must forward fingerprints and a request for a criminal record summary to the Department.⁶ The Department must furnish the requested information to the employer.⁷ The criminal record summary must be limited to convictions for crimes involving sex,⁸ drugs,⁹ or violence.¹⁰ If rehabilitation has taken place the new employee is responsible for submitting this fact to the employer.¹¹

Under Chapter 1088, private elementary and high schools¹² must file a statement¹³ with the Superintendent of Public Instruction verifying that each new employee¹⁴ is required to obtain a criminal record summary from the Department of Justice.¹⁵ This statement must be filed between October 1 and October 15 of each year.¹⁶ When the instructor also serves as the administrator, the statement must be made available to the parents or guardians of all pupils currently enrolled and to any parent or guardian considering whether to enroll a child in the school.¹⁷

2. *Id.* §44341.

3. Chapter 1088 applies to every person, firm, association, partnership, or corporation offering or conducting private school instruction at the elementary or high school level. *Id.* §33190.

4. Chapter 1088 applies to any new employee having contact with minor pupils and not possessing a valid state teaching credential. *Id.* §33191(a).

5. *Id.* §44237(a).

6. *Id.* §44237(b).

7. *Id.* §44237(a).

8. Sex crime is defined as a conviction for any violation or attempted violation of sections 220, 261, 261.5, 264.1, 266, 266j, 267, 273a, 273d, 285, 286, 288, 289, 311.3, 311.4, 313.1, 314, 647a, 647b, or 647d of the Penal Code, or commitment as a mentally disordered sex offender under section 6300 of the Welfare and Institutions Code. CAL. EDUC. CODE §44237(c)(2).

9. Drug crime is defined as a felony conviction for a violation or attempted violation of the Uniform Controlled Substance Act as set forth in sections 11000 through 11645 of the Health and Safety Code. CAL. EDUC. CODE §44237(c)(3).

10. Crime of violence is defined as a conviction for any of the offenses specified in subdivision (c) of section 667.5 of the Penal Code, or a violation or attempted violation of sections 236 through 247 of the Penal Code. CAL. EDUC. CODE §44237(c)(4).

11. CAL. EDUC. CODE §44237(d).

12. This provision refers to those private schools that do not require their personnel to possess a state teaching credential. *Id.* §44237(a).

13. *Id.* §33191(a) (statement made under penalty of perjury).

14. Only new employees having contact with minor pupils and not possessing a valid state teaching credential come within this provision. *Id.*

15. *Id.*

16. Private schools must comply with Chapter 1008 commencing October 1, 1985. *Id.* §33191(a).

17. *Id.* §33191(b).