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Education

Education; pupil discipline

Education Code §§48900, 48901, 48902, 48903, 48903.5, 48905, 48906, 48907, 48910, 48911, 48912 (repealed); §§48900, 48900.2, 48901, 48903, 48903.5, 48903.6, 48904, 48904.5, 48905 (new); §§35291, 48909, 48914, 48915 (amended).
AB 530 (Hart); STATS 1977, Ch 965
Support: American Civil Liberties Union; American Federation of Teachers; California School Board Assocation

Chapter 965 appears to make fundamental changes in the disciplinary systems used in California public schools. Prior to the enactment of Chapter 965, teachers and principles could suspend and governing boards could expel pupils upon a showing of "good cause" [*See, e.g.*, CAL. EDUC. CODE §§48901-48903.5, *as amended*, CAL. STATS. 1976, c. 1010, §2, at —]. Chapter 965 has narrowed the discretionary application of suspension and expulsion as disciplinary measures by substituting specific criteria against which such decisions by teachers [CAL. EDUC. CODE §48901], principals [CAL. EDUC. CODE §48903], and governing boards [CAL. EDUC. CODE §48904.5] must be measured. The new exclusive grounds for suspension and expulsion are: (1) causing, threatening, or attempting to cause property damage or physical injury to another except in self-defense; (2) possessing, selling, or furnishing a firearm, knife, explosive, or other dangerous object of no reasonable use; (3) unlawfully possessing, using, selling, or being under the influence of any alcoholic beverage or intoxicant of any kind; (4) possessing or using tobacco on school premises except as allowed by Section 48903.6 of the Education Code; (5) committing an obscene act or engaging in habitual profanity or vulgarity; and (6) disrupting school activity or willfully defying valid school authority [CAL. EDUC. CODE §48900]. For the purposes of Chapter 965 "suspension" means exclusion of a pupil from regular classroom instruction for adjustment purposes [CAL. EDUC. CODE §48900]. Furthermore, the legislature has expressly indicated that alternatives to suspension or expulsion are to be imposed against students who are tardy, truant, or otherwise absent from school [CAL. EDUC. CODE §48900]. Additionally, the failure of other means of correction to bring about proper conduct is a precondition to suspension [CAL. EDUC. CODE §48900.2] or expulsion [CAL. EDUC. CODE §48904.5], although the principal may suspend a pupil on any of the above listed grounds if a determination is made that the pupil's continued presence causes danger to persons or property or is a threat to disrupt the educational process [CAL. EDUC. CODE

§48900.2]. Testimony of educational professionals as to their past experience with particular behavior and its effect on the educational process has been held sufficient to support a suspension on this exceptional ground [Baker v. Downey City Bd. of Educ., 307 F. Supp. 517, 522 (C.D. Cal. 1969); Montalvo v. Madera Unified School Dist. Bd. of Educ., 21 Cal. App. 3d 323, 330, 98 Cal. Rptr. 593, 598 (1971)].

Under the prior law there were no definite time limits applied to the decisional and appellate procedures required for the administration of pupil discipline [*See, e.g.*, CAL. EDUC. CODE §§48900, 48910, *as amended*, CAL. STATS. 1976, c. 1010, §2, at —]. Chapter 965 incorporates several such requirements. All parents and guardians must now be notified by the governing board of the availability of district rules pertaining to student discipline, and each entering or continuing student must be provided with such rules each school year [CAL. EDUC. CODE §35291]. Prior to the actual suspension of a pupil, Chapter 965 requires that a principal hold an informal conference with a pupil, during which the pupil must be informed of the reason for the disciplinary action, presented with the evidence against him or her, and given an opportunity to present his or her version and evidence in defense [CAL. EDUC. CODE §48903(b)]. This conference may be postponed for a period not to exceed 72 hours from the time suspension was ordered *only* if the continued presence of the pupil poses a clear and present danger to the lives, safety or health of school pupils or personnel [CAL. EDUC. CODE §48903(c)]. Further, within 24 hours of the beginning of a suspension the principal must attempt to notify the pupil's parent or guardian, orally and in writing, of the reasons for and duration of the suspension, the right of the parent or guardian to seek administrative review of the suspension in a meeting with the district superintendent, and the requirement that the parent or guardian respond to a request for a meeting with school officials to discuss the pupil's behavior [CAL. EDUC. CODE §48903(e)]. In response to a request for administrative review, the superintendent must hold a meeting within three school days of the request and render a decision within two school days of the meeting [CAL. EDUC. CODE §48904]. In cases of expulsion, prior law entitled the pupil and his or her parent or guardian to a hearing before the district governing board or an appointed hearing officer or panel [CAL. EDUC. CODE §48914, *as amended*, CAL. STATS. 1976, c. 1010, §2, at 1211]. Chapter 965 adds time constraints to this process by now requiring that a notice of this hearing be forwarded to the pupil and his or her parent or guardian at least ten days prior thereto [CAL. EDUC. CODE §48914(g)], that the hearing be held within 20 calendar days of the date expulsion is recommended or 25 calendar days of the date suspension is ordered, whichever is shorter [CAL. EDUC. CODE §48914(a)], and that a determination be made within three calendar days of completion of this

hearing [CAL. EDUC. CODE §48914(d)]. Prior law entitled the pupil and his or her parent or guardian to appeal a governing board expulsion decision to the county board of education [CAL. EDUC. CODE §48915, *as amended*, CAL. STATS. 1976, c. 1010, §2, at 1213]; Chapter 965 now requires that the county board hold an appeal hearing within 20 calendar days of the request and render a decision within three calendar days of the hearing [CAL. EDUC. CODE §48915].

Finally, Chapter 965 also extends specific statutory rights to pupils by now providing that: (1) pupils must be allowed to complete all assignments and tests missed during a suspension, if practicable, and receive credit therefor [CAL. EDUC. CODE §48903.5]; (2) pupils may neither be penalized for, nor have their reinstatement conditioned upon, parental response to a school conference request [CAL. EDUC. CODE §48903]; (3) governing board decisions adverse to the pupil must be supported by a preponderance of, rather than substantial, evidence [CAL. EDUC. CODE §48914]; (4) law enforcement officers apparently may no longer notify school districts of pupil drug abuse arrests that do not lead to either a complaint or a juvenile court petition, an action that was a discretionary entitlement under the prior law [*Compare* CAL. EDUC. CODE §48904, *as amended*, CAL. STATS. 1976, c. 1010, §2, at — *with* CAL. EDUC. CODE §48922]; and (5) a pupil may have a designated representative accompany him or her to a suspension hearing, although the representative may not act as legal counsel unless the district is so represented [CAL. EDUC. CODE §48904(c)].

Thus, Chapter 965 has made three fundamental changes in the disciplinary systems practiced in the California public schools by: (1) narrowing the discretion of school officials as to the imposition of disciplinary suspensions and expulsions; (2) establishing review procedures for each level of the administrative structure, i.e., school, local district and county board of education; and (3) extended statutory rights to public school pupils.

COMMENT

These revisions to the California Education Code apparently are in response to the recent decision of the United States Supreme Court in *Goss v. Lopez* [419 U.S. 565 (1975)] in which the Court applied the requirements of procedural due process to suspensions of public school pupils [*Id.* at 574]. In *Goss* the Court found an Ohio statute, which permitted arbitrary suspensions of students from the public schools [*See* OHIO REV. CODE ANN. §3313.66 (Page), *as enacted*, 1961 Ohio Laws 129 v. 239 §1], to be unconstitutional in light of an Ohio statutory provision that extended a right to a free education to all children between the ages of six and 21 [419 U.S. at 567. *See generally* OHIO REV. CODE ANN. §3313.64 (Page), *as enacted*, 1963 Ohio Laws 130 v. 750 §1]. The Court held that "[h]aving chosen to

extend the right to an education of people of appellee's class generally, Ohio may not withdraw the right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred" [419 U.S. at 574].

California has extended this same right to education by virtue of two constitutional provisions calling for legislative encouragement of education and the creation of a system of "free schools" in each district of the state and the statutory prescription for a compulsory full-time education for all persons between the ages of six and 16 [*See* Piper v. Big Pine School Dist., 193 Cal. 664, 670, 226 P. 926, 929 (1926). *See generally* CAL. CONST. art. 9, §§1, 5; CAL. EDUC. CODE §48200]. Thus, the procedures established by Chapter 965 to be followed in the suspension or expulsion of a pupil from a public school in California must be examined in light of *Goss* to determine whether they meet the procedural due process requirements set forth in that case.

Goss required only "rudimentary" due process procedures defined as "oral or written notice [to the student] of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story" [419 U.S. at 581]. Chapter 965 appears to codify these requirements by mandating a principal-pupil conference that incorporates all of the procedural due process elements outlined by *Goss* and by requiring that such a conference be held prior to the imposition of any disciplinary suspension [CAL. EDUC. CODE §48903(b)]. The Court went on to state, however, that "[l]onger suspensions or expulsion for the remainder of the school term, or permanently, may require more formal procedures," and they did not "put aside the possibility that in unusual situations, although involving only a short suspension [less than ten days], something more than rudimentary procedure will be required" [419 U.S. at 584]. Thus, beyond the provisions of Section 48903, which appear to satisfy all of the specific procedural due process requirements of *Goss*, Chapter 965 appears to be an attempt by the legislature to anticipate these "longer suspensions" and "unusual situations" by providing the additional and more formal procedures suggested by this Supreme Court decision.

See Generally:

1) 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* §315 (disciplinary action against students) (8th ed. 1974).
2) Comment, *Notice and Hearing Required for Short Term Suspension from High School*, 10 LAND & WATER L. REV. 607 (1975).
3) Comment, *Due Process Rights and High School Suspensions After Goss v. Lopez*, 36 MONT. L. REV. 333 (1975).
4) Comment, *Due Process in School Discipline: The Effect of Goss v. Lopez*, 12 SAN DIEGO L.J. 912 (1975).

Education; student newspapers

Education Code §48916 (amended).
SB 357 (Dills); STATS 1977, Ch 776
Support: American Civil Liberties Union; California School Boards Association

Chapter 776 extends both freedom of speech and freedom of the press to public school students who had previously been granted only the "right to exercise free expression" [CAL. EDUC. CODE §48916, *as amended*, CAL. STATS. 1976, c. 1011, §2, at —]. As a result of this broader statement of first amendment rights, public school students may now, with specified exceptions, express themselves freely in official school publications and by other means, regardless of whether the publication or other means of expression are supported by school financing or the use of school facilities [CAL. EDUC. CODE §48916]. "Official publication" is defined as any material produced by students in journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee [CAL. EDUC. CODE §48916]. Section 48916 of the Education Code, however, continues to prohibit any expression that is obscene, libelous or slanderous, or that so incites students as to create a clear and present danger of either: (1) the commission of unlawful acts on school premises; (2) the violation of lawful school regulations; or (3) the substantial disruption of orderly school operation. Unless the student publication contains writing that is violative of one of these prohibitions, Section 48916 expressly prohibits prior restraint on any material prepared for such a publication. Furthermore, should school officials object to the substance of certain "student expression," the burden is now upon these officials to justify, any limitations on student expression before imposing them and to do so "without undue delay" [CAL. EDUC. CODE §48916]. Apparently to assure adherence to the provisions of Chapter 776, local governing boards and county boards of education are directed to embody the substance of Section 48916 in a "written publications code," which is to include reasonable provisions for the time, place, and manner of conducting activities related to the preparation and distribution of student publications [CAL. EDUC. CODE §48916]. Furthermore, student editors now have complete editorial control over "official school publications," while school advisers are responsible for compliance with the provisions of Section 48916 as well as the maintenance of professional standards of English and journalism. Although Chapter 776 does attach "responsibility" for maintenance of its provisions to journalism advisers, there is apparently no direct affixation of civil liability nor express sanctions for breach of the duty established by Section 48916. The California Government Code does impose liability upon public entities

for injuries proximately caused by the acts or omissions of employees within the scope of their employment [*See* CAL. GOV'T CODE §815.2(a)] so long as the employee would not be immune from liability [*See* CAL. GOV'T CODE §815.2(b)]. Another provision of the Government Code, however, exempts a public employee from liability for any injury resulting from acts or omissions arising from a permissible exercise of discretion [*See* CAL. GOV'T CODE §820.2]. When these two sections are applied to the language of Chapter 776, it is arguable that neither the teacher nor the employing school district could be held civilly liable for libelous statements appearing in official school publications, as the "maintenance of the provisions" of Section 48916 would appear to require an exercise of discretion by a journalism adviser [*See* CAL. EDUC. CODE §48916; CAL. GOV'T CODE §820.2]. Thus, any sanction for breach of the statutory duty would seem to rest upon internal public school disciplinary mechanisms.

Judicial precedents in the area of student freedoms of speech and press have fully explicated most of the terms used in Section 48916 [*See* Tinker v. Des Moines Indep. Community School Dist., 393 U.S. 503 (1969) (constitutional rights of students); Jacobs v. Board of School Comm'rs, 490 F.2d 601 (7th Cir. 1973) (obsenity and free speech); Poxon v. Board of Educ., 341 F. Supp. 256 (E.D. Cal. 1971) (prior restraint of student rights); Braxton v. Municipal Court, 10 Cal. 3d 139, 514 P.2d 697, 109 Cal. Rptr. 897 (1973) (prior restraint as "incitation")]. The greatest difficulty in the areas of student freedoms of speech and expression occurs in the area of "prior restraint" and whether or not it is a proper method of regulating student behavior. The United States Supreme Court has spoken generally to this problem on many occasions [*See, e.g.,* Pittsburgh Press Co. v. Pittsburgh Human Relations Comm'n, 413 U.S. 376 (1973); Near v. Minnesota, 283 U.S. 697 (1931)], framing the issue of prior restraint in terms of what is constitutionally protected speech and expression, and thus not subject to prior restraint, and stating that "[t]he special vice of a prior restraint is that communication will be suppressed . . . before an adequate determination that it is unprotected by the First Amendment" [Pittsburgh Press Co. v. Pittsburgh Human Relations Comm'n, 413 U.S. 376, 390 (1973)]. It would appear, therefore, that a statutory enactment that attempts to separate "protected" from "unprotected" speech, as does Chapter 776 by explicitly excepting libelous, slanderous, obscene and inciting language from its protections against restraint [*See* CAL. EDUC. CODE §48916], should be examined in light of prior case law concerning similar restrictions on speech. One federal district court, for example, has indicated that *any* prior restraint comes before the courts under a "heavy presumption against its constitutional validity" [Poxon v. Board of Educ., 341 F. Supp. 256, 257 (E.D. Cal. 1971)]. Beyond the general problem of prior restraint,

however, the scope of student rights has been further defined by a series of California and federal court decisions. Beginning with the seminal case of *Tinker v. Des Moines Independent Community School District* [393 U.S. 503 (1969)], the United States Supreme Court declared that constitutional rights of free speech and expression are not "shed . . . at the schoolhouse gate" [*Id.* at 506]. Subsequently, the California Supreme Court, in *Braxton v. Municipal Court* [10 Cal. 3d 138, 514 P.2d 697, 109 Cal. Rptr. 897 (1973)], held that a charge of incitation applied to support interruption of free speech by school officials would have to be proven "a specifically intended consequence of the speaker's plea and not a result of unreasonable reactions by hostile on-lookers or overly zealous supporters" [*Id.* at 154, 514 P.2d at 703, 109 Cal. Rptr. at 903]. Arguably, the *Braxton* standard will be applied to test any restraints placed upon student publications or other student expressions pursuant to Section 48916. As to the exception for "obscenity", a federal circuit court has declared, *inter alia*, that the "prurience" standard must be met in the school environment and held that the use of "earthy words" in a school publication was insufficient to allow restraints on the basis of obscenity [Jacobs v. Board of School Comm'rs, 490 F.2d 601, 610 (7th Cir. 1973)]. Finally, the California Supreme Court expressly disallowed *any* prior restraint for libel or slander, calling instead for post-distribution discipline for violations of established guidelines by a student publication [Bright v. Los Angeles Unified School Dist., 18 Cal. 3d 450, 464, 556 P.2d 1090, 1099, 134 Cal. Rptr. 639, 648 (1977)]. This prohibition was based upon the rationale that such terms as libelous and obscene "are not sufficiently precise and understandable by school . . . administrators unknowledgeable about the law" to permit action threatening to constitutional rights [*Id.* at 464, 556 P.2d at 1098, 134 Cal. Rptr. at 647]. Chapter 776 appears to incorporate these judicial pronouncements into California law by expressly prohibiting prior restraints, except when student materials violate the provisions of Section 48916, and by giving school officials the burden of showing justification without undue delay prior to placing any limitation on student expression. Thus, school officials who find student publications inappropriate are apparently relegated to the remedies of prior injunctive action or after-the-fact discipline.

See Generally:

1) Haskell, *Student Expression in the Public Schools*, 59 GEO. L.J. 37 (1970).
2) Letwin, *Regulation of Underground Newspapers on Public School Campuses in California*, 22 U.C.L.A. L. REV. 141 (1974-75).

Education; legal services

Education Code §§35205, 72421 (amended).
AB 1530 (Mangers); STATS 1977, Ch 386
Support: California School Boards Association

Under prior law, public secondary school governing boards were apparently authorized to obtain legal services *only* from a district attorney or county counsel but could, upon the approval of one of these two officers, contract with a qualified private attorney for *specialized* legal services [*See* CAL. EDUC. CODE §35205, *as amended*, CAL. STATS. 1976, c. 1010, §2, at — (school districts); CAL. EDUC. CODE §72421, *as amended*, CAL. STATS. 1976, c. 1010, §2, at — (community college districts)]. Chapter 386 removes both limitations and authorizes school and community college district governing boards to contract with a qualified attorney in private practice to provide *any* necessary legal services subject only to the written views of the district attorney or county counsel as to the need for legal services and the form of the contract proposed to be entered into by the governing board [CAL. EDUC. CODE §§35205, 72421]. These written views, however, are advisory only and are not binding on the governing boards [CAL. EDUC. CODE §§35205, 72421]. Thus, Chapter 386 would appear to encourage school and community college districts to seek private legal counsel and to facilitate their obtaining such legal services.