



1-1-1983

# Education

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Legislation Commons](#)

## Recommended Citation

University of the Pacific; McGeorge School of Law, *Education*, 14 PAC. L. J. 621 (1983).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol14/iss2/55>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact [mgibney@pacific.edu](mailto:mgibney@pacific.edu).

# Education

## Education; suspension and expulsion

Education Code §§48900, 48904.5, 48914 (amended).

SB 1385 (Garamendi); STATS. 1982, Ch 318

(Effective June 29, 1982)

Support: California School Boards Association; California Teachers Association; Department of Finance

Chapter 318 supplements existing law by providing additional grounds for suspensions<sup>1</sup> and recommendations for expulsion.<sup>2</sup> In addition, Chapter 318 changes the procedure for expelling students who have committed specified acts,<sup>3</sup> and gives the governing board of the school district<sup>4</sup> some discretion in reinstating students.<sup>5</sup>

### *Expulsion*

Existing law authorizes the principal of the school to suspend or recommend for expulsion any student who (1) attempts to damage or damages school or private property;<sup>6</sup> (2) attempts to steal or steals school or private property;<sup>7</sup> (3) possesses or uses tobacco in a prohibited manner;<sup>8</sup> (4) engaged in obscenity, profanity, or vulgarity;<sup>9</sup> (5) disrupts school activities or defies the authority of school officials;<sup>10</sup> (6) attempts to cause, threatens to cause, or causes physical injury to another;<sup>11</sup> (7) possesses, furnishes, or sells a weapon without the certified permission of a school official;<sup>12</sup> or (8) possesses, furnishes, sells, or

---

1. See CAL. EDUC. CODE §§48900, 48900.2, 48901, 48903, 48903.3 (procedures pertaining to suspension).

2. See *id.* §§48904.5, 48905, 48907.5, 48914, 48915, 48917, 48918 (procedures pertaining to expulsion). Compare *id.* §48900 with CAL. STATS. 1978, c. 668, §2.5, at 2146 (amending CAL. EDUC. CODE §48900).

3. Compare CAL. EDUC. CODE §48904.5 with CAL. STATS. 1978, c. 668, §5, at 2146 (amending CAL. EDUC. CODE §48904.5).

4. See CAL. EDUC. CODE §§35160-35177 (powers and duties of school district governing boards).

5. Compare *id.* §48914 with CAL. STATS. 1978, c. 668, §7, at 2151 (amending CAL. EDUC. CODE §48914).

6. CAL. EDUC. CODE §48900(e).

7. *Id.* §48900(f).

8. *Id.* §48900(g).

9. *Id.* §48900(h).

10. *Id.* §48900(i).

11. *Id.* §48900(a).

12. *Id.* §48900(b).

uses a controlled substance,<sup>13</sup> alcoholic beverage, or intoxicant in an illegal manner.<sup>14</sup> Chapter 318 adds to the list of grounds for suspensions and recommendations for expulsion the act of *purporting*<sup>15</sup> to sell a controlled substance, alcoholic beverage, or intoxicant.<sup>16</sup> In addition, Chapter 318 gives the superintendent of the school the same authority to suspend or recommend an expulsion that is granted to the principal of the school under existing law.<sup>17</sup>

Prior to the enactment of Chapter 318, the governing board of a school district was required to find that other forms of correction had been attempted, or that the student's presence in the classroom posed a continuing threat to the physical safety of the student or others in the classroom before expelling the student who had committed *any* of the listed acts.<sup>18</sup> Chapter 318 provides that within the list of acts that give rise to a suspension or recommendation for expulsion, certain acts no longer require these specific findings prior to expulsion.<sup>19</sup> These certain acts are (1) attempting to cause, threatening to cause, or causing physical injury to another,<sup>20</sup> (2) possessing, furnishing, or selling a weapon without the certified permission of a school official,<sup>21</sup> (3) possessing, furnishing, selling or using a controlled substance, alcoholic beverage, or intoxicant in an illegal manner,<sup>22</sup> or (4) purporting to sell a controlled substance, alcoholic beverage, or intoxicant.<sup>23</sup>

The change in the expulsion proceeding for these serious offenses does not appear to deny the student the right to due process.<sup>24</sup> The student's right to request a hearing and receive written notice is preserved.<sup>25</sup> The mere failure on the part of the governing board to consider milder forms of correction before imposing suspension or expulsion, does not operate as a denial of due process to the student.<sup>26</sup>

---

13. CAL. HEALTH & SAFETY CODE §§11007, 10053-10058 (definition of controlled substance).

14. CAL. EDUC. CODE §48900(c).

15. *See id.* §48900(d) (selling, delivering, or otherwise furnishing to any person another liquid substance, or material in lieu of the controlled substance, alcoholic beverage, or intoxicant).

16. *Compare id.* §48900 with CAL. STATS. 1978, c. 668, §2.5, at 2146 (amending CAL. EDUC. CODE §48900).

17. *Compare* CAL. EDUC. CODE §48900 with CAL. STATS. 1978, c. 668, §2.5, at 2146.

18. *See* CAL. STATS. 1978, c. 668, §5, at 2146 (amending CAL. EDUC. CODE §48904.5).

19. *Compare* CAL. EDUC. CODE §48904.5 with CAL. STATS. 1978, c. 668, §5, at 2146.

20. *Id.* §48900(a).

21. *Id.* §48900(b).

22. *Id.* §48900(c).

23. *Id.* §48900(d).

24. *See* *Gonzales v. McEuen*, 435 F. Supp. 460, 463 (1977).

25. *See* CAL. EDUC. CODE §48914.

26. 435 F. Supp. at 463.

*Reinstatement*

Existing law provides the procedure used by the governing board of a school district when a recommendation to expel a student has been rejected.<sup>27</sup> If a governing board has contracted with a county hearing officer, or appointed an administrative panel to conduct the expulsion hearing, the governing board must be notified once the decision has been made to reject or accept the recommendation.<sup>28</sup> If the county hearing officer or administrative panel decides to reject the board's recommendation to expel, and the board accepts the administrative panel decision, the student will be immediately reinstated.<sup>29</sup> Prior to the enactment of Chapter 318, students were reinstated to the program or classroom they had been attending before suspension.<sup>30</sup> Chapter 318 now gives the board discretion in determining where students will be reinstated.<sup>31</sup> The governing board can choose to either (1) return the students to the classrooms they had been attending prior to suspension, (2) reinstate the students to other instructional programs, (3) reinstate the students to rehabilitation programs, or (4) require the students to attend any combination of these programs.<sup>32</sup> In determining where to reinstate the student, the governing board must consult with appropriate district personnel, including the teacher involved, the parent or guardian, and the student.<sup>33</sup> In summary, Chapter 318 creates additional grounds for suspensions or recommendations for expulsion,<sup>34</sup> authorizes the superintendent of the school to exercise powers of suspension and recommendations for expulsion,<sup>35</sup> and amends the procedure for the expulsion<sup>36</sup> and reinstatement of students.<sup>37</sup>

---

27. See CAL. EDUC. CODE §48914(d).

28. *Id.*

29. *Id.*

30. Compare *id.* with CAL. STATS. 1978, c. 668, §7, at 2151 (amending CAL. EDUC. CODE §48914).

31. See CAL. EDUC. CODE §48914(d).

32. *Id.*

33. *Id.*

34. Compare CAL. EDUC. CODE §48900 with CAL. STATS. 1978, c. 668, §2.5, at 2146 (amending CAL. EDUC. CODE §48900).

35. Compare CAL. EDUC. CODE §48900 with CAL. STATS. 1978, c. 668, §2.5, at 2146.

36. Compare CAL. EDUC. CODE §48904.5 with CAL. STATS. 1978, c. 668, §6, at 2146 (amending CAL. EDUC. CODE §48904.5).

37. Compare CAL. EDUC. CODE §48914 with CAL. STATS. 1978, c. 668, §7, at 2151 (amending CAL. EDUC. CODE §48914).

## Education; school employees—sex offenses

Education Code §44010 (amended).

AB 2703 (Thurman); STATS. 1982, Ch 213

Support: California Peace Officers Association; California School Boards Association; California State Employees Association; Department of Education

To protect children from some of the detrimental influences at school, existing law provides that a teaching credential<sup>1</sup> or certificate<sup>2</sup> can be denied or revoked, and school employment can be denied or suspended if the teacher or employee has committed a specified sex offense.<sup>3</sup> Rape, one of the specified offenses, is currently defined in the Education Code as (1) sexual intercourse committed while the victim was under the influence of an intoxicant, narcotic, or anesthetic substance supplied by the teacher or school employee, or (2) sexual intercourse committed while the victim was unconscious.<sup>4</sup> Chapter 213 conforms the Education Code to the Penal Code by expanding the definition of rape in the Education Code<sup>5</sup> to also include (1) sexual intercourse involving a victim who is unable to give legal consent as a result of lunacy or unsoundness of mind,<sup>6</sup> and (2) sexual intercourse perpetrated by the use of force, or fear of immediate and unlawful bodily injury.<sup>7</sup>

---

1. CAL. EDUC. CODE §44002 (definition of credential).

2. *Id.* §44004 (definition of certificate).

3. *See id.* §44010 (list of specified offenses). *See generally id.* §§44346(a)(2), 44425, 44436, 44836, 45123.

4. CAL. EDUC. CODE §44010(a); CAL. PENAL CODE §261(3), (4).

5. *Compare* CAL. EDUC. CODE §44010(a) *with* CAL. STATS. 1980, c. 514, §1, at 1440 (amending CAL. EDUC. CODE §44010).

6. CAL. EDUC. CODE §44010(a); CAL. PENAL CODE §261(1).

7. CAL. EDUC. CODE §44010(a); CAL. PENAL CODE §261(2).