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## Education

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# Education

## Education; fingerprinting—notice of suspension

Code of Civil Procedure §§ 196, 239 (amended); Education Code §§ 32390, 48911, 48914, 48980 (amended); Government Code §§ 7906, 68562, 68562.1 (amended); Penal Code § 1143 (amended). AB 439 (Vasconcellos); 1987 STAT. Ch. 134

Existing law requires school districts<sup>1</sup> to provide fingerprint programs for kindergarten students and children newly enrolled in the district, with the actual expenses incurred to be paid by the controller.<sup>2</sup> Chapter 134 no longer requires school districts to offer fingerprint programs, and provides that any parent or guardian who elects to have their child fingerprinted must be assessed a fee to reimburse the district for actual costs associated with the program.<sup>3</sup>

Existing law provides that when a pupil is suspended<sup>4</sup> from school, written notice containing the facts leading to the suspension and the date the pupil will be allowed to return to school must be mailed to the student's parents or guardians within one school day of the beginning of the suspension.<sup>5</sup>

Under prior law, if a suspension was ordered by a principal or a principal's designee, the pupil or the pupil's parents had the right to

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1. The term "school district" includes the county superintendent of schools. CAL. EDUC. CODE § 32390(d). *See also id.* § 4320 (plans for school district organization).

2. *Id.* § 32390(a). The governing board may contract with any public or private agency to perform the fingerprinting and may obtain private funding or volunteer assistance to help curtail fingerprinting costs. *Id.* Each parent or guardian of the child must declare in writing whether or not they want the child to be fingerprinted. *Id.* § 32390(b). *See* CAL. REV. & TAX. CODE § 21 (definition of controller).

3. CAL. EDUC. CODE § 32390(b).

4. *Id.* § 48900 (grounds for suspension).

5. *Id.* § 48911 (a school employee must make a reasonable effort to contact the pupil's parent or guardian by telephone or in person). Due process of law requires that upon suspension of a pupil, the pupil's parents or guardian must be notified within a reasonable time by telephone, mail, or other appropriate method, and advised of the facts and reasons of the suspension, the suspension's duration and further notified that, if desired, a prompt meeting or hearing will be held at which the suspension may be discussed with school officials. *Charles S. v. Board of Education*, 20 Cal. App. 3d 83, 94, 97 Cal. Rptr. 422, 429 (1971).

request a meeting with the superintendent or the superintendent's designee.<sup>6</sup> After the superintendent or superintendent's designee reviewed the case and spoke with the pupil<sup>7</sup> and the pupil's parent or guardian, a decision must have been rendered within two school days.<sup>8</sup> Chapter 134 repeals prior law, and allows school districts to independently establish policies that provide the parents or guardians of the suspended pupil to meet and to discuss the causes, duration, and matters related to the suspension.<sup>9</sup>

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6. 1983 Cal. Stat. ch. 498, sec. 91, at 2115 (enacting CAL. EDUC. CODE § 48914) (meeting must be held within three school days of the request).

7. The pupil could have designated a representative to be present during the meeting. *Id.*

8. *Id.* If the superintendent determined that no violation occurred, all records and documentation regarding the disciplinary proceedings must have been immediately destroyed. *Id.* If the superintendent determined that the penalty imposed was improper, all records must have indicated the revised penalty. *Id.*

9. CAL. EDUC. CODE § 48914.

## Education; special education programs

Education Code §§ 56001, 56026, 56440, 56441, 56441.1, 56441.2, 56441.3, 56441.4, 56441.5, 56441.6, 56441.7, 56441.8, 56441.9, 56441.10, 56441.11, 56441.12, 56441.13, 56441.14, 56442, 56443, 56444, 56445, 56446, 56447, 56447.1, 56448, 56449 (new); § 56221 (amended).

AB 2666 (Hannigan); 1987 STAT. Ch. 311

In California, individuals with exceptional needs<sup>1</sup> possess a right to free and appropriate public education.<sup>2</sup> Under existing law, a preschool child<sup>3</sup> who qualifies as an individual with exceptional needs

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1. The criteria for qualification as an individual with exceptional needs are discussed *infra* in note 7 and the accompanying text.

2. CAL. EDUC. CODE § 56000. *See also* 20 U.S.C. §§ 1400-1485 (1982 & Supp. III 1986) (federal law governing education of the handicapped). *See generally* CALIFORNIA STATE DEPARTMENT OF EDUCATION, CALIFORNIA SPECIAL EDUCATION PROGRAMS: A COMPOSITE OF LAWS (9th. ed. 1987) (compilation of California special education laws); Comment, *The Right to a Meaningful Education in California: Should Dollars Make the Difference*, 10 PAC. L.J. 991 (1979) (discussing children's right to a meaningful education in California).

3. Prior to the enactment of Chapter 311, a child between the ages of three years and four years and nine months was eligible to participate in special educational opportunities.

and who requires intensive special education<sup>4</sup> is assured access to early educational special programs.<sup>5</sup> The enactment of Chapter 311 extends early educational opportunities to a preschool child who requires only special education.<sup>6</sup> Furthermore, Chapter 311 expands the group of persons with exceptional needs to include individuals who meet all of the following criteria: (1) The person is identified as a handicapped child by an individualized education program team; (2) the impairment requires instruction or services that cannot be provided with modification of the individual's home or school environment; and (3) the individual suffers from adequate impairment.<sup>7</sup>

Under Chapter 311, early education services may be provided in a group or individual setting and must involve the family of the child.<sup>8</sup> The programs must adhere to instructional adult-to-child ratios.<sup>9</sup>

1980 Cal. Stat. ch. 1353, sec. 35, at 4821 (amending CAL. EDUC. CODE § 56026(c)(2)). Under Chapter 311, a child must be between the ages of three and five years to qualify for the programs. CAL. EDUC. CODE § 56026(c)(2).

4. See CAL. ADMIN. CODE tit. 5, § 3031(a)(2) (1986) (criteria to qualify for intensive special education services).

5. CAL. EDUC. CODE § 56001(b). See also 20 U.S.C. §§ 1411, 1413, 1419 (1982 & Supp. II 1986) (criteria for state eligibility for federal assistance to special education programs for the handicapped).

6. *Id.* § 56001(b). The services are to be provided to eligible children by June 30, 1991. *Id.* § 56440(c).

7. *Id.* § 56441.11. See *id.* § 56441.11(c)(1)-(4) (requisite levels of impairment). A child whose sole disability is unfamiliarity with the English language, temporary physical disabilities, social maladjustments, or malnutritional, environmental, cultural or economic impairments is not an individual with exceptional needs. *Id.* § 56441.11(d). See also CAL. ADMIN. CODE, tit. 5, §§ 3030, 3031 (1986) (criteria to qualify as an individual with exceptional needs under existing law). See 20 U.S.C. § 1401(a)(1) (1982 & Supp. 1986) (definition of handicapped child).

8. CAL. EDUC. CODE § 56441.2; *id.* § 56441.3(a). Early education services must also include: (1) The observation and monitoring of the child's behavior and development; (2) the presentation of activities developmentally appropriate for the preschool child that do not conflict with the child's medical needs; (3) interaction with family members; (4) the assistance of parents in securing other community services beneficial to the child; (5) the provision of opportunities for the child to explore and develop self-esteem and preacademic skills; (6) the provision of access to developmentally appropriate equipment and specialized materials; and (7) related services. *Id.* § 56441.3(a)(1)-(7). See 34 C.F.R. § 300.13 (1986) (definition of related services). Appropriate settings for early education services are: (1) The regular public or private nonsectarian school system; (2) a child development center or family day care home; (3) the child's regular environment; (4) a site where handicapped and nonhandicapped preschool programs are in close proximity and share common resources; (5) a special education preschool program where nonhandicapped children may participate in the program; and (6) a public school setting which provides an age-appropriate environment. CAL. EDUC. CODE § 56441.4.

9. CAL. EDUC. CODE § 56441.5. Appropriate adult-to-child ratios for group services are dependent on the needs of the child, but may not exceed specified levels. *Id.* See also CAL. ADMIN. CODE tit. 5, § 18204 (1979) (specifying maximum adult-to-child ratios). For group services provided to severely handicapped individuals the adult-to-child ratios may not exceed one to five. CAL. EDUC. CODE § 56441.5; See *id.* § 56030.5 (criteria to qualify as severely handicapped person). *Id.* § 56441.7 (maximum caseload for speech and language specialists is 40). Group services may not exceed four hours per day without the approval of the education program team. *Id.* § 56441.3(b).

Finally, the education program must prepare a child exiting the program for later school success.<sup>10</sup>

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10. CAL. EDUC. CODE § 56441.1(b) (special education programs must prepare a child with exceptional needs for later school success). The legislature intends that the gains made through provision of early education opportunities not be lost by rapid removal of individualized programs and support. *Id.* § 56445(b). The individualized education program must identify a means to monitor the progress of the child in the less intensive special education program. *Id.* § 56445(c). The performance levels and learning style of the child moving to kindergarten or first grade must be made available to the child's teacher. *Id.* § 56445(d).

## Education; student suspension and expulsion

Education Code §§ 48900, 48915 (amended).  
AB 56 (O'Connell); 1987 STAT. Ch. 383

Under existing law, students engaging in specified conduct,<sup>1</sup> including robbery<sup>2</sup> or extortion,<sup>3</sup> may be suspended<sup>4</sup> from school or recommended<sup>5</sup> for expulsion.<sup>6</sup> Chapter 383 expands existing law by

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1. Grounds for suspension arise upon determination by the principal or superintendent of schools that the pupil has: (1) Caused, attempted to cause, or threatened to cause physical injury to another; (2) possessed, sold, or furnished a firearm, knife, explosive, or other dangerous object without permission; (3) unlawfully possessed, used, sold, furnished, or have been under the influence of any controlled substance or intoxicant; (4) committed robbery or extortion; (5) caused or attempted to cause damage to school or private property; (6) stolen or attempted to steal school or private property; (7) unlawfully possessed or used tobacco; (8) committed an obscene act or habitual profanity; (9) unlawfully possessed drug paraphernalia; (10) disrupted school activities or wilfully defied valid authority; or (11) knowingly received stolen property. CAL. EDUC. CODE § 48900.

2. CAL. PENAL CODE § 211 (definition of robbery).

3. *Id.* § 518 (definition of extortion).

4. CAL. EDUC. CODE § 48925(d) (suspension is defined as the removal of a pupil from ongoing instruction for adjustment purposes). *See id.* § 48911 (the principal, his designee, or the superintendent of schools may suspend a pupil for any of the reasons enumerated in California Education Code section 48900). *See also Id.* § 48900.5 (suspension must be imposed only when other means of correction fail to bring about proper conduct). The failure of other means of correction to bring about proper conduct is a precondition to suspension. *Id.* A principal, however, can suspend a pupil on the grounds listed in Education Code section 48900 if the pupil's presence causes a danger to persons or property or threatens to disrupt the instruction process. *Slayton v. Pomona Unified School Dist.*, 161 Cal. App. 3d 538, 549, 207 Cal. Rptr. 705, 712 (1984).

5. CAL. EDUC. CODE § 48900 (by the principal or superintendent of schools).

6. *Id.* § 48900. *See id.* § 48925(b) (expulsion is defined as the removal of a pupil from the immediate supervision and control or the general supervision of school personnel).

providing that attempted<sup>7</sup> robbery or extortion are grounds for suspension or expulsion.<sup>8</sup> Existing law requires that a student be recommended<sup>9</sup> for expulsion for the unlawful selling of a controlled substance,<sup>10</sup> with the exception of the sale of not more than one ounce of marijuana.<sup>11</sup> Chapter 383 limits this exception to only a first offense for the sale of not more than one ounce of marijuana.<sup>12</sup>

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7. The elements of attempt are: (1) The specific intent to commit a particular crime, and (2) a direct act done toward its commission. *People v. Miles*, 272 Cal. App. 2d 212, 217, 77 Cal. Rptr. 89, 93 (1969).

8. CAL. EDUC. CODE § 48900.

9. *Id.* § 48915 (unless recommendation for suspension is inappropriate).

10. CAL. WELF. & INST. CODE § 5341 (definition of controlled substance).

11. CAL. EDUC. CODE § 48915. *See* CAL. HEALTH & SAFETY CODE § 11018 (definition of marijuana).

12. CAL. EDUC. CODE § 48915 (the exception does not apply to concentrated cannabis).

## Education; school employees—reporting substance abuse

Education Code § 44049 (new).

AB 1803 (Clute); 1987 STAT. Ch. 1291

Under existing law, any employee of a school district or of the office of a county superintendent of schools who is attacked, assaulted, or menaced by any pupil has a duty to report the incident to the appropriate law enforcement authorities of the county or city.<sup>1</sup> Chapter 1291 authorizes any principal<sup>2</sup> to report to the parents or legal guardian of a student when the principal has seen, knows of, or reasonably suspects<sup>3</sup> that the student has consumed an alcoholic beverage or abused a controlled substance.<sup>4</sup> Furthermore, any prin-

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1. CAL. EDUC. CODE § 44014(a) (anyone who has authority over the employee and knows of the incident also has a duty to report it). Failure to make a report or an attempt to influence a person not to make a report is a misdemeanor. *Id.* § 44014(a), (c).

2. *Id.* § 44049(a) (or any person designated by the principal).

3. *Id.* (as evidenced by the student's apparent intoxication).

4. *Id.* § 44049. No principal or person designated by the principal may report a known or suspected instance of alcohol or controlled substance abuse by a student to the parent or other having legal custody of the student if the report would require the disclosure of confidential information in violation of student counseling confidentiality statutes. *Id.* § 44049 (c). *See id.* §§ 35301, 72621 (personal information disclosed to a school counselor by a parent

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cial who makes a false report with knowledge of falsity or reckless disregard for truth or falsity, will be liable for any damages.<sup>5</sup>

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or a student is confidential). *See also* CAL. HEALTH & SAFETY CODE §§ 11053-11057 (enumeration of controlled substances).

5. *Id.* § 44049(b).