LAW IN THE SCHOOL

5th Edition

California Department of Justice

146773

LAW IN THE SCHOOL

A guide for California teachers, parents & students

FIFTH EDITION

California Department of Justice

Published by California Dept. of Justice
1515 K Street
Sacramento, CA 95814

Manufactured in the United States of America

Library of Congress Cataloging in Publication Data

California Dept. of Justice.
Law in the school, Fifth Edition.
Includes bibliographical references.
1. Educational law and court citations—California.
2. Criminal law—California. 3. School discipline—
California. 4. Criminal procedure—California.
5. Right to safe schools—California.
I. California Attorney General. II. Title.
KFC662.A885 344'.794'07

To order Law in the School, contact:

Department of General Services
Publications Section
P.O. Box 1015
North Highlands, CA 95660
(916) 973-3700

Preface

School crime and violence have become statewide concerns for almost a decade after statistics revealed the dark side of attending school. Recent figures recorded in the 1989 California school crime report listed more than 174,478 incidents involving crime and violence for the 1988-89 school year. This figure includes 1,131 incidents of reported handgun possession—a 43 percent increase from the previous year.

Schools are not, and should not be, sanctuaries from the law. School officials have a duty to act quickly and wisely to protect all students from possible harm caused by criminal behavior, and to use disciplinary or criminal justice processes to deal effectively with such offenses. To do this, however, requires school staff to have confidence in their knowledge of the law. Law in the School, fifth edition, will guide administrators and teachers in carrying out their responsibilities to provide a safe and orderly environment for students, employees and themselves.

Law in the School has been updated to include the current issues and problems that trouble our schools: gangs, the latest street drugs, vandalism, weapons on campus, discipline problems and child abuse. This book discusses the relevant laws and court decisions that will assist administrators and teachers in dealing with the crime and violence showing up in our classrooms and playgrounds.

We have expanded a chart outlining the most common illegal drugs, their appearance and possible effects; this current information will help school administrators and teachers recognize the symptoms of drug abuse. Also included are the new laws enacted by the state Legislature to deal with drugs and other criminal activity that affect our schools.

The Superintendent of Public Instruction and the Attorney General's Office have committed joint efforts to the following goals:

- ❑ Provide a safe environment for our teachers and students;
- ❑ Combat drug and alcohol use by students;
- ❑ Reduce truancy; and
- ❑ Support citizenship education in our schools.

In achieving these goals, we will be creating an environment that leads to excellence in our educational system. Administrators, teachers, law enforcement agencies, the courts and communities statewide have joined their efforts to improve our schools—and it has worked. In every case where there has been a commitment by all the interested groups to improve our schools, there has been unmistakable gain.

Law in the School will help these worthy efforts.

This fifth edition of Law In the School is the result of the cooperation and commitment of many individuals. The Crime Prevention Center staff are especially grateful to:

Deputy Attorney General Randy Saavedra, California Department of Justice

Deputy Attorney General Harlan Van Wye, California Department of Justice

Donna Clontz, General Manager, Ventura County Deputy Sheriff's Association

John Burton, Consultant, San Bernardino County Office of Education

Alex Rascon Jr., Police Chief, San Diego City Schools

California Attorney General

Contents

Chapter 1

The Duty To Protect

Jack Masterson, the father of a student at "Anyplace Junior High," storms into the principal's office and complains about a gang of youths who have been harassing his son, Alan, on the playground during the lunch period and after school. The principal tells Masterson that Alan should fight his own battles and it is not the place of the school to intervene. The following day Alan is surrounded by the gang. One of them shoves him. Alan loses his balance and hits his head on the pavement, suffering a severe laceration.

Can Masterson sue the principal? The school district? Should administrative action be taken against the principal? Is the principal bound by law to report the incident to the police?

Robert French, the principal of Runnymede High, receives a call from the police informing him that Frank James openly smokes marijuana and deals in illegal drugs in the boys' restroom during the noon hour, and he and his friends have been threatening and assaulting boys who enter the restroom. The police want to send an officer into the restroom to catch Frank "in the act" and to arrest him for his past crimes.

The principal has suspected this problem for some time, but does not believe that the police have any place on campus. He wishes to deal with this problem as a "discipline matter." Is he obligated to allow the police to enter the campus? Can the police take Frank from the campus against his will? Was the principal derelict in his duty in not having the teachers investigate his suspicions to eliminate this situation beforehand?

While school officials do not assume the role of parents or law enforcement officials, they have two duties that they share in common with parents and police. Their *first duty* is to act immediately and fairly to protect students from possible harm caused by crimes or disciplinary offenses committed by other students, outsiders or even the students themselves. Failing this, their *second duty* is to use disciplinary and criminal processes to deal effectively and impartially with misbehavior. Criminal behavior on a school campus is a law enforcement matter, just as it would be on neighboring streets.

In this chapter, the sources and scope of these duties and the consequences of failing to fully carry them out will be considered. In the following chapters, the powers and limitations that teachers and administrators have in fulfilling these duties, and the substantive crimes and offenses they are charged to prevent and to punish will be considered. Throughout this discussion run the threads of two premises: (1) a responsible alliance between the schools and law enforcement is essential in carrying out these duties (Atty.Gen.-Op., Supp. Appen. to J. of Assembly, Reg. Sess. 1969, at p. 87); and (2) the goal of education is to nurture the students' integrity, dignity and independence so the need for outer restraints diminishes as responsible citizenship develops.

Sources of the duty

In 1982, California voters added section 28(c) to Article I of the California Constitution. Referred to as the safe schools provision, it states: *"Right to Safe Schools.* All students and staff of primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful." (Cal. Const., art. I, § 28(c).)[1]

[1] For a discussion of this constitutional right, see Sawyer, "The Right to Safe Schools: A Newly Recognized Inalienable Right," *Pacific Law Journal*, vol. 14, (1983), p. 1309; and Biegel, " 'The Safe Schools Provision:' Can a Nebulous Constitutional Right Be a Vehicle for Change?" *Hastings Constitutional Law Quarterly*, vol. 14, (1987), p. 789.

Since 1982, attorneys and legal scholars have debated how to implement California's constitutional right to safe schools. Some urged that litigants could sue for damages based solely on this right.[2] Others argued that further enabling language was necessary to describe a process for such lawsuits.

In 1988, the issue was finally resolved in *Leger* v. *Stockton Unified School District* (1988) 202 Cal.App.3d 1448. The court found that Article I, section 28(c) is not self-executing in the sense of supplying a right to sue for damages. It expresses a general right without specifying any rules for its enforcement. It imposes no mandatory duties to make a school safe which would give rise to constitutional liability. However, there is a duty to use reasonable care to protect students from known or reasonably foreseeable dangers. If staff fail to do so, the district and its employees can be held liable using traditional civil law tort remedies.

Even though the Right to Safe Schools does not support constitutional lawsuits, it stands as a declaration of rights. It is mandatory that all agencies of government comply with it. Schools are required to recognize that all students and staff have the right to attend safe campuses and are prohibited from taking official actions that contradict the provisions of Article I, section 28(c). (*Leger* v. *Stockton Unified School District, supra.*)

The legal duty to provide safe schools has been recognized by the courts for many years. The California Supreme Court stated:

> *California law has long imposed on school authorities a duty to supervise . . . the conduct of children on the school grounds and to enforce those rules and regulations necessary to their protection. . . . Such regulation*

---

[2] *Hosemann* v. *Oakland Unified School District* (1989) unpublished opinion (1st Dist., Div. 3, #A035856) May 30, 1989. In 1986, the *Hosemann* trial court decided that Article I, section 28(c) was self-executing and supported a cause of action for damages and required the school district to do safety planning. In 1989, the appeals court reversed the trial court's findings and orders in light of *Leger* v. *Stockton Unified School District.*

> *is necessary precisely because of the commonly known tendency of students to engage in aggressive and impulsive behavior which exposes them and their peers to serious physical harm.*[3]

In performing their duty, teachers are required by statutes to "enforce . . . the rules and regulations prescribed for schools" (Ed. Code, §§ 44805, 35291.5) and to "exercise careful supervision over the moral conditions in their respective schools." (5 Cal. Code of Regs., § 5530.) When carrying this out, teachers and administrators must exercise reasonable control over students, but may only exercise such physical control as necessary to maintain order, and to protect property and the health and safety of other students. (Ed. Code, § 44807.)

This duty to supervise extends beyond the classroom. Education Code section 44807 states that "every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school,[4] on the playgrounds, or during recess." The principal is required to provide playground supervision before and after school, as well as during recess and other intermissions.[5] This includes special school events, athletic events and school field trips.

---

[3] Section 44807 does not turn teachers into off-campus police patrols. As the court noted in *Torsiello* v. *Oakland Unified School District* (1987) 197 Cal.App.3d 41, 45, "[T]eachers do not have a duty to police the pathway to and from school. Teachers need only to take appropriate action to see that the pupil is ultimately held to account for his misbehavior."

[4] *Daily* v. *Los Angeles Unified School District* (1970) 2 Cal.3d 741, 747-748. The duty of supervision, however, does not require "round-the-clock" supervision of school premises and is ". . . limited to school-related or encouraged functions and to activities taking place during school hours." *Bartell* v. *Palos Verdes Peninsula School District* (1978) 83 Cal.App.3d 492, 499-500.

[5] See also 5 Cal. Code of Regs., §§ 5531, 5552. Note, however, that Ed. Code, § 44808 exempts school personnel from responsibility or liability for the safety or conduct of students off school property *unless* there is negligence, or the school has sponsored an off-campus activity or provided transportation. See *Castro* v. *Los Angeles Board of Education* (1976) 54 Cal. App.3d 232 and *Torsiello* v. *Oakland Unified School District* (1987) 197 Cal.App.3d 41.

In short, when exercising their duty to supervise students, school officials stand in *"loco parentis"*[6] (in the place of the parents) and are similarly responsible to actively protect the children under their charge.

Scope of the duty

Adequate Teacher Supervision

A key to school discipline and safety is the presence of the teachers. They must be present to properly monitor their students, to prevent or correct harmful situations or readily call for help when a situation is beyond their control.

Unfortunately, there have been tragic cases that graphically show how supervision on school property is important. Students have been hurt and killed due to the failure of the school district, the principal, the teacher—or of all three—to properly supervise them. The following cases are typical.

Failure to provide any supervision. Staff have a duty to be present to prevent accidents that can happen when children are together. Examples from case law clearly illustrate that the administrator is required to do more than assign staff. The administrator has a duty to ensure that staff is actually on hand and supervising.

For example, in the case of *Ziegler* v. *Santa Cruz City High School District* (1959) 168 Cal.App.2d 277, a student was sitting on a railing near a stairwell when another student suddenly pushed him. The victim fell off the railing and was killed by the fall. Although students were warned not to sit on the railing, no staff was assigned to supervise them as they used the stairs. The court held this was sufficient to justify a jury finding the school negligent.

---

[6] *Stuart* v. *Board of Education* (1911) 161 Cal. 210, 213; *People* v. *Curtiss* (1931) 116 Cal.App. Supp. 771, 775; see Ed. Code, § 44807.

In another case, *Forgnone* v. *Salvador U.E. School District* (1940) 41 Cal.App.2d 423, a student's arm was broken in a classroom scuffle with another student during the lunch period. Because no teacher was present in the classroom for some time before it happened, the court held this sufficient to support a claim for negligence. (See also *Beck* v. *San Francisco, etc., School District* (1964) 225 Cal.App.2d 503; *Tymkowicz* v. *San Jose Unified School District* (1957) 151 Cal.App.2d 517.)

These cases illustrate the point that a school cannot escape liability just because specific dangers to students were unforeseen. Also, the school may be held accountable if danger can be anticipated and supervision is necessary to avoid that danger. (See 36 A.L.R.3d 330, 340.)

Failure to provide enough supervising teachers. Even when a supervising teacher is present and conscientiously overseeing the students' activities, it is clear that the teacher cannot be everywhere at once. School authorities are negligent if they fail to provide enough teachers to watch any given area.

For example, in the case of *Charonnat* v. *San Francisco Unified School District* (1943) 56 Cal.App.2d 840, only one teacher was assigned to supervise 150 students. A student's leg was broken in a fight. The jury's finding that this supervision was inadequate was held to be justified.

Failure of teacher to supervise adequately. It is not enough that teachers are assigned to supervise students; they must conscientiously and actively carry out their supervisory duties.

In one case, *Dailey* v. *Los Angeles Unified School District* (1970) 2 Cal.3d 741, a teacher assigned to supervise a playground sat in his office with his back to the playground, talking on the phone and working on his lesson plan. Two students got into a friendly "slap fight." One student fell after being hit, fractured his skull on the asphalt pavement and died later that

night. The California Supreme Court held that a finding of inadequate supervision was justified. The fact that both students willingly, even negligently, engaged in the fight was no defense. The teacher had a duty to protect the students from their own impulses or aggression. (*Dailey, supra,* at note 3.)

In another case, *Lilienthal* v. *San Leandro Unified School District* (1956) 139 Cal.App.2d 453, a student in a metal crafts class was struck in the eye by a knife-shaped metal piece thrown by a classmate. This happened during class when the teacher was present. Evidence indicated that some of the students had been flipping the knife-like object into the ground for more than 30 minutes. The teacher stated he had not seen the students throwing it. Nevertheless, evidence that students had been throwing the knife-shaped piece for some time before the accident justified a verdict that the teacher's failure to discover and stop the conduct constituted negligence. (See also *Charonnat* v. *San Francisco Unified School District, supra,* at p. 4.)

In the case of *Hoyem* v. *Manhattan Beach City School District* (1978) 22 Cal.3d 508, a ten-year-old boy left school before the end of his scheduled classes. At a public intersection, the boy was struck by a motorcycle and seriously injured. The California Supreme Court held that if the school district failed to exercise ordinary care in supervising the student while on school premises, and if this failure caused the injuries, the school district may be held responsible.[7]

Remedial Action

The duty to act. While the presence of teachers will often prevent trouble, teachers also should be alert to spot dangerous situations

---

[7] In the *Hoyem* case, *supra,* the trial court ultimately ruled that the school district had exercised ordinary care in its supervision of the boy and was not held to be liable.

so they can quickly step in or go for help. A teacher or administrator *must* act effectively and quickly. He or she should not ignore a problem, minimize it or rationalize inaction.

A clear example of this responsibility was posed in the case of *Biggers* v. *Sacramento City Unified School District* (1972) 25 Cal.App.3d 269, in which a high school student, while walking out of a restroom, was attacked without provocation by a gang of 10 to 15 juveniles. The student was knocked unconscious and seriously injured. The court held that if the school authorities knew gangs were endangering the students and "just turned their backs to the whole problem," they could not escape liability.

In *Peterson* v. *San Francisco Community College District* (1984) 36 Cal.3d 799, the Supreme Court held that the district had a duty to exercise due care to protect students on the campus from reasonably foreseeable assault. The district was in a superior position to know about crimes occurring there and to protect against recurrences.

In *Rodriguez* v. *Inglewood Unified School District* (1986) 186 Cal.App.3d 707, the court stated:

> *A special relationship is formed between a school district and its students so as to impose an affirmative duty on the district to take all reasonable steps to protect its students.*

All these cases make the point that school staff are responsible for recognizing and responding effectively to any known dangers on the school campus.

In the situation posed at the beginning of the chapter, in which Jack Masterson complained about the gang of students who were assaulting his son at lunch and after school, the liability of the principal and school district is clear.

Likewise in the second example cited. If Principal French suspected that drug deals and assaults were occurring in the boys'

restroom, he was negligent in not having the area supervised. Even if he knew only that boys' restrooms were a *likely* trouble spot—and most administrators will testify that they are—it was his unquestioned duty to immediately provide adequate supervision and protection.

Action by the teacher. When trouble breaks out, the teacher is often the person on the spot. By the time law enforcement officials arrive, the harm has already been done. The law expects that teachers and other staff will, whenever possible, try to protect their students from harm.

For example, in the "slap fight" case (*Dailey* v. *Los Angeles Unified School District, supra,* 2 Cal.3d 741), the California Supreme Court made it clear that if the teacher saw the fight, it was his duty to stop it. (*Dailey, supra,* at pp. 748-749.) It is *always* the teacher's duty to "prevent disorderly and dangerous practices." (*Dailey, supra,* at p. 748.) In addition, statute requires that every teacher "hold students to a strict account for their conduct on the way to and from school, on the playgrounds and during recess. (Ed. Code, § 44807.) Obviously, it is impossible to lay down hard-and-fast rules on what a teacher should do for every case. The teacher's response may range from immediate intervention, to getting additional help quickly, to serving as a reliable witness.

What if the misconduct also constitutes a violation of criminal law or is beyond the power of the school to control?

Calling on law enforcement. Many school officials consider calling law enforcement only as a last resort. Somehow, such action has taken on the connotation of "giving the child a criminal record," "locking him up" or "using harsh punishment rather than understanding counseling."

Generally, these concerns are unfounded, resulting from a lack of communication between schools and law enforcement, and also

from a misunderstanding of the procedures, training and philosophy of modern juvenile officers. Far from displaying the Pavlovian response of "lock the kid up," law enforcement and probation officers are as committed as school officials to counseling young offenders.

The law states that the purpose of law enforcement and the juvenile justice system is to provide juveniles with the best possible care and guidance, balanced with the interest of the state. (Welf. & Inst. Code, § 202.) This care and guidance includes the juvenile's spiritual, emotional, mental and physical welfare. Far from seeking to send children to institutions, the law and those who enforce it seek to strengthen the minor's family ties as well as protect potential victims from harm. In short, law enforcement and school officials share common goals.

Law enforcement presence on campus should not be limited to crisis situations. If school officials invite law enforcement representatives to be guest speakers, visitors and members of campus climate/discipline and other committees, a good partnership can be established before a crisis occurs. With law enforcement's help, the school can create programs that will prevent trouble, rather than waiting to solve problems after they happen.

Moreover, law enforcement can often accomplish what the school cannot. An interview with the police is often a far more memorable experience for a student than a talk with a school official. Not only are today's police trained to be sensitive to youngsters' needs, they are also professionals in dealing with criminal behavior, just as educators are professionals in imparting knowledge.

There are *no sanctuaries* where any person, minor or adult, may indulge in crime without having to answer to the law. Penal Code section 777 provides that "every person is liable to punishment by the laws of this state for a public offense committed by him

therein." The decision whether an adult should be prosecuted is vested in the district attorney. The decision whether a minor who commits a criminal act should be sent to juvenile court lies with the probation officer and the district attorney. *School administrators have not been delegated this authority*; they should use *extreme caution* in deciding whether to withhold evidence of a crime from law enforcement. (See Pen. Code, § 135 and Ed. Code, § 44030.)

In fact, it is a criminal offense for teachers or administrators to fail to notify law enforcement of the following specified criminal acts:

1. **Pupil attacks or menaces school employee.** If a pupil attacks, assaults or menaces any school employee, it is the duty of the employee and the employee's supervisor to promptly report the incident to the appropriate law enforcement authorities. Failure to do so is a misdemeanor and will result in a fine of up to $200. (Ed. Code, § 44014(a).)

A report filed in compliance with the school district governing board regulations does not relieve the employee or the supervisor of the duty to promptly report the incident to law enforcement. If *anyone* on the governing board of a school district, a county superintendent of schools or any employee of a school district, directly or indirectly inhibits or impedes the person from making the report, he or she shall be guilty of a misdemeanor and may be fined $100 to $200. (Ed. Code, § 44014(c).)

2. **Child abuse.** Child abuse is defined as a physical injury inflicted by *other than accidental means.* It is also defined as sexual abuse, willful cruelty or unjustifiable punishment, unlawful corporal punishment, or injury or neglect. Child abuse does *not* mean a "mutual affray" between minors, or injury caused by reasonable and necessary force used by a peace officer or a person employed by or engaged in a public school to stop disturbances. (Pen. Code, §§ 11165.4 and 11165.6.)

Whenever teachers, principals, school administrative officers, supervisors of child welfare and attendance, certificated pupil personnel employees, persons involved in a child abuse prevention programs in schools, day camp personnel, school medical or mental health staff, or child care facility staff [8] know or *reasonably suspect* that a minor (someone under 18 years old) has been abused by someone, whether at school or elsewhere, they must immediately report the suspicion by phone, and within 36 hours in writing, to the local police or sheriff's department, or the county welfare department or the county juvenile probation department. (Pen. Code, §§ 11165-11166.) School district police or security departments are mandated to report child abuse, but not authorized to take child abuse reports. (Pen. Code, §11165.9.)

It is a misdemeanor for a mandated reporter to fail to report child abuse and can result in up to six months in jail, up to $1,000 fine or both. (Pen. Code, § 11172(e).) Moreover, a failure to report may result in personal civil liability. (*Landeros* v. *Flood* (1975) 17 Cal.3d 399.)

In *John R.* v. *Oakland Unified School District* (1989) 48 Cal.3d 438, a case of sexual abuse of a 14-year-old junior high pupil by a teacher while in an off-grounds tutoring situation, the California Supreme Court rejected the theory that the exercise of job-created authority of teachers over students made the district liable as well under the doctrine of respondeat superior. As a matter of public policy, it found that school districts should not be held vicariously liable for their employee's torts when they molest students. The court said the main reason for applying the doctrine of respondeat superior is to allow the employer to spread the risk through

---

[8] Instructional aides, teacher's aides or teacher's assistants of any public or private school, and classified employees of any public school, are also required by law to report suspicion of child abuse *if they have received training on reporting, and the school district has informed the California State Department of Education of the training.* Districts which do not train such employees must report the reasons why they have not done so to the State Department of Education. (Pen. Code, § 11165.7.)

insurance and carry its expense as a cost of doing business. In the case of school districts, however, it is unacceptable that schools should have to bear this cost. But a school may be held liable for their own direct negligence, such as negligent hiring or supervision.

Kimberly M. v. *Los Angeles Unified School District* (1989) 215 Cal.App.3d 545, decided after being returned by the Supreme Court to the lower appellate court for reconsideration, follows the rationale of *John R.*, even though the child involved was only 5 years old and the molest by the teacher occurred at school. A concurring opinion by Justice Johnson urges the Supreme Court to reconsider its broad holding that respondeat superior should not apply to school districts when teachers molest students.

However, students molested by teachers may pursue a remedy in federal court; schools may be found liable for violating students' federal civil rights if the schools do not protect students from reasonably foreseeable sexual assaults by a teacher. (*Stoneking* v. *Bradford Area School District* (3d Cir. 1989) 882 F.2d 720.)

The booklet, *Child Abuse: Educator's Responsibilities,* provides additional information on recognizing and reporting child abuse. It is available from the Attorney General's Crime Prevention Center, P.O. Box 944255, Sacramento, CA 94244-2550.

3. **Pupil commits assault with a deadly weapon.** If a student commits an assault with a deadly weapon (see "Assault," Chapter 3), the chief administrative employee at the school *shall, before suspending or expelling him or her,* notify law enforcement of the crime. (Ed. Code, § 48902(a).) Failure to do so is a misdemeanor and may result in a fine of up to $100. (Ed. Code, § 44030.)

4. **Pupil possesses or sells drugs or possesses weapons on campus.** If a student possesses or sells narcotics or a controlled substance (see "Drugs," Chapter 3) the principal must

notify law enforcement of the crime. If the student possesses a firearm, dirk, dagger, knife with a blade longer than 3-1/2 inches, taser or stun gun on campus, the principal must notify law enforcement. (Ed. Code, § 48902(c).) Principals may also report minors possessing other dangerous objects or using, selling or being under the influence of alcohol, intoxicants or drugs. (Ed. Code, § 48902(b).)

Administrators must realize they do not have the legal authority to withhold these kinds of information from law enforcement officials, although they do have some latitude as to whether they will suspend, expel or take no other action against the student. Their decision should certainly take into consideration the safety of a victim or potential victims.

Chapter 2

The Role of Law Enforcement

Law enforcement coming on campus

Crime occurs everywhere in our state, including on our school campuses, and criminal law is applicable wherever it happens. (Pen. Code, § 777.) This means the authority of law enforcement officers extends to any school in California. (Pen. Code, § 830.1.) Law enforcement officers may be summoned to a campus or may come of their own initiative. They do not need permission to enter school grounds, and school officials must not hinder or resist law enforcement officers in carrying out their duties on campus. (Pen. Code, § 148.) It should also be noted that the police's authority to be on school premises does not depend on the jurisdiction, or lack of jurisdiction, of school security or school police officers. (Ed. Code, § 39670; Pen. Code, § 830.32.)

Law Enforcement Interviewing or Removing Students During School Hours

Law enforcement officers have the *right* to come on campus to interview students who are suspects or witnesses of a crime. Police investigation or apprehension of suspects is a high priority because law enforcement agencies have the duty to protect the public. Thus, school officials should *not* interfere with the release of a student to the officers.[9] (54 Ops.Cal.Atty.Gen. 96 (1971); 34 Ops.Cal.Atty.Gen. 93 (1959); 32 Ops.Cal.Atty.Gen. 46 (1958).)

Officers should notify school authorities when the questioning or removal of a pupil from school is necessary. (54 Ops.Cal.Atty.Gen.

[9] Law enforcement officers share common concerns with school administrators—the welfare of students, the safety of the school environment and the safety of the community. These common concerns are the basis of mutual supportive relationships among all parties.

96 (1971).) School officials do not have the right to demand to be present when the police interview a student. However, a student who is the victim of child abuse does have the right to request a school staff member be present during an interview at school. (Pen. Code, § 11174.3.) In all other cases, the officer may, at his or her discretion, allow a school official to be present during an interview.

No liability will result if school administrators act with care when releasing a pupil to law enforcement for an interview or other legitimate police matters which require taking the student from school. Administrators should check the identity and credentials of the peace officer, the authority under which he or she acts, and the reason why the officer wants the student released. Following this, school officials should then fully assist the peace officer in the accomplishment of his or her duty. (54 Ops.Cal.Atty.Gen. 96 (1971).)

It should be noted that parental permission is not legally required to authorize the interview or removal of the pupil. (5 Cal. Code of Regs., § 303; 32 Ops.Cal.Atty.Gen. 46 (1958); 34 Ops.Cal.Atty.-Gen. 94 (1959).) If the principal or another school official releases a student who is a minor to the police for removal from school, the parent, guardian or responsible relative must be immediately notified of the action and the place where the minor was taken. (Ed. Code, § 48906.)

The only exception to this notification requirement is when a minor has been taken into custody as a victim of suspected child abuse as defined in Section 11165.6 of the Penal Code or according to Section 305 of the Welfare and Institutions Code.

> *. . . In those cases, the school official shall provide the peace officer with the address and telephone number of the minor's parent or guardian. The peace officer shall take immediate steps to notify the parent, guardian or responsible relative of the minor that the minor is in custody and the place where he or she is being held. If*

> *the officer has a reasonable belief that the minor would be endangered by a disclosure of the place where the minor is being held, or that the disclosure would cause the custody of the minor to be disturbed, the officer may refuse to disclose the place where the minor is being held for a period not to exceed 24 hours. The officer shall, however, inform the parent, guardian or responsible relative whether the child requires and is receiving medical or other treatment. The juvenile court shall review any decision not to disclose the place where the minor is being held at a subsequent detention hearing.* (Ed. Code, § 48906.)

If the school receives inquiries from the parents about the location of the student, the parents should be referred to the law enforcement agency that took the student into protective custody.

Law Enforcement Assisting School Administrators

At times, school officials may need to ask law enforcement to come on campus to arrest troublemakers or help in carrying out other duties such as search and seizure. Since school staff and law enforcement have complementary roles in protecting students and enforcing discipline, school officials should cultivate a good relationship with law enforcement. Building a positive rapport with law enforcement officials will encourage school staff to call on them for help when there is trouble. In fact, many schools are actively working with law enforcement officers on campus on a daily basis through school resource officer programs or via drug, alcohol and gang prevention and intervention programs. (See "Working Together," Chapter 8)

Campus police

Many school districts suffer major financial losses from school crime and violence, and they find local law enforcement is unable to meet their needs. In response to this dilemma, many school

districts have established their own police or security forces. In California, every board of education of a public school district has the authority to establish either a school district police department or a security department. (Ed. Code, § 39670.)

Members of a school district police department, including supervisory personnel, are peace officers of the State of California with the same authority as any peace officer—*except* for taking a child abuse report. (Ed. Code, § 39671, Pen. Code, § 11165.9.) School police officers are peace officers for the purpose of carrying out the duties of their employment, according to statutory limitations. (Pen. Code, § 830.32; Ed. Code, §§ 39670-39671.)

School police officers have the authority of peace officers anywhere in the state to perform their primary duty or to make an arrest for a public offense when there is immediate danger to person or property or of the escape of the perpetrator. (Pen. Code, § 830.32.) School police officers' primary duty is to ensure the safety of school district personnel and pupils and the security of the real and personal property of the school district. (Ed. Code, § 39670.)

Only members of a school district *police* department are peace officers. School security officers are *not* peace officers but have the same primary duty.

School peace officers (police) may carry firearms "only if authorized by and under such terms and conditions as are specified by their employing agency." Thus each local school board decides whether school police may carry weapons.

School police and school security officers are supplementary to city and county law enforcement agencies and under no circumstances are they vested with general police powers. (Ed. Code, § 39670.)

Chapter 3

Criminal Law On Campus

Some teachers and administrators are under the misconception that their duties and powers extend only to breaches of discipline. They believe they have no power or obligation to deal with criminal offenses because they lack police power under the law. But criminal behavior is *also* the serious breach of discipline, and teachers and administrators *must* deal with this behavior. In order to control and eliminate harmful behavior at school, teachers and administrators must enforce school rules and the law. Student violators must receive consistent consequences via school discipline measures and by referral to juvenile authorities.

Each school district and county office of education must report the incidence of school crime on school campuses on a semi-annual basis to the State Department of Education on standardized forms available from the Department. (Ed. Code, §§ 628-628.6.) The purpose of the mandated reporting program is to assist schools, school districts, local government, the State Department of Education and the Legislature in obtaining sufficient data and information about the type and frequency of crime occurring on school campuses to permit the development of effective programs and techniques to combat such crime. (Pen. Code, § 628 et seq.) Failure to submit this report, or submitting intentionally misleading data, may result in the Superintendent of Public Instruction withholding an amount from the district's next state funding apportionment until an accurate report is filed. (Ed. Code, § 14044.)

This School Crime Report can be used as a tool to train personnel to recognize and distinguish between criminal actions and discipline issues, to identify crime trends on campus, to report crimes

and to devise methods to prevent crime in the future. Representatives from law enforcement, probation and the State School/Law Enforcement Cadre can assist in providing training to school staff in these areas.

Educators, however, are neither lawyers nor police officers. They may see a variety of deviant behavior, but are often not sure about the criminal implications of such behavior. For example, a few years ago schoolchildren were fooled into believing they would get "high" on a mixture prepared from bananas. Suppose a teacher saw some children using it. Should he or she call the police? Arrest the children? Detain them while deciding what to do? Search them? Search their lockers for other drugs? Are the children's actions grounds for suspension? Quite simply, if an act is a criminal violation in the community, the same act is also a criminal violation when it occurs on campus. A school is not a sanctuary that protects students or others from prosecution.

In this chapter we list the most common criminal violations that occur on campus. These crimes are divided into misdemeanors or felonies. A misdemeanor is a crime carrying a less severe penalty than a felony. The specific penalties set by statute are not important for the purposes of this book because they differ greatly depending on the crime committed. Whether a crime is a misdemeanor or a felony is significant, however, because it indicates the seriousness of the violation in the eyes of the law and sets the conditions under which a teacher or other civilian may make a "citizen's arrest."

Drugs

Serious penalties, not to mention critical health hazards, are attached to the use or sale of more than 135 different substances. A small number of these substances constitute the bulk of the illicit drug traffic. As schools become the major channel of drugs to children, it is important for educators to know the symptoms of drug abuse and be aware of the major drug regulation laws. The chart on page 22 lists the effects associated with the most common

illicit drugs. (Note: The effects listed are not *proof* of drug abuse, because other factors may cause similar symptoms. The signs are, however, cause for further investigation.)

Penalties for the sale of drugs on campus have been made tougher. The *School Safety Act of 1983* makes it a felony, punishable by imprisonment in the state prison, for any person over the age of 18 to unlawfully prepare for sale, or sell or give away any controlled substance to a minor under the age of 18 while on school grounds or public playgrounds during the hours in which school-related programs for minors are being conducted. (Health & Saf. Code, § 11353.5.) Further, the federal *Comprehensive Crime Control Act of 1984* provides for additional punishment of anyone convicted of such actions on or within 1,000 feet of public or private school grounds. (21 U.S.C. 845a.) In California, the *Juvenile Drug Trafficking and Schoolyard Act of 1988* also provides additional penalties for anyone convicted of certain offenses involving crack cocaine on or within 1,000 feet of public or private school grounds. (Health & Saf. Code, § 11353.6.)

Possession or sales of drugs *must* be reported to law enforcement; other acts involving drugs, alcohol or other intoxicants may be reported to law enforcement by the principal. (Ed. Code, § 48900.) It is important for school officials to meet with local law enforcement officials to discuss which drug and alcohol offenses should be reported to them. After deciding which cases they are able and willing to process, school and law enforcement policies should be developed and all staff trained in the reporting procedures.

In addition to criminal sanctions, possession, use, sale, offering for sale or furnishing any controlled substance, alcohol, or any intoxicant, or some other substance represented as such or being under the influence of such, is grounds for suspension or recommended expulsion. (Ed. Code, §§ 48900(c), (d).) Moreover, Education Code section 48915(a) *requires* the principal to recommend expulsion for unlawful sale of any controlled substance as described above unless he or she reports in writing why expulsion is inappropriate. See Chapter 5.

Signs of Drug-Taking

Drug	Appearance	Possible Effects
Alcohol	Liquid.	Euphoria, mood swings (may be relaxed or aggressive alternately), impaired judgment, loss of coordination, blurred vision, altered perception, staggered walk. Increased doses may cause dizziness, nausea and vomiting.
Tobacco	Dried leaf, varying texture and color.	Euphoria, lightheadedness, diminished sense of smell/taste, heart disease, cancer.
Marijuana	Tobacco-like, dried flowers and leaves on stems, often with seeds.	Low doses may induce restlessness, sense of well-being, and euphoria. Physical signs include red eyes, dry mouth, increased appetite. Higher doses may cause dream-like state, acute sensations (e.g. of smell and sight) and paranoia.
Hashish	Gold, brown or black gummy substance compressed into cakes.	Same as for marijuana; however, higher doses can result in hallucinations.
Cocaine	White crystal-like powder or powder chunks.	Euphoria, increased alertness, feelings of confidence and well-being. Can cause dilated pupils, runny nose, and elevated heart rate, respiration, and body temperature. Overdose can cause extreme agitation, respiratory failure or death.
Crack Cocaine	White to tan pellets or chunks.	Prolonged use may result in irritability, depression, paranoia, convulsions or death.
Amphetamines	Pills, capsules, tablets, or white powder.	Increased alertness, euphoria, appetite loss, increased heart rate, and dilated pupils. Prolonged use may cause blurred vision, dizziness, coordination loss, collapse. Overdose can result in high blood pressure, fever, stroke or heart failure.
Methamphetamines	White to tan powder, capsules.	
Ice	Rock candy or rock salt crystals.	The effects of ice are similar to other stimulants but occur more quickly and can be more intense and severe. Prolonged use will cause damage to organs, particularly lungs, liver and kidney.
Barbiturates	Capsules or pills, may be red, blue, yellow, or white.	Drunken behavior, slurred speech, and disorientation. Overdose can cause dilated pupils, shallow respiration, clammy skin, weak and rapid pulse, coma or death.
Heroin	White to brown powder or black tar-like substance.	Euphoria, drowsiness, constricted pupils, nausea, and possible vomiting. Overdose can result in slow and shallow breathing, clammy skin, convulsions, coma or death.
LSD	Clear liquid, colored pills, or white powder, soaked into paper.	Hallucinations, distorted sense of sight, taste, and smell. Dilated pupils, high blood pressure, and fever. "Bad trips" can result in confusion, panic, paranoia, anxiety, loss of control and psychosis.
PCP	Clear liquid, white to brown powder, or a gummy mass.	Similar to LSD, only with rapid and involuntary eye movement and an exaggerated walk. User may experience extraordinary strength, a sense of invulnerability and image distortion.
Inhalants	Any substance that emits vapors.	Hallucinations, decreased body temperature, lower blood pressure, nausea, sneezing, nosebleeds, fatigue, loss of coordination, confusion, psychosis.

The Law

The following acts as they relate to specific drugs are felonies (unless noted otherwise) under the California Health and Safety Code.

Heroin, cocaine, crack cocaine

- ❑ Possession. (§ 11350.)
- ❑ Possession for sale. (§ 11351.)
- ❑ Sale, gift, transporting, furnishing, etc. (§ 11352.)
- ❑ Involving a minor in the above crimes or furnishing these drugs to a minor. (§§ 11353, 11353.5, 11353.6, 11353.7, 11354.)
- ❑ Under the influence. (Misdemeanor, § 11550.)

Barbiturates, LSD, PCP, amphetamines, methamphetamines

- ❑ Possession. (Either a felony or misdemeanor, § 11377.)
- ❑ Possession for sale. (§§ 11378, 11378.5.)
- ❑ Sale, gift, transporting, furnishing, etc. (§§ 11379, 11379.5.)
- ❑ Involving minors in the above crimes or furnishing barbiturates to a minor. (§§ 11380, 11380.5.)
- ❑ Under the influence. (Misdemeanor, § 11550.)

Marijuana, hashish

- ❑ Possession of less than 28.5 grams of marijuana, other than concentrated cannabis, on school grounds by a minor is a misdemeanor. (§ 11357(e).) First offense by a minor, up to $250 fine. Second offense by a minor, up to $500 fine and/or detention for up to 10 days.
- ❑ Possession for sale. (§ 11359.)
- ❑ Planting, cultivating, processing. (§ 11358.)
- ❑ Using a minor to transport, or sell, or give away or giving any amount to a minor. (§ 11361.)
- ❑ Selling, offering to sell, transporting and importing are felonies (§ 11360(a)); transporting or giving of 28.5 grams or less, other than concentrated cannabis—is a misdemeanor. (§ 11360(b).)
- ❑ Under the influence. (Misdemeanor, Pen. Code, § 647(f).)

Inhalants (toluene or other intoxicating inhalants generally found in glue, paint, paint thinner, solvents, etc.)

- ❑ Possession of substance containing toluene or similar toxic inhalant with intent to inhale for purpose of intoxication or knowingly being under the influence thereof—is a misdemeanor. (Pen. Code, § 381.)
- ❑ Possession for sale, dispensing, distributing substance containing toluene or other intoxicating combination of hydrocarbons to minors except as part of crafts kit or certified as containing substance which makes it malodorous or induces sneezing—is a misdemeanor. (§ 380.)
- ❑ Possession of nitrous oxide with intent to inhale for purpose of intoxication or knowingly being under influence—is a misdemeanor. (§ 381b.)
- ❑ Under the influence. (Misdemeanor, Pen. Code, §§ 647(f) or 381.)

Possession of paraphernalia. Possession of paraphernalia used for injecting/smoking heroin or other controlled substances is a misdemeanor (Health & Saf. Code, §§ 11014.5, 11364, 11364.5, 11364.7.)

School officials may ban all paraphernalia from campus by board action. The board rule would then allow suspension or expulsion under provisions of Education Code section 48900(j).

Being under the influence of drugs or alcohol. As teachers learn about the symptoms of drug abuse (see chart), they will be able to spot students who may be under the influence of drugs or alcohol. When apprehending such a youngster, note that the minor may also possess drug paraphernalia which is a criminal misdemeanor offense (Health & Saf. Code, § 11364) or have illicit drugs which is a felony. (Health & Saf. Code, §§ 11350, 11377.) In many schools, students are taken to the school nurse, school resource officer or school police officer for a more accurate determination of possible drug usage.

Being in a place where unlawful drug use is occurring. It is unlawful to be in a place where heroin, cocaine, crack, mescaline, peyote or synthetic THC is being used with the knowledge that such activity is occurring. (Health & Saf. Code, § 11365.) For example, Johnny goes into the restroom to use one of these drugs and Mike, a non-user, goes with him merely to watch. Mike can now be arrested along with Johnny because he knew that Johnny was going to use drugs.

Maintaining a place for the purpose of unlawfully using or selling marijuana and other controlled substances is a misdemeanor or a felony. (Health & Saf. Code, §§ 11366, 11366.5, 11366.6.)

School officials should not throw away confiscated drugs, but should give *all* drugs to a peace officer to be stored according to law enforcement procedures. It is a misdemeanor to destroy evidence of a crime. (Pen. Code, § 135.)

Alcohol

It is a misdemeanor to possess, consume, give, deliver or sell alcoholic beverages on school premises unless it meets several very narrow exceptions. (Bus. & Prof. Code, § 25608.) Possession of alcohol by a minor is a misdemeanor. (Bus. & Prof. Code, § 25662.) Being under the influence of alcohol is also a misdemeanor (Pen. Code, § 647(f)). Furnishing alcohol to a minor is a misdemeanor. (Bus. & Prof. Code, § 25658.) In addition, possession, use, sale or otherwise furnishing alcohol, or a substance represented as alcohol, or being under the influence of alcohol is grounds for suspension or recommended expulsion. (Ed. Code, § 48900 (c) (d).) Also see Chapter 5.

Weapons

The following is a brief summary of weapons law violations most likely to occur on school premises. In addition to the following criminal sanctions, Education Code section 48915(a) requires the

principal to recommend expulsion for possession of any firearm, knife, explosive or other dangerous object at school or at a school activity off school grounds. See Chapter 5.

Guns

Possession on school grounds. No one except law enforcement officers and certain others may bring or possess any firearm upon the grounds of any public school, unless the school district superintendent or designee has given permission. Violation of this section is either a felony or misdemeanor. (Pen. Code, § 626.9.) Note that "possession" in this and other weapons statutes does not require that the offender own the weapon or have it on his or her person or intend to use it unlawfully—having control over the weapon (such as in a locker) is sufficient.

Possession by minors. A minor may never possess a concealable firearm[10] without the written permission or presence of his or her parent or guardian. (Pen. Code, § 12101.) It is also illegal to furnish a minor with such a weapon. (Pen. Code, §§ 12072, 12100.) A minor may not possess live ammunition without written permission or presence of the parent or guardian unless going to or from an organized lawful recreational, shooting or hunting activity. (Pen. Code, § 12101.)

No person may sell or give any air gun or gas-operated gun to a minor without written parental permission. (Pen. Code, §§ 12100, 12551, 12552.)

The Penal Code states that a firearm, used in a misdemeanor or a felony committed or attempted by a juvenile, be declared a

---

[10] A concealable firearm is a device with a barrel less than 16 inches long designed for use as a weapon which expels a projectile by explosion or combustion. (Pen. Code, § 12001.) Such weapons also include rockets, rocket launchers and short-barreled shotguns and rifles.

nuisance. The code requires its surrender or return to the owner, if stolen, or its sale or destruction by law enforcement authorities. (Pen. Code, § 12028.)

If a minor under 18 inflicts personal injury or property damage by shooting a firearm, and the parent permitted the minor to have the firearm or left the firearm in a place accessible to the minor, Civil Code section 1714.3 makes the parents liable without limit for property damage, and for up to $30,000 for the death or injury of one person, and up to $60,000 for the death or injury of everyone in the incident. This liability is *in addition* to any other liability imposed by law.

Prohibited firearms and equipment. It is illegal for anyone to possess certain types of firearms or ammunition, including assault weapons, sawed-off shotguns, machine guns, unmarked pistols or revolvers, firearms from which the identifying numbers have been removed, armor-piercing bullets and equipment such as sniper-scopes and silencers. (Pen. Code, §§ 468, 12001.5, 12020, 12094, 12220, 12280, 12320, 12520.)

Carrying a loaded weapon. It is a misdemeanor to carry a loaded firearm in a vehicle or on the person in a public place. (Pen. Code, § 12031.)

Carrying a concealed weapon. It is a misdemeanor for an unlicensed person to carry a concealed weapon in a vehicle or on his or her person. (Pen. Code, § 12025.) Having parental permission does not affect the need for or take the place of a concealed weapons permit.

Exhibiting, using in a fight, assault. Every person who draws or exhibits a firearm, loaded or not, or an imitation firearm, in a rude, angry or threatening manner, or who unlawfully uses it in a fight or quarrel is guilty of a misdemeanor. (Pen. Code, §§ 417(a), 417.2.) It is a violation even when an unloaded gun is used to "scare" a person.

Many of these cases also constitute the more serious crime of assault, assault with a deadly weapon or assault with intent to kill if the firearm is loaded. These more serious offenses may have severe consequences for the 16- and 17-year-old juveniles because they may be treated legally as adults rather than as minors. If they are remanded to adult court, they may face more serious penalties. (Welf. & Inst. Code, § 707.) These crimes will be discussed later.

Knives

Switchblade knives. A switchblade knife resembles a pocket knife; however, the blade of a switchblade is released by flicking the wrist, or pressing a button or other mechanical device, rather than by manually pulling the blade into position. It is a misdemeanor to personally possess, carry in the passenger compartment of a vehicle, sell, lend, give, etc., a switchblade knife with a blade *two inches* or longer. (Pen. Code, § 653k.)

Daggers, stilettos, dirks and other knives. It is a felony to carry a concealed dagger, stiletto, dirk or similar straight-bladed knife. (Pen. Code, § 12020.) Further, it is a misdemeanor to bring or possess on school property, without authority, all knives having blades more than three and one-half inches long, folding knives with blades that lock into place or razors with unguarded blades. (Pen. Code, § 626.10.) In addition, it is a misdemeanor to draw or exhibit any knife (or other deadly weapon) in a rude, angry or threatening manner or to use it in a fight or quarrel. (Pen. Code, § 417(a).)

Other Weapons

Possession, sale, etc. Under Penal Code section 12020, it is a felony to possess, sell, give away, lend, etc., the following weapons:

- ❑ Blackjacks, billy clubs and sandclubs
- ❑ Metal knuckles

- ❑ Sandbags, saps
- ❑ Nunchakus
- ❑ Ballistic knives
- ❑ Throwing stars
- ❑ Sawed-off shotguns and rifles
- ❑ Mechanical concealed knives and swords

Such weapons shall be confiscated and destroyed whenever they are found. (Pen. Code, § 12029.)

Additionally, it is a misdemeanor to possess blowguns or unlawfully possess a taser or stun gun on school grounds. (Pen. Code, §§ 626.10, 12582.) Minors must be at least 16 and have written parental consent to possess a stun gun or tear gas (Pen. Code, §§ 12403.8, 12651).

Exhibiting, using in a fight, assault. It is a misdemeanor to draw or exhibit any deadly weapon in a rude, angry or threatening manner, or to use them in a fight or quarrel. (Pen. Code, § 417.) It is a felony or misdemeanor to use these weapons or a loaded firearm in an attempt to commit a violent injury on another. (Pen. Code, § 245.)

School Authority

The Education Code authorizes school personnel to take injurious objects from pupils. An injurious object is an object capable of inflicting substantial bodily damage, which is not necessary for academic purposes and is not a personal possession or item of apparel that a pupil would reasonably be expected to have. (Ed. Code, § 49330.)

Education Code section 49331 provides:

> *Any certificated employee of any school district and any classified employee who is designated by the governing board for such purposes may take from the personal possession of any pupil upon school premises*

> *or while under the authority of school personnel any injurious object in the possession of the pupil.*

Education Code section 49332 provides:

> *The parent or guardian of a pupil from whom an injurious object has been taken pursuant to this section may be notified by school personnel of the taking.*
>
> *School personnel may retain protective possession of any injurious object taken pursuant to this section until the risk of its use as a weapon has dissipated, unless prior to dissipation of the risk, the parent or guardian requests that the school personnel retain the object, in which case, the school personnel shall retain the object until the parent or guardian appears personally to take possession of the injurious object from the school personnel.*

If the student brings a weapon to school and asks a certificated or classified employee to take care of it, the weapon may be returned to the student at the end of the day, provided "such injurious object may be lawfully possessed off school grounds." (Ed. Code, § 49333.)

Explosives

Every person who recklessly or maliciously has in his or her possession any destructive device or any explosive in or near any school is guilty of a felony. (Pen. Code, § 12303.2.)

Physical Violence

The number of fights that break out in any schoolyard is amazing. If that many fights occurred in a downtown intersection, the reaction of law enforcement and the attitude of citizens would be unambiguous and hard-line. Our society has traditionally shown far more tolerance toward "schoolyard scuffles" and other petty forms of criminal behavior, but this tolerance is fading fast as we

see how such quarrels can escalate unpredictably into serious violent crime.

Criminal laws protect adults against violence from their neighbors. The same laws also protect minors. Further, Penal Code section 241.2 prohibits assault against anyone on a school campus. School disciplinary rules also protect minors from violence. In addition to the criminal sanctions that follow, Education Code section 48915(a) requires the principal to recommend expulsion for a student causing physical injury to another person, except in self-defense. See "Suspension/Expulsion," Chapter 5.

Minors who are victims of crime are sometimes threatened with more violence if they report the crime, thus they often are reluctant to initiate criminal or disciplinary action. However, intimidating or threatening a victim or witness is a crime carrying severe penalties. (Pen. Code, §§ 136.1-140.) Even if a victim accepts the bullying, however, school staff should not. Applying criminal law or disciplinary action does not depend on the willingness of a victim to "press charges." Moreover, a victim or witness cannot refuse to testify in court without facing charges of contempt of court.

Civil Code section 1714.1 imposes a liability of up to $10,000 upon the *parents* of a minor whose willful misconduct results in injury or death to another. In addition to the Civil Code, Education Code section 48904(a) imposes liability of up to $7,500 for such acts. Furthermore, if the parents were negligent because they did not control their children, more liability may be imposed.

Hazing

Education Code section 32051 provides that "No student, or other person in attendance at any public . . . school shall . . . participate in hazing, or commit any act that . . . causes or is likely to cause bodily danger, physical harm or personal degradation or disgrace resulting in physical or mental harm to any fellow student or person attending the institution." Violation of this section is punishable as a misdemeanor.

This section's language is obviously very broad and covers a number of situations. Not only does it prohibit physical attacks or attempted attacks that would constitute a battery or assault, but it also prohibits such activities as throwing objects near other students, pulling down another student's pants in public, daring a child to commit a dangerous act and many other similar situations.

Assault

"An assault is an *attempt,* coupled with present ability, to commit a violent injury on the person of another." (Pen. Code, § 240.) For example, if Jimmy, armed with a stick, lunges at Billy, and the teacher on duty stops him before he actually touches Billy, Jimmy is guilty of an assault.

While "ordinary" assaults and batteries are misdemeanors, certain dangerous assaults (such as assault with a deadly weapon or assault to commit other felonies) are felonies. (Pen. Code, §§ 220, 243, 243.1-245.5.) There are separate misdemeanor assault statutes that specifically apply to assaults on school property or on school employees. The maximum term of punishment is six months longer than that of "ordinary" assault. (Pen. Code, §§ 241.2, 241.4, 241.6.)

Battery

"A battery is any willful and unlawful use of force or violence upon the person of another." (Pen. Code, § 242.) If one child attacks another with fists, or a stick, or kicks or shoves him or her—this is a criminal battery. If there is any physical injury, and the incident is not a mutual affray, the teacher *must* report the incident to the police. (Pen. Code, §§ 11165-11169.) There is a separate misdemeanor battery statute that is specifically aimed at batteries committed against any person on school property. The maximum term of imprisonment for this offense is six months longer than the maximum term for "ordinary" battery. (Pen. Code,

§ 243.2(a).) There is also a separate felony or misdemeanor statute for battery on a school employee. (Pen. Code, § 243.6.)

Battery only applies to the use of "unlawful" force. If two children are playing in a football game, for example, they are not criminally liable for unintentional injuries inflicted during the game. Also, if one child attacks another, the victim is not guilty of a battery if he or she resists the attack and defends himself or herself. (Pen. Code, § 693(1).) Of course, the *attacker is* guilty of battery.

Whenever any school employee is attacked, assaulted or menaced by a pupil, the employee and his or her supervisor must report it to law enforcement. Failure to report is a misdemeanor. (Ed. Code, § 44014.)

School employees may sue the district in federal court for violation of their federal civil rights if the school fails to protect them from bodily harm. (*Zemsky* v. *City of New York* (2nd Cir. 1987) 821 F.2d 148.) Staff may not, however, sue for damages under Article I, section 28(c) of the California constitution. Instead, their exclusive remedy in state court is the workers' compensation law. (*Halliman* v. *Los Angeles Unified School District* (1984) 163 Cal.App.3d 46.)

Abuse of Teachers

Students and their parents should clearly be encouraged to talk to teachers and administrators about any problems between the student and the teacher or school officials. Teachers especially have an obligation to make sure that their pupils feel free to talk to them about anything.

Inevitably, some of the dialogue may be negative because the actions of a teacher or administrator—whether right or wrong—may attract criticism from some students and parents. Such criticism is considered "fair comment," and teachers should not stifle it but try to consider the objections on their merits.

On the other hand, conduct by a parent, guardian or other person "that materially disrupts classwork or extracurricular activities or involves substantial disorder" is a misdemeanor. (Ed. Code, § 44811; see *Ketchens* v. *Reiner* (1987) 194 Cal.App.3d 470.)

Threats to School Officers

> *James Jones, a student at Murray High, had been absent from Judy Warren's class on Monday. When Jones appeared on Tuesday, he approached his teacher's desk and told her he had some "business to take care of" on Monday, and that if she didn't change the records to indicate he was in her class on that day, he would "send someone to break her legs after school."*

Is Jones guilty of any crime? Although Jones did not actually touch (battery) nor did he attempt to touch (assault) his teacher—he did threaten a future attack on her. Jones may be guilty of a violation of Penal Code section 71 which prohibits threatening a school officer or employee. He may also be guilty of violating Penal Code section 422, making terrorist threats.

Penal Code section 71 states:

> *Every person who, with intent to cause, attempts to cause, or causes, any officer or* ***employee*** *of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat,* ***directly communicated*** *to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out, is guilty of a public offense punishable as follows:*
>
> *(1) Upon a first conviction, such person is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison or in a county jail not exceeding one year, or by both such fine and imprisonment.*

> *(2) If such person has been previously convicted of a violation of this section, such previous conviction shall be charged in the accusatory pleading, and if such previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, such violation is punishable by imprisonment in the state prison. As used in this section, **'directly communicated'** includes, but is not limited to, a communication to the recipient of the threat by telephone, telegraph, or letter. (Emphasis added.)*

For a violation of this section, it is only necessary that the threat *could* be carried out, not that the threat would actually be carried out. (*In re Zardies B.* (1976) 64 Cal.App.3d 11.)

Note that if Jones had threatened to attack his teacher without demanding that she alter school records, his threat would not constitute a violation of Penal Code section 71 because Jones would not be attempting to influence any act in the performance of her duties. Also, the threat must be "directly" communicated to the officer or employee. If the teacher heard about Jones' threat through another student, Jones would not be guilty of this crime unless Jones personally sent the student as a messenger to pass on the threat. (See *People* v. *Zendejas* (1987) 196 Cal.App.3d 367.)

However, Jones' threat might be a crime under Penal Code section 422 which states:

> *Any person who threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person*

> *reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.*

Unlike Penal Code section 71, there is no requirement that the threat be made to influence the performance of a duty or that it be made directly to the person. As long as Jones *made* any threat to kill or seriously harm Ms. Warren, and meant it to be understood as a threat and caused his teacher to be in sustained fear for her safety, he can be arrested and prosecuted for this crime—even if someone else told her about it.

False Imprisonment

False imprisonment is the unlawful violation of the personal liberty of another. (Pen. Code, § 236.) For example, if several children surround one child to prevent him or her from leaving, it is false imprisonment. (Refer to *People* v. *Haney* (1977) 75 Cal.App.3d 308, 313.)

If violence or menace is used, as is usually the case, false imprisonment is then a felony. (Pen. Code, § 237; see *People* v. *Arvanites* (1971) 17 Cal.App.3d 1052.)

Fighting/Disturbing the Peace

Anyone in a public place who fights, challenges another to fight, maliciously disturbs another by loud and unreasonable noise or uses offensive words likely to provoke a fight is guilty of a misdemeanor. (Pen. Code, § 415.) Thus, if a student challenges another to fight, even if it is not punishable as a battery or assault, the challenge may constitute disturbing the peace. A mutual fight—mutual affray—would also be punishable under this section. Penal Code section 415.5(a) specifically prohibits and provides enhanced penalties for the above acts in schools or on school grounds by someone other than students or school employees.

Stealing

In addition to the criminal sanctions that follow, Education Code section 48915(a) requires the principal to recommend expulsion for robbery and extortion. See Chapter 5.

Theft

Under Education Code section 48900(g), stealing or attempting to steal property is cause for suspension or expulsion. Theft can be a felony (grand theft) when the value of what is taken exceeds $400 or the property is taken from the person of another. (Pen. Code, § 487.) Otherwise, it is a misdemeanor (petty theft). For example, a minor is guilty of petty theft if he or she takes a sweater hanging in the cloakroom when the owner isn't looking, or refuses to return a borrowed sweater, or promises to pay for a sweater he or she receives with the intention never to pay. (Pen. Code, § 484.) If the child takes the sweater directly from a person who is carrying or wearing it—the act is grand theft. If the child takes the sweater from a person who is carrying or wearing it by using force or intimidation—the act is robbery.

What if a minor finds lost property? The finder is guilty of theft if he or she has knowledge of the owner's identity (such as a name written inside a jacket), or knows how to discover the identity of the owner (by checking whether anyone reported the loss to the lost-and-found department), but makes no reasonable and just efforts to locate the owner and give back the item. (Pen. Code, § 485.) But there is nothing illegal about "finders keepers" as long as efforts to find the owner are sincerely made. An item worth more than $10, however, must be turned over to police. The finder can re-claim it if the owner is not located in 90 days. (Civ. Code, §§ 2080-2080.3.)

Robbery

Robbery is always a felony. (Pen. Code, § 213.) It is defined as "the felonious taking of personal property in the possession of

another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (Pen. Code, § 211.) "Fear" may involve a threat to inflict injury to the person, or the person's family, or to the person or property of anyone accompanying the person robbed. (Pen. Code, § 212.)

To illustrate, if one or more students approach Jimmy and demand, "Give us your lunch money or we'll beat you up," and Jimmy then gives up his money, they would be guilty of robbery. Usually, there is a sense of immediate danger to the victim. Even if Jimmy does not give up his money, the other students are guilty of attempted robbery.

Extortion

Extortion is also a felony. (Pen. Code, § 520.) It is defined as "the obtaining of property from another, *with* his consent, . . . induced by a wrongful use of force or fear." (Pen. Code, § 518.)

Although similar to robbery, extortion usually does not involve the same immediacy of danger to the victim. A student who demands from another that he or she leave money in a locker "or I'll get you later" is guilty of extortion. Another example of extortion is blackmail.

Receiving Stolen Property

Anyone who receives property worth more than $400 acquired by theft or extortion, knowing that it was so obtained, is guilty of a felony. If the amount of property is less than $400, the district attorney may reduce the crime to a misdemeanor. (Pen. Code, § 496.) Under Education Code section 48900(l), receiving/possessing stolen property is also cause for suspension or expulsion.

A related problem common to many schools is the duplication of school keys. Those persons who knowingly duplicate or possess duplicate keys to school buildings, without authorization from the person in charge, are guilty of a misdemeanor. (Pen. Code, § 469.)

Crimes against school property (vandalism)

If any person maliciously injures or destroys any real or personal property owned by another, he or she is guilty of a misdemeanor or possibly a felony if the property destroyed is worth more than $5,000. (Pen. Code, § 594.) This section applies not only to damage to school property, such as damaging library books or pulling up plants, but also to injury or damage inflicted against the property of students or teachers. In addition to criminal sanctions, causing or attempting to cause damage to school or private property is grounds for suspension or recommended expulsion. (Ed. Code, § 48900(f).)

To limit vandalism at schools and in the community, the law now prohibits the purchase of any aerosol paint container by any person under the age of 18. (Pen. Code, § 594.1.) The law further prohibits *any* person from possessing an aerosol container while in a public facility, if there is a sign posted at the place stating it is a misdemeanor to possess such a container without authorization. It is also unlawful for a minor to possess an aerosol container of paint, for the purpose of defacing property, on any street, public highway or other public place.

Parents' Liability

Parents are liable in damages up to $10,000 for each incident (up to $60,000 for incidents involving firearms) if their children willfully injure others or damage property. (Civ. Code, §§ 1714.1, 1714.3.) Awareness of this liability may motivate parents to control the behavior of their children. If any minor willfully injures a student, a teacher or any other employee or volunteer at the school, or damages property belonging to the school or to any other person, the child's parents may be held liable for an additional $7,500 for the injury or damage. (Ed. Code, § 48904.)

For example, if a child spray-paints a message on a school building, the parents of the minor are also responsible for the cost of

restoring the building. Likewise, if a minor intentionally tears up a school book, the parents are also responsible for the book's replacement. Additional restitution can be gained from action against the parents' homeowner's insurance policy.

If a school district wishes, it can offer a reward leading to the apprehension of a person who injured a student, employee or volunteer, or damaged property of the school district or other governmental agency. (Gov. Code, § 53069.5; Ed. Code, § 48904.) The apprehended minor's parents or guardian are also liable for the reward paid for such information, up to $7,500. (Ed. Code, § 48904.)

In addition, a school employee's personal property is protected under Education Code section 48905 which states:

> *An employee of a school district whose person or property is injured or damaged by the willful misconduct of a pupil who attends school in such district, when the employee or the employee's property is (1) located on property owned by the district, (2) being transported to or from an activity sponsored by the district or a school within the district, (3) present at an activity sponsored by such district or school, or (4) otherwise injured or damaged in retaliation for acts lawfully undertaken by the employee in execution of the employee's duties, may request the school district to pursue legal action against the pupil who caused the injury or damage, or the pupil's parent or guardian pursuant to Section 48904.*

If a minor under 18 uses a firearm to inflict personal injury or property damage, and the parent permitted the minor to have the firearm or left the firearm in a place accessible to the minor, the parent is liable without limit for property damage and for up to $30,000 for the death or injury of one person and up to $60,000 for the death or injury of all persons arising out of the incident. (Civ. Code, § 1714.3.)

Minor's Liability

A minor is civilly liable for a wrong done by him or her and can be sued for damages. (Civ. Code, § 41.) Minors may also enforce their rights by civil action or other legal proceedings, except that a legal guardian must bring the action on their behalf. (Civ. Code, § 42.)

How to make your campus secure from outsiders

A major problem facing many administrators and school staff is how to prevent outsiders from entering school property. Intruders can cause trouble since they are often involved with drug or gang activity, and generally undermine campus administrative authority. Reviewing the School Crime Report statistics will indicate the magnitude of this problem on a given campus. In the past, statutes generally required eviction only when the outsider actually caused trouble, or when it was clear he or she was waiting for an opportunity to commit a specific crime.

The Legislature intends to promote the safety and security of the public schools by restricting and setting conditions on the access of unauthorized persons to school campuses. Penal Code section 627.6 mandates the posting of signs at all public school entrances specifying the requirement for all outsiders who enter school grounds during school hours to register with the principal or designee. (Pen. Code, § 627.2.) "Registering" involves visitors furnishing their name, address, occupation, age (if under 21), purpose for entering school grounds, proof of identity, and other information consistent with purposes and intent of this section. (Pen. Code, § 627.3.)[11]

---

[11] See *In re Jimi A.* (1989) 209 Cal.App.3d 482 for an excellent discussion of school trespass laws and the ways school policy can be used to implement their enforcement.

Requesting Outsiders to Leave

A person[12] may be refused permission to register or asked to leave campus (registration revoked) if it reasonably appears to the school's chief administrator (or an employee designated in writing by the administrator) that the person's expulsion is needed to maintain order because: (1) it appears that the person has entered the campus for the purpose of committing an act likely to interfere with the peaceful conduct of the activities of the campus (Pen. Code, § 626.6); or (2) it appears that the person's presence would be disruptive of such activities regardless of his or her intent. (Pen. Code, § 627.4; Ed. Code, § 32211.) If the person refuses to leave or returns within seven days,[13] he or she may be fined up to $500 and jailed for up to six months.[14] (Pen. Code, §§ 626.6, 627.7.)

Any person who was denied registration or asked to leave because his or her presence was thought by the principal, or principal's designee, to be disruptive, regardless of the person's intent, has the right to appeal the decision to the principal or the superintendent[15] and then to the school board.[16] (Pen. Code, § 627.5; Ed. Code, § 32211(c).)

The exercise of free speech on campus by outsiders as well as by students, even if it causes annoyance and inconvenience, may not

---

[12] Students, parents and guardians of students, school employees and persons whose employment requires their presence on campus, including employee union representatives on business, may not be ordered off campus under these sections. (Pen. Code, §§ 626.6, 627.1; Ed. Code, § 32211(a).)

[13] Education Code section 32211 forbids reentry for only 48 hours after an order to leave. The Penal Code sections give schools the ability to keep outsiders off campus for longer periods.

[14] For second violations, up to 10 days must be served (Pen. Code, §§ 626.6, 627.7) and for further offenses, 90 days must be served. (Pen. Code, § 626.6.)

[15] The person who is denied registration, or whose registration is revoked, may request a hearing before the principal or superintendent. The request must be delivered in writing within five days after the denial or revocation. The hearing must be held within seven days after receipt of the request by the principal or superintendent. (Pen. Code, § 627.5.)

[16] Ed. Code, § 32211(c). This appeal must be made within two days after the superintendent's decision.

be labeled as disruptive unless there is a clear and present danger of substantial interference with school activities. (See Chapter 7.) Outsiders exercising their right of free speech may not be evicted under these laws.

The law does allow, however, the chief administrator of a public school, or an employee designated by him or her to maintain order on campus, to tell an outsider that permission to remain on the school grounds has been withdrawn when there is "reasonable cause to believe that such person has willfully disrupted" the orderly operation of the campus. The consent may be withdrawn for up to 14 days during which time the person affected may submit a written request for a hearing on the withdrawal. The person is entitled to a hearing within seven days of receipt of the request by the chief administrative officer. The hearing should be held whenever possible before the person's exclusion unless an emergency exists. Even in emergency situations, the hearing must be conducted within seven days. (*Braxton* v. *Municipal Court* (1973) 10 Cal.3d 138, 154.) If the chief administrative officer did not personally evict the individual, a written report by the person who did the evicting, and confirmation of the eviction by the administrator, is required within 24 hours. (Pen. Code, § 626.4.)

Arresting Outsiders for "Loitering" at or Near Schools

In some cases it is possible to arrest a disruptive outsider—after first requesting that the individual leave—before he or she causes trouble. Penal Code section 653g prohibits loitering about any school or public place at or near where children normally congregate. The penalty is a fine of up to $1,000, up to six months in jail, or both. It is not necessary that the offender be on school property to be found guilty under this section. It is sufficient that the person be loitering *near* the school *or* any children's "hangout."

The difficulty with this statute is the definition of the term "loiter." The statute defines it as "to delay, to linger, or to idle about any such school or public place without lawful business for being present." While this definition might sound sufficiently broad to

deal with any problems, the courts have interpreted the language to mean that the person must be lingering for the purpose of committing a *crime* when given the chance. (See, e.g., *People* v. *Frazier* (1970) 11 Cal.App.3d 174; *People* v. *Hirst* (1973) 31 Cal.App.3d 75; *In re Christopher S.* (1978) 80 Cal.App.3d 903.)

Under this interpretation, school authorities do not have to wait until a crime actually occurs, or for the offender to take steps toward the commission of any crime. There is also no need to show that an opportunity to commit a crime has occurred or might occur, or even what crime the offender would commit should the opportunity present itself. It is enough that there is evidence that would show the offender was lingering for the purpose of committing any crime. (*People* v. *Frazier, supra,* 11 Cal.App.3d 174.)

It is extremely difficult to give detailed advice concerning what circumstances would justify an arrest for loitering under this section. The courts have indicated that no specific evidence is necessary to justify an arrest and conviction—it must merely be apparent from "all of the circumstances" that the offender was waiting for the opportunity to commit a crime.

Chances for successful prosecution increase if mandated signs are posted (Pen. Code, § 627.6) and school and law enforcement agencies carefully document criminal activities occurring on or around school premises each time the outsider is present and has been notified that he or she is unwanted. Incidents involving drugs, alcohol, fights and similar incidents should be particularly noted in the report. The documentation should also include dates, times and specific locations the individual is observed on or about campus, as well as the individual's proximity to any suspected criminal activity and whether he or she has ever been seen committing criminal acts.

The phrase "at or near campus" would include any school building, school grounds, sidewalks and streets immediately adjacent to the school. It probably includes the immediate area across the street from the school and possibly the area within the first block

from school. It is doubtful that a court would interpret the phrase to include the area beyond the first block from school.

If it appears that the "unlawful purpose" intended by the offender is to damage property or to obstruct or interfere with the school's operation, such entry may also be prosecuted as a criminal trespass. (Pen. Code, § 602(j).)

Requesting Outsiders to Leave Streets Adjacent to the School

Penal Code section 626.8 allows ordering individuals from streets, sidewalks and public ways *adjacent* to the school for seven days, if specific conditions are met.[17] Specifically, this statute states the following acts are misdemeanors: coming onto specified property without lawful business, interfering with or disrupting pupils or school activities, and remaining on the property or returning within seven days after being asked to leave. Again, the penalty is up to six months in jail and up to $500 fine.

The statute is rather restrictive. (See *People* v. *Horton* (1970) 9 Cal.App.3d Supp. 1.) Before an arrest may be made, the following five questions must be answered yes:

1. **Is the individual on the specified property?** To be covered under this section, the individual must come into any school building or upon any school ground, or upon a street, sidewalk or adjacent public way. The individual need not be on school property.

2. **Is his or her purpose there unlawful?** The statute defines "lawful business" as any business not prohibited by statutes, ordinances or regulations. As in the loitering statute discussed earlier, a person is without "lawful business" only if

[17] Vehicle Code § 22455(b) also allows local authorities, by ordinance or resolution, to adopt additional requirements for the public safety regulating any type of vending from vehicles upon any street. Also Penal Code section 647c prohibits persons from willfully and maliciously obstructing the free movement of any person on any street, sidewalk or other place open to the public.

he or she has the intent to do a prohibited act. When this statute was passed, the Legislative Counsel was of the opinion that the following acts are *lawful*:

- ❑ A minor who is *not* enrolled at the school comes on school property to contact pupils for personal reasons, such as arranging social activities.
- ❑ Union members enter school property to contact members of the union.
- ❑ A parent enters school property to remove his or her child *without* the permission of school authorities.
- ❑ A minor enrolled in the school carries out non-school activities on school property, such as passing out political leaflets.
- ❑ Pupils enrolled at the school decide to strike and refuse to attend class.

3. **Has the individual's presence or acts caused the required disruption?** To fulfill this requirement the individual's presence or actions must either: (a) interfere with the peaceful conduct of the activities of the school, or (b) disrupt the school or its pupils or school activities.[18]

Care must be used in determining that the required "disruption" is not, in fact, the unrest or vociferous reaction caused by the exercise of free speech.

4. **Has the individual been asked to leave by one of the persons specified in the statute?** Before an individual may

---

[18] An appellate court has held that no affirmative misconduct is necessary to constitute interference under Penal Code section 626.8. In *In re Oscar R.* (1984) 161 Cal.App.3d 770, a minor had been suspended from school and notified that he was not allowed on the school grounds. He returned to campus on three consecutive days and was arrested on the third after having been told to leave the two previous days. The court found that his presence interfered with school activities because three school employees were required to leave their security posts to deal with him.

be arrested for violation of section 626.8, he or she must be asked to leave by one of the following persons:

(a) the principal, or
(b) a designee (designated in writing by the chief school administrator), or
(c) a member of the school security patrol or school police department, or
(d) by a police officer, sheriff or California Highway Patrol officer.

5. **After being asked to leave, did the individual remain or reenter within seven days?** If the person refuses to leave when so ordered, or if he or she returns within seven days of being told to leave, or otherwise establishes a continued pattern of unauthorized entry, *then* the person can be arrested for a violation of this section.

Again, no crime has been committed under this section unless all five conditions are met, including the condition that the offender either has established a "continued pattern of unauthorized entry," or refuses to leave, or returns within seven days. (Ops.Cal.Legis. Counsel (1967) A.J. 5028; see *People* v. *Horton, supra,* 9 Cal.App.3d Supp. 1.)

"Continued pattern of unauthorized entry" means that on at least two prior occasions in the same school year, the offender came into the building or adjacent public way without lawful business, his or her presence was disruptive, and he or she was asked to leave by authorities.

Sex Offenders

The presence of a registered sex offender on or around a campus is disturbing to parents, law enforcement and school officials. A registered sex offender may be asked to leave without administrators needing any evidence that the person's presence or actions interfere or are disruptive according to Penal Code section 626.8,

unless he or she is the parent or guardian of a child attending the school or has written permission to be on the campus from the school's chief administrator.

In the case of a sex offender, the phrase "continued pattern of unauthorized entry" means that he or she came into a school or adjacent area on two prior occasions in the same school year and was asked to leave by school authorities. (Pen. Code, § 628.8.) It is possible to immediately arrest a specified registered sex offender for a violation of parole/probation if staying away from children is a condition of his or her parole/probation. Being on a school ground may be the basis for revocation of parole/probation. (Pen. Code, § 1203 et seq.)

Outsiders' Right to Free Speech

If adults come to school for the purpose of handing out leaflets or otherwise engaging students in dialogue concerning political, religious, or economic matters or other questions of public concern—they are exercising their right of free speech and may not be (under present law) evicted or prosecuted as loiterers under the sections described above. They may remain even after their supply of leaflets is exhausted, in order to talk to the students—even if a large group of students gather, and even if their presence causes "inconvenience, annoyance or unrest." The exercise of free speech is not an "unlawful purpose." (*Mandel* v. *Municipal Court* (1969) 276 Cal.App.2d 649; *People* v. *Hirst* (1973) 31 Cal.App.3d 75.) However, the *Hirst* court noted that activity otherwise protected by the First Amendment may be prohibited if it is carried on in such a manner as to disturb the peace or good order of the school session.

Arresting Suspended or Expelled Students Who Return to Campus

All too often, a student who is suspended or expelled for disruptive activities spends his or her new-found free time on campus causing more trouble. There are statutes which provide school

staff with the authority to remove these students. If a student has been suspended or expelled for disrupting school and, after a hearing, is notified by registered or certified mail that he or she is suspended or expelled and should not come back to campus, and if the student nevertheless comes onto campus—the student is guilty of a misdemeanor and can be jailed for up to six months and fined up to $500.[19] (Pen. Code, § 626.2.)

Disturbing or Breaking Up a Meeting

Penal Code section 403 provides that "[e]very person who, without authority of law, willfully disturbs or breaks up any assembly or meeting . . . is guilty of a misdemeanor."

While the language of this statute is quite broad, the California Supreme Court held (*In re Kay* (1970) 1 Cal.3d 930) that it must be narrowly applied in order to be constitutional. *Only the actual conduct of a person, rather than the content of his or her message, may be regulated.* (*In re Kay, supra,* at p. 942.) No one may be punished for disagreeing, however vigorously, with the views of official speakers. (*In re Kay, supra,* at p. 941.) Moreover, it is every citizen's right to express highly unpopular views. Also, whether a meeting has been substantially disrupted "cannot be resolved merely by asking those present at the meeting whether they were 'disturbed.' " (*In re Kay, supra,* at p. 944.)

These and related points will be discussed later, but two examples may help to clarify the scope of this statute. Suppose that while class was in session, a prankster threw a "stink bomb" into the room, causing the pupils to scatter. This would be the clearest type of violation of Penal Code section 403.

On the other hand, suppose that Rose Rodriguez, a teacher of a high school current events class, expresses a view on the relationship of

---

[19] For second offenses, 10 days must be served, and for further offenses, 90 days must be served. Those expelled can be kept away for up to one year.

the United States with China. A student offers a contrary view and is roundly booed and hissed by the rest of the class. In fact, the students are so upset that they will not continue with their lesson. In this case, any punishment of the dissenting student would be censorship for the content of the message, rather than for the actual conduct. It is perfectly plain that the dissenting student has not "disrupted" class within the meaning of section 403.

In cases where the appropriate standard of conduct is unclear, a warning and a request that the violator curtail his or her conduct must precede any official action. Both this standard and the requirement that the statute be narrowly interpreted and applied are necessary, lest citizens "steer far wider of the unlawful zone" and forfeit their rights through being forced to speculate as to what conduct might entail criminal sanctions. (*In re Kay, supra,* 1 Cal.3d at p. 945.)

To avoid a "chilling effect" on free speech, a school administrator should not threaten to prosecute for violation of this section unless it seems clear to the teacher or administrator that the disruption goes beyond the constitutionally protected right of free speech. If the disruptive act is sufficiently extreme, it may constitute "disturbing the peace." (*Bethel School District* v. *Fraser* (1986) 478 U.S. 675 106 S.Ct. 3159, 92 L.Ed.2d 549.)

Sit-ins

It is a misdemeanor if a person refuses to leave a building of a public agency during hours of the day or night when the building is regularly closed to the public, and when asked to do so by a security guard or custodian of the building. (Pen. Code, § 602(p).)

Also, it is a misdemeanor to enter any property for the purpose of injuring the property or with the intention of interfering with the business carried on by the owner of the land. (Pen. Code, § 602(j).)

Interfering With School Classes or Activities

Education Code section 44810 prohibits "every minor over 16 years of age or adult who is not a pupil of the school, including but not limited to any such minor or adult who is the parent or guardian of a pupil of the school," from coming upon any school ground or into any schoolhouse and there willfully interfering with the "discipline, good order, lawful conduct, or administration of any school class or activity of the school, with the intent to disrupt, obstruct, or to inflict damage to property or bodily injury upon any person." Violation of this section is a misdemeanor and will result in a fine of $100 to $1,000, up to six months in jail, or both. (See *In re Christopher S.* (1978) 80 Cal.App.3d 903.)

Chapter 4

Criminal Procedure

Arrests and detentions by teachers and school officials

The Right to Arrest

The purpose of an arrest is to take a person into custody for an offense until he or she can be turned over to law enforcement. Rarely does a teacher have to arrest a student. School officials usually have ample power to detain students without "arresting" them. It is also usually unnecessary for school officials to arrest non-students because peace officers are readily available to arrest a troublemaker when called by school staff.

However, sometimes a teacher or administrator must make an arrest. For example, a peace officer may arrest an adult, without a warrant, for a *misdemeanor* only if the misdemeanor is committed in the officer's presence. (Pen. Code, § 836, subd.1.) If a teacher sees a misdemeanor being committed by an adult, and calls law enforcement, the officers cannot arrest the offender until a warrant is obtained, unless the transgression is still continuing when they arrive. The teacher who *saw* the offense, however, may make an arrest; in this case, the officer may assist the teacher to do it. (Pen. Code, § 837, subd. 1. See *People* v. *Campbell* (1972) 27 Cal.App.3d 849, 854; Pen. Code, § 839.) An exception in the law allows a peace officer to arrest a person who commits an assault or battery on school grounds even when the offense did not occur in his or her presence. (Pen. Code, § 243.5.)

The law is different for minors. Law enforcement *can* arrest minors for misdemeanors *not committed* in their presence. (Welf. Inst. Code, § 625.) Thus, if a teacher sees a minor committing a

misdemeanor, and calls law enforcement, the officer can arrest the minor.

People who make a citizen's arrest need not take any physical action or endanger themselves, but may let the police take the offender into physical custody. (*People* v. *Johnson* (1981) 123 Cal.App.3d 495.) If a citizen does make the arrest, however, any civil liability for false arrest, remains with the citizen.

Sometimes it may be necessary to take an offender into immediate custody to avoid injury to a pupil or other people. If it is within the physical power of the principal, teacher or other staff to do so, they may have a duty to take the offender into custody.

The following is an example of a situation requiring immediate action (See *People* v. *Campbell, supra,* 27 Cal.App.3d, at p. 849): A school security officer noticed that a crowd of students had gathered to watch the beating of an old man, so the officer crossed the street and stopped the beating. The court held that the officer had ample grounds for making a citizen's arrest of the assailant.

The need for teachers, administrators, and even students, to make arrests may occur from time to time. These are the circumstances under which an arrest may be lawfully made:

Citizen arrest for a misdemeanor. (Pen. Code, § 837.1.) Any private citizen, including teachers, administrators and students, may arrest any person for a misdemeanor under the following circumstances:

1. **The activity must have occurred in the presence of the person making the arrest.** In order for a misdemeanor arrest to be valid, the unlawful activity must have occurred in the presence of the person making the arrest.

For example, if a teacher sees James, a non-student who often "hangs around" campus, throw a rock through a car window, it is

clear that the act happened in the teacher's presence. On the other hand, if James approaches Fred Jones, a teacher who did not see the incident, and confesses he threw a rock through a car window, the teacher may *not* arrest James; although malicious mischief is a misdemeanor, the act did not occur in the teacher's presence.

A staff member who did see the act, however, may ask the teacher's help to make the arrest. As long as a person who did not see the crime is *acting at the request of a person who did*, the arrest will be lawful. (See *People* v. *Campbell, supra*, 27 Cal.App.3d 849; Pen. Code, § 839.)

The same principle applies if a fellow student saw James throw the rock. This student could report the incident to a teacher who did not witness it, and if the teacher—acting as an assistant to the student—arrests James, the arrest will be lawful. The student has the right to arrest James; and the teacher is helping the student in that arrest.

2. **The activity must amount to a crime.** Suppose it turns out that James threw the rock through his *own* car window. He would *not* be guilty of malicious mischief because, for this act to be a crime, the property must belong to another. Is the arrest valid because it appears that James had committed a crime, even though he was actually innocent? An arrest under such circumstances would *not* be lawful. A citizen arresting some one presumes, at his or her own peril, that a crime has been committed. If the guess is wrong, the person can be sued for false imprisonment, no matter how much cause he or she had for believing a crime had been committed. (See *Gomez* v. *Garcia* (1980) 112 Cal.App.3d 392.)

This point, whether a crime has been committed, is especially sensitive in free-speech cases. It is often difficult to determine if a given activity is constitutionally protected or if it is a public offense. Sometimes the case must go to the U.S. Supreme Court

before a final weighing of conflicting interests can be made and criminal liability established. Until then, the citizen making the arrest guesses at his or her peril. The arrest is unlawful if it turns out that the activity was constitutionally protected.

In the vast majority of cases, it is perfectly obvious whether a crime has been committed. However, the number of cases that are unclear, coupled with the severity of the false imprisonment law, point out the need for knowledge of the law and for continuing cooperation between school personnel and law enforcement.

3. **The right person must be arrested.** Just as no allowance is made for a reasonable mistake that a crime was committed, no allowance is made for a reasonable mistake that the person arrested was actually the one who committed the crime. For example, if a citizen arrests John who is the twin of James, the brother who committed the misdemeanor, the arrest would be unlawful—no matter how much John looks like James.

As stated before, the law differs somewhat for minors. Law enforcement officers *can* arrest a minor whether or not they witnessed the misdemeanor being committed. (Welf. & Inst. Code, § 625.) Therefore, an arrest by law enforcement can be made based on the report of a person (teacher, staff or student) who witnessed the activity, or to whom the minor confessed having committed the misdemeanor, or to whom another student or staff member reported having witnessed the minor commit the misdemeanor.

Arresting for a felony. (Pen. Code, §§ 837.2-837.3.) The major difference between an arrest for a felony and a misdemeanor is that the felony need *not* have occurred in the presence of the person making the arrest.

For example, a principal receives reliable information about a group of students who hang around the campus and extort lunch money from several younger students by threatening to beat them.

The principal may arrest the troublemakers even though the actions were not committed in his or her presence because extortion is a felony. (School officials may also call law enforcement to make the arrest.) Also, in felony cases, if the wrong person is arrested, there is *no* liability—so long as the mistake was reasonable. This is in contrast to a misdemeanor, where the *right person must* be arrested, and no allowance is made even for reasonable mistakes. For a felony arrest, the following two requirements *must* be met:

1. **A felony must have been committed.** No allowance is made for mistakes in determining whether a felony has been committed.

2. **There must be reasonable cause for believing the person arrested committed the felony.** The apprehension of felons is so important to society that citizens are free of liability for mistaken arrests as long as a felony was committed and the mistaken arrest was reasonable.

Suppose Peter complains to his teacher that Jim, a non-student, robbed him of his lunch money by threatening to beat him up. In this case, the teacher could rightfully arrest Jim because robbery and extortion are felonies; the teacher could arrest Jim even though the crime did not take place in his presence. Even if it turns out that the student wrongly identified Jim, the teacher cannot be sued for arresting Jim because the teacher had reasonable cause to arrest him. Again, the teacher could also call law enforcement to make the arrest.

Detention of students. The preceding rules defining the right of a teacher or administrator to arrest for a crime rarely need to be enforced. Most on-campus crime is committed by students, and it is seldom necessary to arrest a student. Even if law enforcement is called, detention of the student is all that is usually required.

School officials' right to exercise physical control over students is implied by the duty of teachers and administrators to "supervise at

all times the conduct of children on the school grounds and to enforce those rules and regulations necessary to their protection." (*Dailey* v. *Los Angeles Unified School District* (1970) 2 Cal.3d 741, 747; Ed. Code, §§ 44805, 44807.) Also, their duty to hold students to "strict account" for their conduct (Ed. Code, § 44807) implies the power to send students to the office of an administrator or another place to detain them there until law enforcement arrives.

Education Code section 44807 also states that a "teacher, vice principal, principal or any other certificated employee of a school district, shall not be subject to criminal prosecution or criminal penalties for the exercise, during the performance of duties, of the same degree of physical control over a pupil that a parent would be legally privileged to exercise but which in no event shall exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning." In the discussion of physical control, the issue of corporal punishment is also relevant and will be examined later.

Arrest procedures

Arrests should be made as soon as circumstances permit. A major reason for allowing citizens to make arrests is that they are often able to act promptly, long before law enforcement officers can respond to the trouble. There must be a good reason for a delayed arrest to justify the police making an arrest without a warrant after much time has elapsed since the criminal conduct. (See *Hill* v. *Levy* (1953) 117 Cal.App.2d 667.)

Statements to suspect. Generally, citizens' arrests are made while the offender is engaged in the commission or attempted commission of an offense, or has just committed the offense and is immediately pursued, or has made a temporary escape. Under such circumstances, it is unnecessary to make any prior statements to the person arrested, although one should inform the suspect that he or she is under arrest. (Pen. Code, § 841.)

If the suspect wants to know the offense for which he or she is being arrested, the suspect must be told. (Pen. Code, § 841.) When the citizen's arrest is not made on the spot or made after an escape, the suspect must be told of: (1) the intention to arrest, (2) the cause of the arrest and (3) the authority to make it—i.e., it is a citizen's arrest. (Pen. Code, § 841.) The cause of the arrest would be the crime committed but it is not necessary for the arresting citizen to know the specific Penal Code section.

Use of force. What if the arrested suspect will not come peacefully? A person with a lawful right to arrest may use whatever force may be necessary for the arrest and detention and whatever reasonable means are available and may summon as many persons as necessary to assist him or her. (Pen. Code, §§ 835, 839.) The force used should not be more than necessary to make the arrest. Curbside punishment is not allowed under the guise of making an arrest. (*People* v. *Walton* (1982) 136 Cal.App.3d 76.)

If the crime is a misdemeanor, use of deadly force (e.g., shooting or shedding blood) is not allowed in making the arrest. If the crime is a *violent felony*, it is lawful even to kill the felon if this is the only force which would stop the suspect.[20]

A person need not wait until a crime is committed to use force. To prevent a public offense, force may be used by any person as well as by the person about to be injured. (Pen. Code, § 692.) Of course, a person who is being lawfully arrested has no right to use force to resist the arrest. Resistance under such circumstances may itself be charged as assault or battery. (*People* v. *Garcia* (1969) 274 Cal.App.2d 100, 105.)

---

[20] Pen. Code, § 197(4). State laws ". . . prohibit the use of deadly force by anyone, including a police officer, against a fleeing felony suspect unless the felony is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm; or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another." (*Kortum* v. *Alkire* (1977) 69 Cal.App.3d 325, 333.)

What to do with the arrested suspect. After the suspect is in custody, he or she must be turned over to a peace officer without unnecessary delay or (as rarely happens) be taken directly to a magistrate by the citizen making the arrest. (Pen. Code, § 847.) Usually, the person arrested is detained until the police arrive, and they will ask the cause and circumstances of the arrest before taking the suspect.

Taking "confessions" from students. Statements may be taken from students by school officials who are not law enforcement officers without any formalities such as citing "Miranda warnings." (*In re Christopher W.* (1973) 29 Cal.App.3d 777, *In re Corey L.* (1988) 203 Cal.App.3d 1020.) Moreover, it is legally acceptable for a school official to report a student's statements to law enforcement agencies or to reveal it in court even if the student was led to believe that it would not be disclosed. (*In re Christopher W., supra*, at p. 783.) Statements made to school staff must be voluntary and may not be "beaten out of" students or made as a result of threats.

The rules governing the taking of confessions or admissions by law enforcement do not apply to school staff who are not peace officers. (*In re Christopher W., supra* at p. 782; *In re Corey L.* (1988) 203 Cal. App.3d 1020.) School staff's primary goal is maintaining a safe campus, not conducting criminal investigations.

Searches and seizures by school officials

> *When society requires large groups of students, too young to be considered capable of mature restraint in their use of illegal substances or dangerous instrumentalities to congregate in the public schools, it assumes a duty to protect them from dangers posed by anti-social activities—their own and those of other students—and to provide them with an environment in which education is possible. To fulfill that duty, teachers and school administrators must have broad supervisory and disciplinary powers.*

> [Nevertheless] . . . *that they are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and each youth to discount important principles of our government as mere platitudes.*
>
> *At the same time, the right of all students to a school environment fit for learning cannot be questioned. Attendance is mandatory and the aim of all schools is to teach. Teaching and learning cannot take place without the physical and mental well-being of the students. The school premises, in short, must be safe and welcoming.* (*In re William G.* (1985) 40 Cal.3d 550, 563.)

Due to the prevalence of drugs, alcohol and weapons on many school campuses, teachers, administrators and other school staff need to know the basic rules for conducting a search of lockers, school property, students and student property in order to protect students and staff from harm.

In the case, *New Jersey* v. *T.L.O.*, (1985) 469 U.S. 325, 83 L.Ed.2d 720, 105 S.Ct. 733, the U.S. Supreme Court set the basic standard for searches of students. Among other things, this case established the "reasonable suspicion" standard for school officials to search students. In determining what is "reasonable," the schoolchild's legitimate expectations of privacy (Fourth Amendment rights) and the school's legitimate need to maintain an environment in which learning can take place must be weighed. States may set higher standards of liberty for their citizens, but they can't set lower standards. In the *William G.* case, the California Supreme Court cited extensively from *T.L.O.*, and decided that school personnel should not be held to the probable cause standard to which peace officers must adhere in determining whether a search is legal; nor is a warrant required. Before searching a student, a school employee need only to have a reasonable suspicion that the search will turn up evidence that the student has engaged or is engaging in a prohibited activity. But there must be facts supporting that

suspicion. A search cannot be based on a mere hunch or rumor. The scope of the search must also be reasonably related to the objective of the search and not excessively intrusive in light of the age and sex of the student and the nature of the offense.

Reasonable suspicion. In order for the court to find there was a reasonable suspicion, the judge will expect the searcher to:

- Clearly explain the reasons for the suspicion and the facts surrounding the incident.
- Connect the student who is searched to the violation of law or rules.
- Search only students who are likely to possess evidence of the crime or rule violation.
- Rely on recent and credible information from personal knowledge or observation and from other eyewitnesses.

Reasonable suspicion can include previous similar illegal activity in that area, suspicious movements or illicit behavior or prior contacts with the student for similar illegal behavior.

Reasonable scope. In order for the court to find that the search was reasonable in scope, the judge will expect the searcher to:

- Intrude only so far as is reasonable under the circumstances to recover the contraband.
- Evaluate the seriousness of the violation when deciding how intensive the search should be.
- Take into account the student's age and sex.

The law requires that school searches be no more extensive than reasonably necessary. The greater the need for immediate protection of students or staff, the broader the scope of the search. The more immediate the danger, the broader the scope of the search.

The reasonable belief that a student possesses a loaded gun or dangerous drugs would justify a more intensive search including the student, locker, bookbag, purse, desk or vehicle. The loss of a

small amount of money or object of minimal value does not justify as extensive a search. Under no circumstances should a school employee conduct a strip or body cavity search. (Ed. Code, § 49050.) If a staff member believes there is a need for such an intrusive search, seek immediate legal advice and assistance from the school attorney, district attorney or law enforcement. Note that the mouth is not considered a "body cavity" for these purposes. (Pen. Code, § 4030.)

Applying the rules for school searches. In the *William G.* case, the court found that a vice principal's suspicion that a student was tardy or truant from class, combined with the student's furtive attempt to hide a calculator case with an odd-looking bulge from the vice principal's view, did *not* provide sufficient cause to search the student. Especially since, in this case, there was no information connecting that particular student or his calculator case to any illegal activity. In this same case, however, the court approved searches of students and lockers based on information from other students that the suspected students had sold, possessed or ingested drugs. (*Id.* at p. 567.)

In *In re Frederick B.* (1987) 192 Cal.App.3d 79, the court held that a school security guard, who observed two students exchanging paper currency in an area of the school where he had previously caught others in drug-related acts, had a reasonable suspicion that students were doing something illegal. When he asked the boys what they had exchanged, one said he had given the other 50 cents. The court found that these facts justified detention in the dean's office to clear up the matter. When one minor had to be physically restrained from leaving the area, a handgun was discovered stuck in the student's waistband. (The question of whether a search would have been warranted if the gun had not been discovered was never litigated because possession of the handgun provided sufficient cause for arrest.)

Because the decision to conduct a search must be based on the facts of each individual case, it is impossible to provide specific

all-purpose guidelines. Moreover, legal casebooks are full of cases in which the police, trial courts and appellate courts—even individual appellate justices—disagree on the legality of specific searches.[21]

If highly trained judicial officers, examining the same set of facts, cannot agree on the reasonableness of a search done by a trained peace officer, then people untrained in law cannot be expected to be always right in their decisions. In addition, many of these decisions on whether or not to conduct a search have to be made quickly and during tense situations. In any case, school personnel should avoid searches for arbitrary or punitive reasons. If a decision to search is based on facts—such as credible, reliable information received from others, suspicious conduct, unusual odors emanating from a locker, the intoxicated appearance of a student, etc.—it is likely to be upheld. The courts are generally aware of the circumstances in which these decisions must be made, and they take this into account when they determine if a search was reasonable.

Always conduct searches in the presence of another adult who is the same sex as the student. Search only those areas where there is a reasonable belief the contraband is located. First ask the student to give up the object or to consent to the search. If refused, have the student turn pockets inside out and pat down the outer clothing to feel for the suspected contraband. Search purses or other containers in the immediate possession of the student. Search the locker or vehicle if warranted.

Evidence which is seized should be labelled and kept in a secure place where others have no access. Witnesses in court must be able to identify the evidence as the same object they found during their search. If weapons are involved, seek assistance from law

---

[21] See *In re Robert B.* (1985) 172 Cal.App.3d 763; *In re Corey L.* (1988) 203 Cal.App.3d 1020; *In re Bobby B.* (1985) 172 Cal.App.3d 377.

enforcement who have the necessary training and experience to conduct such a search safely.

If evidence of a crime or violation of a school rule is discovered, school staff need not advise students of the right to remain silent before questioning them. (*In re Christopher W.* (1973) 29 Cal.App.3d 777; *In re Corey L.* (1988) 203 Cal. App.3d 1020.) Any statements made may be relayed to law enforcement or used in administrative or disciplinary hearings. It is advisable, however, to allow police to conduct any lengthy or extensive investigation because they are specially trained in interview techniques.

Preventing liability. School officials must be familiar with basic constitutional rights and current court opinions on student searches. Failure to comply with the reasonable suspicion and reasonable scope standard can result in inability to use the evidence in juvenile court or liability of the searcher, the school or the district for violating the student's civil rights. (see *Cales* v. *Howell Public Schools* (E.D. Mich. 1986) 635 F.Supp. 454; *Kuehn* v. *Renton School District* (Wash. 1985) 694 P.2d 1078.)

Locker searches. It is wise to have a written policy advising students and parents that lockers are school property and may be searched from time to time for disciplinary, health or safety reasons. Once students are on notice that the school retains control of lockers, they no longer have a reasonable expectation of privacy in the lockers they use. Under those circumstances, school officials no longer need reasonable suspicion to justify locker searches.

Use of trained dogs for searches. An area of the law that is still being clarified is the use of dogs trained in sniffing out narcotics to assist in campus searches. School administrators interested in using these dogs are advised to check with their legal counsel.

Sometimes the use of dogs to detect drugs does not constitute a search at all. For example, in a school where a drug problem exists, allowing a trained dog to sniff the air in a locker-lined

corridor does not involve any detention of students or search of their possessions, nor does it involve any human confrontation or invasion of legitimate privacy interests. (The students' right to privacy does not cover illicit drugs, and they cannot legitimately object to an unintrusive detection of such drugs.) Should the dog "alert" at a specific locker, school officials would have a reasonable suspicion to believe there is contraband inside. In this situation, the examination of the locker's contents constitutes a search. But the initial use of the dog to establish reasonable suspicion to examine a particular locker would not be a search. (*People* v. *Mayberry* (1982) 31 Cal.3d 335; *United States* v. *Place* (1983) 462 U.S. 696.) However, in the absence of exigent circumstances or consent of the owner, a search warrant would be needed to open the locker and search it.

Using the dogs to detain students not suspected of drug possession, however, could result in the harassment and embarrassment of innocent people. An example of this would be students not permitted to leave their classrooms or other areas because school officials wanted them to be individually sniffed by narcotics dogs. These tactics intrude on the students' constitutional freedoms, and would also certainly create controversy in the community. In addition, a mistake by the trained dog that resulted in a personal search of a student would be more intrusive and embarrassing for the student than a mistaken search of a locker. Only the most compelling situations would warrant consideration of such tactic. (See *Horton* v. *Goose Creek Independent School District* (5th Cir. 1982) 677 F.2d 471; *Doe* v. *Renfrow* (1979) 475 F.Supp. 1012 modified 631 F.2d 91 (1980).)

Calling on Law Enforcement for Help

In some circumstances, school officials have the right to conduct searches and seize contraband, even when law enforcement officers would *not* have sufficient legal cause. In addition, school officials have the right to call on law enforcement to assist them in discharging such searches and/or seizures (e.g., searching a student's person or locker).

For example, in the case of school officials having reasonable suspicion that a male student has marijuana in his pockets, the school officials have the right to search the boy. If the boy refuses to be searched, however, rather than risk a violent confrontation, the school officials may call a juvenile officer to conduct the search for them because peace officers are professionally trained to conduct effective searches. In such cases, the peace officer is acting as an agent of the school official rather than in his or her own right and the search will be upheld. (See *In re Fred C.* (1972) 26 Cal.App.3d 320.)

When an administrator is acting in the normal role as a school official, the primary aim is to find evidence of student misconduct and enhance the safety of the school. (*In re Donaldson*, 269 Cal.App.2d 509, 511.) The fact that a school official intends to inform law enforcement of any evidence of illegal activity does not change the official's performance of his or her school duty to the performance of the duty of the police.

A school official may form a reasonable suspicion of wrongdoing on the part of a student based on information from law enforcement, and then make a search with the help of law enforcement. It would be considered a search by a school official, not by law enforcement, as long as the school official made an independent determination that a search was needed to gather evidence of student misconduct for the purpose of protecting the safety of the school. School officials should not hesitate to call on law enforcement to help get information about student misconduct.

On the other hand, if a school official does a search as an agent of law enforcement rather than in the independent capacity as a school official, he or she will have to abide by the probable cause requirements established for searches by law enforcement rather than the more relaxed reasonable suspicion standard set for school officials. The administrator is acting as an agent of law enforcement when he or she is requested by law enforcement to conduct a search *for the primary purpose* of securing a conviction.

Students on probation (to the county juvenile court) or parole (to the California Youth Authority) often have conditions allowing searches of their persons and possessions by law enforcement, probation or parole officers. Such searches may be done from time to time to monitor the student's compliance with the probation or parole process. Educators should be aware of which students are on probation or parole, and work closely with officers supervising them. (Ed. Code, § 48267; Welf. & Inst. Code, § 827(b).) If such a student is involved in suspected criminal activity or school rule violations, notify the probation or parole officer immediately so that action may be taken.

Schools should develop written policies regarding searches, interrogation of students, reporting of criminal activity to law enforcement, cooperation during on-campus investigations and disciplinary actions, and consequences for illegal activity. Well-written guidelines will make staff and students aware of what is expected of them and will promote a safe school environment for everyone.

A survey of juvenile procedure

Many educators are not familiar with the aims or procedures of the juvenile court system. For this reason, they may be reluctant to report student crimes to law enforcement either for fear that the experience will be too cruel or destructive to the minor or that juvenile procedures are powerless to deal with youth crime. A brief survey of the juvenile court system and an explanation of how juveniles are affected by the system may relieve these concerns.

The Purpose of the Juvenile Court

Juvenile court law seeks to provide for the protection and safety of the public and each minor under the court's jurisdiction and to preserve and strengthen the minor's family ties; it will remove him or her from the custody of the parents only when the child's

welfare or safety, or the protection of the public cannot otherwise be safeguarded. When a child is removed from the home, reunification of the minor with the family is a primary objective. The law attempts to secure custody, care and discipline for the minor as close as possible to what should have been given by the parent. (Welf. & Inst. Code, § 202(a).)

Minors under the jurisdiction of the juvenile court as a consequence of their delinquent behavior receive treatment and guidance which holds them accountable for their behavior, and is appropriate in light of the minor's interests and the public's safety. Such guidance may include non-retributive punishment that fits the rehabilitation goals of the juvenile court law. (Welf. & Inst. Code, § 202(b).)

In general, those affected by juvenile court law are children under the age of 18 who either:

- are not receiving proper parental care or control at home (Welf. & Inst. Code, § 300);
- have violated a law (Welf. & Inst. Code, § 602); or
- have engaged in delinquent behavior not amounting to a crime (Welf. & Inst. Code, § 601).

Juveniles Not Properly Cared for at Home

A minor may also be declared a dependent child of the court if a parent or guardian inflicts serious physical harm on the minor; fails to properly care for the child; if the home is unsuitable; if a parent or guardian is cruel or neglects the child; if the minor is suffering serious emotional damage; or if the minor has been sexually abused or cruelly treated. (Welf. & Inst. Code, § 300.) Examples of minors who are declared dependent children of the court are those subjected to excessive beatings or other physical or sexual abuse, those whose homes are excessively dirty, those who are not fed adequately and those who are abandoned.

In cases where minors have been physically abused, the need for juvenile court intervention is often first noticed by school personnel who are required by law to alert law enforcement (or child protective agencies such as the county probation department or county welfare department) to investigate the possibility of criminal child abuse being committed by a parent or guardian. In addition to teachers and other specified school personnel, designated medical personnel treating a minor are also required by law to report abuse or suspected abuse. (Pen. Code, §§ 11165.7, 11165.8, 11166.) Juvenile court proceedings to protect the child are generally initiated by a social worker or probation officer. Criminal proceedings in adult court against the person harming the child are initiated by law enforcement and the district attorney. Both courts may work on the same incident simultaneously.

A minor may, under certain circumstances, be detained in a special facility or foster home while waiting for a full hearing by the juvenile court on the matter in question. (Welf. & Inst. Code, §§ 305, 307.5.) If a minor is declared a dependent child by the court, he or she may be returned home, placed in a relative's home, sent to another foster home or placed in a facility where he or she will receive proper care. Any ruling that a minor is a dependent child will be reviewed by the juvenile court at least once every six months, or when considering if the minor can be returned to the parents, or when other action is taken. (Welf. & Inst. Code, §§ 361, 361.2, 361.3, 364, 366.) In all cases where welfare services could be useful in rehabilitating and reunifying the family, these services are ordered. (Welf. & Inst. Code, § 361.5.)

Juveniles Who Have Violated a Law

A minor who commits a crime is normally dealt with by the juvenile court system. (Welf. & Inst. Code, § 602.) However, if a minor is 16 or 17 years of age when he or she commits an offense, the juvenile court may send the minor to adult court if it finds that he or she would not be amenable to the programs available

through the facilities of the juvenile court. (Welf. & Inst. Code, § 707.) A minor tried in adult court must be remanded to the Youth Authority for an evaluation and report before being sentenced to state prison. (Welf. & Inst. Code, § 707.2.)

The juvenile court process starts with a peace officer detaining a minor, taking him or her into temporary custody. The peace officer may release the minor; refer the minor to shelter care, counseling or a diversion program; issue a citation requiring him or her to appear before a probation officer; or take the minor to the probation department. (Welf. & Inst. Code, §§ 626, 626.5.)

If a minor is taken into custody, the officer must notify the minor's parents that the child is in custody and is being held at a particular place. The minor has the right to telephone, at public expense, an attorney and also his or her parents, guardian, responsible relative or employer. (Welf. & Inst. Code, § 627.)

The probation department may dismiss the case and release the minor or refer the case to juvenile court for a hearing. Even if the case is referred to juvenile court, the minor must be released to the custody of the parent or guardian unless detention is necessary because the minor is not cared for properly at home; to protect the person or property of others; the minor is likely to flee, has violated a court order or is physically dangerous to the public. (Welf. & Inst. Code, § 628.)

If the minor is detained by the probation officer, the officer has 48 hours from the time of the minor's arrest to file a petition with the juvenile court or to release the minor.[22] (Welf. & Inst. Code, § 631.) If a petition is filed to detain the youth, the court holds a detention hearing to rule on this issue. (Welf. & Inst. Code, § 632.)

[22] If the offense is a non-violent misdemeanor, the minor has a right to a detention hearing within 48 hours of the arrest, excluding weekends and holidays. If the offense is a violent misdemeanor or felony, the petition must be filed within 48 hours of the arrest excluding weekends and holidays. The minor's detention hearing would then be held the next court day. (Welf. & Inst. Code, § 632.)

The youth and parents have the right to be represented by an attorney at this hearing. (Welf. & Inst. Code, § 633.) The court will appoint an attorney if the minor or parents have no money to hire one. (Welf. & Inst. Code, § 634.) If the parents or guardian can afford an attorney for the youth but refuses to provide one, an attorney will be appointed by the court at the parents' or guardian's expense. (Welf. & Inst. Code, § 634.)

The court will order the minor detained only if he or she has violated an order of the juvenile court; or there is an immediate, urgent necessity for detention to protect the minor or the person or property of another; or the minor is an escape risk. (Welf. & Inst. Code, § 635.) If the minor is ordered detained, he or she is held in juvenile hall or another suitable location. Juvenile hall is neither a jail nor a prison. It is a temporary place of detention pending disposition of the minor's case by the probation department or juvenile court. Abused or neglected children are never sent to juvenile hall but are temporarily housed in shelter-receiving homes.

When a minor is detained, a hearing on the charges must be set within 15 court days from the time of the detention order. (Welf. & Inst. Code, § 636.) If the minor is not detained, the hearing must be held within 30 calendar days of the minor's initial appearance in juvenile court on the complaint. (Welf. & Inst. Code, § 657.) The minor has the right to be represented by an attorney at this hearing also, and the court must appoint an attorney if the youth or parents cannot afford to hire one, or if the parents will not provide one. (Welf. & Inst. Code, § 700.)

At this hearing, the minor has the right to be confronted by witnesses, and to question the ones against him or her. The minor also has the right to summon witnesses to testify. (Welf. & Inst. Code, § 664.) After the evidence is heard, the court decides whether the allegations in the petition are true beyond a reasonable doubt. (Welf. & Inst. Code, § 701.) There is no "conviction" in a criminal sense. (Welf. & Inst. Code, § 203.)

If the court finds the charges to be untrue, the minor is released. (Welf. & Inst. Code, § 701.) If the charges are found to be true, an evaluation of the minor is made by a probation officer, and after a dispositional hearing, the court may take any of several courses of action including: returning the child back home; placing the minor on probation; sending the child to live with relatives or to a foster home, a private residential facility, a county ranch, school or camp; or committing the minor to the California Youth Authority. (Welf. & Inst. Code, § 727.) A minor released on probation may be required to make restitution, perform community service, repair damages in cases of vandalism or pay a restitution fine. (Welf. & Inst. Code, §§ 728, 729, 729.1, 729.6, 729.7, 729.8, 731.5.) All minors placed with their parents during probation must be ordered to attend school, maintain a curfew and participate in a counseling or educational program with his or her parents. (Welf. & Inst. Code, § 729.2.)

Both the hearing and its record are generally private except for persons with a legitimate interest in the work of the court or in a particular case, unless the child or parent requests that the public be admitted. (Welf. & Inst. Code, § 676.) If one of the offenses charged is a felony listed in the Welfare & Institutions Code section 676, however, the hearing will be public to the same extent that adult criminal trials are public. (Welf. & Inst. Code, § 676.)

The purpose of the California Youth Authority is to provide training and treatment. Commitment of a minor to the Youth Authority may be imposed as non-retributive punishment consistent with the rehabilitative objectives of the juvenile court law. (Welf. & Inst. Code, §§ 202, 1700.) If the minor is rehabilitated, his or her criminal records including records of arrest may later be sealed. (Welf. & Inst. Code, §§ 707.4, 781.)

Juveniles Who Are Incorrigible But Who Have Not Committed a Crime

A minor does not have to commit a crime to be made a ward of the court. Minors who persistently refuse to obey the reasonable

orders or are beyond the control of their parents or guardians, or who violate a juvenile curfew ordinance, come under the jurisdiction of the juvenile court and may be made a ward of the court. (Welf. & Inst. Code, § 601(a).) A minor who is a ward of the court according to this subsection may be placed on probation in the home of a relative, in a foster home, or in another community care facility. The minor and parents may also be ordered to participate in counseling or educational programs. (Welf. & Inst. Code, § 727.)

A minor who is habitually truant or who persistently refuses to obey the reasonable orders of school authorities may also be made a ward of the juvenile court, but only after referral to a school attendance review board (Ed. Code, § 48263) and/or a truancy mediation program to first allow these programs to attempt to correct the problem. (Welf. & Inst. Code, §§ 601(b), 601.1, 601.3.) Criminal charges may also be brought against a minor's parents who fail to compel the minor to attend school. (Welf. & Inst. Code, §§ 601.3(b)(5), 601.4; Ed. Code, § 48293.)

An incorrigible minor who is beyond control of his or her parents, a truant minor, a runaway and a curfew violator are known as status offenders. (Welf. & Inst. Code, § 601.) Because of their *status* as minors (persons under age 18), if they violate laws regarding required behavior for minors, they come under the jurisdiction of the juvenile court. These minors are afforded the same rights and go through the same hearing process described earlier for minors who commit crimes. (Welf. & Inst. Code, § 602.) The court need find only a preponderance of evidence to declare a minor a §601 ward. (Welf. & Inst. Code, § 701.) These minors, however, may not be placed in secure (locked) facilities. The general prohibition against secure detention during non-school hours for truants (Welf. & Inst. Code, §§ 207, 601(b)) does not apply to wards found in contempt of court. (*In re Michael G.* (1988) 44 Cal.3d 283.)

PART THREE: DISCIPLINE IN THE SCHOOL[23]

Chapter 5

Disciplinary Offenses

In many respects, the responsibilities of educators and law enforcement officers regarding disciplinary offenses are complementary. If a student attacks a teacher with a knife, obviously it is a law enforcement matter and, as has been noted, there is a statutory obligation to report the incident to a law enforcement agency.[24]

Attacking the teacher is also a severe disciplinary problem for which suspension or expulsion is allowed by law. (Ed. Code, §§ 48900, 48915(a), 48915.1(c).) Disciplinary action does not depend on the outcome of criminal proceedings, nor does the imposition of criminal punishment bar the use of school punishment. Two offenses were committed by the knife-wielding student's actions, one criminal and one disciplinary, and punishment for each is in order.

---

[23] NOTE: The discussion in this part generally relates to pupils accused of disciplinary offenses other than individuals with exceptional needs as defined in Education Code section 56026 (i.e., special education pupils). While such pupils are subject to the same prohibitions that apply to their classmates regarding assault, theft, drugs, etc., disciplinary proceedings against such students with exceptional needs are subject to certain considerations arising out of their status. School districts should consult their county counsel or other legal advisor about disciplinary procedures involving handicapped students. See *Honig* v. *Doe* (1988) 484 U.S. 305, 108 S.Ct. 592, 98 L.Ed.2d 686.

[24] Education Code section 48902 requires the reporting of assaults with deadly weapons or force likely to produce great bodily injury. It also requires the reporting of drug-related offenses and possession of firearms and other weapons at school, and exonerates the person making such report from civil and criminal liability.

The educators' responsibility to maintain a moral, educational and disciplined school environment goes beyond their duty to see that criminal law is enforced on campus. For example, "habitual profanity" is not a criminal offense, yet it is clearly contrary to an orderly functioning of a school and is legally a reason for suspension or expulsion. (Ed. Code, § 48900(i).) In addition, Education Code section 44806 requires teachers to instruct their pupils concerning morals, manners and citizenship.

In this chapter, we will explore the various statutory grounds for suspension or expulsion. When considering the application of these sanctions, it must be remembered that discipline may not be applied to discourage the exercise of rights guaranteed to everyone under the California and U.S. Constitutions and laws. The limits of these rights will be examined later.

Local rules

The governing board of a school district shall establish rules for the government and discipline of the schools under its jurisdiction. (Ed. Code, §§ 35010, 35014, 35291.) In addition, every four years, each school is legally required to adopt rules and procedures on discipline. (Ed. Code, § 35291.5.) Teachers and the principal are represented on the panel that adopts rules and procedures on school discipline for each school. (Ed. Code, § 35291.5.) The rules must be developed with input from students, teachers, parents, staff and members of the community. The rules should be clear and concise. Further, it is the duty of every school employee to enforce the rules and procedures on school discipline adopted by the school in accordance with this section. (Ed. Code, § 35291.5(a).) This section also requires that parents and students be informed of these rules in writing at the beginning of the school year or at the time of initial enrollment. (Ed. Code, § 35291.5(b).)

As discussed in previous chapters, students who willfully defy the reasonable and valid rules of a school or school district can be subject to suspension or expulsion. (Ed. Code, § 48900(k).)

Statutes require that the governing board adopt rules and regulations regarding procedures for expulsion hearings. (Ed. Code, § 48918.)

Enumerated grounds for suspension and expulsion

Education Code section 48900 provides that "[a] pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has: . . . " engaged in one of the specified behaviors described below.

Physical Injury

A pupil may not threaten or cause physical injury to another person or attempt to do so. (Ed. Code, §§ 48900(a), 48915, 48915.1(c).)

Dangerous Weapons

A pupil may not possess, sell, use, or furnish any firearm, knife, explosive or other dangerous object unless written permission is obtained from a certificated school employee and approved by the principal or the principal's designee. (Ed. Code, §§ 48900(b), 48915, 48915.1(c).)

Alcohol and Drugs

A pupil may not unlawfully possess, use, sell, furnish or be under the influence of any alcoholic beverage, intoxicant or controlled substance. (Ed. Code, §§ 48900(c), 48915, 48915.1(c).)

Also, students may be suspended or expelled for selling substances represented to be alcohol, drugs or other intoxicants. (Ed. Code, § 48900(d).) For example, if a student sells a bag of oregano and represents the substance as marijuana, the punishment can be suspension or expulsion.

Robbery or Extortion

Students can be suspended or expelled for taking part in extortion or robbery, or an attempt of either. (Ed. Code, §§ 48900(e), 48915, 48915.1(c).)

Damaging School/Private Property

Students may be suspended for causing or attempting to cause damage to school or private property. (Ed. Code, § 48900(f).) Damaging school property includes defacing or destroying such property and is cause for suspension or expulsion. (5 Cal. Code of Regs., § 305.) This prohibition is also broad enough to include the refusal to return school property loaned to a pupil. With proper due process, grades, diplomas and/or transcripts may be withheld. (Ed. Code, § 48904.3.) In addition, the parent or guardian may be held liable within certain limits for such damage. (Ed. Code, §§ 48904, 48905.)

Stealing School/Private Property

A pupil may be suspended or expelled if he or she steals school or private property, attempts to do so, or knowingly receives stolen property. (Ed. Code, §§ 48900(g), 48900(l).)

Smoking

A pupil may be suspended or expelled if he or she possesses or uses tobacco on campus or at school sponsored activities. (Ed. Code, §§ 48900(h), 48901.) Smoking areas for students which formerly could be created under authority given in Education Code section 48901(a) are no longer permitted. School districts are now required to take "all practical steps" to discourage students from smoking. (Ed. Code, § 48901(b).)

Profanity, Obscenity

A pupil may be suspended or expelled if he or she commits an obscene act or engages in habitual profanity or vulgarity. (Ed.

Code, § 48900(i).) With regard to profanity and vulgarity, the key word is "habitual." An isolated act of profanity or vulgarity is probably not sufficient grounds for suspension or expulsion under this code section. Lesser penalties, however, may be used for isolated use of lewd and vulgar speech. Society has an interest in teaching students the boundaries of socially appropriate behavior. This interest is served by restricting obscene speech while protecting expressions of political views, even unpopular and controversial ones. (See *Bethel School District* v. *Fraser* (1986) 478 U.S. 675, in which the U.S. Supreme Court upheld the two-day suspension of a high school student who gave a speech peppered with sexual innuendos at a high school assembly.)

Paraphernalia

A pupil may be suspended or expelled if he or she offers, arranges or negotiates to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code. (Ed. Code, § 48900(j).)

Disruption, Defiance

A pupil may be suspended or expelled if he or she disrupts school activities or otherwise willfully defies the valid authority of supervisors, teachers or administrators performing their duties. (Ed. Code, § 48900(k).) This provision is significant not only for its general applicability, but also it can be used to enforce the reasonable rules and regulations of individual school districts.

One important limit to this provision is that a pupil may not be disciplined for politely disobeying an order that would violate his or her constitutional or statutory rights. For example, if a student is asked by the teacher to stand up and salute the flag, and he or she refuses, the student may not be punished for "disobedience" no matter how often the student refuses. As we shall see, the courts have repeatedly held that a student has a constitutional right to refuse to stand and salute the flag and may not be punished for exercising this right.

Mandatory Expulsion

The Legislature has determined that the principal or superintendent *shall* recommend expulsion for (a) causing serious physical injury to another; (b) possession of firearms, knives, explosives or other dangerous objects; (c) unlawful sale of controlled substances;[25] or (d) robbery or extortion—unless they find and report in writing to the governing board that expulsion is inappropriate due to the noted particular circumstances. (Ed. Code, § 48915(a).)

A quick review of suspension and expulsion procedures is briefly outlined on the chart on page 81.

Limitations on suspensions

Must Be School-Related Offense

Education Code section 48900 further provides that:

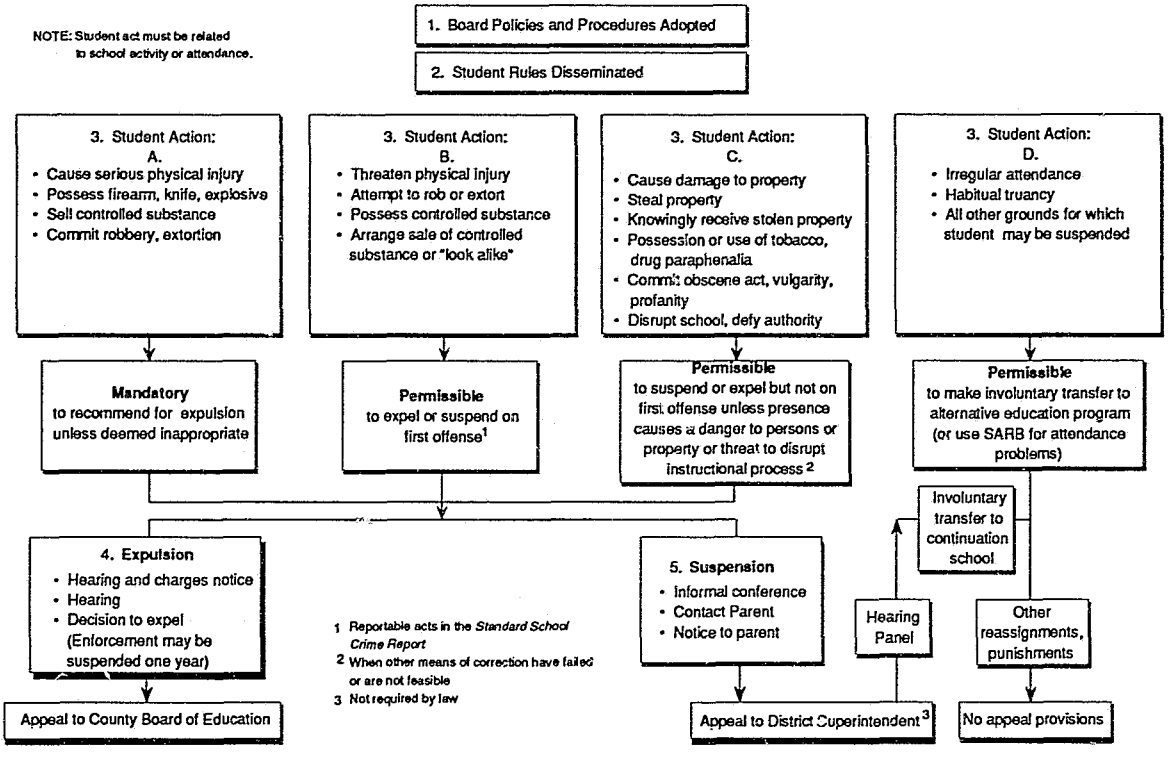
> *No pupil shall be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal, or occurring within any other school district. A pupil may be suspended or expelled for acts which are enumerated in this section and related to school activity or attendance which occur at any time, including, but not limited to, any of the following:*
>
> - ❑ *While on school grounds.*
> - ❑ *While 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.*

---

[25] "[E]xcept for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis." (Ed. Code, § 48915(a)(3).)

Overview of Suspension/Expulsion Involuntary Transfer Actions

(Education Code section 48900 et seq., 35291, 35991.5)



Last Resort

Education Code section 48900.5 states:

> *Suspension shall be imposed only when other means of correction fail to bring about proper conduct. However, a pupil, including an individual with exceptional needs . . . may be suspended for any of the reasons enumerated in section 48900 upon a first offense, if the principal or superintendent of schools determines that the pupil violated subdivision (a), (b), (c), (d), or (e) of section 48900 or that the pupil's presence* ***causes a danger*** *to persons or property or threatens to disrupt the instructional process.* (Emphasis added.)

Truancy

However, suspension or expulsion is not an intended sanction for truancy, tardiness or other absences. (Ed. Code, § 48900.) Many schools use "in-school" suspension as an effective alternative. This allows for closely supervised and intensive schooling. Schools also hold Saturday classes for such students. (Ed. Code, §§ 37201, 37223, 41601.)

Local rules and dress codes

The governing board of a school district may set rules for the government and discipline of the schools under its jurisdiction. (Ed. Code, §§ 35010, 35014, 35291.) As described above, students who willfully defy the reasonable and valid rules of a school district can be suspended or expelled. (Ed. Code, § 48900(k).)

Dress codes are highly controversial; few areas of student conduct have stirred up more litigation than alleged "dress code" violations. Perhaps for this reason many school districts have relaxed their standards, and many principals do not enforce existing ones. But California courts do support reasonable and clear school regulations governing the appearance of students.

For example, in *Montalvo* v. *Madera Unified School District Board of Education* (1971) 21 Cal.App.3d 323, a student challenged a school board regulation specifying the maximum length of hair. The court noted that issues of grooming, including hair style, are not related to "free speech." Grooming codes will be upheld if the schools can show "some reasonable relationship between the legitimate concerns of the school administration relating to the education process" and the rules controlling the appearance of students.[26] The court held that in this case the rule was reasonable. In another case, *Akin* v. *Board of Education of Riverside, etc., District* (1968) 262 Cal.App.2d 161, a regulation forbidding students to wear beards was similarly upheld.

In drafting dress codes, however, school authorities must be careful that the codes state exactly what is expected of the students. In *Myers* v. *Arcata, etc., School District* (1969) 269 Cal.App.2d 549, a regulation forbidding "extremes of hair style" was struck down. The court held that this standard was so vague that students could not be sure whether they were in violation. Being specific, of course, puts a special burden on school officials and may lead to some frustration as juvenile styles change. As one judge lamented, "The long hair case of today may be a shaven head case tomorrow, or a brilliantly dyed hair case of some other time. The possible extremes of dress and attire are nearly unlimited." (*Crews* v. *Cloncs* (S.D. Ind. 1969) 303 F.Supp. 1370, 1374.)

Some California schools have limited dress styles to discourage students from wearing gang "colors" and clothing on campus. Other schools established rules to prohibit specific gang paraphernalia, but often the gangs changed those to get around the rules.

---

[26] *Montalvo* v. *Madera Unified School District Board of Education* (1971) 21 Cal.App.3d 323, 335; *Jeffers* v. *Yuba City Unified School District* (E.D. Cal. 1970) 319 F.Supp. 368; compare *Olff* v. *East Side Union High School District* (N.D. Cal. 1969) 305 F.Supp. 557.

Therefore, school personnel should continually work with local law enforcement gang units for current gang information and identification. As in the cases discussed earlier, the dress code policies may be upheld if they are consistently enforced and can demonstrate a connection between campus safety and the educational process.

Chapter 6

Disciplinary Punishments

Suspension

Suspension, like expulsion, should be used when other punishments fail. It may be imposed by a teacher, principal, superintendent or the governing board. The law allows suspension for a first offense without considering other means of correction if the offense involves physical injuries, dangerous objects or weapons, certain drugs, robbery or extortion, or "the pupil's presence causes a danger to persons . . . or threatens to disrupt the instructional process." (Ed. Code, § 48900.5.)

By a Principal or Superintendent

A principal, the principal's designee[27] or the superintendent may suspend a student for an offense for up to five school days. (Ed. Code, § 48911(a).) Before a suspension is imposed, the student must be given an informal conference with the principal, designee or superintendent and, whenever possible, the referring teacher or supervisor. At this conference the pupil must be informed of the charges against him or her. If the student denies the charges, then he or she is given an explanation of the incriminating circumstances and an opportunity to present his or her version. (Ed. Code, § 48911(b).)

If the youngster must be removed before this hearing can be scheduled, for example, because the principal or the principal's designee determines that "an emergency situation exists"—the

[27] Any administrator or certificated person at the school site who helps with disciplinary procedures, if specifically designated by the principal in writing and on file, may act as the "principal's designee." (Ed. Code, § 48911(h).)

student may be suspended without the hearing. An "emergency situation" means a situation that constitutes a clear and present danger to the lives, safety or health of pupils or school personnel. (Ed. Code, § 48911(c).) In such circumstances, a conference shall be held within two school days unless the pupil waives this right or is physically unable to attend for any reason, in which case it shall be held as soon as possible. (*Goss* v. *Lopez* (1975) 419 U.S. 565, at pp. 581-583; Ed. Code, § 48911(c).)

At the time of suspension, a school employee must make a reasonable effort to contact the parent or guardian in person or by telephone and must notify them in writing. (Ed. Code, § 48911(d). The school board or district superintendent must also be notified. (Ed. Code, § 48911(e).)[28] Generally, a pupil may not be suspended for more than 20 days in one school year. (Ed. Code, § 48903.)[29]

Each school district is authorized to establish a policy that permits school officials to meet with the parent or guardian of a suspended pupil to discuss the cause, the duration, the school policy involved and other matters pertaining to the suspension. (Ed. Code, § 48914.)

A teacher may decide whether a pupil will be required to make up assignments and tests missed during a suspension. (Ed. Code, § 48913.)

---

[28] Parents are required to attend a conference regarding the child's behavior; however, there is no sanction if they fail to attend.

[29] There are two specific exceptions to the 20-day limit: (1) where the governing board already is considering suspending the student from continuation school for the rest of the semester (Ed. Code, § 48912.5) and (2) when a pupil enrolls or transfers to another regular school, opportunity school or class, or continuation school or class (Ed. Code, § 48903; maximum—30 days).

By a Teacher

A teacher may suspend an offending pupil from his or her class for the day of the suspension as well as the following day. This type of suspension may occur only once every five days. (Ed. Code, § 48925(d)(3).) The teacher must immediately report the suspension to the principal or designee and send the pupil to the principal for appropriate action. The pupil may not return to that teacher's class during his or her suspension period without the concurrence of the teacher *and* principal. (Ed. Code, § 48910.)

The teacher must ask, as soon as possible, the pupil's parent or guardian to attend a parent-teacher conference to talk about the suspension. If possible, a school counselor or psychologist should attend the conference. A school administrator must attend the conference if the teacher, or the parent or guardian requests it. (Ed. Code, § 48910.) In addition, for specified reasons, the teacher may request that the parent or guardian of the suspended student attend a portion of the school day in his or her child's classroom. (Ed. Code, § 48900.1.) The law states that the parent shall attend class; however, there is no sanction for failure to attend.

Expulsion by the governing board

The principal or superintendent *shall* recommend to the governing board the expulsion of an offending student for any of the enumerated grounds in Education Code section 48915(a):

- ❑ causing serious physical injury to another;
- ❑ possession of firearms, knives, explosives or other dangerous objects;
- ❑ unlawful sale of controlled substances; or
- ❑ robbery or extortion,

unless they provide a written report to the governing board explaining that expulsion is inappropriate due to the noted circumstances. Further, the principal or superintendent may recommend the expulsion of an offending student for any of the enumerated

grounds applicable to suspension. (Ed. Code, § 48915(b), (c).) The pupil and parent or guardian are entitled to a hearing and must be notified in a detailed written notice at least 10 calendar days before the hearing date. (Ed. Code, § 48918(b).)

The governing board may order a pupil expelled on finding that the pupil:

- ❑ Caused, attempted or threatened to cause physical injury.
- ❑ Possessed, sold, furnished any firearm, knife, explosive or dangerous object.
- ❑ Possessed, sold, used, furnished, been under the influence of a controlled substance, alcohol or intoxicant.
- ❑ Offered to sell a controlled substance, alcohol or intoxicant, and then delivered an article representing it to be the illegal substance.
- ❑ Committed or attempted to commit robbery or extortion.

The board may also expel a pupil for committing one or more of the other enumerated acts of section 48900 if it is also found that other means of correction are not feasible or have repeatedly failed; or due to the nature of the violation, the pupil's presence causes a continuing danger to the physical safety of the pupil or others. (Ed. Code, § 48915(a), (b) and (c); see chart in Chapter 5.)

When an expulsion of a pupil is ordered, the governing board shall set a date, not later than the last day of the semester *following* the semester in which the expulsion occurred, for when the pupil may apply for readmission to a school maintained by the district. (Ed. Code, § 48916.) The expulsion order and the causes shall be recorded in the student's mandatory interim record. (Ed. Code, § 48918(j).) If the student enters another school district, the new district must hold a hearing to determine whether the student poses a continuing danger to either the pupils or employees of the

school district. (Ed. Code, § 48915.1(c).) The pupil or parent or guardian has a right of appeal to the county board of education. (Ed. Code, § 48919.)

Suspension of expulsion

The governing board, upon voting to expel a pupil, may suspend the enforcement of the expulsion order for a period of not more than one calendar year and may, as a condition of the suspension of enforcement, assign the pupil to a school, class, or program which is deemed appropriate for the rehabilitation of the pupil. During the period of the suspension of the expulsion order, the pupil shall be deemed to be on probationary status. The suspension of an expulsion order under this section may be revoked by the governing board upon the pupil's commission of any of the acts enumerated in section 48900 or for any violation of the district's rules and regulations governing pupil conduct. Upon revocation of the suspension of an expulsion order, a pupil may be expelled under the terms of the original expulsion order.

Upon satisfactory completion of the rehabilitation assignment of a pupil, the pupil shall be reinstated by the governing board in a school of the district. Upon reinstatement, the governing board may also order the expungement of any or all records of the expulsion proceedings.

A decision of the governing board to suspend an expulsion order shall not affect the time period and requirements for the filing of an appeal of the expulsion order with the county board of education required under section 48919. Any appeal shall be filed within 30 days of the original vote of the governing board. (Ed. Code, § 48917.)

Corporal punishment

All forms of corporal punishment are now prohibited. "Corporal punishment" means the willful infliction of, or willfully causing the infliction of, physical pain on a pupil. An amount of force that is reasonable and necessary for a person employed or engaged in a public school to quell a disturbance threatening physical injury to persons or damage to property, for purposes of self-defense, or to obtain weapons or other dangerous objects within the control of the pupil, is not and shall not be construed to be corporal punishment within the meaning and intent of this section. Physical pain or discomfort caused by athletic competition or other such recreational activity voluntarily engaged in by the pupil is not and shall not be construed to be corporal punishment within the meaning and intent of this section. (Ed. Code, §§ 49000, 49001.)

Administrators might remind their staff that the use of physical punishment given in the form of involuntary extra laps, pushups, etc., may very well come under the corporal punishment restrictions as defined in Education Code sections 49000-49001. Some authorities would consider charges under child abuse statutes.[30]

Detention

A student may not be detained more than one hour after school for disciplinary or other reasons unless he or she must wait longer than that for a school bus. (5 Cal. Code of Regs., §§ 307, 353; Ed. Code, § 44807.5.)

---

[30] An individual teacher or school official who administered corporal punishment in the face of the Education Code prohibition runs the risk of substantial personal civil liability for his or her actions.

Chapter 7

The Limits of Discipline

Free speech

Demonstrations, picketing, political activity and agitations of every kind are no longer confined to college campuses. A dynamic balance between the constitutional rights of students and school staff, and the orderly administration of public schools is critical. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." (*Tinker* v. *Des Moines School District* (1969) 393 U.S. 503, 506.) In California, the rights of students to free speech is statutory as well as constitutional. Education Code section 48907 provides that "[s]tudents of the public schools have the right to exercise freedom of speech and of the press. . . ."

This represents only one side of the balance. This chapter will explore the common activities that qualify as "speech" or "expression," and the extent to which such activities may be regulated. In the case, *Bethel School District* v. *Fraser* (1986) 478 U.S. 675 106 S.Ct. 3159, 92 LEd.2d 549, the U.S. Supreme Court found that school officials may, in specific circumstances, restrict language that "disrupts" school proceedings. School administrators cannot legally censor students' speech or writing unless it seems clear that the constitutionally protected right of free speech is not involved.

Protected activities

Wearing Buttons, Badges and Other Insignia

Education Code section 48907 grants students the right to wear "buttons, badges and other insignia." This statute codifies the ruling of the United States Supreme Court in a case (*Tinker* v. *Des Moines School District, supra,* 393 U.S. 503) which upheld the right of students to wear black armbands to class in protest against

American foreign policy, despite school rules forbidding such behavior.

The right to wear insignia, as with all of the other rights discussed below, is not absolute. For example, "obscene, libelous or slanderous" expressions are prohibited (Ed. Code, § 48907), as well as activities that cause "material and substantial interference with the requirements of appropriate discipline in the operation of the school." (*Tinker* v. *Des Moines School District* (1969) 393 U.S. at p. 506.) These limitations will be discussed in a later section.

Refusing to Salute the Flag

The U.S. Supreme Court has held that students may not be compelled to salute the American flag. Since that decision, several school districts have tried to require children who declined to salute the flag to at least stand for the salute. The federal courts have been unanimous in holding that such requirements are unconstitutional. (*Board of Education* v. *Barnette* (1943) 319 U.S. 624.)

In one example, the school board announced that students who choose not to salute the flag "will stand quietly." One student refused to stand, and the court held that his refusal was a form of expression; he was exercising a right "akin to pure speech." (*Banks* v. *Board of Public Instruction* (S.D. Fla. 1970) 314 F.Supp. 285; see also *Goetz* v. *Ansell* (2nd Cir. 1973) 477 F.2d 636; *Sheldon* v. *Fannin* (D. Ariz. 1963) 221 F.Supp. 766; *Fran* v. *Baron* (E.D. N.Y. 1969) 307 F.Supp. 27.)

Furthermore, one student's right to free expression may not be limited merely for the reason that the expression may lead other students to exercise their rights. In one case, school authorities complained that one student's refusal to stand and salute the flag was persuading others to do likewise. The court dismissed this argument with the observation that " '[t]he First Amendment

protects successful dissent as well as ineffective protests.' " (*Hanover* v. *Northrup* (D. Conn. 1970) 325 F.Supp. 170, 173, quoting *Frain* v. *Baron* (E.D. N.Y. 1969) 307 F.Supp. 27.)

In another example, a teacher refused to lead or recite the Pledge of Allegiance,[31] choosing instead to remain seated with her head bowed. She was charged with insubordination. The federal court held that she had a constitutional right to remain seated and to refuse to lead the pledge. (*Hanover* v. *Northrup* (D. Conn. 1970) 325 F.Supp. 170.)

Distributing Literature

The Education Code grants students the right to distribute printed materials or petitions and make use of bulletin boards. (Ed. Code, § 48907.) California courts have also recognized this as a fundamental right:

> *The protection of the First and Fourteenth Amendments extends to the distribution of information and opinion concerning religious, political and economic matters, and other subjects of public concern through handbills, leaflets, and pamphlets.* (*Mandel* v. *Municipal Court* (1969) 276 Cal.App.2d 649.)

The *Mandel* case also held that adults have the right to come onto campus for the purpose of distributing such literature. (*Mandel* v. *Municipal Court, supra.*) In this case, the adult passed out an anti-draft pamphlet that urged students to attend a meeting and outlined a proposal for a one-day student strike. In another case, it was held that an adult had the right to stay on campus to talk to the students even after his supply of literature had run out. (*People* v. *Hirst* (1973) 31 Cal.App.3d 75.)[32]

---

[31] 36 U.S.C., § 172.

[32] The court noted in *Hirst*, however, that school authorities retain the right to prevent disruption and disorder, as well as to forbid or control (in an undiscriminatory manner) handbilling on school grounds by persons who are not students, teachers or administrators.

Student Publications

The Education Code protects the students' right to exercise freedom of the press, so long as it is not obscene, libelous, slanderous or does not present a clear and present danger of inciting students to commit unlawful acts on school premises. (Ed. Code, § 48907.)

Student editors of official school publications, such as newspapers, yearbooks or other student material distributed to the student body, ". . . shall be responsible for assigning and editing the news, editorial, and feature content of their publications subject to the limitations . . ." of Education Code section 48907. It is the responsibility of the journalism adviser of a student publication to supervise the production of the student staff, to maintain professional standards of English and journalism, and to maintain the provisions of Education Code section 48907.

Finally, the Education Code provides that "[t]here shall be no prior restraint of material prepared for official school publications except insofar as it violates this section." (Ed. Code, § 48907.) School officials have the burden of justifying limitations without "undue delay" prior to limiting student expression. (Ed. Code, § 48907.)

In a recent U.S. Supreme Court case, educators acted reasonably in deleting two pages of student articles about pregnancy and divorce from a high school newspaper. Educators do not violate the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns. (*Hazelwood School District* v. *Kuhlmeier* (1988) 484 U.S. 260, 108 S.Ct. 562, 98 L.Ed.2d 592.) The school newspaper in this case was not a public forum, but was part of the educational curriculum. A school need not tolerate student speech that is inconsistent with its basic educational mission, even though the government could not censor speech outside the school.

Demonstrating

The U.S. Supreme Court has recognized both the right of students to peacefully and non-disruptively publicize their grievances on school grounds (*Grayned* v. *City of Rockford* (1972) 408 U.S. 104), and the right of non-students to picket on public sidewalks adjacent to school grounds. (*Grayned, supra,* at p. 118.) In California, this point was emphasized in a case that held the sidewalks adjacent to schools as well as elsewhere ". . . are dedicated in part for meeting people and exchanging ideas. Thus, neither the picket nor the pedestrian has a superior right-of-way. Their interests must be weighed and balanced." (*People* v. *Horton* (1970) 9 Cal.App.3d Supp. 1, 9.)

As the FBI states in its manual on riot control:

> *A peaceful or lawful demonstration should not be looked upon with disapproval . . .; rather, it should be considered a safety valve possibly serving to prevent a riot.*

While the limitations placed on the right to picket and other free-speech rights will be discussed later, it should be noted in this context that the right to picket does not extend to interfering with pedestrian traffic or right-of-way of motorists.[33]

The limits of free speech

Activity Creating Clear and Present Danger of Substantial Disruption

Even if an activity may be classified as "speech" or "expression," as stated earlier, it may be prohibited if it "so incites students as to create a clear and present danger of the commission of unlawful acts on school premises, or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the

---

[33] *People* v. *Horton* (1970) 9 Cal.App.3d Supp. 1, 10; see Pen. Code, § 647c (obstruction of free movement on street, sidewalk or public place); Pen. Code, § 370 (public nuisance); Veh. Code, § 21954 (right-of-way of vehicles).

school." (Ed. Code, § 48907.) The danger, however, must rise "far above public inconvenience, annoyance or unrest." (*Mandel* v. *Municipal Court, supra,* at p. 669.)

This standard requires administrators to possess specific facts, rather than rely on speculations or opinions, to establish that substantial danger is "clear and present." This requirement was emphasized in the strongest language by the U.S. Supreme Court.

> *[I]n our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any words spoken in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk; and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.* (*Tinker* v. *Des Moines School District* (1969) 393 U.S. 503, 508.)

For instance, students are ordinarily entitled to wear symbols of dissent, but those symbols may be banned if they are causing "material and substantial interference with the requirements of appropriate discipline in the operation of the school." (*Tinker* v. *Des Moines School District, supra,* 393 U.S. at p. 506.) In the Supreme Court case just cited, the specific facts necessary to prohibit the student actions were not presented. Where the facts have met the above standard, however, other courts have not hesitated to uphold bans on such symbols. (*Guzick* v. *Drebis* (6th Cir. 1970) 431 F.2d 594; *Hill* v. *Lewis* (E.D. N.C. 1971) 323 F.Supp. 55; *Hernandez* v. *School District No. 1* (D. Col. 1970) 315 F.Supp. 289.)

Likewise, while peaceful demonstrations are lawful, ". . . schools could hardly tolerate boisterous demonstrators who drown out classroom conversation, make studying impossible, block entrances, or incite children to leave the schoolhouse." (*Grayned* v. *City of Rockford, supra,* 408 U.S. at p. 119.)

Further, literature that can be shown to have substantially disrupted or materially interfered with school procedures may be banned and its disseminators punished. In the absence of such a showing, no disciplinary action may be taken. (*Scoville* v. *Board of Education* (7th Cir. 1970) 425 F.2d 10.)

Prohibited Content

Education Code section 48907 prohibits expression which is "obscene, libelous, or slanderous." In many cases, it is difficult even for experienced lawyers and judges to agree whether an expression is obscene, libelous or slanderous. It follows that, except in the most clear-cut case, school officials should seek legal advice.

The expression of views that do not fall in the above categories is constitutionally protected. As the U.S. Supreme Court said, "[c]learly, government has no power to restrict such activity because of its message." (*Grayned* v. *City of Rockford, supra,* 408 U.S. at p. 115.) This rule is sometimes frustrating to school administrators because of the extreme, scurrilous and malicious examples of communication that appear at schools. Nevertheless, it is just this sort of communication that the First Amendment was designed to protect. As a California court stated:

> *If First Amendment rights were limited to speech that pleases and tranquilizes the listener, the constitutional immunity would be unnecessary. No one objects to what he likes to hear. . . . 'Phlegmatic, indeed, is the individual who at some time has not recoiled at the exercise of free speech by others. Annoyance and inconvenience, however, are a small price to pay for preservation of our most cherished right. . . .'* (*Castro* v. *Superior Court*

(1970) 9 Cal.App.3d 675, 699-700, quoting from *Wirta* v. *Alameda-Contra Costa Transit District* (1967) 68 Cal.2d 51, 62.)

Particularly unsettling to school administrators are attacks against themselves or their policies. In *Scoville* v. *Board of Education* (7th Cir. 1970) 425 F.2d 10, 14, an administrator was accused in a student publication of having a "sick mind." Since the statement was neither libelous, slanderous nor obscene, and there were no facts presented showing a likelihood of substantial disruption or material interference with the school, the expulsion of the authors of the statement was held unconstitutional. In a similar case, a student publication undertook to ridicule school officials by printing a satirical speech by a hypothetical administrator. Again, as the previously mentioned legal standards for interference were not met, the court held that the publication was protected. (*Sullivan* v. *Houston Ind. School District* (S.D. Tex. 1969) 307 F.Supp. 1328, 1341.)

In another instance, a school policy prohibiting students from criticizing the governor or state Legislature was struck down as unconstitutional. (*Dickey* v. *Alabama State Board of Education* (M.D. Ala. 1967) 273 F.Supp. 613.) Publications that criticize in a profane or vulgar manner, however, may be prohibited. (*Baker* v. *Downey City Board of Education* (C.D. Cal. 1969) 307 F.Supp.517.)

Regulation of Time, Place and Manner

Education Code section 48907 requires each governing board and each county superintendent to adopt rules and regulations concerning the exercise of free expression "which shall include reasonable provisions for the time, place, and manner of conducting such activities."

The rationale behind this statute has long been recognized by the courts. As the U.S. Supreme Court stated:

> *For example, two parades cannot march on the same street simultaneously, and government may allow*

> *only one. A demonstration or parade on a large street during rush hour might put an intolerable burden on the essential flow of traffic, and for that reason could be prohibited. If overamplified loudspeakers assault the citizenry, government may turn them down. Subject to such reasonable regulation, however, peaceful demonstrations in public places are protected by the First Amendment. Of course, where demonstrations turn violent, they lose their protected quality as expression under the First Amendment. The nature of a place, the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable. Although a silent vigil may not unduly interfere with a public library, making a speech in the reading room almost certainly would. That same speech should be perfectly appropriate in a park. The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.* (*Grayned* v. *City of Rockford, supra,* 408 U.S. at pp. 115-116 (citations omitted).)

So, even though students have the right to use bulletin boards (Ed. Code, § 48907), it would be fitting to adopt a regulation prohibiting the posting of handbills with gummed backs on the bulletin boards. Likewise, posting of materials at places other than bulletin boards could be prohibited. In another example, a principal's office could be out-of-bounds for demonstrations because the activity would make it impossible for the office to function. (Van Alstyne, "Constitutional Protection of Protest," in *Upsurge and Upheaval in School Law,* p. 167.)

Regulations of time, place or manner must meet three tests:

1. The regulation must be narrowly drawn to *channel* speech—rather than to *eliminate* it—in such a manner that it does not interfere with other important interests. As the U.S. Supreme Court said, "[f]ree expression 'must not, in the guise of regulation, be abridged or denied.' " (*Grayned*

v. *City of Rockford, supra,* 408 U.S. at p. 117.) This is what the California Legislature meant when it specified that the provisions must be "reasonable."

2. The regulations must use objective standards to clearly define the areas of prohibition:

   Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. . . . Third, but related, where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of [those] freedoms.' Uncertain meanings inevitably lead citizens to 'steer far wide of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked.' (*Grayned* v. *City of Rockford, supra,* 408 U.S. at pp. 108-109.)

3. The regulations must not discriminate. (*Sullivan* v. *Houston Ind. School District, supra,* 307 F.Supp. at p. 1340.) For instance, school authorities could not allow a group opposed to American foreign policy to use a public address system for a rally, and the next day forbid the use of a public address system to a group favoring the policy.

Conclusions

California educators are charged with preparing students for their place in a democratic community and should stimulate the students' curiosity and interest by providing access to varying, and perhaps controversial, points of view.

In such a climate, robust and creative—but formative—minds will sometimes espouse bizarre and dangerous doctrines as well as fresh insights. A democratic society has made the decision that giving expression to all such views must be tolerated until they imminently endanger the system which allowed them. (See *Bethel School District* v. *Fraser* (1986) 478 U.S. 675 106 S.Ct. 3159, 92 L.Ed.2d 549.) As the California Supreme Court has stated:

> *The rights of students and teachers to express their views on school policies and governmental actions relating to schools, and the power of school authorities to regulate political activities of students and faculty, are of peculiar concern to our state and nation today. Education is in a state of ferment, if not turmoil. When controversies arising from or contributing to this turbulence are brought before the courts, it is imperative that the courts carefully differentiate in treatment those who are violent and heedless of the rights of others as they assert their cause and those whose concerns are no less burning but who seek to express themselves through peaceful, orderly means. In order to discourage persons from engaging in the former type of activity, the courts must take pains to assure that the channels of peaceful communication remain open and that peaceful activity is fully protected.* (*L.A. Teachers Union* v. *L.A. Board of Education* (1969) 71 Cal.2d 551, 565.)

Religion in the school

Two fundamental First Amendment principles dictate the relationship between the public schools and religion. The first principle is the separation of church and state: this prohibits public agencies from aiding or opposing religion in general, or favoring one religion over another. The second principle is the right of citizens to the free exercise of their religious beliefs.

The U.S. Supreme Court has addressed these principles as they apply to public school activities, and three rules have evolved:

1. Bible reading is prohibited in public schools even if it is done without comment and even if students have the option of being excused from the exercise. (*Abington School District* v. *Schempp* (1963) 374 U.S. 203.)

2. Prayers may not be recited in public schools even if students have the option of being excused from them. (*Engel* v. *Vitale* (1962) 370 U.S. 421; see *DeSpain* v. *DeKalb County Community School District* (7th Cir. 1967) 384 F.2d 836.)

3. Sectarian or denominational doctrines may not be taught, directly or indirectly, in the public schools. (Cal. Const., art. IX, § 8.)

This does not mean that the Bible is banned from the public schools. It may be used as instructional material for reference, historical, poetic or any other non-religious purpose. While Bibles may not be distributed through the public schools, they may be placed in school libraries. (25 Ops.Cal.Atty.Gen. 316 (1955); see *Evans* v. *Selma Union High School District* (1924) 193 Cal. 54.) Learning about the religious traditions and history of our country, and the spiritual faith and courage of those who founded it, is by no means forbidden so long as the instruction is not intended to pass on religious beliefs. (25 Ops.Cal.Atty.Gen. 316 (1955); see *Engel* v. *Vitale, supra,* 370 U.S. at note 253.)

In addition, a recent federal circuit court opinion held that a public secondary school which allows non-curriculum related student groups to meet on school premises during non-instructional time is not allowed to deny a student club access on the basis of the religious content of the speech at club meetings. Therefore, a student Bible club must be allowed access to school facilities on the same basis as a chess club, service club and other non-curriculum related clubs. High school students are deemed to be mature enough to understand that an equal access policy is one

of state neutrality toward religion, not one of state favoritism. (*Mergens* v. *Board of Education of Westside Com. Schools* (8th Cir. 1989) 867 F.2d 1076; see also Equal Access Act, 20 U.S.C., §§ 4071-4074 (1984).)

California law makes it illegal to administer any test, questionnaire, survey or examination containing any questions concerning a pupil's (or parent's or guardian's) beliefs or practices in religion or morality (as well as beliefs concerning sex or family life) unless the parent or guardian is notified in writing that such questions will be asked, and *written* consent is received from the parent or guardian. (Ed. Code, § 60650.)

If any part of the instruction in "health," family-life education or sex education conflicts with the religious training or belief of a parent or guardian (and this *includes* their personal moral convictions), the child must be excused from such portions of the class when requested in writing by the parent or guardian.[34] Also, because of religious beliefs, students may refuse to shower in physical education classes.

Although religious teaching and practices are forbidden in the public schools, this does not mean educators should be unconcerned about developing the morals and values of their pupils. Teachers are responsible for supervising the moral conditions in their schools and stimulating thoughtful formation of worthy goals in the students. (See Ed. Code, § 44806 and 5 Cal. Code of Regs.,

---

[34] Ed. Code, § 51240. Even without these restrictions, parents may request that their children be excused from sex education (Ed. Code, § 51550) and venereal disease education (Ed. Code, § 51820). Moreover, as a matter of constitutional law, schools may be required to comply with parents' reasonable requests that their children be excused from certain activities which are contrary to the parents' religious or moral convictions (*Hardwick* v. *Board of School Trustees* (1921) 54 Cal. App. 696). Such exemption would not, however, extend to opting-out from basic textbooks used in the schools at the choice of the local board of education. (*Mozert* v. *Hawkins Co. Board of Education* (6th Cir. 1987) 927 F.2d 1058.)

§ 5530.) That such goals can be achieved without resorting to the promotion of religion, was well phrased by Fulbright and Bolmeir, well-known experts in the field of school law:

> *It would be unfortunate to promote a program of religious instruction which creates and agitates denominational differences and animosities, in lieu of a broader and more effective program of moral and spiritual values divorced from all sectarian influences. . . . A curriculum conceived in terms of moral and spiritual values will strive to improve and develop human personality, moral responsibility, devotion to truth, respect for excellence, moral equality, brotherhood, the pursuit of happiness, and spiritual enrichment for every school pupil.* (*Courts and Curriculum* (1969) at pp. 165-166.)

Chapter 8

Interagency Partnerships

> *"State officials and state courts are now going about translating that mandate [to create safe campuses] into the reality of a secure school environment. The true genius of the American legal system—indeed our entire system of government—is its evolutionary capacity to meet new problems. Legal institutions change as they respond to new challenges. The serious challenge of restoring a safe school environment has begun to reshape the law."* Former U.S. Supreme Court Justice Warren Burger.[35]

History of school-law enforcement partnerships

The evolution of current California school safety mandates and the increase of school-law enforcement partnerships can be tied to a series of public statements, court cases and legislative actions.

Statewide attention to school safety issues began less than 20 years ago. Before that time, there was an awareness that schools were having increasing problems with crime and violence, but there was no concentrated public movement to do something about it. Educators dealt with crime and discipline incidents on a case-by-case basis. Methods used were different at every district and very much depended on personal philosophies and personalities of the people involved at the time. Frequently school staff and juvenile justice personnel did not cooperate.

---

[35] *School Safety*, Winter 1986, p.4.

Court Cases and State Law

The changes began with several U.S. Supreme Court cases. In 1969, the high court held that students and teachers did not shed their constitutional rights at the schoolhouse gate. Even though the court's ruling allowed students who were protesting the Vietnam War to wear black armbands, the justices stated clearly that school authorities may prohibit activities which substantially interfere with the work of the school or impinge on the rights of other students. The holding that students have fundamental rights which the state must respect, is the foundation for their gaining the fundamental right to go to safe, secure and peaceful schools more than a decade later. (*Tinker* v. *Des Moines Independent Community School District* (1969) 393 U.S. 503.)

In 1975, the U.S. Supreme Court mandated that students also had a constitutional right to due process before imposing disciplinary sanctions. (*Goss* v. *Lopez* (1975) 419 U.S. 565.) These requirements consisted of informal notice by the school staff of the reason for the discipline, the nature of the evidence against the student, and an opportunity to argue against it before the disciplinary decision could become final. Within several years, the California Legislature had passed several bills which added these requirements to the system of suspension and expulsion. (Ed. Code, § 48900 et seq.)

Community Input

In 1978, the members of the Fresno Interagency Task Force on Disruption and Violence in Schools recommended that someone must be held accountable to carry out programs to reduce crime and violence in schools and that agencies must cooperate in the endeavor.

The 1978-79 Los Angeles County Grand Jury's Education Committee called for a teamwork approach to cope with their schools' vandalism and violence, and to create a calm atmosphere where learning is the first priority. Judge Kenyon proposed that the

public schools become islands of safety in which students could pursue learning and teachers conduct their teaching without fear.

Then-Attorney General George Deukmejian formed a School Safety Center within his office which began publishing booklets for practitioners on school safety issues. In 1980, he filed the first lawsuit in California to compel schools to diminish violence and vandalism, to speak and act for the children who could not speak and act for themselves.[36]

School Crime Reporting

About the same time, the first laws creating a school crime reporting process were passed. This early system requested rather than mandated that school districts report statistics on violence and vandalism, so not every school participated. The first statewide crime statistics were released in 1981 which fueled more attempts to do something about the increasing dangers on campuses.

Laws Strengthened

The court eventually denied Deukmejian's complaint, but the attention that it brought to school safety issues led to citizens joining forces to draft and gain voter approval of Proposition 8, the Victim's Bill of Rights, in 1982. Prop. 8 gave all students and staff the inalienable right to attend campuses which are safe, secure and peaceful. (Cal. Const., art. I, § 28(c).)

In 1983, the Legislature amended and improved the disciplinary procedures for suspending and expelling disruptive students. They passed the School Safety Act of 1983 that increased penalties for dealing drugs to minors on school grounds. Funds were made available for local law enforcement and schools to run joint drug

---

[36] *A Lawsuit to Restore Safety in the Schools,* State of California, Department of Justice, 1980. See also, *People ex rel. George Deukmejian* v. *Los Angeles Unified School District, et al.,* Complaint for Declaratory Relief, filed May 21, 1980 (Los Angeles County).

abuse prevention and drug suppression programs around the state. (Ed. Code, § 48900 et seq.; see Health & Saf. Code, §§ 11353.5, 11357(d), 11357(e).) These programs have increased in numbers and in funding through the years.

School Safety Partnership

That same year, Attorney General John Van de Kamp and State Superintendent of Public Instruction Bill Honig formed a partnership between the Department of Justice and the State Department of Education to establish a cadre of professionals from education and law enforcement to devise school safety training materials and support services. Later, this School Safety Partnership was codified by the Interagency School Safety Demonstration Act of 1985. (Ed. Code, §§ 32260-32296.) The School Law Enforcement Partnership Cadre remains vital today and provides information, training and assistance to hundreds of schools and juvenile justice agencies yearly.[37]

In 1984, the Legislature also passed other significant school safety legislation. Bills increased the penalties for violence against persons on school campuses, required the schools to begin reporting crimes to the State Department of Education, ordered the Attorney General's Office to prepare materials to enable schools to do a professional job of crime reporting, required the juvenile court to notify the schools of cases involving serious juvenile crimes and created new statutes to deal with trespassers on campus.[38] The State Department of Education and Attorney General's Office publish many documents to assist school staff in preparing these reports accurately. These statistics are used to determine which programs should be funded by the state to combat crime on school campuses.

---

[37] Contact either the Crime Prevention Center, Office of the Attorney General, P.O. Box 944255, Sacramento, CA 94244-2550, (916) 324-7863, or the School Climate and Student Support Services Unit, State Department of Education, P.O. Box 944272, Sacramento, CA 94244-2720, (916) 322-6352.

[38] See Pen. Code, §§ 241.2, 243.2., 243.3, 243.5, 626-628.2; also Welf. & Inst. Code, § 827(b).

Schools were given opportunities in 1986 to participate in statewide interagency programs to combat gangs and serious juvenile crime.[39]

Planning Improves

In 1987, all schools were required to create school discipline plans involving input from many groups. In 1989, the Legislature recommended that every school develop its own school safety plan with the cooperation of law enforcement agencies, community leaders, parents, pupils, teachers, administrators and other interested persons. (Ed. Code, §§ 35291-35294.5.)

Court Actions

During this time, the Supreme Court also decided several cases that enhance the ability of law enforcement and the courts to work with schools to enforce truancy laws.[40] Increased information sharing was mandated among schools, probation, prosecutors and juvenile courts. (Ed. Code, §§ 38267, 48902, 49076.)

Along with activity in the Legislature and in state offices, private citizens took school safety cases into California courtrooms. As more people became aware of the seriousness and enormity of the problem, lawyers requested compensation for their clients based on traditional liability theories and constitutional rights to be safe from harm. Judges made strongly worded school safety rulings in criminal and in civil cases and held schools liable for damages to others.[41]

---

[39] Gang Violence Suppression Program, Pen. Code, § 13826.65; Serious Habitual Offender Program, Welf. & Inst. Code, §§ 500-506.

[40] *In re James. D.* (1987) 43 Cal.3d 903; *In re Michael G.* (1988) 44 Cal.3d 283.

[41] See for example, *Dailey* v. *Los Angeles Unified School District* (1970) 2 Cal.3d 741; *Hoyem* v. *Los Angeles Unified School District* (1978) 22 Cal.3d 508; *Peterson* v. *San Francisco Community College* (1984) 36 Cal.3d 46; *In re William G.* (1985) 40 Cal.3d 550; *Leger* v. *Stockton Unified School District* (1989) 202 Cal.App.3d 1448; *Zemsky* v. *City of New York* (2nd Cir. 1987) 821 F.2d 148; *Stoneking* v. *Bradford Area School District* (3rd Cir. 1989) 882 F.2d 720.

The need to work together to provide safe, secure and peaceful schools grows more important every day. Everyone must keep current on school safety legislation, court decisions and statewide school safety programs so that they can prevent injuries, crimes and litigation and can better protect students and staff from harm.

Interagency cooperation

In practice, the juvenile justice system is not really a system at all, but a collection of many different systems:

- ❑ Schools
- ❑ Law enforcement
- ❑ Probation
- ❑ Child protective services
- ❑ District attorney
- ❑ Courts
- ❑ Youth authority
- ❑ Social services
- ❑ Mental health
- ❑ Drug and alcohol treatment
- ❑ Private community agencies

Each system has its own policies and procedures for doing its job with children. Sometimes these procedures are in conflict with those of the other agencies that are working with the same child. In most cases, however, these conflicts can be worked out when people sit down with each other to solve their common problems. In most cases, a more informed decision can be made and more appropriate services can be delivered when input from all agencies is taken into account.

One of the best ways to keep students and staff safe is to work in partnership with governmental and community agencies. It is worthwhile to consider meeting with local law enforcement, district attorneys, probation and protective service agencies to discuss general concerns about school safety and to plan jointly

with them to eliminate mutual problems. Interagency cooperation might evolve such policies as:

- Providing school liaison police officers on campus.
- Reporting all felony[42] crimes to law enforcement.
- Cross-training school employees on search and seizure laws to enable them to conduct legal searches of students, lockers, student vehicles and other areas when necessary.
- Identifying high-risk areas on campus so that problems can be solved.
- Setting aside a private place for law enforcement interviews of victims, witnesses and suspects on campus.
- Cooperating with law enforcement, probation and protective services investigators when they need to come on campus to pursue an active case.
- Developing crisis management plans for crises that may occur on campus (suicide, shooting, major injury, etc.) that include action plans and duties for staff, rumor control, counseling services for staff, students and others.
- Involving the community in campus security with programs similar to Neighborhood Watch.
- Including students, staff and law enforcers in review of designs for new schools.
- Training staff on child abuse symptoms and the reporting requirements and procedures.
- Assigning a probation officer to each middle school and senior high school campus to provide diversion services to supervise probationers who attend there.

Positive working relationships with law enforcement, probation and protective services workers will benefit the school and community. A school that welcomes police officers and deputy sheriffs

---

[42] Felonies are crimes which can send an adult to prison for several years. Included are assault with a deadly weapon, robbery, extortion, drug sales, burglary and rape.

on campus is a safer school because of their presence—even for brief visits. When school staff, law enforcement, probation officers and protective services staff work closely together, they can count on each other in a crisis. They understand each others' perspectives and can anticipate each others' reactions.

Truancy

Truancy Defined

There is a widespread misconception that youngsters can voluntarily quit school when they reach age 16. This is not true. Except under certain provisions defined in Education Code section 48410, the legal age for leaving school is 18.

Full-time school attendance is compulsory for California children between the ages of 6 and 18. (Ed. Code, § 48200.) Youths who are 16 years or older, but under 18, are required to at least attend continuation education classes or regional occupational center programs. If they are employed, a minimum schedule program is permitted. (Ed. Code, § 48400.) Youths who are 16 years, or older, or who have completed the tenth grade can be exempted from compulsory attendance by passing the California High School Proficiency Examination and receiving parental permission. (Ed. Code, § 48412.)[43]

"Truant" is defined as follows:

> *Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without valid excuse more than three days or tardy in excess of 30 minutes on each of more than three days in one school year is a truant and shall be reported to the attendance supervisor or to the superintendent of the school district.* (Ed. Code, § 48260.)

---

[43] Education Code section 48140 also exempts high school graduates, ROP students, students in private schools, students with dependents and a few others.

> *Any pupil who has once been reported as a truant and who is again absent from school without valid excuse one or more days, or tardy on one or more days, shall again be reported as a truant to the attendance supervisor or the superintendent of the district.* (Ed. Code, § 48261.)

Habitual Truant Defined

> *Any pupil is deemed an habitual truant who has been reported as a truant three or more times per school year, provided that no pupil shall be deemed an habitual truant unless an appropriate district officer or employee has made a conscientious effort to hold at least one conference with a parent or guardian of the pupil and the pupil himself, after the filing of either of the reports required by section 48260 or section 48261.* (Ed. Code, § 48262.)

Truancy Sweeps

Many schools have teamed with law enforcement to find and pick up truants on city streets. In addition to helping schools prevent truancy, these programs have significantly aided law enforcement because the daytime burglary statistics drop as school attendance improves.

Consistent Enforcement

A truant student can be stopped and taken into custody if he or she is not in school during hours of operation. Education Code section 48264 states:

> *The attendance supervisor, a peace officer, or any school administrator or his designee, may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full-time education or to compulsory continuation education found away from*

> *his home and who is absent from school without valid excuse within the county, city, or city and county, or school district.*

In addition, a peace officer without a warrant may take into custody a minor who ". . . is under the age of 18 years when such officer has reasonable cause for believing that such minor is a person described in sections 300, 601, or 602 . . ." (Welf. & Inst. Code, § 625(a)). A habitual truant student falls under section 601(b) of the Welfare & Institutions Code.

The California Supreme Court, in the case *In re James D.* (1987) 43 Cal.3d 903, held that law enforcement had reasonable suspicion to detain and question a youth to determine whether he was truant, based on his "youthful appearance." They found that the public's interest in enforcing compulsory education laws, and the propriety of a truancy arrest under Ed. Code section 48624, outweigh the slight interference with personal liberty caused by the detention. Further, in the case *In re Michael G.* (1988) 44 C.3d 283, the court held that the juvenile court was authorized, because of its contempt power, to order the secure confinement during nonschool hours of a minor who was previously made a ward of the court,[44] and later found in contempt of court for willfully disobeying a juvenile court order to attend school.

Parents, school administrators and other school and community members have debated the issue of law enforcement custody of truants. Some feel this is a punitive measure designed to harass youngsters. However, statistics reflect the serious implications of truancy and the need for *preventive* action by law enforcement and schools. Truancy prevention is an excellent form of delinquency prevention.

---

[44] For truancy according to Welfare & Institutions Code section 601(b).

Truants in Custody

At this stage, communication between agencies about their cases involving students becomes important. Cooperation among school officials, school attendance review boards (SARBs), law enforcement, probation and other youth serving agencies can result in more effective responses to specific student needs. The proper use of these resources can result in successfully returning a student to the classroom. The following code sections illustrate guidelines for handling truants in custody.

> *Any person arresting or assuming temporary custody of a minor pursuant to section 48264 shall forthwith deliver the minor, either to the parent, guardian, or other person having control or charge of the minor or to the school from which the minor is absent, or to a nonsecure youth service or community center designated by the school or district for counseling prior to returning such minor to his home or school, or to a school counselor or pupil services and attendance officer located at a police station for the purpose of obtaining immediate counseling from the counselor or officer prior to returning or being returned to his home or school, or, if the minor is found to have been declared an habitual truant, he shall cause the minor to be brought before the probation officer of the county having jurisdiction over minors.* (Ed. Code, § 48265.)

> *Any person taking action pursuant to sections 48264 and 48265 shall report the matter, and the disposition made by him of the minor to the school authorities of the city, or city and county, or school district and to the minor's parent or guardian.* (Ed. Code, § 48266.)

Reporting Truancy

Once a pupil has been declared a ward of the court and is required to attend school, the school staff must report truancy, tardiness or

insubordination to the court and the probation officer within 10 days. (Ed. Code, § 48267.) Probation and the district attorney may then file a petition to bring the matter before the judge to request sanctions. (Welf. & Inst. Code, § 777.)

School Attendance Review Boards

A SARB may be created to provide guidance and coordinated services to pupils with school attendance and behavior problems. (Ed. Code, § 48320.) County SARBs include parents, representatives from school districts, probation, welfare, county superintendent of schools, law enforcement agencies, community-based youth service centers, and school guidance and child welfare and attendance personnel. (Ed. Code, § 48321(a).) Local SARBs, serving smaller areas but similarly structured, may also be formed. (Ed. Code, § 48321(b).) The SARB board meets with the pupil and parent and attempts to solve the attendance or behavior problem. Most SARBs are successful in the majority of cases referred to them in returning students to school. If their interventions do not resolve the problem, the pupil may be referred to juvenile court for prosecution (Welf. & Inst. Code, §§ 601(b), 601.1-601.4). In addition, the parent may be cited for violation of Education Code section 48293 which carries a fine up to $100 for a first offense and $250 for subsequent offenses.

The state SARB, made up of interagency representatives, supports county SARBs in carrying their duties by providing statewide personnel training and policy coordination. (Ed. Code, § 48325.)

Truancy Mediation Programs

District attorneys and probation departments may establish truancy mediation programs that require the parent and pupil to meet with them and discuss the possible legal consequences of the pupil's truancy. Services to resolve the truancy problem are offered. If mediation is unsuccessful, the minor and the parent may be prosecuted as described above.

Information sharing

In these days of limited resources, it makes sense for public agencies to pool their energies and their information when they deal with the serious problems of youthful criminals, child victims and the need for effective services for these children and their families.

School Involvement

The schools play a very important role in this process because they have children in their care and control for many of their waking hours. Schools know these children better than most and have insight into their behavior, their personalities and their needs. They can be more involved in the decision-making process of the juvenile justice system. Their input helps the child receive appropriate attention from the court. On the other hand, the information the school receives about what happened at court helps the school make educational plans for the child as well as plan for the safety of staff and students.

At first glance, many agencies' rules seem to make information sharing impossible. However, a close examination of those rules turns up many ways of legally sharing information to make more informed decisions about youth.

Confidentiality

The 19th century historical basis for confidentiality of juvenile records was the belief that children were not responsible for their criminal acts and that treatment and rehabilitation could not occur if others knew of the child's earlier record. By not sharing information, rehabilitation was supposed to be enhanced and the child would be free to change his or her behavior without being labeled a "delinquent" or a "troublemaker."

Today many practitioners believe that holding children accountable for their acts is an important part of treatment and rehabilitation. Knowing what other professionals have done with the child

permits decision-makers to get a clearer picture of the child and family, so they can formulate the best possible plans for services and treatment.

By clearing up misunderstandings about the release and sharing of confidential records among child-serving agencies, everyone gains access to needed information and does a better job with the child involved.

Crime Reporting

When students commit criminal offenses off-campus, the school staff should be aware of this in order to provide for the safety of staff and other students. This information can also be used to better program students in school, to assign them to the appropriate teachers and counselors and to prevent further problems.

School staff are mandated and trained to report child abuse to local law enforcement or child protective services agencies. (Pen. Code, § 11164 et seq.) But they may not be as familiar with reporting requirements for crimes and other school-related offenses occurring on campus.

When students commit offenses on campus, in many cases, reports must be made to local law enforcement, probation or the juvenile court. Schools must inform, within 10 days, the court and the probation officer of any court ward who is truant, tardy or habitually insubordinate. (Ed. Code, § 48267.) Schools must also report weapons and drug offenses and assaults on staff. (Ed. Code, §§ 44030, 48902.) An interagency group can agree on the types of crimes that should be reported to local law enforcement.

For instance, pupils who commit felonies or repeatedly commit misdemeanors should be reported to law enforcement. This allows the juvenile justice system to deal with offenders early in their criminal careers while there is still some ability to provide effective rehabilitation. A first offender will typically be handled

by a diversion program. Only more serious cases and chronic offenders are sent to the juvenile court judge.

By reporting crimes to the police, a record can be made of the offense that is accessible to the juvenile justice system. It is highly likely that a youth who is committing crimes at school is committing similar offenses in the community as well. When all crimes are reported, a more complete picture of the scope of criminal activity is gained. School staff do no favors to youthful offenders or the community by ignoring criminal behavior at school or treating it only as a discipline code matter.

Records Access

At the same time, all of us are aware that students have legitimate privacy concerns about this information and that we all must handle it in a professional manner. Training in the access and proper dissemination of confidential information is a must as the interagency information sharing process is developed.

The court controls access to juvenile court records, probation records, social services records and school records.[45] Juvenile law enforcement records may be shared with other law enforcement agencies or any person or agency that has a legitimate need for the information for official disposition of a case. (Welf. & Inst. Code, § 828.) Further, if a child has been found by the juvenile court to have committed a drug offense or a serious violent offense, the court must inform the superintendent of the disposition within seven days. (Welf. & Inst. Code, § 827.) Availability of school records is governed by the federal Family Educational Rights to Privacy Act. (20 U.S. Code, § 1232g; 34 Code of Fed. Regs. 99), often called FERPA or the Buckley Amendment, and state statutes that are patterned on FERPA.

---

[45] See Welf. & Inst. Code, §§ 825-830, 504; Ed. Code, §§ 35250-35254, 49061-49077; 5 Cal. Code of Regs., §§ 430-438, 16020-16027.

Interagency groups that wish to work together to plan appropriately for children and for joint case management and supervision of children who are involved in the juvenile court process may develop interagency information sharing policies and procedures.

The simplest and most common way of obtaining records is to have the minor and parents sign a written consent to release records to the requesting agency. Most schools and probation, social services, parole and other agencies have used these consent or waiver forms successfully for years. It is rare for anyone to refuse to sign such a waiver since parents usually want to cooperate in the service plan for the child involved.

Another easy way to legally share records is to obtain a general order from the juvenile court that authorizes interagency record sharing. Juvenile court judges have discretion to issue such orders (commonly known as *TNG* orders)[46] releasing juvenile court, school and other agency records to appropriate agencies for governmental purposes. Each county juvenile court should have a *TNG* order on file, so school staff should obtain a copy. Request that it be modified if necessary to include all interagency partners working on school safety issues. The court is interested in promoting public safety, assisting the juvenile justice system to function efficiently and basing its own decisions on the best information available. These goals can be met with increased access to agencies' records.

Information policy development

The following is a suggested model[47] for developing school safety interagency information sharing agreements and policies:

- ❑ Form an information management committee.
- ❑ Discover what types of information is maintained by all participating agencies.

---

[46] *TNG* v. *Superior Court* 4 Cal.3d 767 (1971).

[47] *The Need to Know* (1989) National School Safety Center.

- ❑ Evaluate the need and usefulness of the different types of information and data bases.
- ❑ Determine confidentiality and disclosure rules.
- ❑ Choose the types of information and data bases that are needed to make high quality decisions.
- ❑ Establish and implement appropriate confidential and disclosure policies.
- ❑ Designate an information management liaison in each agency who will be the gatekeeper for the information.
- ❑ Review the effectiveness and appropriateness of the policies periodically.

Thorough familiarity with juvenile and school records statutes, a good working relationship with the juvenile court judge and an interagency commitment to organized information sharing will allow the school safety program to build a common information base to make better decisions about problem youth and to enhance campus safety for everyone.

Mobilizing and taking action

Staff Training

Once the interagency plan is developed and implementation begins, all staff must be trained in school safety issues. Cross-training of staff by members of other agencies is a useful technique. School safety materials should be collected into a resource library that includes books, videotapes, pamphlets and information on model programs. These materials should be available to all school staff and used in training. Every school employee (principals, teachers, aides, custodians, clerical, health, substitutes, bus drivers and others) should be aware of their individual responsibility for creating and maintaining a safe campus. Students, parents and community members also should receive training focused on their roles in creating a positive school climate and a safe campus.

Solving Problems

The use of the interagency process to solve school safety problems is the best way to achieve success. The problems are so complex and multi-faceted that it takes the collective minds and energies of schools, law enforcement, probation, protective services and private citizens to create a safe and welcoming school environment. We cannot do it alone. It takes our collective commitment to school safety to achieve it.

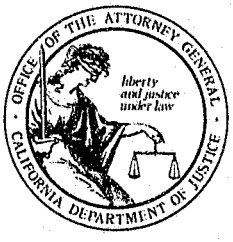
It is true that each of the interagency partners has different official priorities. The first priority of law enforcement and probation is public safety. The highest goal of protective services is protecting children from abuse and neglect. The schools' main thrust is educating young people. Yet all of these priorities mesh when all agencies become partners in ensuring safe schools.

California Appeals Court Justice Thompson summed up this message in a few simple words:

> *The schools are not merely empowered to maintain law and order so that learning can take place. They are required to maintain law and order so that children are kept safe.*[48]

---

[48] *Kimberly M. v. Los Angeles Unified School District* (1987) 196 Cal.App.3d 1506, opinion vacated and reconsidered in *Kimberly M. v. Los Angeles Unified School District* (1989) 215 Cal.App.3d 545.


OFFICE OF THE ATTORNEY GENERAL
liberty
and justice
under law
CALIFORNIA DEPARTMENT OF JUSTICE