

AMENDED IN SENATE JUNE 19, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 420

Introduced by Assembly Member Dickinson

~~(Coauthor: Assembly Member John A. Pérez~~ *Coauthors: Assembly Members Alejo, Ammiano, Brown, John A. Pérez, and V. Manuel Pérez)*

(Coauthor: Senator Leno)

February 15, 2013

An act to amend ~~Section~~ *Sections 48900 and 48910* of the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

AB 420, as amended, Dickinson. Pupil discipline: suspensions: willful defiance.

Existing law prohibits a pupil from being suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed a specified act, including, among other acts, disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

This bill would limit that authority of a superintendent of a school district and a principal ~~by only allowing~~ *regarding disruptive or similar pupil conduct by prohibiting a recommendation of expulsion for a pupil*

on those basis. It would limit the authority to suspend for disruptive or similar conduct to a pupil who is enrolled in any of grades 6 to 12, inclusive, to be suspended, but not expelled, for willful defiance who has substantially disrupted school activities or substantially prevented instruction from occurring, only on or after the 3rd offense in a school year, provided and only if the pupil’s parent, guardian, or education rights holder has been informed that other specified correction measures were attempted before the recommendation to suspend. The bill also would state the intent of the Legislature to minimize the excessive use of willful defiance to, among other things, address the disproportionate suspension of particular subgroups of pupils and encourage schools to instead prioritize and use alternative means of correction.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 48900 of the Education Code is amended
- 2 to read:
- 3 48900. A pupil shall not be suspended from school or
- 4 recommended for expulsion, unless the superintendent of the school
- 5 district or the principal of the school in which the pupil is enrolled
- 6 determines that the pupil has committed an act as defined pursuant
- 7 to any of subdivisions (a) to (r), inclusive:
- 8 (a) (1) Caused, attempted to cause, or threatened to cause
- 9 physical injury to another person.
- 10 (2) Willfully used force or violence upon the person of another,
- 11 except in self-defense.
- 12 (b) Possessed, sold, or otherwise furnished a firearm, knife,
- 13 explosive, or other dangerous object, unless, in the case of
- 14 possession of an object of this type, the pupil had obtained written
- 15 permission to possess the item from a certificated school employee,
- 16 which is concurred in by the principal or the designee of the
- 17 principal.
- 18 (c) Unlawfully possessed, used, sold, or otherwise furnished,
- 19 or been under the influence of, a controlled substance listed in
- 20 Chapter 2 (commencing with Section 11053) of Division 10 of the
- 21 Health and Safety Code, an alcoholic beverage, or an intoxicant
- 22 of any kind.

1 (d) Unlawfully offered, arranged, or negotiated to sell a
2 controlled substance listed in Chapter 2 (commencing with Section
3 11053) of Division 10 of the Health and Safety Code, an alcoholic
4 beverage, or an intoxicant of any kind, and either sold, delivered,
5 or otherwise furnished to a person another liquid, substance, or
6 material and represented the liquid, substance, or material as a
7 controlled substance, alcoholic beverage, or intoxicant.

8 (e) Committed or attempted to commit robbery or extortion.

9 (f) Caused or attempted to cause damage to school property or
10 private property.

11 (g) Stole or attempted to steal school property or private
12 property.

13 (h) Possessed or used tobacco, or products containing tobacco
14 or nicotine products, including, but not limited to, cigarettes, cigars,
15 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
16 packets, and betel. However, this section does not prohibit use or
17 possession by a pupil of his or her own prescription products.

18 (i) Committed an obscene act or engaged in habitual profanity
19 or vulgarity.

20 (j) Unlawfully possessed or unlawfully offered, arranged, or
21 negotiated to sell drug paraphernalia, as defined in Section 11014.5
22 of the Health and Safety Code.

23 (k) (1) A pupil enrolled in any of grades 6 to 12, inclusive, *who*
24 *has substantially* disrupted school activities or ~~otherwise willfully~~
25 ~~defied the valid authority of supervisors, teachers, administrators,~~
26 ~~school officials, or other school personnel engaged in the~~
27 ~~performance of their duties~~ *substantially prevented instruction*
28 *from occurring.*

29 (2) A pupil may only be suspended from school pursuant to this
30 subdivision on or after the third offense in a school year, ~~provided~~
31 *and only if the pupil's parent, guardian, or education rights holder*
32 *has been informed that* other means of correction, pursuant to
33 Section 48900.5, were attempted before the recommendation to
34 suspend. Pursuant to Section 48900.5, a school district may
35 document other means of correction but is not required to do so.

36 (3) Notwithstanding any other law, this subdivision shall not
37 constitute grounds for a pupil to be recommended for expulsion.

38 ~~(4) This subdivision does not prevent a teacher from suspending~~
39 ~~a pupil from class, pursuant to Section 48910, for conduct described~~
40 ~~in paragraph (1).~~

1 ~~(5)~~

2 (4) It is the intent of the Legislature *to address the*
3 *disproportionate suspension of particular subgroups of pupils*, to
4 minimize the excessive use of ~~willful defiance~~ *this subdivision* as
5 a reason to impose in-school and off-campus removals that often
6 lead to poor educational outcomes, and to encourage schools to
7 instead prioritize and use alternative means of correction such as
8 participation in a restorative justice program, a positive behavior
9 support system with tiered interventions, or other forms of
10 correction as specified in Section 48900.5, in order to improve
11 educational outcomes for children.

12 (l) Knowingly received stolen school property or private
13 property.

14 (m) Possessed an imitation firearm. As used in this section,
15 “imitation firearm” means a replica of a firearm that is so
16 substantially similar in physical properties to an existing firearm
17 as to lead a reasonable person to conclude that the replica is a
18 firearm.

19 (n) Committed or attempted to commit a sexual assault as
20 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
21 Code or committed a sexual battery as defined in Section 243.4
22 of the Penal Code.

23 (o) Harassed, threatened, or intimidated a pupil who is a
24 complaining witness or a witness in a school disciplinary
25 proceeding for purposes of either preventing that pupil from being
26 a witness or retaliating against that pupil for being a witness, or
27 both.

28 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
29 sold the prescription drug Soma.

30 (q) Engaged in, or attempted to engage in, hazing. For purposes
31 of this subdivision, “hazing” means a method of initiation or
32 preinitiation into a pupil organization or body, whether or not the
33 organization or body is officially recognized by an educational
34 institution, which is likely to cause serious bodily injury or personal
35 degradation or disgrace resulting in physical or mental harm to a
36 former, current, or prospective pupil. For purposes of this
37 subdivision, “hazing” does not include athletic events or
38 school-sanctioned events.

39 (r) Engaged in an act of bullying. For purposes of this
40 subdivision, the following terms have the following meanings:

1 (1) “Bullying” means any severe or pervasive physical or verbal
2 act or conduct, including communications made in writing or by
3 means of an electronic act, and including one or more acts
4 committed by a pupil or group of pupils as defined in Section
5 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
6 that has or can be reasonably predicted to have the effect of one
7 or more of the following:

8 (A) Placing a reasonable pupil or pupils in fear of harm to that
9 pupil’s or those pupils’ person or property.

10 (B) Causing a reasonable pupil to experience a substantially
11 detrimental effect on his or her physical or mental health.

12 (C) Causing a reasonable pupil to experience substantial
13 interference with his or her academic performance.

14 (D) Causing a reasonable pupil to experience substantial
15 interference with his or her ability to participate in or benefit from
16 the services, activities, or privileges provided by a school.

17 (2) (A) “Electronic act” means the transmission, by means of
18 an electronic device, including, but not limited to, a telephone,
19 wireless telephone, or other wireless communication device,
20 computer, or pager, of a communication, including, but not limited
21 to, any of the following:

22 (i) A message, text, sound, or image.

23 (ii) A post on a social network Internet Web site including, but
24 not limited to:

25 (I) Posting to or creating a burn page. “Burn page” means an
26 Internet Web site created for the purpose of having one or more
27 of the effects listed in paragraph (1).

28 (II) Creating a credible impersonation of another actual pupil
29 for the purpose of having one or more of the effects listed in
30 paragraph (1). “Credible impersonation” means to knowingly and
31 without consent impersonate a pupil for the purpose of bullying
32 the pupil and such that another pupil would reasonably believe, or
33 has reasonably believed, that the pupil was or is the pupil who was
34 impersonated.

35 (III) Creating a false profile for the purpose of having one or
36 more of the effects listed in paragraph (1). “False profile” means
37 a profile of a fictitious pupil or a profile using the likeness or
38 attributes of an actual pupil other than the pupil who created the
39 false profile.

1 (B) Notwithstanding paragraph (1) and subparagraph (A), an
2 electronic act shall not constitute pervasive conduct solely on the
3 basis that it has been transmitted on the Internet or is currently
4 posted on the Internet.

5 (3) “Reasonable pupil” means a pupil, including, but not limited
6 to, an exceptional needs pupil, who exercises average care, skill,
7 and judgment in conduct for a person of his or her age, or for a
8 person of his or her age with his or her exceptional needs.

9 (s) A pupil shall not be suspended or expelled for any of the
10 acts enumerated in this section unless the act is related to a school
11 activity or school attendance occurring within a school under the
12 jurisdiction of the superintendent of the school district or principal
13 or occurring within any other school district. A pupil may be
14 suspended or expelled for acts that are enumerated in this section
15 and related to a school activity or school attendance that occur at
16 any time, including, but not limited to, any of the following:

17 (1) While on school grounds.

18 (2) While going to or coming from school.

19 (3) During the lunch period whether on or off the campus.

20 (4) During, or while going to or coming from, a
21 school-sponsored activity.

22 (t) A pupil who aids or abets, as defined in Section 31 of the
23 Penal Code, the infliction or attempted infliction of physical injury
24 to another person may be subject to suspension, but not expulsion,
25 pursuant to this section, except that a pupil who has been adjudged
26 by a juvenile court to have committed, as an aider and abettor, a
27 crime of physical violence in which the victim suffered great bodily
28 injury or serious bodily injury shall be subject to discipline pursuant
29 to subdivision (a).

30 (u) As used in this section, “school property” includes, but is
31 not limited to, electronic files and databases.

32 (v) For a pupil subject to discipline under this section, a
33 superintendent of the school district or principal may use his or
34 her discretion to provide alternatives to suspension or expulsion
35 that are age appropriate and designed to address and correct the
36 pupil’s specific misbehavior as specified in Section 48900.5.

37 (w) It is the intent of the Legislature that alternatives to
38 suspension or expulsion be imposed against a pupil who is truant,
39 tardy, or otherwise absent from school activities.

1 *SEC. 2. Section 48910 of the Education Code is amended to*
2 *read:*

3 48910. (a) A teacher may suspend any pupil from class, for
4 any of the acts enumerated in Section 48900, for the day of the
5 suspension and the day following. The teacher shall immediately
6 report the suspension to the principal of the school and send the
7 pupil to the principal or the designee of the principal for appropriate
8 action. If that action requires the continued presence of the pupil
9 at the schoolsite, the pupil shall be under appropriate supervision,
10 as defined in policies and related regulations adopted by the
11 governing board of the school district. As soon as possible, the
12 teacher shall ask the parent or guardian of the pupil to attend a
13 parent-teacher conference regarding the suspension. If practicable,
14 a school counselor or a school psychologist may attend the
15 conference. A school administrator shall attend the conference if
16 the teacher or the parent or guardian so requests. The pupil shall
17 not be returned to the class from which he or she was suspended,
18 during the period of the suspension, without the concurrence of
19 the teacher of the class and the principal.

20 (b) A pupil suspended from a class shall not be placed in another
21 regular class during the period of suspension. However, if the pupil
22 is assigned to more than one class per day this subdivision shall
23 apply only to other regular classes scheduled at the same time as
24 the class from which the pupil was suspended.

25 (c) A teacher may also refer a pupil, for any of the acts
26 enumerated in Section 48900, to the principal or the designee of
27 the principal for consideration of a suspension from the school.

28 (d) *Notwithstanding subdivision (k) of Section 48900, a teacher*
29 *may suspend a pupil in any grade level from class, including for*
30 *a first offense and from a one-room schoolhouse, for disrupting*
31 *school activities or otherwise willfully defying the valid authority*
32 *of supervisors, teachers, administrators, school officials, or other*
33 *school personnel engaged in the performance of their duties.*