

ASSEMBLY BILL

No. 2242

**Introduced by Assembly Member Dickinson
(Principal coauthor: Assembly Member Alejo)
(Coauthors: Assembly Members Perea and Swanson)**

February 24, 2012

An act to amend Sections 48900, 48900.7, 48900.8, 48915, 48927, and 49079 of, to add Section 48911.3 to, and to repeal Section 48900.4 of, the Education Code, relating to pupils.

LEGISLATIVE COUNSEL’S DIGEST

AB 2242, as introduced, Dickinson. Pupils: grounds for suspension and expulsion.

Existing law prohibits the suspension, or recommendation for expulsion, of a pupil from school unless the superintendent or the principal of the school determines that the pupil has committed any of various specified acts. Existing law also authorizes the assignment of a pupil suspended from a school to a supervised suspension classroom under certain conditions.

Under existing law, the acts for which a pupil may be suspended or recommended for expulsion include, but are not limited to, 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. These acts also include, for a pupil enrolled in any of grades 4 to 12, inclusive, intentionally engaging in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the

rights of either school personnel or pupils by creating an intimidating or hostile educational environment.

This bill would provide that the act of 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 would subject a pupil to in-school suspension in a supervised suspension classroom, but not to off-campus suspension, extended suspension, recommendation for expulsion, or expulsion.

The bill would move the language relating to a pupil intentionally engaging in harassment, threats, or intimidation, directed against school district personnel or pupils, to another code section in place of the language relating to a pupil disrupting school activities or otherwise willfully defying valid authority. The bill would also make conforming and nonsubstantive changes, and delete obsolete cross-references.

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, as amended
- 2 by Section 6 of Chapter 732 of the Statutes of 2011, is amended
- 3 to read:
- 4 48900. A pupil shall not be suspended from school or
- 5 recommended for expulsion, unless the superintendent or the
- 6 principal of the school in which the pupil is enrolled determines
- 7 that the pupil has committed an act as defined pursuant to any of
- 8 subdivisions (a) to (r), inclusive:
- 9 (a) (1) Caused, attempted to cause, or threatened to cause
- 10 physical injury to another person.
- 11 (2) Willfully used force or violence upon the person of another,
- 12 except in self-defense.
- 13 (b) Possessed, sold, or otherwise furnished a firearm, knife,
- 14 explosive, or other dangerous object, unless, in the case of
- 15 possession of an object of this type, the pupil had obtained written
- 16 permission to possess the item from a certificated school employee,
- 17 which is concurred in by the principal or the designee of the
- 18 principal.
- 19 (c) Unlawfully possessed, used, sold, or otherwise furnished,
- 20 or been under the influence of, a controlled substance listed in

Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

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

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

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

(g) Stolen or attempted to steal school property or private property.

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

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

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

~~(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties—~~*Intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected result of creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.*

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

(m) Possessed an imitation firearm. As used in this section, “imitation firearm” means a replica of a firearm that is so substantially similar in physical properties to an existing firearm

1 as to lead a reasonable person to conclude that the replica is a
2 firearm.

3 (n) Committed or attempted to commit a sexual assault as
4 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
5 Code or committed a sexual battery as defined in Section 243.4
6 of the Penal Code.

7 (o) Harassed, threatened, or intimidated a pupil who is a
8 complaining witness or a witness in a school disciplinary
9 proceeding for the purpose of either preventing that pupil from
10 being a witness or retaliating against that pupil for being a witness,
11 or both.

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

14 (q) Engaged in, or attempted to engage in, hazing. For purposes
15 of this subdivision, “hazing” means a method of initiation or
16 preinitiation into a pupil organization or body, whether or not the
17 organization or body is officially recognized by an educational
18 institution, which is likely to cause serious bodily injury or personal
19 degradation or disgrace resulting in physical or mental harm to a
20 former, current, or prospective pupil. For purposes of this
21 subdivision, “hazing” does not include athletic events or
22 school-sanctioned events.

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

25 (1) “Bullying” means any severe or pervasive physical or verbal
26 act or conduct, including communications made in writing or by
27 means of an electronic act, and including one or more acts
28 committed by a pupil or group of pupils as defined in *subdivision*
29 *(k)* or in Section 48900.2; or 48900.3, ~~or 48900.4~~, directed toward
30 one or more pupils that has or can be reasonably predicted to have
31 the effect of one or more of the following:

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

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

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

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

1 (2) “Electronic act” means the transmission of a communication,
2 including, but not limited to, a message, text, sound, or image, or
3 a post on a social network Internet Web site, by means of an
4 electronic device, including, but not limited to, a telephone,
5 wireless telephone or other wireless communication device,
6 computer, or pager.

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

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

19 (1) While on school grounds.

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

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

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

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

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

34 (v) A superintendent of the school district or principal may use
35 his or her discretion to provide alternatives to suspension or
36 expulsion, including, but not limited to, counseling and an anger
37 management program, for a pupil subject to discipline under this
38 section.

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

SEC. 2. Section 48900.4 of the Education Code is repealed.

~~48900.4. In addition to the grounds specified in Sections 48900 and 48900.2, a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.~~

SEC. 3. Section 48900.7 of the Education Code is amended to read:

48900.7. (a) In addition to the reasons specified in Sections 48900, 48900.2, and 48900.3, ~~and 48900.4~~, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has made terroristic threats against school officials or school property, or both.

(b) For the purposes of this section, “terroristic threat” shall include any statement, whether written or oral, by a person who willfully threatens to commit a crime ~~which~~ *that* will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000), 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, or for the protection of school district property, or the personal property of the person threatened or his or her immediate family.

SEC. 4. Section 48900.8 of the Education Code is amended to read:

1 48900.8. For purposes of notification to parents, and for the
2 reporting of expulsion or suspension offenses to the department,
3 each school district shall specifically identify, by offense
4 committed, in all appropriate official records of a pupil each
5 suspension or expulsion of that pupil for the commission of any
6 of the offenses set forth in Section 48900, 48900.2, 48900.3,
7 ~~48900.4~~, 48900.7, or 48915.

8 SEC. 5. Section 48911.3 is added to the Education Code, to
9 read:

10 48911.3. In addition to the reasons specified in Section 48900,
11 a pupil may be subject to in-school suspension in a supervised
12 suspension classroom pursuant to Section 48911.1, and subject to
13 documentation or other means of correction, as described in Section
14 48900.5, but may not be subject to an off-campus suspension or
15 extended suspension, or recommended for expulsion, or expelled,
16 pursuant to subdivision (g) of Section 48911 and Sections 48915
17 to 48927, inclusive, for disrupting school activities or otherwise
18 willfully defying the valid authority of supervisors, teachers,
19 administrators, school officials, or other school personnel engaged
20 in the performance of their duties.

21 SEC. 6. Section 48915 of the Education Code is amended to
22 read:

23 48915. (a) Except as provided in subdivisions (c) and (e), the
24 principal or the superintendent of schools shall recommend the
25 expulsion of a pupil for any of the following acts committed at
26 school or at a school activity off school grounds, unless the
27 principal or superintendent finds that expulsion is inappropriate,
28 due to the particular circumstance:

29 (1) Causing serious physical injury to another person, except
30 in self-defense.

31 (2) Possession of any knife or other dangerous object of no
32 reasonable use to the pupil.

33 (3) Unlawful possession of any controlled substance listed in
34 Chapter 2 (commencing with Section 11053) of Division 10 of the
35 Health and Safety Code, except for the first offense for the
36 possession of not more than one avoirdupois ounce of marijuana,
37 other than concentrated cannabis.

38 (4) Robbery or extortion.

39 (5) Assault or battery, as defined in Sections 240 and 242 of the
40 Penal Code, upon any school employee.

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel shall be based on a finding of one or both of the following:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

(1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.

(2) Brandishing a knife at another person.

(3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.

(5) Possession of an explosive.

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions:

(1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.

(2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.

1 (3) Is not housed at the schoolsite attended by the pupil at the
2 time of suspension.

3 (e) Upon recommendation by the principal, superintendent of
4 schools, or by a hearing officer or administrative panel appointed
5 pursuant to subdivision (d) of Section 48918, the governing board
6 may order a pupil expelled upon finding that the pupil, at school
7 or at a school activity off of school grounds, violated subdivision
8 (f), (g), (h), (i), (j), (k), (l), or (m) of Section 48900, or Section
9 48900.2; ~~or 48900.3, or 48900.4~~; and either of the following:

10 (1) That other means of correction are not feasible or have
11 repeatedly failed to bring about proper conduct.

12 (2) That due to the nature of the violation, the presence of the
13 pupil causes a continuing danger to the physical safety of the pupil
14 or others.

15 (f) The governing board shall refer a pupil who has been
16 expelled pursuant to subdivision (b) or (e) to a program of study
17 ~~which~~ *that* meets all of the conditions specified in subdivision (d).
18 Notwithstanding this subdivision, with respect to a pupil expelled
19 pursuant to subdivision (e), if the county superintendent of schools
20 certifies that an alternative program of study is not available at a
21 site away from a comprehensive middle, junior, or senior high
22 school, or an elementary school, and that the only option for
23 placement is at another comprehensive middle, junior, or senior
24 high school, or another elementary school, the pupil may be
25 referred to a program of study that is provided at a comprehensive
26 middle, junior, or senior high school, or at an elementary school.

27 (g) As used in this section, “knife” means any dirk, dagger, or
28 other weapon with a fixed, sharpened blade fitted primarily for
29 stabbing, a weapon with a blade fitted primarily for stabbing, a
30 weapon with a blade longer than 3½ inches, a folding knife with
31 a blade that locks into place, or a razor with an unguarded blade.

32 (h) As used in this section, the term “explosive” means
33 “destructive device” as described in Section 921 of Title 18 of the
34 United States Code.

35 SEC. 7. Section 48927 of the Education Code is amended to
36 read:

37 48927. (a) This chapter shall also apply to pupils attending
38 the California School for the Blind and the two California Schools
39 for the Deaf, which shall be referred to as the “state special
40 schools.”

(b) Because the state special schools have a governance structure different from that of school districts, for the purposes of this section the following definitions shall apply:

(1) “Superintendent” means the appropriate principal of the state special school in which the pupil is enrolled, or the principal’s designee, for purposes of Sections 48900, 48900.2, 48900.3, ~~48900.4~~, 48900.5, 48900.7, and 48911, and subdivisions (a) and (j) of Section 48918.

(2) “Governing board of each school district,” “governing board of any school district,” or “each governing board of a school district” means the Superintendent of Public Instruction or his or her designee for purposes of subdivision (a) of Section 48900.1, subdivision (b) of Section 48901, subdivision ~~(b)~~ (a) of Section 48901.5, Section 48907, Section 48910, the first paragraph of Section 48918, and the first paragraph of Section 48918.5.

(3) “Governing board” means the Superintendent of the State Special School in which the pupil is enrolled for purposes of Section 48912, subdivision (d) of Section 48915, ~~Section 48915.5~~, Section 48916, Section 48917, subdivisions (a), (c), (d), (f), (h), (i), (j), and (k) of Section 48918, and Sections 48921, 48922, 48923, and 48924.

(4) “Governing board” means the governing board of the district of residence of the expelled pupil for purposes of subdivision (f) of Section 48915 and Section 48916.1. In the case of an adult pupil expelled from a state special school, “governing board” means the governing board of the school district that referred the pupil to the state special school for purposes of the code section cited in this paragraph.

(5) “Superintendent of schools or the governing board” means the appropriate principal of the state special school in which the pupil is enrolled, or the principal’s designee, for the purposes of Section 48900.6.

(6) “School district” or “district” means the state special school in which the pupil is enrolled for purposes of Section 48900.8, subdivision (b) of Section 48903, Section 48905, Section 48909, Section 48914, paragraph (1) of subdivision (e) of Section 48916.1, subdivision (c) of Section 48918.5, Section 48919, Section 48920, and Section 48921.

(7) “County board of education” or “county board” means the Superintendent of Public Instruction or his or her designee for purposes of Sections 48920, 48921, 48922, 48923, and 48924.

~~(8) “Local educational agency” includes a state special school for purposes of Section 48902 and Section 48915.5.~~

~~(9) “A change in placement” for purposes of paragraph (2) of subdivision (a) of Section 48915.5 means a referral by the state special school to the pupil’s school district of residence for placement in an appropriate interim alternative educational setting.~~

~~(10) “Individualized education program team” means the individualized education program team of the pupil’s school district of residence with appropriate representation from the state special school in which the pupil is enrolled for purposes of subdivision (a) of Section 48915.5.2.~~

~~(11) “Individualized education program team” means the individualized education program team of the state special school in which the pupil is enrolled with appropriate representation from the pupil’s school district of residence for purposes of subdivisions (b), (c), and (d) of Section 48915.5.3.~~

(c) Subdivision (b) of this section shall be deemed to provide the same due process procedural protections to pupils in the state special schools as afforded to pupils in the public school districts of the state.

SEC. 8. Section 49079 of the Education Code is amended to read:

49079. (a) A school district shall inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in, any of the acts described in any of the subdivisions, except subdivision (h), of Section 48900 or in Section 48900.2, 48900.3, ~~48900.4~~, or 48900.7 that the pupil engaged in, or is reasonably suspected to have engaged in, those acts. The district shall provide the information to the teacher based upon any records that the district maintains in its ordinary course of business, or receives from a law enforcement agency, regarding a pupil described in this section.

(b) A school district, or school district officer or employee, is not civilly or criminally liable for providing information under this section unless it is proven that the information was false and that the district or district officer or employee knew or should have

1 known that the information was false, or the information was
2 provided with a reckless disregard for its truth or falsity.

3 (c) An officer or employee of a school district who knowingly
4 fails to provide information about a pupil who has engaged in, or
5 who is reasonably suspected to have engaged in, the acts referred
6 to in subdivision (a) is guilty of a misdemeanor, which is
7 punishable by confinement in the county jail for a period not to
8 exceed six months, or by a fine not to exceed one thousand dollars
9 (\$1,000), or both.

10 (d) For the 1994–95 school year, the information provided shall
11 be from the previous two school years. For the 1996–97 school
12 year and each school year thereafter, the information provided
13 shall be from the previous three school years.

14 (e) Any information received by a teacher pursuant to this
15 section shall be received in confidence for the limited purpose for
16 which it was provided and shall not be further disseminated by the
17 teacher.