

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY MAY 7, 2012

AMENDED IN ASSEMBLY APRIL 24, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1729

Introduced by Assembly Member Ammiano

February 16, 2012

An act to amend Sections 48900 and 48900.5 of the Education Code, relating to pupil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1729, as amended, Ammiano. Pupil rights: suspension or expulsion: *alternatives and other means of correction*.

Existing law provides that a pupil shall not be 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. Existing law also authorizes a superintendent of the school district or principal to use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and an anger management program, for a pupil subject to discipline under this provision.

This bill would instead authorize a superintendent of the school district or principal of the school to use alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil's specific misbehavior, as specified.

Existing law requires the imposition of suspension only when other means of correction fail to bring about proper conduct but authorizes

the suspension of a pupil, including an individual with exceptional needs, upon a first offense if the principal or superintendent of schools determines that specified offenses were committed or that the pupil’s presence causes a danger to persons or property or threatens to disrupt the instructional process.

~~This bill would require documentation of~~ *authorize a school district to document the other means of correction used and place that documentation in the pupil’s record.* The bill would also specify that other means of correction include, but are not limited to, among other things, a positive behavior support approach with tiered interventions that occur during the schoolday on campus, a conference between school personnel, the pupil’s parent or guardian, and the pupil, participation in a restorative justice program, and after-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors. ~~By requiring documentation of other means of correction used, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The public policy of this state is to ensure that school
- 4 discipline policies and practices support the creation of safe,
- 5 positive, supportive, and equitable school environments where
- 6 pupils can learn.
- 7 (b) The overuse of school suspension and expulsion undermines
- 8 the public policy of this state and does not result in safer school
- 9 environments or improved pupil behavior. Moreover, such highly
- 10 punitive, exclusionary practices are associated with lower academic
- 11 achievement, lower graduation rates, and a worse overall school
- 12 climate.

1 (c) Failing to teach and develop social and behavior skills in
2 pupils leads to the depletion of funding through decreased average
3 daily attendance, increased rates of teacher turnover, and increased
4 pupil dropout rates.

5 (d) School suspension and expulsion are disproportionately
6 imposed on pupils of color, pupils with disabilities, lesbian, gay,
7 bisexual, and transgender pupils, and other vulnerable pupil
8 populations.

9 (e) In 2006, the suspension rate of African American elementary
10 and secondary pupils in this state was more than double the rate
11 of suspensions for White, Hispanic, or Asian pupils, and there is
12 no evidence demonstrating that pupils of color or other pupil
13 populations misbehave at greater rates than their peers.

14 (f) Research has found that nonpunitive classroom discipline
15 and in-school discipline strategies are more effective and efficient
16 than suspension and expulsion for addressing the majority of pupil
17 misconduct.

18 (g) The public policy of this state is to provide effective
19 interventions for pupils who engage in acts of problematic behavior
20 to help them change their behavior and avoid exclusion from
21 school.

22 (h) The public policy of this state is to ensure that school
23 discipline policies and practices are implemented and enforced
24 evenhandedly and are not disproportionately applied to any class
25 or group of pupils.

26 (i) The intent of this act is to clarify existing law on school
27 discipline and ensure the discretion of superintendents of schools
28 and principals to implement school discipline policies and practices
29 other than school suspension and expulsion.

30 SEC. 2. Section 48900 of the Education Code, as amended by
31 Section 6 of Chapter 732 of the Statutes of 2011, is amended to
32 read:

33 48900. A pupil shall not be suspended from school or
34 recommended for expulsion, unless the superintendent of the school
35 district or the principal of the school in which the pupil is enrolled
36 determines that the pupil has committed an act as defined pursuant
37 to any of subdivisions (a) to (r), inclusive:

38 (a) (1) Caused, attempted to cause, or threatened to cause
39 physical injury to another person.

1 (2) Willfully used force or violence upon the person of another,
2 except in self-defense.

3 (b) Possessed, sold, or otherwise furnished a firearm, knife,
4 explosive, or other dangerous object, unless, in the case of
5 possession of an object of this type, the pupil had obtained written
6 permission to possess the item from a certificated school employee,
7 which is concurred in by the principal or the designee of the
8 principal.

9 (c) Unlawfully possessed, used, sold, or otherwise furnished,
10 or been under the influence of, a controlled substance listed in
11 Chapter 2 (commencing with Section 11053) of Division 10 of the
12 Health and Safety Code, an alcoholic beverage, or an intoxicant
13 of any kind.

14 (d) Unlawfully offered, arranged, or negotiated to sell a
15 controlled substance listed in Chapter 2 (commencing with Section
16 11053) of Division 10 of the Health and Safety Code, an alcoholic
17 beverage, or an intoxicant of any kind, and either sold, delivered,
18 or otherwise furnished to a person another liquid, substance, or
19 material and represented the liquid, substance, or material as a
20 controlled substance, alcoholic beverage, or intoxicant.

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

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

24 (g) Stole or attempted to steal school property or private
25 property.

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

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

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

36 (k) Disrupted school activities or otherwise willfully defied the
37 valid authority of supervisors, teachers, administrators, school
38 officials, or other school personnel engaged in the performance of
39 their duties.

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

3 (m) Possessed an imitation firearm. As used in this section,
4 “imitation firearm” means a replica of a firearm that is so
5 substantially similar in physical properties to an existing firearm
6 as to lead a reasonable person to conclude that the replica is a
7 firearm.

8 (n) Committed or attempted to commit a sexual assault as
9 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
10 Code or committed a sexual battery as defined in Section 243.4
11 of the Penal Code.

12 (o) Harassed, threatened, or intimidated a pupil who is a
13 complaining witness or a witness in a school disciplinary
14 proceeding for purposes of either preventing that pupil from being
15 a witness or retaliating against that pupil for being a witness, or
16 both.

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

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

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

30 (1) “Bullying” means any severe or pervasive physical or verbal
31 act or conduct, including communications made in writing or by
32 means of an electronic act, and including one or more acts
33 committed by a pupil or group of pupils as defined in Section
34 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
35 that has or can be reasonably predicted to have the effect of one
36 or more of the following:

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

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

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

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

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

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

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

- 24 (1) While on school grounds.
- 25 (2) While going to or coming from school.
- 26 (3) During the lunch period whether on or off the campus.
- 27 (4) During, or while going to or coming from, a
28 school-sponsored activity.

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

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

39 (v) For a pupil subject to discipline under this section, a
40 superintendent of the school district or principal may use his or

1 her discretion to provide alternatives to suspension or expulsion
2 that are age appropriate and designed to address and correct the
3 pupil's specific misbehavior as specified in Section 48900.5.

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

7 SEC. 3. Section 48900.5 of the Education Code is amended to
8 read:

9 48900.5. (a) Suspension, including supervised suspension as
10 described in Section 48911.1, shall be imposed only when other
11 means of correction ~~have been documented~~ and fail to bring about
12 proper conduct. *A school district may document the other means*
13 *of correction used and place that documentation in the pupil's*
14 *record, which may be accessed pursuant to Section 49069.*
15 However, a pupil, including an individual with exceptional needs,
16 as defined in Section 56026, may be suspended, subject to Section
17 1415 of Title 20 of the United States Code, for any of the reasons
18 enumerated in Section 48900 upon a first offense, if the principal
19 or superintendent of schools determines that the pupil violated
20 subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the
21 pupil's presence causes a danger to persons.

22 (b) Other means of correction include, but are not limited to,
23 the following:

24 (1) A conference between school personnel, the pupil's parent
25 or guardian, and the pupil.

26 (2) Referrals to the school counselor, psychologist, social
27 worker, child welfare attendance personnel, or other school support
28 service personnel for case management and counseling.

29 (3) Study teams, guidance teams, resource panel teams, or other
30 intervention-related teams that assess the behavior, and develop
31 and implement individualized plans to address the behavior in
32 partnership with the pupil and his or her parents.

33 (4) Referral for a comprehensive psychosocial or
34 psychoeducational assessment, including for purposes of creating
35 an individualized education program, or a plan adopted pursuant
36 to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C.
37 Sec. 794(a)).

38 (5) Enrollment in a program for teaching prosocial behavior or
39 anger management.

40 (6) Participation in a restorative justice program.

1 (7) A positive behavior support approach with tiered
2 interventions that occur during the schoolday on campus.

3 (8) After-school programs that address specific behavioral issues
4 or expose pupils to positive activities and behaviors, including,
5 but not limited to, those operated in collaboration with local parent
6 and community groups.

7 (9) Any of the alternatives described in Section 48900.6.

8 ~~SEC. 4. If the Commission on State Mandates determines that~~
9 ~~this act contains costs mandated by the state, reimbursement to~~
10 ~~local agencies and school districts for those costs shall be made~~
11 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
12 ~~4 of Title 2 of the Government Code.~~