

AMENDED IN ASSEMBLY MAY 14, 2013

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 256

Introduced by Assembly Member Garcia

February 7, 2013

An act to amend ~~Sections~~ *Section* 48900 and 48900.4 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 256, as amended, Garcia. Pupils: grounds for suspension and ~~expulsion~~. *expulsion: bullying.*

Existing law prohibits the suspension, or recommendation for expulsion, of a pupil from school unless the superintendent of the school district or the principal of the school determines that the pupil has committed any of various specified acts, including, but not limited to, engaging in acts of bullying by means of an electronic act, as defined ~~act~~. *Existing law further defines "electronic act" as the transmission, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, as specified.* Existing law prohibits a pupil from being suspended or expelled for any of those acts unless the act is related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district.

This bill would ~~provide that conduct constituting bullying by means of an electronic act, even if the conduct originated from an off-campus location, is considered conduct related to a school activity or school~~

~~attendance and a student may be suspended or expelled for this conduct instead, for purposes of pupil suspension or recommendation of expulsion from a school, define “electronic act” as the creation and transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, as specified.~~

~~Existing law also authorizes a pupil enrolled in any of grades 4 to 12, inclusive, to 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, whether or not the act relates to a school activity or school attendance.~~

~~This bill would additionally authorize a pupil enrolled in any of grades 4 to 12, inclusive, to be suspended or expelled if the superintendent or principal of the pupil’s school determines that the pupil has intentionally engaged in bullying by means of an electronic act, as defined, directed against school district personnel or pupils, that is equally as severe or pervasive, whether or not the act relates to a school activity or school attendance.~~

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.

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) (A) “Electronic act” means the *creation and* transmission
7 *originated on or off the schoolsite*, by means of an electronic
8 device, including, but not limited to, a telephone, wireless
9 telephone, or other wireless communication device, computer, or
10 pager, of a communication, including, but not limited to, any of
11 the following:

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

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

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

18 (II) Creating a credible impersonation of another actual pupil
19 for the purpose of having one or more of the effects listed in
20 paragraph (1). “Credible impersonation” means to knowingly and
21 without consent impersonate a pupil for the purpose of bullying
22 the pupil and such that another pupil would reasonably believe, or
23 has reasonably believed, that the pupil was or is the pupil who was
24 impersonated.

25 (III) Creating a false profile for the purpose of having one or
26 more of the effects listed in paragraph (1). “False profile” means
27 a profile of a fictitious pupil or a profile using the likeness or
28 attributes of an actual pupil other than the pupil who created the
29 false profile.

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

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

38 (s) ~~(1)~~—A pupil shall not be suspended or expelled for any of
39 the acts enumerated in this section unless the act is related to a
40 school activity or school attendance occurring within a school

1 under the jurisdiction of the superintendent of the school district
2 or principal or occurring within any other school district. A pupil
3 may be suspended or expelled for acts that are enumerated in this
4 section and related to a school activity or school attendance that
5 occur at any time, including, but not limited to, any of the
6 following:

7 (A)

8 (1) While on school grounds.

9 (B)

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

11 (C)

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

13 (D)

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

16 ~~(2) For purposes of this subdivision, conduct that constitutes~~
17 ~~bullying by means of an electronic act under subdivision (r) may~~
18 ~~be found to be “related to a school activity or school attendance”~~
19 ~~even if the conduct originated from an off-campus location.~~

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

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

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

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

38 ~~SEC. 2. Section 48900.4 of the Education Code is amended to~~
39 ~~read:~~

1 ~~48900.4. In addition to the grounds specified in Sections 48900~~
2 ~~and 48900.2, a pupil enrolled in any of grades 4 to 12, inclusive,~~
3 ~~may be suspended from school or recommended for expulsion if~~
4 ~~the superintendent or the principal of the school in which the pupil~~
5 ~~is enrolled determines that the pupil has intentionally engaged in~~
6 ~~harassment, threats, intimidation, or bullying by means of an~~
7 ~~electronic act, as defined in subdivision (r) of Section 48900,~~
8 ~~directed against school district personnel or pupils, that is~~
9 ~~sufficiently severe or pervasive to have the actual and reasonably~~
10 ~~expected effect of materially disrupting classwork, creating~~
11 ~~substantial disorder, and invading the rights of either school~~
12 ~~personnel or pupils by creating an intimidating or hostile~~
13 ~~educational environment.~~

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