

ASSEMBLY BILL

No. 420

Introduced by Assembly Member Dickinson
(Coauthor: Assembly Member John A. Pérez)
(Coauthor: Senator Leno)

February 15, 2013

An act to amend Section 48900 of the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

AB 420, as introduced, 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 a pupil enrolled in any of grades 9 to 12, inclusive, to be suspended, but not expelled, for willful defiance on or after the 3rd documented offense in a school year, provided other specified correction measures were attempted and documented before the recommendation to suspend. The bill also would state the intent of the Legislature to minimize the excessive use of willful defiance 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.
- 23 (d) Unlawfully offered, arranged, or negotiated to sell a
- 24 controlled substance listed in Chapter 2 (commencing with Section
- 25 11053) of Division 10 of the Health and Safety Code, an alcoholic
- 26 beverage, or an intoxicant of any kind, and either sold, delivered,
- 27 or otherwise furnished to a person another liquid, substance, or
- 28 material and represented the liquid, substance, or material as a
- 29 controlled substance, alcoholic beverage, or intoxicant.
- 30 (e) Committed or attempted to commit robbery or extortion.
- 31 (f) Caused or attempted to cause damage to school property or
- 32 private property.
- 33 (g) Stole or attempted to steal school property or private
- 34 property.

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

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

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

11 ~~(k) Disrupted~~ *(1) A pupil enrolled in any of grades 9 to 12,*
12 *inclusive, disrupted school activities or otherwise willfully defied*
13 *the valid authority of supervisors, teachers, administrators, school*
14 *officials, or other school personnel engaged in the performance of*
15 *their duties.*

16 *(2) A pupil may only be suspended from school pursuant to this*
17 *subdivision on or after the third documented offense in a school*
18 *year, provided other means of correction, as defined in Section*
19 *48900.5, were attempted and documented before the*
20 *recommendation to suspend.*

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

23 *(4) It is the intent of the Legislature to minimize the excessive*
24 *use of willful defiance as a reason to impose in-school and*
25 *off-campus removals that often lead to poor educational outcomes,*
26 *and to encourage schools to instead prioritize and use alternative*
27 *means of correction such as participation in a restorative justice*
28 *program, a positive behavior support system with tiered*
29 *interventions, or other forms of correction as specified in Section*
30 *48900.5.*

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

33 (m) Possessed an imitation firearm. As used in this section,
34 “imitation firearm” means a replica of a firearm that is so
35 substantially similar in physical properties to an existing firearm
36 as to lead a reasonable person to conclude that the replica is a
37 firearm.

38 (n) Committed or attempted to commit a sexual assault as
39 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal

1 Code or committed a sexual battery as defined in Section 243.4
2 of the Penal Code.

3 (o) Harassed, threatened, or intimidated a pupil who is a
4 complaining witness or a witness in a school disciplinary
5 proceeding for purposes of either preventing that pupil from being
6 a witness or retaliating against that pupil for being a witness, or
7 both.

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

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

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

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

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

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

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

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

37 (2) (A) “Electronic act” means the transmission, by means of
38 an electronic device, including, but not limited to, a telephone,
39 wireless telephone, or other wireless communication device,

1 computer, or pager, of a communication, including, but not limited
2 to, any of the following:

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

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

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

9 (II) Creating a credible impersonation of another actual pupil
10 for the purpose of having one or more of the effects listed in
11 paragraph (1). “Credible impersonation” means to knowingly and
12 without consent impersonate a pupil for the purpose of bullying
13 the pupil and such that another pupil would reasonably believe, or
14 has reasonably believed, that the pupil was or is the pupil who was
15 impersonated.

16 (III) Creating a false profile for the purpose of having one or
17 more of the effects listed in paragraph (1). “False profile” means
18 a profile of a fictitious pupil or a profile using the likeness or
19 attributes of an actual pupil other than the pupil who created the
20 false profile.

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

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

29 (s) A pupil shall not be suspended or expelled for any of the
30 acts enumerated in this section unless the act is related to a school
31 activity or school attendance occurring within a school under the
32 jurisdiction of the superintendent of the school district or principal
33 or occurring within any other school district. A pupil may be
34 suspended or expelled for acts that are enumerated in this section
35 and related to a school activity or school attendance that occur at
36 any time, including, but not limited to, any of the following:

37 (1) While on school grounds.

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

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

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

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

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

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

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