

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 introduced, Ammiano. Pupil rights: suspension or expulsion.

Existing law provides that a pupil shall not be suspended from school or recommended for expulsion unless the superintendent 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 to use alternatives to suspension or expulsion that are age appropriate and designed to address and correct the root causes of the pupil's specific misbehavior, as specified. The bill would require, if an individual with exceptional needs is subject to discipline under this provision, an individualized education program team to hold a meeting within 3 days to discuss behavior of the individual with exceptional needs and determine if a functional behavioral assessment and behavioral intervention plan are needed to address the behavior. The bill would also provide that an individual with exceptional needs is not subject to suspension, except as specified, expulsion, or other behavioral

interventions, but instead will receive an appropriate assessment identifying behavioral needs, proposed behavioral goals to address the identified needs, and appropriate related services. By requiring an individualized education program team meeting, the bill would impose a state-mandated local program.

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 other means of correction used. The bill would also specify that other means of correction include, but are not limited to, a positive behavior support approach with tiered interventions, conferences between school personnel, parents, and pupils, and participation in a restorative justice program. 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.
State-mandated local program: yes.

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

1 punitive, exclusionary practices are associated with lower academic
2 achievement, lower graduation rates, and a worse overall school
3 climate.

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

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

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

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

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

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

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

33 SEC. 2. Section 48900 of the Education Code, as amended by
34 Section 6 of Chapter 732 of the Statutes of 2011, is amended to
35 read:

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

- 1 (a) (1) Caused, attempted to cause, or threatened to cause
2 physical injury to another person.
- 3 (2) Willfully used force or violence upon the person of another,
4 except in self-defense.
- 5 (b) Possessed, sold, or otherwise furnished a firearm, knife,
6 explosive, or other dangerous object, unless, in the case of
7 possession of an object of this type, the pupil had obtained written
8 permission to possess the item from a certificated school employee,
9 which is concurred in by the principal or the designee of the
10 principal.
- 11 (c) Unlawfully possessed, used, sold, or otherwise furnished,
12 or been under the influence of, a controlled substance listed in
13 Chapter 2 (commencing with Section 11053) of Division 10 of the
14 Health and Safety Code, an alcoholic beverage, or an intoxicant
15 of any kind.
- 16 (d) Unlawfully offered, arranged, or negotiated to sell a
17 controlled substance listed in Chapter 2 (commencing with Section
18 11053) of Division 10 of the Health and Safety Code, an alcoholic
19 beverage, or an intoxicant of any kind, and either sold, delivered,
20 or otherwise furnished to a person another liquid, substance, or
21 material and represented the liquid, substance, or material as a
22 controlled substance, alcoholic beverage, or intoxicant.
- 23 (e) Committed or attempted to commit robbery or extortion.
- 24 (f) Caused or attempted to cause damage to school property or
25 private property.
- 26 (g) ~~Stolen~~ *Stole* or attempted to steal school property or private
27 property.
- 28 (h) Possessed or used tobacco, or products containing tobacco
29 or nicotine products, including, but not limited to, cigarettes, cigars,
30 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
31 packets, and betel. However, this section does not prohibit use or
32 possession by a pupil of his or her own prescription products.
- 33 (i) Committed an obscene act or engaged in habitual profanity
34 or vulgarity.
- 35 (j) Unlawfully possessed or unlawfully offered, arranged, or
36 negotiated to sell drug paraphernalia, as defined in Section 11014.5
37 of the Health and Safety Code.
- 38 (k) Disrupted school activities or otherwise willfully defied the
39 valid authority of supervisors, teachers, administrators, school

1 officials, or other school personnel engaged in the performance of
2 their duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (1) While on school grounds.

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

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

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

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

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

1 (v) ~~A~~For a pupil subject to discipline under this section, a
 2 superintendent of the school district or principal may use his or
 3 her discretion to provide alternatives to suspension or expulsion;
 4 including, but not limited to, counseling and an anger management
 5 program, for a pupil subject to discipline under this section that
 6 are age appropriate and designed to address and correct the root
 7 causes of the pupil’s specific misbehavior as specified in Section
 8 48900.5.

9 (w) For an individual with exceptional needs, as defined in
 10 Section 56026, subject to discipline under this section, an
 11 individualized education program (IEP) team meeting will be held
 12 within three days to discuss the behavior. The IEP team will
 13 determine if a fundamental behavioral assessment and behavioral
 14 intervention plan are needed to address the behavior of the
 15 individual with exceptional needs. The individual with exceptional
 16 needs will not be subject to suspension except as provided in
 17 subdivision (a) of Section 48900.5, expulsion, or other behavioral
 18 intervention, but instead will receive an appropriate assessment
 19 identifying behavioral need, proposed behavioral goals to address
 20 the identified needs, and appropriate related services.

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

25 SEC. 3. Section 48900.5 of the Education Code is amended to
 26 read:

27 48900.5. (a) Suspension, including supervised suspension as
 28 described in Section 48911.1, shall be imposed only when other
 29 means of correction have been documented and fail to bring about
 30 proper conduct. However, a pupil, including an individual with
 31 exceptional needs, as defined in Section 56026, may be suspended,
 32 subject to Section 1415 of Title 20 of the United States Code and
 33 subdivision (w) of Section 48900, for any of the reasons enumerated
 34 in Section 48900 upon a first offense, if the principal or
 35 superintendent of schools determines that the pupil violated
 36 subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the
 37 pupil’s presence causes a danger to persons or property or threatens
 38 to disrupt the instructional process.

39 (b) Other means of correction shall include, but are not limited
 40 to, the following:

- 1 (1) *A positive behavior support approach with tiered*
- 2 *interventions that occur during the schoolday on campus, using*
- 3 *any of the following activities:*
- 4 (A) *Conferences between school personnel, parents, and pupils.*
- 5 (B) *Referrals to the school counselor, psychologist, social*
- 6 *worker, child welfare attendance personnel, or other school*
- 7 *support service personnel for case management and counseling.*
- 8 (C) *Study teams, guidance teams, resource panel teams, or other*
- 9 *intervention-related teams that assess the root causes of the*
- 10 *behavior, and develop and implement individualized plans to*
- 11 *address the behavior in partnership with the pupil and his or her*
- 12 *parents.*
- 13 (D) *Referral for a comprehensive psychosocial or*
- 14 *psychoeducational assessment, including for purposes of creating*
- 15 *an individualized education program, or a plan adopted pursuant*
- 16 *to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C.*
- 17 *Sec. 794(a)).*
- 18 (E) *Enrollment in a program for teaching prosocial behavior*
- 19 *or anger management.*
- 20 (F) *Participation in a restorative justice program.*
- 21 (2) *Any of the alternatives described in Section 48900.6.*
- 22 (3) *After-school programs operated in collaboration with local*
- 23 *parent and community groups that are designed to address specific*
- 24 *behavioral issues or to expose pupils to positive activities and*
- 25 *behaviors.*
- 26 SEC. 4. If the Commission on State Mandates determines that
- 27 this act contains costs mandated by the state, reimbursement to
- 28 local agencies and school districts for those costs shall be made
- 29 pursuant to Part 7 (commencing with Section 17500) of Division
- 30 4 of Title 2 of the Government Code.