



December 10, 2014

EFFECTIVE JANUARY 1, 2015: NEW CONSTRAINTS ON ADDRESSING CHALLENGING BEHAVIORS AND THE EDUCATIONAL PLACEMENT OF PARTICULARLY DIFFICULT STUDENTS

Several bills have been passed by the Legislature and signed by the Governor which public school administrators who deal with the challenging behaviors and the educational placement of particularly difficult students should fully understand. A bullet point summary follows:

1. AB 420 places strict limitations on the authority of school administrators to suspend pupils or recommend that they be expelled for willful defiance or disruption of school activities - (48900(k)).

- Eliminates willful defiance or disruption of school activities (Ed. Code § 48900(k)) as a bases for expelling students.
- Prevents school administrators from using Education Code section 48900(k) as a bases to suspend pupils in kindergarten through the third grade.
- Teachers may still suspend students from their classrooms for the day of suspension and the following day pursuant to Education Code section 48910.

2. AB 2276 requires that pupils who are transfers from a juvenile court school be allowed to immediately enroll. The new school must immediately enroll the pupil even if the pupil or the adult responsible for him/her has not yet acquired the necessary clothing, such as school uniforms, or cannot product the records normally required for enrollment, such as proof of residency, academic records and immunization history.

3. SB 1111 makes changes to the procedures and rules associated with administrative panels /hearing officers and the expulsion process.

- If the administrative panel (or hearing officer), following an evidentiary hearing, decides to not recommend expulsion, but nevertheless specifically

finds the pupil either : (i) possessed, sold, or furnished a firearm; (ii) brandished a knife at another person; (iii) unlawfully sold a controlled substance (including marijuana in any amount);(iv) sexually assaulted/attempted to sexually assault/committed sexual battery; or (v) possessed an explosive - (Education Code § 48915(c)), then the pupil must either be immediately reinstated in his/her prior school, placed at another comprehensive campus or placed at a continuation school.

- If the administrative panel (or hearing officer), following an evidentiary hearing, decides to not recommend expulsion in conjunction with a charge of any type of misconduct other than Education Code section 48915(c) (described above), then the pupil has a right to return to the “classroom instructional program from which the expulsion referral was made.”
- If the administrative panel decides not to recommend expulsion in conjunction with a charge of any type of misconduct other than Education Code section 48915(c) (described above), the pupil may not be transferred to another program or campus except upon the request of the parents.
- Before transferring the pupil to another school, as may have been requested by his/her parents, the district superintendent, or his/her designee, must consult with the pupil’s teachers and other pertinent district personnel, as well as the pupil’s parents, in regard to all potential placement options.

4. SB 1111 makes changes to the rules regarding readmission/re-enrollment following an expulsion and an associated involuntary transfer to a county community school.

- A pupil who has been expelled and was then transferred to a county community school now has the right to re-enroll in his/her former school or another comprehensive campus immediately upon readmission to the district, unless the student was expelled for a serious offense listed in Education Code section 48915(a) and (c). Serious offenses include:
 - Serious physical injury to another except in self-defense;
 - Possession of a knife or other dangerous object;
 - Possession of illegal drugs, except for possession of marijuana as a first offense and in an amount of one ounce or less;
 - Robbery or extortion;
 - Assault or battery upon a school employee;
 - Possession, selling, or furnishing a firearm;
 - Brandishing a knife at another person;

- Unlawful sale of a controlled substance (including marijuana in any amount);
- Sexual assault/attempted sexual assault/sexual battery; or
- Possession of an explosive.
- Only the governing board of the school district which issued the expulsion order may act to extend the duration of an expelled student's county community school placement.

5. **SB 1111 makes changes to the rules regarding voluntary transfers to county community schools.** School districts may approve the voluntary transfer of a pupil to a county community school upon the request for such enrollment by the parents, but only if the school district determines that the community school placement will promote the educational interests of the pupil and that the county community school has space available to enroll the pupil.

- The parent may rescind the request for community school placement at any time.
- If the parent rescinds the community school placement, then the pupil must be immediately placed back in the school the pupil was attending at the time of the request or in another mutually agreed upon school.

6. **SB 1111 makes changes to the rules regarding county community school referrals by school districts pursuant to school attendance review board recommendations.**

- The community school must be able to meet the “educational needs of the pupil”;
- The community school must have space to enroll the pupil (for example, in the day program rather than only in the independent study program);
- The community school must be “geographically accessible” to the pupil (“geographically accessible means that the travel time is reasonable and that the pupil’s family is able to pay for the cost of transportation);
- The parents may object to the referral on the grounds that:
 - The school is geographically inaccessible to the pupil;
 - They are unable to transport to pupil to the school;
 - They have reasonable concerns for the pupil’s safety at the school; or
 - The school does not meet the educational needs of the pupil.
- If a parent objects to the referral, the school district must either address the objection (for example, provide transportation) or offer an alternative

placement at another comprehensive or continuation school within the school district;

- If the school district has offered the pupil all other options within the school district, the school district may refer the pupil to the county community school;
- So long as the pupil is less than 19 years old, he/she now has the right to return to his/her prior school at the end of the semester following the semester when the acts pertinent to the referral occurred. Special education pupils have return rights until they are 22 years old.

7. SB 1111 makes changes to and clarifies the rules in the Education Code regarding county community school referrals by Probation of students who are wards of the court.

- A pupil may be placed at a county community school per order of the juvenile court if the pupil is subject to the jurisdiction of the juvenile court for violating the law, refusal to obey order of parents, violation of curfew or truancy.

This rule applies to pupils who: (i) have been ordered and adjudged to be a ward of the court; (ii) in lieu of being adjudged a ward, have been placed on probation under the supervision of a probation officer; (iii) are allowed to remain in the physical custody of a parent or guardian, but with certain conditions; (iv) are subject to terms of probation associated with a deferred entry of judgement; or (v) have been ordered on probation without supervision by a probation officer. (Cal. W & I Code §§ 725, 727(a)(2), 729.2 and 791).

- A pupil may be placed at a county community school if the pupil is under the supervision of a probation officer per Section 654 of the Welfare and Institutions Code, so long as both the pupil and the pupil's parents also agree to the placement.

California Welfare and Institutions Code section 654 provides that following an investigation, if the probation officer concludes that the pupil is within or may soon be within the jurisdiction of the juvenile court (for refusal to obey orders of parents, violation of curfew, truancy or violation of the law), the probation officer may - in lieu of filing a petition to declare the pupil a dependent child of the court or a ward of the court - attempt to adjust the underlying situation by delineating specific programs of supervision for the pupil.

- A pupil may be placed at a county community school if the pupil is under the supervision of a probation officer per Sections 726 and 727(a)(3) of the Welfare and Institutions Code, so long as the pupil's parents, or the adult appointed by the court to make educational decisions, also agrees to the placement.

California Welfare and Institutions Code sections 726 and 727(a)(3) provide that the court may limit the control and decision-making authority exercised over the ward or a dependent child by any parent or guardian, with or without taking physical custody from the parent or guardian, and appoint another responsible adult to exercise such control. In addition:

- The community school placement must be based on the best interests of the pupil.
 - The community school placement must be the least restrictive educational program for that pupil.
 - The community school placement must allow the pupil to have access to the academic resources, services, extracurricular activities and enrichment activities that are available to all pupils.
- Counsel for the pupil or for the person who holds the educational rights of the pupil may petition the juvenile court to review and/or change placement in a county community school.

8. SB 1111 makes changes to county community school programs.

- County community schools must accept course work satisfactorily completed by a pupil while attending another public school or non-public school/agency program and issue full credit for course work completed or partial credit if not completed.
- Credit issued for course work must be applied to the same or equivalent courses.
- County community schools may not require a student to retake a course if the pupil has satisfactorily completed the course in another public school or non-public school/agency program.
- If the pupil has only completed a portion of a course, he or she shall not be required to retake that portion unless the pupil will be able to do so and also graduate high school on time.

- County community schools may not prevent a pupil from taking or re-taking a course in order to meet the eligibility requirements for admission to a California State University or a University of California campus.
- County community schools must receive the records of incoming pupils within 10 school days upon transfer from the former school and must send the records within 10 school days upon transfer to another school.
- Pupils in county community schools must be assigned classes or programs most appropriate for reinforcing or reestablishing educational development including but not limited to basic educational skill development, on the job training, school credit recovery assistance, tutorial assistance and individual guidance activities. (Restates the current law.)
- An individually planned educational program based upon an educational assessment must be assigned to each student. (Restates the current law.)
- The academic program at a community school must lead to the completion of a regular high school program. (Restates the current law.)
- Independent study program must meet the requirements of the pupil's individually planned educational program and must be voluntary. (Restates the current law.)
- County Community School must comply with state and federal law regarding special education and programs for English Language Learners. (Restates the current law.)

Not every nuance in each bill is covered by this summary. Accordingly, please read all three bills. If you have any questions concerning this or related issues, do not hesitate to contact our office.

— Alan B. Harris

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