



Education Law Update

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EDUCATION CODE AMENDED TO EXPAND THE TYPES OF STUDENT OFFENSES WHICH MUST BE REPORTED TO LOCAL LAW ENFORCEMENT

The Legislature has just recently expanded the types of student misconduct under Education Code section 48902 which school principals are required to report to local law enforcement. Reporting these offenses to local law enforcement is mandatory. The failure to make the required report may be an infraction which can be punished by a \$500.00 fine.

(1) Mandatory Notification Requirement. Prior to the latest revision, Education Code section 48902 required the principal of a school to notify law enforcement when a student is suspended or referred for an expulsion hearing for any of the following offenses:

- Assault with a firearm (Cal. Penal Code § 245);
- Assault with a deadly weapon or instrument other than a firearm (Cal. Penal Code § 245);
- Assault likely to produce great bodily injury (Cal. Penal Code § 245);
- Possession, use, sale, furnishing or being under the influence of a controlled substance, alcohol or other intoxicant (Cal. Educ. Code § 48900(c));
- Offering, arranging or negotiating the sale of an item represented as either a controlled substance, alcohol or other intoxicant - even if the item was not actually a controlled substance, alcohol or other intoxicant - provided that the item was actually furnished to another (Cal. Educ. Code § 48900(d));

- Any conduct that may involve the possession or sale of a narcotic or a controlled substance (Cal. Educ. Code § 48902(c));
- Violating the Gun-Free School Zone Act of 1995, within 1000 feet of a school (Cal. Penal Code § 626.9); or
- Possessing a dirk, dagger, ice pick, knife having a blade longer than 2 1/2 inches, folding knife with a blade that locks into place, razor with an unguarded blade, box cutter, taser, stun gun, pellet gun, BB gun or spot marker gun (Cal. Penal Code § 626.10).

(2) Latest Legislative Revision. The latest revision to Education Code section 48902 expands the types of offenses which must be reported to also include the zero tolerance offenses set out in Education Code section 48915(c). Those offenses are:

- Possession, selling or furnishing a firearm;
- Brandishing a knife at another person (with a blade longer than 3 1/2 inches or a shorter blade that is fixed or which locks);
- Sale of illegal drugs;
- Sexual assault/sexual battery; or
- Possession of an explosive (such as a bomb, grenade, mine or a rocket with 4 or more ounces of propellant charge).

(3) Special Education Students. If the perpetrator is a student with a disability as defined in California Education Code section 56026/IDEA, local law enforcement authorities must also be made aware of the existence of pertinent special education records and disciplinary records that may bear on any law enforcement decisions to be made. However, copies of the records may only be transmitted when in compliance with FERPA and California Education Code section 49073, et seq., both of which regard the privacy of pupil records. As a general rule, written parental consent is required before copies of pupil records may be transmitted to law enforcement unless the records are requested by the district attorney in conjunction with a criminal investigation or pursuant to a court order such as a search warrant. (Educ. Code § 49076.)

(4) Competing Rationales. Proponents of Education Code section 48902 reporting requirements contend that the statute: (a) promotes the early identification of maladaptive patterns and behaviors which may derive from or spill over into the local community; and that (b) early identification promotes early collaboration on effective “at-risk youth” prevention and intervention strategies.

Opponents of the legislation contended that: (a) requiring a law enforcement report when a firearm is either seized or surrendered will tend to discourage students from surrendering or reporting the presence of a firearm at school; (b) schools have the discretion to contact law enforcement in appropriate situations without the benefit of the statute; and (c) placing limitations on the discretion of school officials to respond to incidents simply serves to facilitate the “school to prison pipeline.”

(5) Reporting Process. Notification regarding an assault with a firearm, other deadly instrument or an assault with intent to inflict great bodily injury must be made immediately, before the student is suspended. Notification regarding offenses pertaining to drugs and alcohol must be made within one school day of suspension. There is no provision which specifies the deadline for notification regarding the other Section 48902 offenses. In light of the purposes underlying the statute, the notification should occur immediately if appropriate and probably no later than within one school day.

Additionally, the statute provides that the report may be made either by telephone or as otherwise agreed between the school and local law enforcement. Finally, the report should be made whenever it is determined that subject student may have committed the pertinent misconduct regardless whether or not the school intends to suspend the student and initiate the expulsion process.

If, in a particular instance, the school’s reporting obligation or related FERPA obligation is unclear, do not hesitate to call for advice.

– Alan B. Harris

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