

# SCHOOL EMPLOYEES LEGAL RIGHTS AND DUTIES

## I. REPRESENTATION RIGHTS

### A. Weingarten Rights

1. All bargaining unit members have the right to Association representation if they believe that they could be disciplined, or experience an adverse action, now or in the future.

*NLRB v. J. Weingarten Inc.*

2. There is no right to representation for:

- Routine interaction with a supervisor
- Receipt of notice of previously determined discipline
- Receipt of a work directive
- Routine formal evaluation procedures.

3. The representative must be allowed to:

- Speak during the meeting, but cannot insist on speaking for the employee.
- Request that questions be clarified.
- Advise the employee on how to answer questions
- Provide additional information.

4. If the employer denies the request for Union Representation:

- Employee may refuse to answer and the employer may not discipline the employee only if the employee had a right to a representative.
- Employer commits unfair practice.

*Government Code Sec. 3543.1*

### B. School Employees Charged With Serious Misconduct

1. Occasionally school employees face charges of misconduct which could form the basis for dismissal, credential revocation or criminal prosecution.
2. Sometimes, these involve allegations of sexual misconduct with students or allegations of physical abuse.
3. Even if they are innocent, school officials will investigate on the assumption that they are guilty. **They should not answer any questions or offer any explanations.**
4. **School employees facing such charges need legal counsel immediately.**
5. They should seek referral to a CTA/NEA Group Legal Services Attorney to discuss the situation. Initial consultations are paid for by CTA/NEA, and depending on the problem, you may be entitled to representation at CTA/NEA expense.

## II. CERTIFICATED EMPLOYEES-HIRING AND CLASSIFICATION-SOME USEFUL RULES

### A. Probationary Status is the Default Classification.

Temporary classification is appropriate *only* in the following circumstances:

- To replace an employee on leave or on special assignment
- To teach in a limited term project not required by federal or state statute
- For a position in a migratory program less than 4 months
- To teach temporary classes not to last more than 3 months
- To teach the first semester in a high school where mid-year graduations will reduce enrollment for second semester.

*Education Code Sec. 44909, 44919, 44921*

General rule: There should not be more temporary certificated employees than there are on leave or in limited term assignments.

### B. Certificated Employees must be notified of their Temporary Status when they begin work.

If certificated employees not so notified, in writing, they are presumed probationary. This means when the certificated employee begins working, not when School Board approves their contract.

*Education Code Sec. 44916.; Kavanaugh v. Sonoma County UHSD*

### C. Certificated Employees serving on Intern Credentials are Probationary.

But, probation lasts one year beyond the internship.

*Welsh v. Oakland USD; Peoples v. San Diego USD*

## III. EMPLOYMENT CONTRACTS

### A. For Certificated Employees, Contracts last the School Year

If a certificated employee fails to fulfill the terms of a contract without good cause, or leaves the services of the district without the consent of the superintendent, the Commission on Teacher Credentialing may take adverse action against the credential holder, but may not revoke or suspend for more than one year.

*Education Code Sec. 44420*

If the district asks in writing for a declaration of intent to remain for the next school year, you must respond by July 1. The Deadline is June 1 for year-round schools. Failure to reply will be deemed a declining of employment.

*Education Code Sec. 44842*

## IV. ACADEMIC FREEDOM

### A. Grade Changes

Administration does not have the right to order a change in grade unless the teacher is given an opportunity to explain the basis for it.

*"...the grade given to each pupil shall be the grade determined by the teacher of the course and the determination..., in the absence of clerical or mechanical mistake, fraud, bad faith, or incompetency, shall be final."*  
*Education Code Sec. 49066*

#### B. Curriculum Issues

1. Teachers have no right to determine the curriculum, but there is a limited right to control method of instruction and to select outside speakers within the parameters of district rules.  
*Cockrel v. Shelby County SD*
2. Teachers cannot be punished for speaking in class about social issues, e.g. racism and homophobia because Ed. Code mandates schools to combat intolerance.  
*Debro v. San Leandro USD*

#### C. Free Speech Rights

3. School employees have a right to speak out on matters of public concern and wear political buttons on school premises. Districts may prohibit employees from wearing political buttons while teaching in the classroom but not at other locations and times on campus.  
*CTA v. San Diego USD*
4. Districts may prohibit the usage of school mailboxes for distribution of campaign information about candidates , but cannot prohibit issues campaign information. If there is no district policy, then mailboxes may be used for candidate information that is produced by the local, CTA or NEA.  
*San Leandro TA v. San Leandro USD*

### V. SCHOOL SAFETY ISSUES

#### A. Safety Plans

Schools must establish school safety plans that:

- Assess the current status of school crime
- Identify programs that would provide a high level of school safety, which would include procedures to notify teachers of dangerous pupils; a sexual harassment policy; disaster procedures; a dress code prohibiting wearing of gang "colors."
- Establish a safe and orderly environment conducive to learning.

*Education Code Sec. 32280, et seq.*

#### B. Collective Bargaining

Safety conditions of employment are a negotiable subject under the EERA.

### C. Student Discipline

1. A teacher may suspend a student for up to two days for acts enumerated in Sec. 48900, e.g., causing or threatening bodily harm, possessing weapons, drugs, alcohol, using tobacco, stealing or receiving stolen property, damaging or attempting to damage school property, robbery, extortion, disruption of school activities or willfully defying valid authority.

*Education Code Sec. 48910*

2. The teacher must report the suspension to the principal immediately and send the student to the principal's office.
3. The teacher must ask the parent to attend a conference regarding the suspension, and arrange for the school counselor/psychologist to be present if possible.
4. The principal can decide to keep the child on site, but

*"The pupil shall not be returned to the class from which he or she was suspended, during the period of the suspension, without the concurrence of the teacher of the class and the principal."*

*Education Code Sec. 48910(a)*

5. The suspended pupil shall not be placed in another regular class during the suspension.

*Education Code Sec. 48910(b)*

6. The teacher may also recommend suspension from school.
6. Suspension from a school is limited to 20 days in a school year.

*Education Code Sec. 48903*

#### 8. Expulsion

- a. Acts justifying expulsion: causing serious bodily injury, except in self-defense; possession of a firearm or knife, drug sales, robbery or extortion.
- b. Different rules for special education students: expulsion cannot be for misconduct that was caused by or a direct manifestation of the student's identified disability. There must be an IEP team meeting to assess this issue. Parents may attend.

*Education Code Sec. 48915.5*

### D. Teachers have the right to be notified of New Students who have been Suspended.

A school district shall inform the teacher of each pupil who has engaged in, or is reasonably suspected to have engaged in any of the conduct described in Sec. 48900. Penalty for knowingly withholding this information is up to six months in jail or \$1,500 fine, or both.

Information shall be from the previous three school years.

Teacher must keep the information in confidence for the limited purpose for which it was provided.

*Education Code Sec. 49079*

Courts must notify school superintendents when a student is found to have committed a felony or a misdemeanor involving curfew, gambling, drugs, assault, battery, vandalism, weapons or certain sex offenses. Superintendent shall transmit this information to counselors and teachers who are reporting on the behavior of the minor and whom the superintendent believes need the information to work with the student, "to avoid being needlessly vulnerable."

*Welfare & Institution Code Sec. 827 (b) (2)*

## **VI. PARENT AND STUDENT RIGHTS AND RESPONSIBILITIES**

### **A. Parent Rights**

Parents have the right to observe instruction and other school activities that involve his/her child, but parent must request this in writing. This is subject to district procedures.

Students cannot be compelled to affirm or disavow any privately held world view, political or religious doctrine.

Students may not be tested for behavioral, mental, or emotional evaluation without the informed written consent of parent. This is in addition to IDEA requirements.

*Education Code Sec. 49091.10, et seq.*

### **B. Parent-Teacher Meetings**

If you believe there is potential for confrontation, ask that your union representative be present, especially if the purpose of the meeting concerns a complaint about you.

It is a misdemeanor to threaten injury to a school employee or their property.

*Penal Code Sec. 71*

### **C. Liability of Parents for Student's Misbehavior**

A parent or guardian may be liable for up to \$10,000 for the willful misconduct of their minor when that misconduct results in injury or death to any employee or to employee's property.

*Education Code Sec. 48904*

The district may withhold grades and diplomas until the debt is paid, or if the family is unable to afford the debt, the student may be forced to work it off.

School employees may ask the district to sue the parents on their behalf.

*Education Code Sec. 48905*

#### D. Disruption of School Activities by Parents or Students

Any parent or other person whose conduct materially disrupts class work or extracurricular activities or involves substantial disorder, is guilty of a misdemeanor. This includes conduct at parent-teacher conferences.

*Education Code Sec. 44811*

Any person over 16 years of age who comes onto school property and willfully interferes with the discipline, good order, lawful conduct, or administration of any class or activity of the school is guilty of a misdemeanor.

*Education Code Sec. 44810*

### VII. DUTY TO PROVIDE A SAFE ENVIRONMENT

#### A. Physical Violence between Students

1. Off-Campus: no liability for student conduct or safety off campus, unless the school employee has undertaken to transport the student, or during a field trip.

*Education Code Sec. 44808*

2. On-Campus: no criminal sanctions against a certificated employee for using the amount of physical force necessary to maintain order, protect property or the health and safety of other students and staff and to maintain conditions conducive to learning.

*Education Code Sec. 44807*

This section does not speak to civil liability. A public employee is not liable for an injury resulting from his/her exercise of discretion vested in him or her. Use of judgment in determining whether to break up a fight or not or following the district's policies will probably immunize an educational employee from liability.

*Government Code Sec. 820.2*

2. Weapons: School employees have a right to confiscate them, even if it means using some reasonable physical force.

*Education Code Sec. 49001*

School employees have a right to search backpacks, clothing, lockers, provided they are not acting in an arbitrary, capricious or harassing way.

*In re Randy G.* California Supreme Court case.

No strip searches or rearranging of student clothing to permit a visual inspection of underclothing or private parts of a student. Metal detectors are permitted.

*Education Code Sec. 49050*

#### B. Sexual Harassment and Hate Violence

1. No person may be discriminated against on the basis of sex, ethnicity, race, religion disability or sexual orientation in any program or activity conducted by public schools. This can be enforced by a civil action.

*Education Code Sec. 220*

2. School districts must have a written policy on sexual harassment that is disseminated to students and employees. Students can be expelled or suspended for engaging in sexual harassment.

*Education Code Sec. 48900.2*

3. Title IX of the Federal Civil Rights Act of 1964 gives students and parents a right to sue school employees for allowing student-on-student sexual harassment to occur. School districts and employees will be liable if they knew about the harassment, and did nothing to stop it.

4. Harassment Based on Sexual Orientation, Actual or Perceived

It can be expensive. *Nobozny v. Podlesny* (1996) 92 F. 3d 446 was a \$1 million settlement where the plaintiff suffered several years of student harassment because he was gay and the district did nothing about it. The court held that the district's failure to enforce its sexual harassment policy against gay harassers denied the student equal protection of the law and discriminated against him on the basis of gender and sexual orientation.

5. Hate Violence

Students can be suspended or expelled for participation in hate violence, which is defined as injuring, intimidating, threatening or oppressing anyone because of their race, religion, ancestry, national origin, disability, gender, or sexual orientation.

*Education Code Sec. 48900.3; Penal Code Sec. 422.55; Education Code Sec. 220*

## **VIII. MISCELLANEOUS THINGS TO KNOW**

### **A. Whistle-blower Protections**

Protects school employees who disclose evidence of improper governmental activity or who refuse to carry out an illegal order. School employers who retaliate against an employee who has made a disclosure or refused an illegal order can be held criminally or civilly liable, including having punitive damages assessed against them.

“Improper governmental activity” includes actions that violate state or federal law; corruption, bribery; fraud; misuse of government property; economically wasteful; gross misconduct, incompetency or inefficiency.

*Education Code Sec. 44110*

### **B. Whistle-blowing of Special Education Issues**

No school employee who assists a parent of a pupil with exceptional needs to obtain services or accommodation for their child may be subject to reprisal or disciplinary action as a result of such assistance or advocacy. Enforcement is through a complaint with the State Dept. of Education, Uniform Complaint Procedures.

*Education Code Sec. 56046*

C. Certificated Employee Evaluation

Permits evaluation to occur once every 5 years by mutual agreement, if the certificated employee is permanent, deemed Highly Qualified under ESEA, and whose previous evaluation meets or exceeds standards.

*Education Code Sec. 44664*

D. School Restrooms

School restrooms must be maintained and cleaned regularly, fully operational, and stocked with soap and paper supplies. If a district fails to correct reports of violation within 30 days, funds for deferred maintenance are withheld.

*Education Code Sec. 35292.5*

E. Prohibited use of electronic listening or recording devices

No one may use an electronic listening or recording device in a classroom without prior consent of the teacher and the principal.

*Education Code Sec. 51512*