

DO'S & DON'TS FOR SCHOOL EMPLOYEES CHARGED WITH CRIMINAL MISCONDUCT

Recently, school employees have faced an increasing number of charges of sexual or other criminal misconduct with students. School officials who investigate these charges often seem to believe only the students and/or their parents. School employees facing such charges need competent legal counsel *immediately*.

CTA attorneys have prepared the following "Do's & Don'ts" for CTA members charged with sexual or other criminal misconduct involving students. *Remember: Even if you know you are innocent, school officials must investigate on the assumption that you are guilty.*

DO'S

****Do Contact Your Chapter Rep *Immediately*.** School employees are entitled by law to have, and should demand, representation in *any* meeting with school officials to discuss any complaint against them. If no representative is available, reschedule the meeting. Asserting your right is not insubordination. You do forfeit this right if you attend the meeting without a Chapter representative.

****Do Seek Referral To A CTA/NEA Legal Services Attorney To Discuss The Situation.** CTA and NEA jointly sponsor a legal services program for CTA members which provides advice and consultation, as well as representation, in cases directly involving your employment. Initial consultations are paid for by CTA/NEA, and CTA members may be entitled to legal representation at CTA/NEA expense.

*****Do Keep A Diary Of All Communications From Anyone About The Situation, So You Will Have A Complete Record Of Everything That Transpired.*** Keeping a diary also helps you to "make sense" of what's happening during a time which is usually difficult and often very emotional.

DON'TS

*****Don't Talk To Anyone Except Your Spouse About Details Of The Situation Until After You Have Talked To Your Lawyer.*** A legal rule called "privilege" prevents the police or school authorities from requiring your spouse to reveal what you told her/him in the confidentiality of your marriage. The "privilege" rule extends to the lawyer-client relationship as well. However, there is no "privilege" for communication with a room mate or "significant other," another employee, a Chapter representative, a school official or a representative of Child Protective Services. *Remember: Unless Privileged, What You Say About The Problem To Another Person Will Be Subpoenaed And Used Against You.*

TEACHERS RIGHT TO RESPOND TO VIOLENT/DISRUPTIVE STUDENTS

Every teacher in the public schools shall hold pupils to a strict account for their conduct on the way to and from school, on the playgrounds, or during recess. A teacher shall not be subject to criminal prosecution or criminal penalties for exercising, during the performance of duties, the same degree of physical control over a pupil that a parent would be legally privileged to exercise, which shall not exceed the amount of physical control reasonably necessary to maintain order, protect property, protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning. (44807)

A teacher is not responsible or liable for the conduct or safety of pupils while they are not on school property, unless the teacher has undertaken to provide transportation to and from school, or undertaken school activity off the campus, or otherwise assumed responsibility or liability, or has failed to exercise reasonable care. (44808, 87706)

SCHOOL DISCIPLINE POLICY

Each school must adopt rules and procedures on student discipline. After soliciting the views of parents, teachers, school administrators, school security personnel, and junior and senior high school pupils, the rules shall be adopted by a panel consisting of the school principal and a teacher representative. Students and parents are to receive written notice of the procedures at the beginning of the school year. It is the duty of each employee to enforce these rules and procedures. (35291.5)

CORPORAL PUNISHMENT PROHIBITED

Corporal punishment is prohibited. Corporal punishment means "the willful infliction of physical pain on a pupil." It does **not** include reasonable and necessary force for self-defense, to quell a disturbance, to prevent injury to others or damage to property, or to remove dangerous weapons from the possession of students. (49000, 49001, Penal Code 11165.4)

Any person who inflicts unjustifiable physical pain or mental suffering on a child is guilty of a misdemeanor. (Penal Code 273(a))

DETENTION

A pupil may be detained for up to one hour after school for disciplinary reasons except a pupil may not be detained so as to miss regular bus transportation. Pupils may not be detained during the noon hour for disciplinary reasons. (California Administrative Code, Title 5, §§ 304, 307, 352, 353) A school district may adopt reasonable rules and regulations authorizing a teacher to restrict a pupil's recess time for disciplinary purposes. (44807.5)

TRANSFER

Disruptive or violent students, age 16 and up, can be involuntarily transferred to "continuation schools," which may or may not be located on a separate site. (48432.5) However, a teacher in the school in which the student is enrolled **cannot** participate in the final decision for an involuntary transfer. Certain notices and hearing must precede such a transfer. Such transfers can occur only when other less drastic methods of correction have failed, unless the **principal** determines that the student presents an immediate danger to people or property or threatens the instructional process.

TEACHERS RIGHT TO RESPOND continued....

These involuntary transfers can extend only to the end of the semester following the acts leading up to the transfer.

Unless a district adopts rules and regulations which provide otherwise, a teacher can neither effect an involuntary transfer, nor block a return after termination of such a transfer, other than voicing an opinion informally or being called as a witness in the hearing process.

Pupils aged 8-16 can also be temporarily assigned to 24-hour elementary schools for insubordination or refusal to obey the rules and regulations of school authorities. (48607) School principals can recommend admission to such to a board of admission. (48606) The goal is to return the student to the regular school as soon as possible and to use this school only as a means of preventing later and more difficult delinquency.

SEARCH

In the case of *In Re William G* (1985) 221 Cal.Rptr. 118, the California Supreme Court clearly stated the Constitutional standard to be applied to a student search as follows:

We conclude that searches of students by public school officials must be based on a **reasonable suspicion** that the student or students to be searched have engaged, or are engaging, in a proscribed activity (that is, a violation of a school rule or regulation, or a criminal statute). These must be articulable facts supporting that reasonable suspicion. Neither indiscriminate searches of lockers nor more discreet individual searches of a locker, purse or a person, here a student, can take place absent the existence of reasonable suspicion. Respect for privacy is the rule--a search is the exception. (Emphasis added.)

SEIZURE

A teacher is authorized to seize any firearm, knife, razor, switchblade, machine gun or other "injurious object" capable of inflicting substantial bodily damage from any **person** on school premises or on a public right of way adjacent to school property, or while under the authority of school personnel. An injurious object is one capable of inflicting substantial bodily damage, not necessary for the academic purpose of the pupil. (49331, Penal Code 626.10)

It is a public offense punishable by one year in jail to bring or possess such weapon on the premises of any public school. (Penal Code 626.10)

RIGHT TO KNOWLEDGE OF CRIMINAL HISTORY

A school district must inform a teacher when it has information that a student has caused or attempted to cause serious bodily injury to another person. Such information shall be received by the teacher in confidence for the limited purpose for which it was provided and shall not be further disseminated. (49079).

If a minor enrolled in a public school (grades K-12) has been found by a court to have used, sold, or possessed narcotics or controlled substances or to have committed certain felonies (including murder, arson, rape, robbery, assault), the information must go to the superintendent and the information "shall be expeditiously transmitted to any **teacher**, counselor, or administrator with direct supervisory or disciplinary responsibility over the minor . . . in order to avoid being needlessly vulnerable or to protect other persons from needless vulnerability." Any information received by a teacher shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated. (Welfare and Institution Code § 827)

TEACHERS RIGHT TO RESPOND continued....

Further, even short of conviction, when a petition is filed in juvenile court or a complaint is filed in any court alleging that a minor is using, selling, or possessing drugs, the district attorney may provide written notice to the superintendent of the school district of attendance. (48909)

The student, parent or guardian must notify the school at the time of enrollment that the student was expelled previously from another school and the reason for the expulsion. (48915.1)

WITHHOLDING OF GRADES, DIPLOMA, TRANSCRIPTS

After affording due process, a school district may withhold the grades, diploma, and transcripts of a pupil responsible for willfully cutting, defacing or otherwise injuring district property until the pupil or the parent or guardian has paid for the damages, or completed a program of voluntary work if unable to pay. The district shall establish rules and regulations to implement this section. (48909)

SUSPENSION AND EXPULSION

Education Code § 48900 lists the grounds for student suspension and expulsion as follows:

- a. Caused, attempted, or threatened to cause physical injury to another person.
- b. Possessed, sold, or furnished any firearm, knife, explosive or other dangerous object, unless possession was with written permission from a certificated employee concurred in by the principal.

TEACHERS RIGHT TO RESPOND continued....

- c. Unlawfully possessed, used, sold or furnished, or been under the influence of, any controlled substance, an alcoholic beverage, or intoxicant.
- d. Unlawfully offered, arranged, or negotiated to sell any controlled substance, an alcoholic beverage, or intoxicant, and then either sold, delivered, or furnished to any person another liquid, substance, or material and represented it as a controlled substance, alcoholic beverage or intoxicant.
- e. Committed or attempted to commit robbery or extortion.
- f. Caused or attempted to cause damage to school or private property.
- g. Stole or attempted to steal school or private property.
- h. Possessed or used tobacco.
- i. Committed an obscene act or engaged in habitual profanity or vulgarity.
- j. Had unlawful possession of or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia.
- k. Disrupted school activities or willfully defied valid authority.

TEACHERS RIGHT TO RESPOND continued....

1. Knowingly received stolen school or private property.

It is the intent of the Legislature that alternatives to suspension or expulsion be used for pupils who are truant or tardy. (48900)

These acts must be related to school activity or attendance to be used as a basis for suspension or expulsion. (48900)

However, the Attorney General has ruled that suspension or expulsion may be imposed upon students for conduct away from school premises, outside of school hours and not involving a school activity or attendance when the nature and extent of such conduct have become common knowledge among other students at the school and parents of other students have expressed concern because of the contemptuous attitude of the students engaged in the questionable conduct. (48 Ops. Atty. Gen. 4 (1966))

SUSPENSION BY TEACHER

A teacher may suspend any pupil from his/her class or class period for any act listed in Education Code § 48900, for the **day of suspension and the day following**, and the student can't return to the class during this time without approval of the teacher. The suspension must be immediately reported to the principal and the student sent to the principal for further action. The teacher must also request a parent/teacher conference with a counselor regarding the suspension as soon as possible. The pupil shall not be returned to the class from which the pupil was suspended without the concurrence of the teacher and principal. (48910)

The district **shall** adopt a policy authorizing teachers to require the parent or guardian of a pupil suspended by the teacher to attend a portion of the school day in the classroom from which the pupil was suspended. Parents are to be notified of the policy prior to its implementation, and are to meet with the school administrator after the classroom visitation.

Parents are protected against unfair treatment in their employment in retaliation for being absent from work for this purpose. (48900.1)

A teacher may also **recommend** a pupil for suspension from school, but final decision lies in the hands of school administrators after following detailed procedures. These suspensions may last for no more than five (5) consecutive school days and the student has certain rights to at least an informal conference **before** being suspended. "Wherever practicable," the referring teacher is to be present. If the student poses "a clear and present danger," however, suspension can precede the conference. (48911) Once the student returns, the teacher can require him/her to complete missed assignments or tests. (48913)

In a given year, a student cannot be suspended for more than twenty (20) days from a given school, or thirty (30) days if he/she transfers to another school. (48903)

EXPULSION

A teacher has **no** power to **expel** a disruptive or violent student from class or school. The expulsion process can be triggered **only** by recommendation of the principal or superintendent (or a hearing officer). (48915) A teacher can, of course, present evidence and urge expulsion. Once expulsion is formally recommended, a detailed series of notices and hearings transpires **prior** to actual expulsion. (48918) Various appeals can also be undertaken to the county board of education. (48920-48924)

A school board can deny enrollment to a pupil who has been expelled from another school district for the remainder of the expulsion period, after it has determined through a hearing that the pupil poses a danger to students or employees in the school district. (48915.1)

TEACHERS RIGHT TO RESPOND continued....

NOTE: Special rules apply to the suspension and expulsion of Special Education pupils (48916)

NOTIFY LAW ENFORCEMENT AGENCY

Whenever any school district employee is attacked, assaulted, or menaced by a pupil, it is the duty of the employee and the supervisor, who has knowledge of the incident, promptly to report the matter to the law enforcement authorities. Failure to make such a report is a misdemeanor punishable by a fine of not more than \$200. Any employee of any school district who attempts to impede the making of a required report is guilty of a misdemeanor and may be assessed a fine of not less than \$100 or more than \$200. (44014) No board, board member, or county or district employee shall impose any sanctions against a person required to make this report. (44014)

In case of assault with a deadly weapon or force likely to produce great bodily injury, the principal is **required** to notify law enforcement authorities prior to suspension or expulsion.

In cases of unlawful possession, use, sale, furnishing, or being under the influence of any controlled substance, alcoholic beverage or intoxicant, the principal may notify law enforcement authorities prior to suspension or expulsion.

A principal is immune from civil or criminal liability for such report unless the report was false and the principal knew the report was false or the report was made with reckless disregard for the truth or falsity of the report. (48902)

LEGAL ACTION

The parent or guardian of any minor whose willful misconduct results in injury or death to any pupil, employee, or volunteer in a district or who willfully cuts, defaces, or injures the property of any such person is liable for damages not to exceed \$7,500. The

TEACHERS RIGHT TO RESPOND continued....

parent or guardian is also liable for all property belonging to the district loaned to minor and not returned upon demand. (48904)

Teachers may request the school district to take legal action against a pupil (or the pupil's parents) when the teacher is injured or his/her property is damaged by the pupil while (1) located on district property, (2) being transported to or from a district activity, (3) present at a district activity, or (4) in retaliation for an employee's lawful acts in the line of duty. (48905)

In addition, injured teachers may have a right of action against the school district. In June, 1982, California voters approved Proposition 8, the so-called "Victims Bill of Rights." Among other things, this Constitutional amendment added a Constitutional right to safe schools. Article I, Section 28c provides that all public school students **and staff** have an "inalienable right to attend campuses which are safe, secure and peaceful."

PROTECTIONS AGAINST TEACHER ABUSE

SCHOOL SITE INTERRUPTIONS

Governing boards are required to post at every entrance to each school and grounds a notice setting forth "school hours" as defined by the board. (32211)

No outsider shall enter or remain on school grounds during school hours without having registered with the principal. (P.C. 627.2)

Any person who comes into a school building or upon school grounds, street, sidewalk, or public way adjacent thereto, without lawful business, and whose presence or acts interfere with the peaceful conduct of school activities or disrupt the school or its pupils may be asked to leave the premises. Failure to comply with such a request when made by the school's chief administrative official or designee, or any attempt to re-enter the prohibited premises within 72 hours after being asked to leave constitutes a misdemeanor. Upon first conviction, such person may be punished by a fine not to exceed \$500, by imprisonment not to exceed six months, or by both a fine and imprisonment. (P.C. 626.8)

Any person other than a student, parent or guardian, or employee of the school district shall promptly depart from the school premises during school hours when requested to do so by the school principal or designee. Such person shall not return for at least 48 hours. The request to leave shall be made exclusively on the basis that it appears reasonable to conclude that the continued presence of the person would be disruptive of, or interfere with, classes or other school activities. Failure to comply promptly with the request or to remain off the school premises for 48 hours constitutes a misdemeanor. Any person requested to leave the premises may appeal his expulsion to the district superintendent and ultimately to the governing board. (32211)

Every person who loiters about any school, or who reenters a school within 72 hours after being asked to leave is a vagrant and subject to a fine. (P.C. 653(g))

PROTECTIONS AGAINST ABUSE continued....

Every minor over 16 or adult who is not a pupil of the school who enters any school ground and willfully interferes with discipline, good order, lawful conduct, or administration of any class or school activity with the intent to disrupt, obstruct, or to inflict damage to property or bodily injury to any person, is guilty of a misdemeanor which is punishable by a fine of not less than \$100 or more than \$1,000, or by imprisonment in county jail for up to six months, or both. (44810)

Any person who willfully disturbs any public school or any public school meeting is guilty of a misdemeanor and shall be subject to a fine of not more than \$500. (32210)

CLASSROOM INTERRUPTIONS

It is the intent of the of the Legislature that each school district board formally address the problem of classroom interruptions and adopt a policy to control those interruptions. (32212)

THREATS TO PERSONAL SAFETY

In order to prevent campus crime and violence and to promote safe educational conditions, each school district shall develop a "School Safety Plan." (35294) This plan *may* include the following (35294(a)):

- ▶ An assessment of the current status of crime committed on school campuses and school-related functions;
- ▶ Appropriate strategies that will provide or maintain a high level of school safety;

PROTECTIONS AGAINST ABUSE continued....

- ▶ An action plan, in conjunction with law enforcement authorities, for implementing appropriate safety strategies and programs and determining their fiscal effects.

Based on written records maintained by the district or received from law enforcement agencies, a school district shall inform the teacher of every student who has caused (or attempted to cause) serious bodily injury to another person. (49079(a)) Such information is confidential and shall not be disseminated further by the teacher. (49079(d))

Any person, except a registered student of the school, who (1) fights or challenges another to a fight on school grounds, or (2) maliciously and willfully disturbs another person in a school building or on school grounds by loud and unreasonable noise, or (3) uses offensive words likely to provoke an immediate, violent reaction is guilty of a misdemeanor punishable by a series of penalties dependent upon whether the offense is a first offense or the offender has previous convictions. (P.C. 415.5)

An assault or battery committed on school property against **any** person is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in the county jail not to exceed one year, or by both. (P.C. 241.2, 243.2) An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. (P.C. 240) A battery is any willful and unlawful use of force or violence upon the person of another. (P.C. 242)

A peace officer may, without a warrant, arrest a person who commits an assault or battery on school property during hours when school activities are being conducted if:

1. The person has committed the assault or battery, although not in the peace officer's presence, or

PROTECTIONS AGAINST ABUSE continued....

2. The peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed. (P.C. 243.5)

PROHIBITION OF WEAPONS

Any person who brings or possesses a firearm (P.C. 626.9) or dirk, dagger knife with fixed blade longer than 3½ razor upon any public school or state university is guilty of a misdemeanor. (P.C. 626.10)

POTENTIAL LIABILITY AND DISTRICT RESPONSIBILITY

LIABILITY

Under Government Code section 820, teachers, like all other public employees in California, are liable for injury caused by their acts or omissions to the same extent as private persons. They may be personally liable if, in the performance of their school duties, their negligent or wrongful conduct causes harm to pupils or others. Teachers face the risk of lawsuits for torts such as assault and battery, slander, libel, defamation, false arrest, and malpractice. However, Government Code section 825 requires a school district to provide a defense and pay any judgment or settlement resulting from any action in the course and scope of employment.

Fortunately, teachers are afforded considerable protection by the law in the performance of their duties. School districts are required by law to insure against the personal liability of employees for loss or damage to property or damages for death or injury to any person as a result of any **negligent** act of an employee within the scope of employment. (35208) Additional coverage may be secured by school districts wishing to insure against personal liability of employees for injury resulting from any act or omission in the scope of employment. (35208)

LIMITATION OF LIABILITY

No employee of any school district shall be responsible or liable for the conduct or safety of pupils while they are not on school property, unless the district or a specified person has undertaken to provide transportation to and from school, or undertaken school activity off the campus, or otherwise assumed responsibility or liability, or has failed to exercise reasonable care. (44808, 87706) Liability is limited in specified undertakings to when the pupil is or should be under the immediate and direct supervision of a district employee. (44808)

**DEFENSE OF CIVIL SUIT ARISING OUT OF LAWFUL CHILD ABUSE
REPORTING**

While the law grants immunity from liability for reporting child abuse as required, it cannot prohibit a party from suing a teacher. However, if a teacher is sued for reporting as required by law, the state will pay for attorneys' fees incurred up to \$50,000, if the teacher prevails. (P.C. 11172(c))

Source: *Guide to School Law*, California Teachers Association, 1992