

Right to Education & to Attend School

1. Education Code, § 201
 - a. (a) All pupils have the **right to participate fully** in the educational process, **free from discrimination and harassment**.
 - b. (b) California's public schools have an **affirmative obligation** to combat racism, sexism, and other forms of bias, and a responsibility **to provide equal educational opportunity**.
 - c. (c) **Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.**
 - d. (d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.
 - e. (e) **There is an urgent need to teach and inform pupils in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase pupils' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in public schools and in society as a means of responding to potential harassment and hate violence.**
 - f. (f) **It is the intent of the Legislature that each public school undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of pupils to equal educational opportunity.**
 - g. (g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes
2. California Constitution § 5, AIX: SEC. 5. "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

Right to Be On Campus

3. Civil Code, § 51: All persons within the state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. Private right of action, including up no less than \$4,000.00 in damages and up to triple damages for each denial of access, as well as punitive damages for intentional rights violations, and attorneys' fees.
 - a. Applies to *private* schools.
 - b. Courts split on public schools.
4. Civil Code, § 52: private right of action against any person acting under the color of law (school, district) who interferes in any way with the exercise of statutory or constitutional rights (California and Federal / U.S.), with civil penalty up to \$25,000.00 *against each person found to have violated section*.

School Authority

5. Education Code, § 35160: "... the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner *which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established*."
6. Education Code, § 49400: "... the governing board of any school district shall give diligent care to the health and physical development of pupils, and may employ properly certified persons for the work."
7. Education Code, § 49403: "...the governing board of a school district shall cooperate with the local health officer in measures necessary for the prevention and control of communicable diseases in schoolage children . . . to administer an immunizing agent to a pupil *whose parent or guardian has consented in writing to the administration of the immunizing agent*"
8. Can exclude where "Clear & Present Danger"
 - a. **Education Code, § 48213**: school can exclude a child without notice if (1) resides where any contagious, infectious, or communicable disease **exists or has recently existed** (H&SC 120230) or (2) "whenever there is a good reason to believe that the child is suffering from a recognized contagious or infectious disease" (Education Code, § 49451) *and the principal "determines that the continued presence of the child would constitute a clear and present danger to the life, safety, or health of a pupil or school personnel."*
 - b. **Education Code, § 48900**: a student *shall not be suspended* from school or recommended for expulsion unless the *superintendent or principal* determines the student brought guns or drugs or drug paraphernalia to school, robbed, destroyed school property, hazing, attempted to or did sell Soma, sexually assaulted

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someone, committed an obscene act or engaged in habitual profanity or vulgarity, bullied [paraphrased]

- i. *Note:* (k)(1) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
 1. Shot mandates are NOT “valid authority.”
 2. Child *wants to go to school like normal*. NOT disrupting duties.
Actually want the teachers to perform their duties!
9. Education Code: 49451: “A parent or guardian having control or charge of any child enrolled in the public schools **may file annually** with the principal of the school in which he is enrolled a statement in writing, signed by the parent or guardian, stating that **he will not consent to a physical examination of his child**. Thereupon the child shall be exempt from any physical examination, but *whenever there is a good reason to believe that the child is suffering from a recognized contagious or infectious disease, he shall be sent home and shall not be permitted to return until the school authorities are satisfied that any contagious or infectious disease does not exist.*
10. In re: Arata (1921) 52 Cal. App. 380: “while health authorities possess power to place under quarantine restrictions persons **who they have reasonable cause to believe are inflicted with infectious or contagious diseases**, personal restraint can only be imposed where, under the facts as brought within the knowledge of the health authorities, **reasonable ground exist** to support the belief that the person is afflicted.”
11. Testing Recommendations, Not Requirements.
 - a. <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/K-12-Guidance-2021-22-School-Year.aspx>
 - b. CDPH has a robust State- and Federally-funded school testing program and subject matter experts available to support school decision making, including free testing resources to support screening testing programs (software, test kits, shipping, testing, etc.).
 - c. Resources for schools interested in testing include: California's Testing Task Force [K-12 Schools Testing Program](#), [K-12 school-based COVID-19 testing strategies](#) and [Updated Testing Guidance](#); The Safe Schools for [All state technical assistance \(TA\)](#) portal; and the [CDC K-12 School Guidance](#) screening testing considerations (in Section 1.4 and Appendix 2) that are specific to the school setting.

School Liability

1. Penal Code, § 2052: Practicing Medicine Without a License = prescribing, or even promoting, medicine; is a “wobbler” offense that can be tried as a felony or misdemeanor. When tried as a misdemeanor, penalties are up to one (1) year in county jail and/or a fine of up to one thousand dollars (\$1,000), and when tried a felony, one and a half (1.5), two (2) or three (3) years in jail, and/or a fine of up to ten thousand dollars (\$10,000). All that is in addition to any professional disciplinary action you may face if you are a licensed health care professional and are alleged to have violated the terms of your license

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2. Penal Code 192b: Involuntary Manslaughter: unintentional killing of another person, while committing either a crime that is not an inherently dangerous felony, or a lawful act that might produce death.
3. Penal Code 273a: Child Endangerment: willfully exposing a child under the age 18 to unjustifiable pain, suffering, or danger. A person can be charged for subjecting the child to an unreasonable risk of harm, even if the child never suffers actual physical harm
4. Government Code § 37100: any law, measure, policy, order, ordinance or rule is null and void if it conflicts with the California Constitution or the U.S. Constitution.
5. Civil Code § 43: "Slander is a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which . . . 2. Imputes in him the present existence of an infectious, contagious, or loathsome disease."

Threats School May Make

1. Abandonment
 - a. **Welf. & Inst. Code 300**: Juvenile Court has jurisdiction over the child if the child
 - i. suffering or substantial risk of child suffering or serious non-accidental harm by parent or guardian,
 - ii. harmed from conduct of custodian due to inadequate supervision of parent or guardian or willful negligence to provide for child,
 - iii. suffering from serious emotional damage due to lack of care unless willful failure of parent due to sincerely held religious belief,
 - iv. subjected to acts of cruelty by parent, guardian, or household member.
 - b. **Welf. & Inst. Code 11165.2**: negligent treatment or maltreatment of a child by person responsible for welfare or health (acts or omissions).
 - i. Religious/Spiritual Exception: A child receiving treatment by spiritual means or not receiving specified medical treatment for religious reasons shall not for that reason be considered neglected.
 - c. **Intent of the Legislature**: not to disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting
2. Failure to Supervise School Attendance
 - a. *Truancy Definition & Consequences*:
 - i. **Truant** = miss 30 min of school more than 3 times unexcused.
 1. School must notify parent/guardian w/ specificity about truancy
 2. School must report truancy to Superintendent
 - ii. **2nd offense**: student may be assigned to after school/weekend program.
 1. If student fails program, will be considered habitual truant.
 - iii. **3d offense / "Habitual Truant"** = 3 reports to Super + makes effort for 1 meeting with parent and child. May be recommended to attend School Attendance Review Board or Mediation session. If no board or mediation program exists, may be recommended to County Probation Dept or DA.
 - iv. **4th offense**: School issues 4 reports - student may be w/in JRX of juvenile court and considered a ward of the state.
 - v. **Chronic Truant (EC Section 48263.6)**: absent from school without valid excuse for 10%+ of school days in a school year.

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- b. **PC 270.1a:** potential misdemeanor punished by \$2,000 or up to 1 year in prison if a parent or guardian, does not provide reasonable supervision of a child's school attendance, and child is between 1st-8th grade.
 - i. *Defenses:* reasonable supervision, child was not a chronic truant, coerced confession

Sidenote

1. See Step by Step Guide: <https://www.aclunc.org/our-work/know-your-rights/know-your-rights-free-speech-protests-demonstrations>
2. Resisting Arrest
 - a. It is no crime in this state to nonviolently resist the unlawful action of police officers. (*In re Michael V.* (1974) 10 Cal.3d 676, 681; *In re Chase C.*, 243 Cal. App. 4th 107, 114)
 - b. "one cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution." (*Wright v. Georgia* (1963) 373 U.S. 284, 291-292; *People v. Curtis*, 70 Cal. 2d 347, 356)