

DISCLAIMER:

*This is a very high overview of the Education and Penal Code sections that govern a child's and parent's / guardian's obligations to attend school in California and FLTJ is not an expert in elementary and secondary school education. Please take the time to read these code sections yourselves. Also, **your school may prescribe more restrictive terms on your child's attendance.** Therefore, you *must read* your school's policies / rules to determine what you agreed to abide by in choosing to enroll your child there.*

SUMMARY:

The California Legislature has defined a truant in very precise language: a student missing **three (3) full days or thirty (30) minutes tardy or absent on three (3) occasions without a valid excuse** during one school year must be classified as a "truant" and reported to the proper school authority. Education Code, Section 48260(a). A "valid excuse," "includes, but is not limited to **illness, receipt of medical care, time with family, religious services, entertainment work, and "other reasons" within the discretion of school administrators based upon the facts of the pupil's circumstances.** Education Code, Sections 48205, 48225.5, 48260(c). When a child – and his or her parent / guardian – fails to meet these attendance guidelines, *both* may be penalized, as set forth in brief, below.

Because the law in most states requires students to go to school, schools **can** discipline you and your child for missing class; however, **schools cannot discipline you more harshly because of the message or the political nature of your action.** If you are planning to miss a class or two, look up the policy for unexcused absences for the school and school district, as these will vary. If you are considering missing several days, read about truancy (summary of CA laws provided herein, below) and look at your particular school's policy for suspensions.

If you are facing a suspension of 10 days or more, you have a right to a formal process and can be represented by a lawyer. Some states and school districts require a formal process for fewer days, which you will have to look up yourselves.

This firm is *not* taking these cases, but, again, know your rights!

TYPES OF TRUANTS

"TRUANT"

1. **Education Code, Section 48260(a):** a student subject to compulsory full-time education or to compulsory continuation education (CA, K-12), who is absent from school without a valid excuse
 - a. 3 full days and/or tardy or absent for more than a 30-minute period during the schoolday on 3 occasions in one school year.
 - b. This student shall be classified as a truant and shall be reported to the attendance supervisor or to the superintendent of the school district.

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“*CHRONIC TRUANT*”

1. **Education Code, Section 48263.6:** “Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without a valid excuse for ten percent or more of the school days in one school year[.]”
2. **Education Code, Section 48260.5:** The school district must notify the parent or guardian of the truant by the most cost-effective method possible, and that the notification must include specific information related to the student's unexcused absences.

“*HABITUAL TRUANT*”

1. **Education Code, Section 48262:** If a student has been reported as a truant three or more times in one school year *and* after an appropriate school employee has made a conscientious effort to hold at least one meeting with the parent / guardian the student, the student is deemed a *habitual* truant.
2. **Education Code, Section 48263, 48263.5:** When a student is a habitual truant, is irregular in attendance at school, or is habitually insubordinate or disorderly during school, the student may be referred to a school attendance review board (SARB), the county probation department, a probation officer, or district attorney mediation program. The intent is to provide intensive guidance to meet the special needs of students with school attendance problems or school behavior problems pursuant to *EC* Section 48320. These interventions are designed to divert students with serious attendance and behavioral problems from the juvenile justice system and to reduce the number of students who drop out of school.

“**VALID EXCUSES**”:

1. **Education Code, Section 48205** identifies the following “valid excuses”:
 1. Illness;
 2. Quarantine under the direction of a county or city health officer;
 3. Having medical, dental, optometrical, or chiropractic services rendered;
 4. Attending funeral services for a member of the student’s immediate family [1 full day excused for services in California, 3 days if outside of California];
 - a. “immediate family member” = mom, dad, grandma/pa, spouse, child, son or daughter in law, sibling, any relative living in the immediate household.
 5. Jury duty;
 6. Illness or medical appointment;
 7. “Justifiable personal reasons,” including appearance in court, funeral service, religious holiday or ceremony [not to exceed 4 hours], religious retreat, employment conference, educational conference on the legislative or judicial process offered by a nonprofit organization if requested in writing by the parent / guardian and approved by the principal or designated school rep;
 8. Serving as a member of a precinct board for an election;
 9. Spending time with a member of the student’s immediate family who is an active duty member of the uniformed services [duration at the discretion of the superintendent of the school district];
 10. To attend the student’s naturalization ceremony.

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2. **Education Code, Section 48225.5** allows students in the entertainment industry to miss up to a maximum of five (5) days per school year.
3. **Education Code, Section 48260(c)**: school administrators **have the discretion** to excuse an absence **due to the pupil's circumstances**, even if *not* one of the valid excuses listed, above, or the uniform standards established by the governing board of the district.
4. **Right to Makeup Work**: students missing school for any of the reasons listed, above, “shall be allowed to complete all assignments and tests missed during the absence that can be reasonably provided and, upon satisfactory completion, shall be given full credit therefor.” The teacher of any class a pupil is absent “shall determine, which tests and assignments shall be reasonably equivalent to, but not necessarily identical to, the tests and assignments that the pupil missed during the absence.”

PENALTIES FOR STUDENTS:

1. **EC Section 48264.5**: schools and school districts have discretion regarding student penalties for truancy as long as they are consistent with state law. The penalties for truancy become progressively severe from the first the time a truancy report is required through the fourth time a truancy report is required and include the following:
 - a. Makeup classes on the weekend, meeting with school administrators;
 - b. Written warning by a peace officer that is kept at the school for not less than two years or until the pupil graduates or transfers from that school and if the pupil transfers from that school, the record forwarded to the school receiving the pupil's school records;
 - c. Written warning maintained by a law enforcement agency in accordance with that law enforcement agency's policies and procedures;
 - d. Afterschool or weekend study program;
 - e. Appearance before a review board, truancy mediation, or similar program;
 - f. Fourth time truancy within the same school year: the student may be within the jurisdiction of the juvenile court that may adjudge the pupil to be a ward of the court pursuant to Section 601 of the Welfare and Institutions Code. If the pupil is adjudged a ward of the court, the pupil shall be required to do one or more of the following:
 - i. (1) Court-approved community services sponsored by either a public or private nonprofit agency for not less than 20 but not more than 40 hours over a period not to exceed 90 days;
 - ii. (2) Pay a fine of not more than fifty dollars (\$50) for which a parent or legal guardian of the pupil may be jointly liable;
 - iii. (3) Attendance of a court-approved truancy prevention program; and/or
 - iv. (4) Suspension or revocation of driving privileges pursuant to Section 13202.7 of the Vehicle Code. This subdivision shall apply only to a pupil who has attended a school attendance review board program, a program operated by a probation department acting as a school attendance review board, or a truancy mediation program pursuant to subdivision (c).

PENALTIES FOR PARENTS / GUARDIANS

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1. **Education Code, Section 48293(a):** when any parent, guardian, or other person having control or charge of any student fails to compel the student to attend school without an excuse or exemption, they may be assigned penalties that become progressively severe with a second and third conviction:
 - a. First conviction: fine of not more than one hundred dollars (\$100);
 - b. Second conviction: fine of not more than two hundred fifty dollars (\$250);
 - c. Third or subsequent conviction: if willfully refused to comply with this section, by a fine of not more than five hundred dollars (\$500), OR placement in a parent education and counseling program.
 - d. (b) A judgment that a person convicted of an infraction be punished as prescribed in subdivision (a) may also provide for the payment of the fine within a specified time or in specified installments, or for participation in the program. A judgment granting a defendant time to pay the fine or prescribing the days of attendance in a program shall order that if the defendant fails to pay the fine, or any installment thereof, on the date that it is due, or fails to attend a program on a prescribed date, he or she shall appear in court on that date for further proceedings. Willful violation of the order is punishable as contempt.
 - e. (c) The court may also order that the person convicted of the violation of subdivision (a) immediately enroll or reenroll the pupil in the appropriate school or educational program and provide proof of enrollment to the court. Willful violation of an order under this subdivision is punishable as civil contempt with a fine of up to one thousand dollars (\$1,000). An order of contempt under this subdivision shall not include imprisonment.
2. **Penal Code Section 270.1(a):** penalties for a parent or guardian of a pupil of six years of age or more who is in kindergarten or any of the grades from one to eight:
 - a. A parent or guardian of a pupil of six years of age or more who is in K-8 who is subject to compulsory full-time education or compulsory continuation education, whose child is a chronic truant and who has failed to reasonably supervise and encourage the pupil's school attendance, and who has been offered language accessible support services to address the pupil's truancy, is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both.
 - b. (b) A superior court may establish a deferred entry of judgment program.

K-12 STUDENTS RIGHTS (pertinent laws taken from FLTJ “K-12 Students & Parent’s Rights Toolkit”)

First Amendment Right

1. The U.S.¹ and California Constitutions² protect individual’s rights to express themselves freely, to participate in the religion of their choosing, to assemble, and to petition the government to redress their grievances. They prohibit the government from interfering with these rights, by either promoting one religion or opinion over another, or restricting any practice or expression.

¹ U.S. Const. amend. 1

² Cal. Const. art. 1, § 2

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2. In the public elementary school context, the United States Supreme Court has made it clear that public students do not “shed” their First Amendment rights “at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmnty Sch. Distr.* (1969) 393 U.S. 503.
3. In private schools, there is no “state action” because they are not government actors. Therefore, more restrictions can be placed upon students otherwise constitutionally-protected rights.
4. More restrictive measures are permitted for elementary and secondary school students, versus college students, presumably because the latter are more mature and/or do not present the kind of disciplinary problems that educators encounter in grade school and high school.
5. *West Virginia State Board of Ed. v. Barnette* (1943) 319 U.S. 694 (a group of Jehova’s Witnesses challenged the state’s law requiring all public school students to salute the flag and recite the Pledge of Allegiance or otherwise face expulsion as being incompatible with their religious beliefs barring the worship of idols or graven images; USSC agreed in a 6 to 3 decision).
 - a. Justice Robert Jackson treated the flag salute as a form of speech and argued that the government cannot compel citizens to express belief without violating the First Amendment: **“If there is any fixed star in our constitutional constellation it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”**
6. *Tinker v. Des Moines Indep. Cmnty Sch. Distr.* (1969) 393 U.S. 503 (silent armband wearing during school hours in protest of Vietnam War; USSC agreed in a 7-2 vote that the school’s rule violated the students’ and teachers’ First Amendment speech rights).
 - a. Justice Abe Fortas affirmed the freedom that young people have under the Constitution: **“In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students... are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.”**
 - b. He went on to reiterate: **“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”**

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."

School Authority

1. 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.*"
2. 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 someone, committed an obscene act or engaged in habitual profanity or vulgarity, bullied [paraphrased]

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- a. *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.

School Liability

1. Penal Code §273d: Child Abuse: imposing physical injury or **cruel punishment** on a minor under the age of 18. The offense may be filed as a misdemeanor or a felony and is punishable by up to 6 years in jail or prison.
2. 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
3. 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.

Threats School May Make

1. Abandonment: Juvenile Court has jurisdiction over the child if
 - a. **Welf. & Inst. Code 300**: the child is suffering or substantial risk of child suffering or serious non-accidental harm by parent or guardian or from serious emotional damage due to lack of care, harmed from conduct of custodian due to inadequate supervision or willful negligence, subjected to acts of cruelty by parent, guardian, or household member.
 - b. **Welf. & Inst. Code 11165.2**:
 - 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 into family life*, prohibit the use of reasonable methods of discipline, or prescribe a particular method of parenting
2. Failure to Supervise School Attendance
 - a. *Truant* = miss 30 min of school or full days more than 3 times unexcused.
 - i. School must notify parent/guardian w/ specificity about truancy
 - ii. School must report truancy to Superintendent
 - b. *Penalties to Students*:
 - i. **First Offense**: student may be assigned to after school/weekend program.
 1. If student fails program, will be considered habitual truant.
 - ii. **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.
 - iii. **4th offense**: School issues 4 reports - student may be w/in JRX of juvenile court and considered a ward of the state.
 - iv. **Chronic Truant (EC Section 48263.6)**: absent from school without valid excuse for 10%+ of school days in a school year.
 - c. *Penalties to Parents / Guardians (PC 270.1a)*: potential misdemeanor punished by \$2,000 or up to 1 year in prison if did not provide reasonable supervision.
 - i. *Defenses*: did supervise, child was not a chronic truant, coerced confession

Sidenotes

1. Step-by-Step How to Peacefully, Lawfully Protest
2. Resisting Arrest: it is no crime to nonviolently resist unlawful police action. (*In re Michael V.* (1974) 10 Cal.3d 676, 681; *In re Chase C.*, 243 Cal. App. 4th 107, 114); *Wright v. Georgia* (1963) 373 U.S. 284, 291-292; *People v. Curtis* 70 Cal.2d 347 ["one cannot be punished for failing to obey the command . . . if that command is itself violative of the Constitution.""]

Sources:

- **California Constitution**, https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&article=I;
- **U.S. Constitution**, <https://constitution.congress.gov/constitution/>
- **KNOW YOUR RIGHTS: Students Rights**: <https://www.aclu.org/know-your-rights/students-rights/#can-my-school-discipline-me-for-participating-in-a-walkout>
- ***Tinker v. Des Moines Independent Community School District (1969)***, by David L. Hudson, <https://mtsu.edu/first-amendment/article/694/tinker-v-des-moines-independent-community-school-district>;
- ***West Virginia State Board of Education v. Barnette (1943)***, by Kristine Bowman, <https://mtsu.edu/first-amendment/article/227/west-virginia-state-board-of-education-v-barnette>
- ***Bethel School District No. 403 v. Fraser (1986)***, by David L. Hudson, <https://mtsu.edu/first-amendment/article/675/bethel-school-district-no-403-v-fraser>,
- **Attorney General's Truancy Hub**  This web page focuses on the critical importance of addressing truancy in the elementary grades.
- **Attorney General's Truancy Toolkit**  This toolkit describes the collaborative tools used by key partners to keep children in school.
- <https://www.cde.ca.gov/ls/ai/tr/> [as of October 19, 2021]