

Right to Education & to Attend School Free from Discrimination, Harassment, Bullying

1. California children have a **constitutional right** to a free public school education, which includes extracurricular activities that are educational in nature, such as athletic, music, and drama programs
 - a. Cal. Constitution Article IX, Section 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.”
 - b. *Hartzell v. Connell* (1984) 35 Cal. 3d 899, 904–913
2. California children have “the inalienable right to attend campuses which are safe, secure and peaceful.”
 - a. Cal. Const. Article I, Section 28
3. “It is the policy of the State of California to afford all persons in public schools, regardless of their disability ... equal rights, and opportunities in the educational institutions of the state.”
 - a. Education Code, §200
4. “No person shall be subjected to discrimination on the basis of disability ... in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance”
 - a. Education Code, § 220
5. Children have the right to participate “**fully**” in the educational process **free from discrimination and harassment**.
 - a. Education Code, § 201(a)
6. 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**.
 - a. Education Code, § 201(b)
7. Harassment, discrimination, violence, bias-related incidents 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. There is an “urgent need” to prevent and respond to these incidents.
 - a. Education Code, § 201(c)
 - b. Education Code, § 201(d)
8. **The California Legislature has specifically found that:**
 - a. “**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.**”
 - i. Education Code, § 201(e)
 - b. **Each public school must “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.”**
 - i. Education Code, § 201(f)

9. **Every person has a right to full and equal access and accommodations** in all businesses regardless of their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.
 - a. Civil Code § 51: If you are denied access, you can file suit and, if you win, be awarded *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*.
 - b. This applies to *private* schools.
 - c. Courts split on whether applies to public schools.
10. **Everyone has the right to exercise your statutory and constitutional rights without interference.**
 - a. Civil Code, § 52: Where a person “acting under color of law” (e.g. police officer, school board member(s), teacher) interferes in any way with the exercise of these rights, you can sue and, if you win, recover up to \$25,000.00 *against each person for each violation*.
11. **Students have the right to free speech while on campus**, unless it is obscene, libelous, slanderous, incites “a clear and present danger of the commission of unlawful acts,” or “causes a substantial disruption of the orderly operation of the school.” In fact, schools *must* actually adopt written rules that provide “reasonable provisions for the time, place, and manner of conducting such activities within its respective jurisdiction.”
 - a. Education Code, §48907 (a), (b)
 - b. Peaceful protest is *not* an unlawful act; HOWEVER, schools are arguing that the protests are causing a “substantial disruption of the orderly operation of the school,” meaning they can prevent the speech / protest.
12. **A school cannot dismiss, suspend, discipline, reassign, transfer, or otherwise retaliate against an employee for protecting a pupil engaged in freedom of expression (speech, press), or for refusing to infringe upon such conduct.**
 - i. Ed. Code, §48907(g)
 - ii. Get teachers on board with supporting children exercising their First Am rights to free speech.
13. **Students have the right to use phones on campus** “in response to a perceived threat or danger,” in the case of an emergency, when the school grants the student permission, when use is necessary for the health, well-being, or education of the student.
 - a. Education Code, §48901.7
14. **No one can use an “electronic listening or recording device” in a classroom without prior consent of the teacher and principal.**
 - a. Students will be subjected to “**appropriate disciplinary action.**”
 - b. Anyone else **will be guilty of a misdemeanor.**
 - c. Education Code, §51512
 - i. NOTE: N/A *outside* of the classroom.

School Board Obligations and Powers

15. School Boards may initiate 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.**”

- a. Education Code, § 35160
16. School Boards must “give diligent care to the health and physical development of pupils, and may employ properly certified persons for the work.”
 - a. Education Code, § 49400
17. School Boards must cooperate with the local health officer “in measures necessary for the prevention and control of communicable diseases in schoolage children,” including administering an “immunizing agent to a pupil *whose parent or guardian has consented in writing to the administration of the immunizing agent*”
 - a. Education Code, § 49403
 - b. NOTE: YOU MUST CONSENT
 - i. Please see [FLTJ Notice of Rescission of Consent](#) to ensure you are only consenting to necessary medical treatment *unrelated* to CV19 masking, testing, quarantining, contact tracing, or injection measures.
18. **Every school district in California must have a masking policy.**
 - a. *Let Them Breathe v. Newsom*, San Diego Super. Ct., Case No. 37-2021-00031385- CU-WM-NC
 - b. *What that policy looks like is up to each individual school district.*
 - c. *Whether that policy is enforced is up to the individual school district.*
19. **School districts can enforce their masking policy by excluding students from in-person instruction.**
 - a. *Let Them Breathe v. Newsom*, San Diego Super. Ct., Case No. 37-2021-00031385- CU-WM-NC
 - b. HOWEVER schools can NOT force children into independent study.
20. **Children cannot be forced to enroll in an independent study program, must still have access to all the same services and resources as students attending school in-person, and can return to in-person learning at any time.**
 - a. Education Code, § 51747 (f)(8): “independent study is an *optional educational alternative* in which *no pupil may be required to participate.*”
 - b. Education Code, § 51747(h)(2): Enrollment can occur only if there is a “pupil-parent-educator conference” to determine whether enrollment in independent study is in the best interest of the child and
 - c. Education Code, § 51747(f)(9)(F) “a signed written agreement for independent study from the pupil, or the pupil’s parent or legal guardian if the pupil is less than 18 years of age”.
 - d. Education Code, § 51746: a child who voluntarily enrolls in a distance learning or independent study program “*shall ensure the same access* to all existing services and resources in the school in which the pupil is enrolled ... *as is available to all other pupils in the school.*”
 - e. Education Code, § 51747(f): the school must “*transition pupils whose families wish to return to in-person instruction from independent study expeditiously*, and, in no case, later than five instructional days.”
21. **School boards do not have to have a testing or quarantine policy. These are recommended by the CDPH, not mandated.**
 - a. *Let Them Breathe v. Newsom*, Case No. 37-2021- 00031385- CU-WM-NC
 - b. <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/K-12-Guidance-2021-22-School-Year.aspx>

When Can a Child Be Excluded?

22. Exclusion

- a. A school may *exclude* a student without notice if the principal or his / her designee determines that the student poses a “clear and present danger” to the life, safety, or health of a pupil or school personnel.
 - i. Education Code, § 48213
 - ii. “Clear and present danger” requires an *objective finding* that *facts* exist demonstrating the danger. *A happy, healthy smiling child, excited to go to school is not a clear and present danger.*
- b. A School *may* send your child home if there is “good reason to believe” that the child is suffering from a recognized contagious or infectious disease and can keep him / her home until “satisfied” the disease is gone.
 - i. Education Code, § 49451
 - ii. What is “good cause to believe”??

23. Suspension:

- a. The Superintendent or principal may *not* suspend or recommend for expulsion a student *unless* S/P *determines* that the student [paraphrased] brought guns or drugs or drug paraphernalia to school, robbed, destroyed school property, hazed, assaulted someone, committed an obscene act, engaged in habitual profanity or vulgarity, bullied, made a terrorist threat, hate crime, sexually harassed, and/or aided in abetting in the above.
 - i. Education Code, § 48900 (a)-(j), (l)-(w)
- b. Children in grades K-8 can *not* be suspended for “disruption.”
 - i. Education Code, § 48900(k)(3), (4)
- c. No child K-12 can be *expelled* for “disruption”
 - i. Education Code, §48900(k)(2)
- d. Can only be suspended if “other means of correction” fail.
 - i. Education Code, § 48900.5
 - ii. “Other means of correction” include
 1. A conference between the school and guardians;
 2. Referral to counselor, social worker, support services;
 3. Study teams / support;
 4. IEP evaluation and services;
 5. Prosocial behavior or anger management training;
 6. Restorative justice program;
 7. Positive behavior support approach with tiered interventions that occur during the schoolday on campus.
- e. **Cannot be suspended for more than 20 days in a school year.**
 - i. Education Code, §48903
 - ii. Unless transferred from another school / district, in which case cannot be suspended for more than 30 days in a school year.
- f. **Cannot suspend for more than 5 schooldays in a row.**
 - i. Education Code, §48911

24. Expulsion

- a. A child cannot be expelled from school without a full hearing before the School Board, which must be appealable to the County Board of Education (due process).

- i. Education Code, § 48918
 - ii. Education Code, § 48919
 - b. No child K-12 can be *expelled* for “disruption”
 - i. Education Code, §48900(k)(2)
- 25. **Charter Schools:** see
 - a. Education Code, §§48901.1

Parent & Student Liability for Willful Misconduct

26. Financial Liability for Damages

- a. Parents are liable for the willful misconduct of their children in an amount not to exceed \$10,000.00.
- b. If the student willfully damages school property, the school may withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil’s parent or guardian has paid for the damages thereto, after notifying the student and parent of their intent to do that.
- c. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of the voluntary work, the grades, diploma, and transcripts of the pupil shall be released.
 - i. Education Code, §48904

27. Failure to Supervise School Attendance

- a. Truant = miss 30 min of school more than 3 times unexcused.
 - i. School must notify parent/guardian w/ specificity about truancy
 - ii. School must report truancy to Superintendent
- b. Penalties
 - i. *2nd 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*: absent from school without valid excuse for 10%+ of school days in a school year.
 - 1. Education Code, § 48263.6
- c. A parent / guardian may be charged with a misdemeanor if s/he does not provide reasonable supervision of a 1-8 grader’s school attendance.
 - i. *Penalty*: \$2,000 or up to 1 year in prison.
 - ii. *Defenses*: reasonable supervision, child was not a chronic truant, coerced confession

28. 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

School Liability

29. 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
30. 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.
31. 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
32. 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.
33. 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.”

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)