

Introduced by Senator Skinner

February 1, 2023

An act to amend Section 48900 of, and to repeal and add Section 48901.1 of, the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

SB 274, as amended, Skinner. Suspensions and expulsions: willful defiance.

(1) Existing law prohibits a pupil from being suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed ~~a specified act~~, *an act from a list of specified acts*, including, among other acts, disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. *Existing law authorizes a teacher to suspend any pupil from class for any of the listed acts, including willful defiance, for the day of the suspension and the day following.*

Existing law prohibits the suspension of a pupil enrolled in kindergarten or any of grades 1 to 5, inclusive, and recommending the expulsion of a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, for disrupting school activities or otherwise willfully defying the valid authority of those school personnel engaged in the performance of their duties. Existing law, until July 1, 2025, prohibits the suspension of a pupil enrolled in any of grades 6 to 8, inclusive, for those acts. Existing law applies these same provisions to charter schools.

This bill would ~~remove~~ *extend the prohibition against the suspension of pupils, including pupils enrolled in a charter school, for disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties from the list of acts for which a pupil, regardless of their grade of enrollment, may be suspended or recommended for expulsion. The bill would extend the prohibition against the suspension of charter school pupils for those acts to all grades, indefinitely.* *to all grades, indefinitely, but would retain a teacher's existing authorization to suspend any pupil from class for any of the listed acts, including willful defiance, for the day of the suspension and the day following, as provided.*

(2) Existing law states the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.

This bill would instead prohibit a suspension or expulsion from being imposed against a pupil based solely on the fact that they are otherwise absent from school activities.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) For more than a decade, the Supreme Court, in *Miller v.*
- 4 *Alabama*, 567 U.S. 460 (2012), and supported by neuroscience
- 5 research, has recognized that young people are different and,
- 6 because of the hallmark features of youth, such as “immaturity,
- 7 impetuosity, and failure to appreciate risks and consequences,”
- 8 are both not as culpable as older people and capable of remarkable
- 9 change.
- 10 (b) Reflecting this reality and emerging science, California law
- 11 concerning youth, their development, and punishment for their
- 12 behaviors has been evolving.
- 13 (c) In 2014, Assembly Bill 420 of the 2013–14 Regular Session,
- 14 authored by Assembly Member Roger Dickinson, was passed and
- 15 signed by Governor Jerry Brown, eliminating willful defiance as
- 16 a reason to suspend or expel pupils enrolled in grades 1 to 3,
- 17 inclusive.

1 (d) In 2019, Senate Bill 419 of the 2019–20 Regular Session,
2 authored by Senator Nancy Skinner, was passed and signed by
3 Governor Gavin Newsom, removing a sunset provision for the
4 prohibition against willful defiance suspensions for 4th and 5th
5 grade pupils and expanding the prohibition to middle school pupils,
6 with a sunset provision for July 1, 2025.

7 (e) Removing the opportunity for a pupil to be suspended from
8 school for a behavior deemed willfully defiant has a
9 disproportionately beneficial impact on Black pupils. According
10 to a publication from the California School Board Association,
11 California’s Black pupils are suspended at a far higher rate than
12 their peers.

13 (f) Research confirms that pupils of color, pupils who are
14 homeless, pupils with disabilities, pupils in foster care, and
15 LGBTQIA+ pupils are more likely to be suspended for behavior
16 deemed to be a willfully defiant offense even when harmless.

17 (g) A 2018 study conducted by professors from University of
18 California, Los Angeles, and San Diego State University shows
19 willful defiance suspensions represent 15 percent of all suspensions
20 in grades 4 to 12, inclusive, and 21 percent in grades 7 and 8,
21 among Black male pupils.

22 (h) Suspending pupils can significantly harm children, leading
23 to learning loss, missed school meals, and have countless other
24 harmful social and material consequences.

25 (i) School suspensions can also result in substantial economic
26 and social costs for families, including other children in the
27 household, their employers, and their communities.

28 (j) Suspended or expelled pupils are five times more likely to
29 drop out of school and to fall into the so-called school-to-prison
30 pipeline, costing the state an estimated \$46,000,000,000 per year.

31 (k) United States Secretary of Education Miguel Cardona was
32 quoted in an Education Week article stating, “All students deserve
33 access to safe, supportive schools and classrooms. Discrimination
34 and use of exclusionary discipline can negatively impact students’
35 abilities to learn, grow and thrive... We’re seeking information so
36 that the Department can help schools and educators confront
37 disparities and create inclusive school environments that set all
38 students up for success.”

39 (l) Ending willful defiance suspensions for all public school
40 children recognizes the unique developmental vulnerabilities of

1 youth, especially youth of color, and supports a school environment
2 where every child has the opportunity to succeed.

3 SEC. 2. Section 48900 of the Education Code is amended to
4 read:

5 48900. A pupil shall not be suspended from school or
6 recommended for expulsion, unless the superintendent of the school
7 district or the principal of the school in which the pupil is enrolled
8 determines that the pupil has committed an act as defined pursuant
9 to any of subdivisions (a) to (r), inclusive:

10 (a) (1) Caused, attempted to cause, or threatened to cause
11 physical injury to another person.

12 (2) Willfully used force or violence upon the person of another,
13 except in self-defense.

14 (b) Possessed, sold, or otherwise furnished a firearm, knife,
15 explosive, or other dangerous object, unless, in the case of
16 possession of an object of this type, the pupil had obtained written
17 permission to possess the item from a certificated school employee,
18 which is concurred in by the principal or the designee of the
19 principal.

20 (c) Unlawfully possessed, used, sold, or otherwise furnished,
21 or been under the influence of, a controlled substance listed in
22 Chapter 2 (commencing with Section 11053) of Division 10 of the
23 Health and Safety Code, an alcoholic beverage, or an intoxicant
24 of any kind.

25 (d) Unlawfully offered, arranged, or negotiated to sell a
26 controlled substance listed in Chapter 2 (commencing with Section
27 11053) of Division 10 of the Health and Safety Code, an alcoholic
28 beverage, or an intoxicant of any kind, and either sold, delivered,
29 or otherwise furnished to a person another liquid, substance, or
30 material and represented the liquid, substance, or material as a
31 controlled substance, alcoholic beverage, or intoxicant.

32 (e) Committed or attempted to commit robbery or extortion.

33 (f) Caused or attempted to cause damage to school property or
34 private property.

35 (g) Stole or attempted to steal school property or private
36 property.

37 (h) Possessed or used tobacco, or products containing tobacco
38 or nicotine products, including, but not limited to, cigarettes, cigars,
39 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew

1 packets, and betel. However, this section does not prohibit the use
2 or possession by a pupil of the pupil's own prescription products.

3 (i) Committed an obscene act or engaged in habitual profanity
4 or vulgarity.

5 (j) Unlawfully possessed or unlawfully offered, arranged, or
6 negotiated to sell drug paraphernalia, as defined in Section 11014.5
7 of the Health and Safety Code.

8 ~~(k) [Reserved]~~

9 (k) *(1) Disrupted school activities or otherwise willfully defied*
10 *the valid authority of supervisors, teachers, administrators, school*
11 *officials, or other school personnel engaged in the performance*
12 *of their duties.*

13 *(2) Except as provided in Section 48910, a pupil enrolled in*
14 *kindergarten or any of grades 1 to 12, inclusive, shall not be*
15 *suspended for any of the acts enumerated in paragraph (1), and*
16 *those acts shall not constitute grounds for a pupil enrolled in*
17 *kindergarten or any of grades 1 to 12, inclusive, to be*
18 *recommended for expulsion.*

19 (l) Knowingly received stolen school property or private
20 property.

21 (m) Possessed an imitation firearm. As used in this section,
22 "imitation firearm" means a replica of a firearm that is so
23 substantially similar in physical properties to an existing firearm
24 as to lead a reasonable person to conclude that the replica is a
25 firearm.

26 (n) Committed or attempted to commit a sexual assault as
27 defined in Section 261, 266c, 286, 287, 288, or 289 of, or former
28 Section 288a of, the Penal Code or committed a sexual battery as
29 defined in Section 243.4 of the Penal Code.

30 (o) Harassed, threatened, or intimidated a pupil who is a
31 complaining witness or a witness in a school disciplinary
32 proceeding for purposes of either preventing that pupil from being
33 a witness or retaliating against that pupil for being a witness, or
34 both.

35 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
36 sold the prescription drug Soma.

37 (q) Engaged in, or attempted to engage in, hazing. For purposes
38 of this subdivision, "hazing" means a method of initiation or
39 preinitiation into a pupil organization or body, whether or not the
40 organization or body is officially recognized by an educational

1 institution, that is likely to cause serious bodily injury or personal
2 degradation or disgrace resulting in physical or mental harm to a
3 former, current, or prospective pupil. For purposes of this
4 subdivision, “hazing” does not include athletic events or
5 school-sanctioned events.

6 (r) Engaged in an act of bullying. For purposes of this
7 subdivision, the following terms have the following meanings:

8 (1) “Bullying” means any severe or pervasive physical or verbal
9 act or conduct, including communications made in writing or by
10 means of an electronic act, and including one or more acts
11 committed by a pupil or group of pupils as defined in Section
12 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
13 that has or can be reasonably predicted to have the effect of one
14 or more of the following:

15 (A) Placing a reasonable pupil or pupils in fear of harm to that
16 pupil’s or those pupils’ person or property.

17 (B) Causing a reasonable pupil to experience a substantially
18 detrimental effect on the pupil’s physical or mental health.

19 (C) Causing a reasonable pupil to experience substantial
20 interference with the pupil’s academic performance.

21 (D) Causing a reasonable pupil to experience substantial
22 interference with the pupil’s ability to participate in or benefit from
23 the services, activities, or privileges provided by a school.

24 (2) (A) “Electronic act” means the creation or transmission
25 originated on or off the schoolsite, by means of an electronic
26 device, including, but not limited to, a telephone, wireless
27 telephone, or other wireless communication device, computer, or
28 pager, of a communication, including, but not limited to, any of
29 the following:

30 (i) A message, text, sound, video, or image.

31 (ii) A post on a social network internet website, including, but
32 not limited to:

33 (I) Posting to or creating a burn page. “Burn page” means an
34 internet website created for the purpose of having one or more of
35 the effects listed in paragraph (1).

36 (II) Creating a credible impersonation of another actual pupil
37 for the purpose of having one or more of the effects listed in
38 paragraph (1). “Credible impersonation” means to knowingly and
39 without consent impersonate a pupil for the purpose of bullying
40 the pupil and such that another pupil would reasonably believe, or

1 has reasonably believed, that the pupil was or is the pupil who was
2 impersonated.

3 (III) Creating a false profile for the purpose of having one or
4 more of the effects listed in paragraph (1). “False profile” means
5 a profile of a fictitious pupil or a profile using the likeness or
6 attributes of an actual pupil other than the pupil who created the
7 false profile.

8 (iii) (I) An act of cyber sexual bullying.

9 (II) For purposes of this clause, “cyber sexual bullying” means
10 the dissemination of, or the solicitation or incitement to
11 disseminate, a photograph or other visual recording by a pupil to
12 another pupil or to school personnel by means of an electronic act
13 that has or can be reasonably predicted to have one or more of the
14 effects described in subparagraphs (A) to (D), inclusive, of
15 paragraph (1). A photograph or other visual recording, as described
16 in this subclause, shall include the depiction of a nude, semi-nude,
17 or sexually explicit photograph or other visual recording of a minor
18 where the minor is identifiable from the photograph, visual
19 recording, or other electronic act.

20 (III) For purposes of this clause, “cyber sexual bullying” does
21 not include a depiction, portrayal, or image that has any serious
22 literary, artistic, educational, political, or scientific value or that
23 involves athletic events or school-sanctioned activities.

24 (B) Notwithstanding paragraph (1) and subparagraph (A), an
25 electronic act shall not constitute pervasive conduct solely on the
26 basis that it has been transmitted on the internet or is currently
27 posted on the internet.

28 (3) “Reasonable pupil” means a pupil, including, but not limited
29 to, a pupil with exceptional needs, who exercises average care,
30 skill, and judgment in conduct for a person of that age, or for a
31 person of that age with the pupil’s exceptional needs.

32 (s) A pupil shall not be suspended or expelled for any of the
33 acts enumerated in this section unless the act is related to a school
34 activity or school attendance occurring within a school under the
35 jurisdiction of the superintendent of the school district or principal
36 or occurring within any other school district. A pupil may be
37 suspended or expelled for acts that are enumerated in this section
38 and related to a school activity or school attendance that occur at
39 any time, including, but not limited to, any of the following:

40 (1) While on school grounds.

1 (2) While going to or coming from school.

2 (3) During the lunch period whether on or off the campus.

3 (4) During, or while going to or coming from, a
4 school-sponsored activity.

5 (t) A pupil who aids or abets, as defined in Section 31 of the
6 Penal Code, the infliction or attempted infliction of physical injury
7 to another person may be subject to suspension, but not expulsion,
8 pursuant to this section, except that a pupil who has been adjudged
9 by a juvenile court to have committed, as an aider and abettor, a
10 crime of physical violence in which the victim suffered great bodily
11 injury or serious bodily injury shall be subject to discipline pursuant
12 to subdivision (a).

13 (u) As used in this section, “school property” includes, but is
14 not limited to, electronic files and databases.

15 (v) For a pupil subject to discipline under this section, a
16 superintendent of the school district or principal is encouraged to
17 provide alternatives to suspension or expulsion, using a
18 research-based framework with strategies that improve behavioral
19 and academic outcomes, that are age appropriate and designed to
20 address and correct the pupil’s specific misbehavior as specified
21 in Section 48900.5.

22 (w) (1) A suspension or expulsion shall not be imposed against
23 a pupil based solely on the fact that they are truant, tardy, or
24 otherwise absent from school activities.

25 (2) It is the intent of the Legislature that the Multi-Tiered System
26 of Supports, which includes restorative justice practices,
27 trauma-informed practices, social and emotional learning, and
28 schoolwide positive behavior interventions and support, be used
29 to help pupils gain critical social and emotional skills, receive
30 support to help transform trauma-related responses, understand
31 the impact of their actions, and develop meaningful methods for
32 repairing harm to the school community.

33 SEC. 3. Section 48901.1 of the Education Code is repealed.

34 SEC. 4. Section 48901.1 is added to the Education Code, to
35 read:

36 48901.1. Notwithstanding Section 47610 or any other law, a
37 pupil enrolled in a charter school in kindergarten or any of grades
38 1 to 12, inclusive, shall not be suspended ~~or recommended for~~
39 ~~expulsion~~ on the basis of having disrupted school activities or
40 otherwise willfully defied the valid authority of supervisors,

1 teachers, administrators, school officials, or other school personnel
2 engaged in the performance of their ~~duties~~. *duties, and those acts*
3 *shall not constitute grounds for a pupil enrolled in a charter school*
4 *in kindergarten or any of grades 1 to 12, inclusive, to be*
5 *recommended for expulsion.*

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