

# Alternatives to student suspension

The Education Code provides a variety of disciplinary alternatives to student suspension, which should be used only as a last resort.

Seven years ago, James A. Garfield High School in East Los Angeles set a school record with 613 student suspensions, out of a total enrollment of 5,000 students. The school, made famous by the 1988 film *Stand and Deliver*, was no stranger to the high rates of student discipline all too common within the Los Angeles Unified School District. However, by the 2004-2005 school year, it had become clear to school officials that the proliferation of suspensions was having little, if any, positive impact on student conduct and simply resulted in more students missing a greater number of instructional days.

Officials at Garfield High knew things had to change. But how? The answer, as it turned out, was in the various disciplinary tools and discretion afforded to school officials by the California Education Code.

Of Garfield High's 613 student suspensions during the 2004-2005 school year, only one-third were for acts of violence or drug offenses. The rest were for conduct

ranging from smoking to vandalizing school property to sleeping in class. Acknowledging that they had been applying a "quick-trigger" approach to suspensions, school officials transitioned to a progressive discipline philosophy in order to cut down on the number of suspensions. This included employing alternative methods of discipline such as apology letters, sending students to the principal's office during lunch, and greater parental involvement in the disciplinary process.

Garfield High administrators and staff were able to use these and other disciplinary alternatives in lieu of suspension because of the substantial discretion afforded to them by the Education Code. Of course, progressive discipline didn't always work and students who engaged in serious or habitual misconduct were still subject to suspension or expulsion, but gradually, and with

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By David Robinett

dogged commitment to this new approach, the number of student suspensions at Garfield High began to decline each year. Incredibly, for the 2010-2011 school year, Garfield High reported just a single suspension.

While Garfield High's achievement has been roundly praised, there is an understandable temptation to dismiss its success as an anomaly or impractical to duplicate. However, what may be most significant in understanding how Garfield High went from 613 suspensions to one suspension is that school officials didn't invent a novel approach to student discipline or introduce ideas that had never been tried. Garfield High simply used the tools and discretion that had always been available to them in the Education Code.

### **Student suspension, generally**

Existing law is designed to make the removal of a student from his or her school a last resort in many instances. As a result, the Education Code provides a variety of disciplinary alternatives and significant discretion to school officials to avoid suspension. In fact, for many types of misconduct, suspension of a student for a first offense is actually prohibited. Education Code section 48900.5 provides in part that "suspension shall be imposed only when other means of correction fail to bring about the proper conduct."

Of course, there are exceptions for more serious offenses, particularly violent acts and drug offenses, or if the student is a danger to others or a threat to the instructional process. Notwithstanding these exceptions, for "routine" misconduct such as vandalism, disrupting class, profanity and smoking, to name a few, the Education Code discourages removal from school. This reflects a broader legislative intent that students be given a chance to improve their conduct before imposing suspension.

This intent is also reflected in Education Code section 48900(v), which authorizes school officials to use different methods of correction before resorting to suspension or expulsion for most types of misconduct: "A superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion, in-

cluding, but not limited to, counseling and an anger management program, for a pupil subject to discipline under this section."

These provisions are not meant to prevent the use of suspension, or even expulsion when appropriate, but rather to discourage removal of a pupil from his or her school unless absolutely necessary.

In the three school years prior to and

correction have been adequately employed.

This presumption that many students are being suspended prematurely is one shared by a growing number of state lawmakers. In response to a series of high profile studies and renewed attention to student discipline, several bills have been proposed this year that are designed to encourage disciplinary alternatives to suspension



### **A logical conclusion is that many students engaged in non-violent, non-drug offenses are being suspended for the first offense.**

including 2010-2011, California schools imposed 2.2 million suspensions, averaging approximately 750,000 suspensions each year. Of those 2.2 million suspensions, slightly more than half (56 percent) were for acts of violence or drug offenses, leaving nearly one million suspensions for non-violent, non-drug offenses.

This raises the question of why so many suspensions for conduct that does not threaten the safety of others or seriously disrupt the operation of the schools. Undoubtedly, many of these suspensions were for repeat offenses, but a logical conclusion is that many students engaged in non-violent, non-drug offenses are being suspended for the first offense or before other means of

and expulsion. Notable among these is Assembly Bill 1729, introduced by Assemblyman Tom Ammiano, which proposes to strengthen the existing law requiring that suspensions for most offenses be imposed only after other means of correction have failed to bring about proper conduct. It also expands the list of examples of other means of correction and requires documentation of those other means before a student may be suspended.

Similarly, Assembly Bill 2242, introduced by Assemblyman Roger Dickinson, is designed to discourage suspensions for routine misconduct. AB 2242 aims to amend the law that currently lists "willful defiance" as one of the types of misconduct for which a student can be suspended. In its analysis of AB 2242, the Legislature cites research by Assemblyman Dickinson that approximately 42 percent of suspensions in California are based on the charge of "willful defiance," which, when coupled with a failure to adequately employ other means of

correction, is believed to be largely responsible for the high number of student suspensions.

These are just some examples of a concerted effort by lawmakers to address student discipline (particularly the disproportionate application of student discipline among certain demographics) as well as the perceived underutilization by schools of disciplinary alternatives provided for in the Education Code.

### Alternatives to suspension

The law encourages creativity by school officials in employing disciplinary alternatives to suspension, subject to the legal parameters set forth in the Education Code. The Legislature has also expressly set forth some specific disciplinary alternatives in the Education Code. These include:

#### 1. Community service

California law permits school districts to require students to perform community service as a form of discipline, both as

an alternative to suspension or as part of a student's suspension order. Education Code section 48900.6 authorizes a school district to require students to perform community service on campus without parent consent and off campus with parent consent.

Further, the law authorizes a surprisingly broad range of activities that qualify as community service, both on or off campus. Section 48900.6 provides that: "For the purposes of this section, 'community service' may include, but is not limited to, work performed in the community or on school grounds in the areas of outdoor beautification, community or campus betterment, and teacher, peer, or youth assistance programs."

Accordingly, school districts have generous latitude in determining what constitutes appropriate community service, from cleaning up graffiti on the weekends to volunteering at a the local Boys and Girls Club.

The rationale for Section 48900.6 is described in its legislative history: "[C]ommunity service offers a much more produc-

tive and appropriate punishment in some cases than does suspension or expulsion. Campus community service would keep students in the school environment and teach them respect for school property, while providing a valuable service to the campus."

Although the amount of community service should be reasonable in relation to the offense, there is no restriction on the amount of community service that can be assigned. There are, however, restrictions on assigning community service to students engaged in more serious misconduct.


#### 2. Requiring parents to attend class

As a deterrent to bad behavior, there are likely few methods more effective (or mortifying) than having a child's parent join him or her as a lab partner in chemistry. But surprisingly, this is one of the most underutilized disciplinary alternatives authorized by the Education Code. Generally, a parent can sit in on his or her child's class voluntarily with the consent of school officials. But Education Code section 48900.1 authorizes a teacher to require a parent to attend class with his or her child as a disciplinary alternative to out-of-school suspension, under the following conditions:

- The student must have been suspended from class by the teacher (distinguishable from an administrator-authorized suspension from school);
- The suspension from class must be for a violation of either Education Code section 48900(i) (obscene act or habitual profanity or vulgarity) or 48900(k) (disruption or willful defiance); and
- Prior notice of this policy must be given to parents before implementation.

Presumably, one reason this option is not employed more often is the perceived inconvenience to the child's parents – particularly the desire not to get either parent in trouble with his or her employer. However, consistent with the Legislature's intent to encourage alternatives to suspension, lawmakers have gone to great lengths to protect parents who are required to attend class with their child.

Specifically, California Labor Code section 230.7 prohibits an employer from ter-



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minating or “in any manner discriminating against an employee who is the parent or guardian of a pupil for taking time off to appear in the school of a pupil pursuant to a request made under Section 48900.1 of the Education Code.” Section 230.7 authorizes reimbursement for lost wages and work benefits as well as reinstatement if a parent was terminated by the employer. Like the community service option, there is no limit to the number of times this provision can be used, although Section 48900.1 requires safeguards in the policy to take into account “reasonable factors that may prevent compliance with a notice to attend.”

### 3. Temporary removal from class

Education Code section 48925(d)(3) authorizes teachers to remove a misbehaving child from class for the remainder of the class period. This can be an effective disciplinary alternative for students being disruptive or who just need a “time out,” in lieu of a referral for suspension for “willful defiance.” Section 48925(d)(3) limits the use of this disciplinary method to no more than “once every five schooldays.”

Although the authorizing statute seemingly provides few restrictions for its use, there is one ambiguity in the law that should be considered prior to employing temporary removal. A separate statute, Education Code section 46300(a) requires that students be supervised by a certificated employee during instructional time in order for the school district to collect average daily attendance apportionment.

The temporary removal statute, Section 48925(d)(3) doesn’t specify whether a student removed under that authorization must continue to be supervised by a certificated employee. Therefore, schools may wish to ensure that students temporarily removed from class are supervised by a certificated employee for “silent reading time” or similar for the remainder of the class period when temporarily removed from class.

### 4. Other means of correction

Above are just some examples of disciplinary alternatives to suspension. Other disciplinary measures commonly used or specified in the Education Code that are

designed to keep the pupil in school include limiting recess (Education Code §44807.5), detention, and in-school suspension (Education Code §48911.1). Lawmakers are also trying to encourage use of a greater variety of disciplinary alternatives to suspension. At press time, the aforementioned AB 1729 proposed to enumerate several more examples of appropriate alternatives to suspension in the Education Code, including:

- Referrals for psychosocial or psycho-educational assessment;
- The use of study teams, guidance teams, resource panel teams, or other intervention-related teams to address and respond to pupil behavior;
- Development and use of behavioral support plans;
- Use of appropriate after-school programs.

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Most, if not all, of these alternatives to suspension can currently be employed pursuant to the discretion afforded school officials by the Education Code. However, by specifically listing them in statute, lawmakers aim to eliminate doubt as to the legality of such measures and encourage their use when appropriate.

### Looking forward

There is no one-size-fits-all approach to student discipline. At times, removing a student from campus by suspension or expulsion is a necessary and appropriate response to dangerous or habitual misconduct. However, there are other times when the more effective response may be to allow the student to remain on campus while using other methods to correct his or her behavior. The best way to ensure that school officials utilize the ideal disciplinary response in any particular situation is to have

a thorough understanding of all of the tools the Education Code provides to address student misconduct.

Garfield High School is an example of what can be accomplished when school officials take advantage of the full range of disciplinary tools and discretion afforded to them by the Education Code. Perhaps not every school can reduce its suspension rate so dramatically, but it stands to reason that if schools start employing these tools to their full advantage, instead of 2.2 million suspensions, in the next three years California could see a figure significantly lower, to the benefit of both its schools and its students. ■

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