
Two New Laws Related to Student Discipline Promote Recess and Restorative Justice Practices

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Earlier this year, Governor Gavin Newsom signed two bills into law, both of which concern how school districts impose student discipline. Assembly Bill (AB) 1165 amends Education Code section 48900.5 to add provisions that encourage school staff to engage the victim and perpetrator of racist bullying, harassment, or intimidation, in a restorative justice practice that meets the needs of both students. Senate Bill (SB) 291, which will be enacted as Education Code section 49056, prohibits elementary school staff from restricting a student’s access to recess for disciplinary reasons, with a limited exception. Both AB 1165 and SB 291 go into effect on January 1, 2024.

Assembly Bill 1165 – Restorative Justice Practice

Pursuant to Section 48900.5(a), a student can only be suspended from school or recommended for expulsion if other means of correction, including, among other potential measures, participation in a restorative justice program, fail to bring about appropriate conduct. Nevertheless, a student may be suspended for a first-time offense in certain, enumerated circumstances. AB 1165 does not directly alter this paradigm; rather, it raises additional opportunities for local educational agencies (LEAs) to implement and engage in restorative justice practices.

AB 1165 specifically comes into play when a student commits an act of racist bullying, harassment, or intimidation against another student. Regardless of whether the LEA suspended the perpetrator or implemented other means of correction, AB 1165 encourages LEAs to take the following steps:

- (1) “to have both the victim and perpetrator engage in a restorative justice practice that is found to suit the needs of both the victim and the perpetrator;”
- (2) to “regularly check on” the victim to ensure that he or she is not in danger of suffering long-lasting mental health consequences; and
- (3) to require the perpetrator “to engage in culturally sensitive programs that promote racial justice and equity and combat racism and ignorance.”

Senate Bill 291 – Recess

Under existing law, Education Code section 44807.5 permits a school district to adopt reasonable rules and regulations authorizing a teacher to restrict a student’s access to recess as a disciplinary measure. With the enactment of SB 291, however, section 44807.5 is repealed.

Beginning in the 2024-2025 school year, elementary school staff can no longer deny a student recess unless the student’s participation “poses an immediate threat to the physical safety” of the student or the student’s peers. If a student’s recess period is denied because a threat exists, school staff must then “make all reasonable efforts to resolve such threats and minimize exclusion from recess to the greatest extent practicable.” The statute encourages the use of other means of correction, as outlined in Education Code section 48900.5(b).

Beyond disciplinary considerations, SB 291 defines new rights for K-8 students related to recess. Recess is defined as a period during the school day when students are given supervised but unstructured time to engage in physical activity, play, organized games, or social engagement with peers. SB 291 requires public schools to schedule recess for at least 30 minutes on regular instructional days and at least 15 minutes on early release days, which may be divided into one or more periods. However, schools are exempted from allotting recess on days dedicated to field trips or other educational programs. In addition, SB 291 mandates that recess be outside, weather, air quality, and space permitting.

Takeaways

AB 1165 and SB 291 both provide alternatives to more punitive disciplinary measures against students. While both bills become law on January 1, 2024, note that the provisions of SB 291 actually go into effect for the 2024-25 school year.

AB 1165 seeks to promote healing and learning through the restorative justice process. The ultimate goal—to protect students and address the root causes of racist bullying—falls in line with existing efforts by school districts to ensure that schools serve as safe spaces for students of all races and ethnicities. Among the resulting tasks for school staff will be to evaluate and ascertain restorative justice practices suitable for both the victim and the perpetrator. Interestingly, AB 1165 only encourages, rather than outright requires, restorative justice measures following incidents of bullying, harassment, or intimidation.

For its part, SB 291 explicitly prohibits the use of recess restriction as discipline, unless an immediate safety threat exists. Prompted by pandemic-era educational disruptions, the new law aims to counteract the detrimental social-emotional impacts wrought on children during the pandemic by prioritizing the unstructured play and peer-to-peer social interactions that recess facilitates. Note that SB 291 is silent as to what information suffices to establish “an immediate threat of safety” warranting recess restriction.

If you have questions about Senate Bill SB 291 and Assembly Bill (AB) 1165 compliance with state law, please contact the authors of this News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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