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State of California

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OPINION	:	No. 79-505
	:	
of	:	<u>August 1, 1979</u>
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SUBJECT: ATTENDANCE OF PRINCIPAL AT INFORMAL CONFERENCE—Where the principal is present at school, he or she must attend the informal conference held prior to suspending a pupil from school pursuant to Education Code section 48903.

Alan K. Marks, County Counsel, San Bernardino County, has requested an opinion on the following question:

Where the principal is present at school, must the principal be in attendance at the informal conference conducted prior to suspension of a pupil from school?

CONCLUSION

Where the principal is present at school, he or she must attend the informal conference held prior to suspending a pupil from school pursuant to Education Code section 48903.

ANALYSIS

In Goss v. Lopez (1975) 419 U.S. 565, 572–584, the United States Supreme Court

concluded that a pupil facing suspension from school is, under the Due Process Clause of the Fourteenth Amendment, ordinarily entitled to notice and a hearing before being suspended. The court stated the minimum requirements as follows:

“[D]ue process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.” (*Id.*, at p. 581.)

In its discussion of the process due the pupil who faces a suspension, the court clearly contemplated that it would be the person imposing the discipline who would hear the student’s side of the matter before disciplinary action was taken.

The following passages from the Court’s discussion evidence this. “In the great majority of cases *the disciplinarian may informally discuss the alleged misconduct with the student* minutes after it has occurred.” (*Id.*, at p. 582.) “In holding as we do, we do not believe that we have imposed procedures on school disciplinarians which are inappropriate in a classroom setting. Instead we have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions.” (*Id.*, at p. 583.) “At least *the disciplinarian will be alerted to the existence of disputes* about facts and arguments about cause and effect. . . . In any event, *his discretion will be more informed* and we think the risk of error substantially reduced.” (*Id.*, at pp. 583–584.) “Requiring that there be at least an *informal give-and-take between student and disciplinarian*, preferably prior to the suspension, will add little to the fact-finding function where the disciplinarian himself has witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context. (*Id.*, at p. 584.) “The Court holds only that *the principal must listen to the student’s ‘version of the events,’* either before suspension or thereafter—depending upon the circumstances.” (*Id.*, at p. 596 (dissenting opinion of Justice Powell.) (Emphasis added in each passage.)

The Court also noted that the procedure in effect at the school involved in the case, which the principal failed to follow, was “remarkably similar” to the procedures the Court required in its decision. (*Id.*, at p. 583.) This procedure required the teacher who observed the pupil’s conduct to fill out a form describing the misconduct and send the pupil to the principal with the form. The principal would then obtain the pupil’s version. If it conflicted with the teacher’s version, the teacher would be summoned to explain his version in the pupil’s presence. (*Id.*, at p. 568 fn. 2.)

In *Goldberg v. Kelly* (1969)397 U.S. 254, the Supreme Court concluded that due process required that a person be afforded notice and a hearing before the state terminated

public assistance payments. The Court concluded the hearing must permit the person to orally present his side of the matter to the decision maker because a written or second hand account given by someone else was not adequate. (*Id.*, at pp. 268–269.) The Supreme Court’s discussion in *Goss* evidences this same concern for a first hand presentation to the disciplinarian.

Thus, under *Goss*, the person who will be imposing the discipline must conduct the hearing with the pupil.

In response to *Goss*, the California Legislature amended Education Code¹ section 48903 to provide for the due process requirements. (9 Pacific L.J. 505, 507.) Section 48903, as amended in 1977, stated in relevant part:

“(a) The principal of the school may suspend a pupil from the school for any of the reasons enumerated in section 48900 for no more than five consecutive schooldays.

“(b) Suspension by the principal shall be preceded by an informal conference between the pupil, the principal or the principal’s designee, and, whenever practicable, the teacher or supervisor who referred the pupil to the principal. . . .” (Stats. 1977, ch. 965, § 9.)

Section 48903 was thereafter amended effective September 11, 1978, to state, as it presently does, in relevant part:

“(a) The principal of the school *or the principal’s designee* may suspend a pupil from the school for any of the reasons enumerated in Section 48900 for no more than five consecutive schooldays.”

“(b) Suspension by the principal or *his or her designee* shall be preceded by an informal conference between the pupil, *a certificated school employee*, and, whenever practicable, the teacher or supervisor who referred the pupil to the principal or his or her designee. At the conference the pupil shall be informed of the reason for the disciplinary action and the evidence against him or her and shall be given the opportunity to present his or her version and evidence in his or her defense. *When the principal is absent from school, the principal’s designee conducting the suspension shall conduct the informal conference required by this section.*”

¹ Unless otherwise indicated all section references are to the Education Code.

“
“(i) For purposes of this section, ‘principal’s designee’ is an acting principal specifically designated by the principal to assist with disciplinary procedures when the principal is absent from school.”² (Stats. 1978, ch. 668, § 12.)

Under subdivision (a), of the 1978 version of section 48903, the only persons authorized to suspend a student are “The principal of the school or the principal’s designee.” Under subdivision (i), it is clear that the authority of the principal’s designee to suspend a pupil is limited to those periods when the principal is absent from school and the designee is an acting principal who has been specifically designated by the principal to assist with disciplinary procedures. Thus, when the principal is present at school, the principal is the only person authorized to suspend a pupil pursuant to section 48903.

Subdivision (b), provides for the informal conference required by the *Goss* decision. Those who must attend are:

- (1) the pupil;
- (2) a certificated school employee;
- (3) whenever practicable, the teacher or supervisor who referred the pupil.

The legislative history of AB 2191, in the 1978 Session, which resulted in the enactment of the present wording of section 48903 indicates that the designation of the person to be present, other than the pupil and the person who referred the pupil, changed as follows:

- (a) the principal or a school employee designated by the principal (Feb. 9 Amend.);
- (b) “a certificated school employee” (Feb. 17 Amend.);
- (c) “the principal, or principal’s designee who is conducting the suspension” (Apt. 10 Amend.);
- (d) “a certificated school employee” (Apt. 19 and all subsequent Amends.).

It appears that the Legislature contemplated that the words “a certificated school employee” in subdivision (b), were to include others than the principal or principal’s

² Portions of the section which are underlined are the parts which were added or changed by the amendment effective September 11, 1978.

designee who is conducting the hearing.

To the extent that the Legislature attempted to eliminate the requirement of the disciplinarian's presence at the suspension conference, the attempt must fail as a denial of due process under the *Goss* decision. While the *Goss* decision does not require the principal to be the disciplinarian, as we have indicated, subdivisions (a) and (i) of the present version of section 48903 do make the principal the only person authorized to make the suspension when the principal is present at school. A statute is presumed constitutional and must be interpreted in harmony with constitutional requirements. (*California Housing Finance Agency v. Elliot* (1976) 17 Cal. 3d 575, 594; *People v. Globe Grain and Mill. Co.* (1930) 211 Cal. 121, 127.) Accordingly, we conclude that the combined effect of confining the authority to suspend to the principal when the principal is present at school, and the due process requirements of the *Goss* decision that the disciplinarian be present at the suspension conference, require the principal to be in attendance at the informal conference conducted prior to a suspension of a pupil under section 48903.
