

40966

03/10/11 05:37 PM
LN 11 12124 PAGE 1
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 9

Amendment 1

Strike out line 1 of the title, and insert:

An act to add Sections 234.4, 234.5, 234.6, 234.7, 234.8, and 4800.45 to the Education Code, relating to pupil rights.

Amendment 2

On page 1, before line 1, insert:

SECTION 1. (a) The Legislature finds and declares that the State of California is committed to a safe and civil educational environment for all pupils, employees, parents and legal guardians, volunteers, and patrons that is free from discrimination, harassment, intimidation, or bullying.

(b) The Legislature finds and declares that the intent of this act is to clarify and supplement the existing law on discrimination, harassment, intimidation, and bullying in public schools.

(c) The Legislature finds and declares all of the following:

(1) Pupils who are subjected to discrimination, harassment, intimidation, or bullying may suffer long-term social, emotional, and psychological harms.

(2) The public policy of this state is to reduce and ultimately eliminate school-based discrimination, harassment, intimidation, and bullying.

(3) The public policy of this state is to provide pupils with a safe school environment in which all pupils are included and respected and have an equal opportunity to participate in all school activities and events.

(4) The most effective way to reduce discrimination, harassment, intimidation, and bullying is to create a schoolwide culture of inclusion and respect for differences.

(5) The public policy of this state is to provide support for youth who are victimized by discrimination, harassment, intimidation, or bullying and support for the families of those youth.

(6) The public policy of this state is to provide effective interventions for youth who engage in acts of discrimination, harassment, intimidation, and bullying to help them change their behavior and avoid entering the criminal justice system.

(7) The public policy of this state is to ensure that laws and policies that prohibit discrimination, harassment, intimidation, and bullying are enforced evenhandedly and are not disproportionately applied to any class or group.

SEC. 2. Section 234.4 is added to the Education Code, to read:

234.4. (a) Consistent with subdivision (a) of Section 234.1, on or before July 1, 2012, each school district shall adopt a policy prohibiting discrimination, harassment, intimidation, and bullying.

(b) A school district shall have local control over the content of the policy, except that the policy shall contain, at a minimum, all of the following components:



PB1112124

40966

03/10/11 05:37 PM
 UN 11 12124 PAGE 2
 Substantive

(1) A statement that all pupils have the right to participate fully in the educational process, free from discrimination, harassment, intimidation, and bullying pursuant to subdivision (a) of Section 201.

(2) A statement that each school in the district has an affirmative obligation to combat all forms of bias and a responsibility to provide equal educational opportunity pursuant to subdivision (b) of Section 201.

(3) A statement that California law and school district policy prohibit discrimination, harassment, intimidation, and bullying based upon any of the actual or perceived characteristics contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, any of the actual or perceived characteristics listed in Section 220, and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. School districts are also encouraged to prohibit discrimination, harassment, intimidation, or bullying more generally, but the statement must contain a list of the characteristics set forth in Section 220.

(4) A description of the school district's procedure for addressing complaints of discrimination, harassment, intimidation, and bullying pursuant to subdivision (a) of Section 234.5.

(5) The names of two or more administrative personnel in each school as required by subdivision (c) of Section 234.5.

(6) A statement that all school personnel who witness an act of discrimination, harassment, intimidation, or bullying are required take immediate steps to intervene when safe to do so.

(7) A statement that the policy applies to all acts related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or within any other school district that occur at any time, including, but not limited to, any of the following:

(A) While on school grounds.

(B) While going to or coming from school.

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

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

(8) An attached copy of the written complaint form published by the school pursuant to subparagraph (3) of subdivision (b) of Section 234.5.

(9) A link to the Superintendent's list of statewide resources for youth who have experienced discrimination, harassment, intimidation, or bullying and for the families of those youth pursuant to Section 234.7.

(c) The policy shall be posted and publicized on or before July 1, 2012, as follows:

(1) In all parent-student handbooks issued in the school district, which shall also include a statement that pupils are expected to contribute to building a culture of inclusion and respect.

(2) On the school district's Internet Web site and all individual school Web sites.

(3) In all school district and school administrative offices.

(d) A statement notifying school personnel and pupils of the existence of the policy, and where a written copy of the policy is available in the school and the school district, shall be publicized and posted on or before July 1, 2012, as follows:

(1) The statement shall include the following language:

40966

03/10/11 05:37 PM
 JUN 11 12:24 PAGE 3
 Substantive

"Discrimination, harassment, intimidation, and bullying are not acceptable ways to treat others. California law prohibits discrimination, harassment, intimidation, and bullying based on a student's actual or perceived disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics.

"Tell a teacher or a school employee if you see or experience discrimination, harassment, intimidation, or bullying. You have the right to file a complaint and to have the school protect you. Complaint forms are available on all school district Internet Web sites and in all school and administrative offices."

(2) The statement shall be posted in all teacher lounges, staff rooms, classrooms, gyms, locker rooms, bathrooms, and cafeterias in each school.

(e) The policy and the statement shall be translated pursuant to Section 48985. If translated, the policy and the statement shall be publicized and posted pursuant to subdivisions (c) and (d) in both the English and non-English versions.

SEC. 3. Section 234.5 is added to the Education Code, to read:

234.5. (a) Consistent with subdivision (b) of Section 234.1, on or before July 1, 2012, each school district shall adopt a process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying.

(b) A school district shall have local control over the content of the complaint process and may use the department's Uniform Complaint Procedures as set forth in department regulations, except that the process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying shall include all of the following components:

(1) A requirement that if school personnel witness an act of discrimination, harassment, intimidation, or bullying he or she shall take immediate steps to intervene when safe to do so.

(2) A timeline for each school in the school district or the school district to investigate and resolve complaints of discrimination, harassment, intimidation, and bullying that does not exceed 30 working days from the date the complaint was received. The school, or if applicable, school district, shall report to the complainant the resolution of the complaint within 45 working days of the initial filing, if the complainant identifies himself or herself and requests a response.

(3) A written complaint form published by the school district, and made available at all school and school district offices and on school and school district Internet Web sites, that includes, at a minimum, all of the following:

(A) Questions intended to elicit a description of the incident complained of and to identify any individual who may have been involved or witnessed the incident.

(B) A checklist of the actual or perceived characteristics listed in Section 220 to allow the complainant to identify whether one of these characteristics was the basis of the discrimination, harassment, intimidation, or bullying.

(C) A description of the complaint process and timeline

(D) A statement that complainants will be protected from retaliation and that those who investigate a complaint alleging discrimination, harassment, intimidation, or bullying will protect the confidentiality of the parties to the extent possible.

40966

03/10/11 05:37 PM
 RN 11 12124 PAGE 4
 Substantive

(E) A statement that the complaint may be filed anonymously, and a space to indicate whether a response is requested.

(F) A description of the location at each school in the district where the complaint may be filed, pursuant to subdivision (d).

(G) A statement that the complainant has a right to appeal a school or school district resolution of a complaint and a description of the appeal process, which, at a minimum, must describe the process required by the department's Uniform Complaint Procedures as set forth in department regulations.

(H) A statement that it is not necessary to exhaust any administrative complaint process before pursuing civil law remedies.

(I) The names of the two or more personnel on each school campus identified pursuant to subdivision (c) and of the local educational agency officer identified pursuant to subdivision (g) of Section 234.1, responsible for ensuring district compliance with the department's Uniform Complaint Procedures as set forth in department regulations and Chapter 2 (commencing with Section 200).

(4) A process for a pupil to report complaints of discrimination, harassment, intimidation, or bullying to any school personnel or school district through any means other than the written complaint form that includes:

(A) A requirement that school district or school personnel report the nonwritten complaint within 48 hours to the school or the school district for investigation and resolution.

(B) A requirement that the pupil who made the nonwritten complaint is provided with the same information included in the written complaint form, as set forth in paragraph (3).

(c) Each school district shall identify at least two school administrative personnel on each campus whose names and contact information are posted with the school district policy prohibiting discrimination, harassment, intimidation, and bullying, pursuant to the requirements of subparagraph (I) of paragraph (3) of subdivision (b). These personnel shall be:

(1) Knowledgeable about the school district's policy and complaint procedure regarding discrimination, harassment, intimidation, and bullying.

(2) Available to pupils as a resource to assist with complaints of discrimination, harassment, intimidation, and bullying.

(3) Able to refer pupils to counseling, as appropriate.

(d) Each school district shall assign a specific location for every school in the district where complaints may be filed, such as the principal's office.

(e) If applicable, pursuant to Section 48985, each school district shall make the complaint process available in the primary language other than English.

(f) Consistent with subdivision (e) of Section 234.1, each school district shall maintain documentation of complaints and their resolution for a minimum of one review cycle of what is commonly known as the department's Categorical Program Monitoring process.

SEC. 4. Section 234.6 is added to the Education Code, to read:

234.6. (a) School districts, consistent with the provisions of Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19, shall offer professional development training for school personnel that covers all of the following topics:

40966

03/10/11 05:37 PM
 RN 11 12124 PAGE 5
 Substantive

(1) The school district policy prohibiting discrimination, harassment, intimidation, and bullying, adopted pursuant to Section 234.4.

(2) The actual or perceived characteristics covered by the school district policy prohibiting discrimination, harassment, intimidation, or bullying pursuant to paragraph (3) of subdivision (b) of Section 234.4.

(3) The school district process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying, adopted pursuant to Section 234.5.

(4) Techniques for intervening in discrimination, harassment, intimidation, and bullying, including how teachers and other school personnel can create a schoolwide culture of inclusion and respect for differences without infringing on pupils' free speech rights.

(5) The harm caused by discrimination, harassment, intimidation, and bullying.

(b) In the course of existing orientation provided to school district board members, each school district shall provide school board members with information about the school district policy prohibiting discrimination, harassment, intimidation, and bullying, adopted pursuant to Section 234.4, and the school district process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying, adopted pursuant to Section 234.5.

(c) In the course of existing orientation provided to pupils, each school district, consistent with the provisions of Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19, shall provide pupils with age-appropriate information about all of the following:

(1) The school district policy prohibiting discrimination, harassment, intimidation, and bullying, adopted pursuant to Section 234.4.

(2) The actual or perceived characteristics covered by the school district policy prohibiting discrimination, harassment, intimidation, or bullying pursuant to paragraph (3) of subdivision (b) of Section 234.4.

(3) The school district process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying, adopted pursuant to Section 234.5.

(4) The difference between protected speech and discrimination, harassment, intimidation, and bullying.

(5) The harm caused by discrimination, harassment, intimidation, and bullying.

SEC. 5. Section 234.7 is added to the Education Code, to read:

234.7. At the beginning of each school year, the Superintendent shall post on his or her Internet Web site and provide to each school district a list of statewide resources, including community-based organizations, that provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, or bullying, and their families.

SEC. 6. Section 234.8 is added to the Education Code, to read:

234.8. (a) All local educational agencies shall collect data related to pupil experiences with discrimination, harassment, intimidation, and bullying each year. The data may be collected through annual participation in the California Healthy Kids Survey or, if inclusion of the information in that survey is not feasible, through participation in the California Student Survey.

40966

03/10/11 05:37 PM
 SEN 11 12124 PAGE 6
 Substantive

(b) The department shall, in the next revision of either the California Healthy Kids Survey or, if that is not feasible, in the next revision of the California Student Survey, include questions seeking information on discrimination, harassment, intimidation, and bullying based upon any of the actual or perceived characteristics contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, any of the actual or perceived characteristics listed in Section 220, and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics, and require local educational agencies to survey their pupils with those questions.

(c) The department shall request that the Youth Risk Behavior Survey include questions seeking information on discrimination, harassment, intimidation, and bullying based upon any of the actual or perceived characteristics contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, any of the actual or perceived characteristics listed in Section 220, and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics.

SEC. 7. Section 48900.45 is added to the Education Code, to read:

48900.45. (a) Notwithstanding any other law, a pupil who is found to have committed an act of discrimination, harassment, intimidation, or bullying under subdivision (r) of Section 48900, or Section 48900.2, 48900.3, or 48900.4, shall not automatically be subject to suspension or expulsion, but shall be subject to alternative discipline or progressive discipline pursuant to this section, and shall be subject to suspension pursuant to Section 48900.5 if he or she has access to, and is otherwise given the opportunity to make up, missed coursework without additional academic penalty.

(b) For the purpose of this section, "alternative discipline" means disciplinary action other than suspension or expulsion that is designed to correct and address the root causes of the pupil's specific misbehavior, while still retaining the pupil in class or school, including, but not limited to:

- (1) Meeting with pupil and parent.
- (2) Reflective activities such as writing an essay about the misbehavior.
- (3) Mediation to address the conflict between pupils.
- (4) Counseling, pursuant to subdivision (v) of Section 48900.
- (5) Anger management, pursuant to subdivision (v) of Section 48900.
- (6) Health counseling or intervention.
- (7) Mental health counseling.
- (8) Social-emotional cognitive skill building.
- (9) Community service, pursuant to Section 48900.6.
- (10) In-school detention or suspension, during lunchtime, after school, or on weekends.

(c) For the purpose of this section, "progressive discipline" means the process of dealing with pupil misbehavior in a manner that gives notice of the inappropriate behavior to the pupil and teaches him or her appropriate behavior by instituting increasingly severe responses for repeated instances of the same type of misbehavior.

SEC. 8. The Legislature finds and declares that it is the intent of this act to clarify existing law as set forth in Chapter 2 (commencing with Section 200) of Part

40966

03/10/11 05:37 PM
EN 11 12124 PAGE 7
Substantive

1 of Division 1 of Title 1 of the Education Code. The Legislature further finds and declares that, under existing case and statutory law, a school district and school could be held vicariously liable for any discrimination, harassment, intimidation, or bullying by any individual who has contact with pupils by virtue of employment or other contractual relationship with the school district.

SEC. 9. This act shall not be construed to limit pupil rights to free speech as protected by the United States Constitution, the California Constitution, Sections 48907 and 48950 of the Education Code, and other applicable law.

SEC. 10. This act shall not be construed to require an exhaustion of any administrative complaint process before civil law remedies may be pursued.

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Amendment 3

On page 1, strike out lines 1 to 4, inclusive