

SENATE RULES COMMITTEE

AB 1266

Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 1266
Author: Ammiano (D), et al.
Amended: 4/25/13 in Assembly
Vote: 21

SENATE EDUCATION COMMITTEE: 5-2, 6/12/13

AYES: Liu, Block, Hancock, Hueso, Monning

NOES: Wyland, Huff

NO VOTE RECORDED: Correa, Torres

ASSEMBLY FLOOR: 46-25, 5/9/13 - See last page for vote

SUBJECT: Pupil rights: sex-segregated school programs and activities

SOURCE: Equality California
Gender Spectrum
GSA Network
National Center for Lesbian Rights
Transgender Law Center

DIGEST: This bill requires a pupil be permitted to participate in sex-segregated school programs, activities, and facilities including athletic teams and competitions, consistent with his/her gender identity, regardless of the gender listed on the pupil's records.

ANALYSIS:

Existing law:

1. Prohibits any person from being subjected to discrimination on the basis of disability, gender, nationality, race or ethnicity, religion, sexual orientation, or

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- any other characteristic that is contained in the definition of hate crimes in the Penal Code, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.
2. Defines “hate crime” as a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:
 - A. Disability.
 - B. Gender.
 - C. Nationality.
 - D. Race or ethnicity.
 - E. Religion.
 - F. Sexual orientation.
 - G. Association with a person or group with one or more of these actual or perceived characteristics.
 3. Defines “gender” as sex, and includes a person’s gender identity and gender expression. “Gender expression” is defined as a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.
 4. Prohibits discrimination on the basis of the characteristics listed in #1 in any aspect of the operation of alternative schools or charter schools.
 5. States that it is the policy of the State that all people, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the State. Each educational institution in the State is required to have a written policy on sexual harassment.

On the basis of sex

Existing law:

1. Provides that it is the policy of the State that elementary and secondary school classes and courses, including non-academic and elective classes and courses, be conducted without regard to the sex of the pupil enrolled in these classes and courses.

2. Precludes school districts from prohibiting a pupil from enrolling in any class or course on the basis of the sex of the pupil, except sex education courses.
3. Prohibits a school district from requiring a pupil of one sex to enroll in a particular class or course, unless the same class or course is also required of a pupil of the opposite sex.
4. Requires participation in a particular physical education activity or sport to be available to pupils of each sex if required of pupils of one sex.

Privacy

Article I, Section I of the California Constitution states:

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

Three legal challenges have been pursued regarding the definition of “gender” in the Education Code. The most recent case, *California Education Committee, LLC vs. Jack O’Connell*, was filed in Sacramento Superior Court in 2008. Plaintiffs argued that current law places “educators in the impossible position of (1) reading the minds of individuals to determine the individual’s self-defined sexual identity so as not to inadvertently discriminate against an individual based upon their self-defined sex and (2) protecting the privacy and safety of all students from persons of the opposite sex.” Additionally, plaintiffs argued that students’ privacy will be violated because the school district “will require teachers, administrators, and school districts to permit children of the opposite sex to enter locker rooms and restrooms in the future.” The defendant, Jack O’Connell who was the State Superintendent of Public Instruction at the time, filed a demurrer and moved to dismiss the case. The Sacramento Superior Court granted the motion to dismiss the case on June 1, 2009, for plaintiffs’ “failure to state facts sufficient to constitute a cause of action.”

California Interscholastic Federation (CIF)

CIF bylaw 300 D., approved by CIF’s Federated Council on February 2, 2013, and to take effect in the upcoming school year (beginning August 1, 2013) is as follows:

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Participation in interscholastic athletics is a valuable part of the educational experience for all students. All students should have the opportunity to participate in CIF activities in a manner that is consistent with their gender identity, irrespective of the gender listed on a student's records. Should any questions arise whether a student's request to participate in a sex-segregated activity consistent with his/her gender identity is bona fide, a student may seek review of his/her eligibility for participation by working through the procedure set forth in the "Guidelines for Gender Identity Participation.

CIF's Guidelines for Gender Identity Participation establish a process that includes:

1. The pupil and/or parents must contact the school administrator or athletic director indicating that the pupil has a consistent gender identity different than the gender listed on the pupil's school registration records, and that the student desires to participate in activities in a manner consistent with his/her gender identity.

The school may contact CIF for guidance.

If the school declines to allow the pupil to participate in activities in a manner consistent with his/her gender identity, at the request of the pupil and/or parent the school administrator must contact the CIF office, which will assign a facilitator who will assist the school and pupil in preparation and completion of the CIF Gender Identity eligibility appeal process.

The pupil is to be scheduled for an appeal hearing before an eligibility committee specifically established to hear gender identity appeals.

A pupil may appeal the decision of the eligibility committee to the California Interscholastic Federation Executive Director.

This bill requires a pupil be permitted to participate in sex-segregated school programs, activities, and facilities including athletic teams and competitions, consistent with his/her gender identity, regardless of the gender listed on the pupil's records.

Comments

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According to the author, “Although current California law already protects students from discrimination in education based on sex and gender identity, many school districts do not understand and are not presently in compliance with their obligations to treat transgender students the same as all other students in the specific areas addressed by this bill. As a result, some school districts are excluding transgender students from sex-segregated programs, activities and facilities. Other school districts struggle to deal with these issues on an ad hoc basis. Existing law is deficient in that it does not provide specific guidance about how to apply the mandate of non-discrimination in sex-segregated programs, activities and facilities.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/18/13)

Equality California (co-source)
Gender Spectrum (co-source)
GSA Network (co-source)
National Center for Lesbian Rights (co-source)
Transgender Law Center (co-source)
American Civil Liberties Union of California
Anti-Defamation League
Bay Area Youth Summit
California Communities United Institute
California Federation of Teachers
California LGBT Health & Human Services Network
California State PTA
California Teachers Association
Child & Adolescent Gender Center
Family Equality Council
GLSEN
GLSEN Orange County
HonorPAC
L.A. Gay and Lesbian Center
Labor/Community Strategy Center
LAUSD
LGBT Community Center of the Desert
Los Angeles Gender Center
MALDEF
National Association of Social Workers, CA Chapter
National Gay & Lesbian Task Force Action Fund

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North County LGBTQ Resource Center
Our Family Coalition
Pacific Pride Foundation
Public Advocates, Inc.
Public Counsel
Restorative Schools Vision Project
San Diego Cooperative Charter School
San Diego LGBT Community Center
San Francisco Unified School District
The Center Long Beach
The Center OC
The Trevor Project
Youth Justice Coalition

OPPOSITION: (Verified 6/18/13)

California Catholic Conference
Capitol Resource Institute
Concerned Women for America
Traditional Values Coalition

ASSEMBLY FLOOR: 46-25, 5/9/13

AYES: Alejo, Ammiano, Atkins, Bloom, Blumenfield, Bocanegra, Bonilla, Bonta, Bradford, Buchanan, Ian Calderon, Campos, Chau, Chesbro, Dickinson, Eggman, Fong, Frazier, Garcia, Gatto, Gomez, Gordon, Hall, Roger Hernández, Jones-Sawyer, Levine, Lowenthal, Medina, Mitchell, Mullin, Muratsuchi, Nazarian, Pan, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Skinner, Stone, Ting, Weber, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Achadjian, Allen, Bigelow, Brown, Chávez, Conway, Dahle, Donnelly, Beth Gaines, Gorell, Grove, Hagman, Harkey, Jones, Linder, Maienschein, Mansoor, Melendez, Morrell, Nestande, Olsen, Patterson, Salas, Wagner, Wilk

NO VOTE RECORDED: Cooley, Daly, Fox, Gray, Holden, Logue, Torres, Waldron, Vacancy

PQ:d 6/18/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****