

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2289 (Weber) – As Introduced February 13, 2018

SUBJECT: Pupil rights: pregnant and parenting pupils

SUMMARY: Requires schools to grant parental leave to students who are parents or are soon to be parents, prohibits parental leave from being deemed absences in computing average daily attendance, requires schools to grant parenting pupils four excused absences per school year to care for a sick child, requires schools to notify pregnant and parenting students of their educational rights and options, and requires schools to provide students with guidelines for a make-up work plan if individualized instruction is not available. Specifically, **this bill:**

- 1) Requires school districts to notify pregnant and parenting pupils of their rights and options through annual welcome packets, independent study packets, on the school district's website, in lactation rooms, and in locker rooms.
- 2) Requires schools, school districts, county offices of education (COEs), and charter schools to provide a pupil who gives or expects to give birth with up to six weeks of parental leave, a pupil who undergoes caesarian section or a complicated birth with up to eight weeks of leave, and a parenting pupil not giving birth with up to four weeks of leave.
- 3) Specifies that parental leave absences are not deemed absences in computing average daily attendance (ADA), if the governing board of a school district, COE, or charter school files with the California Department of Education (CDE) an expectant and parenting pupil policy that ensures students will receive schoolwork during their leave.
- 4) Requires that pregnant or parenting pupils have up to 4 excused absences per school year to care for a sick child, for which the school is prohibited from requiring a doctor's note.
- 5) Specifies that temporary disability also includes pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom.
- 6) Requires school districts to provide pupils with a temporary disability resulting from pregnancy with guidelines for makeup work plan development, if the option for individualized instruction is not available in a school district.
- 7) Requires the parent or guardian of a pregnant pupil to notify a school district of the pupil's need for individualized instruction, before the end of the pupil's 32nd week of pregnancy.

EXISTING LAW:

- 1) Prohibits, in federal and state law, educational institutions that receive federal or state financial assistance from applying any rule concerning a pupil's parental, family, or marital status that treats pupils differently on the basis of sex, or discriminating against or excluding any student from its education program or activity on the basis of pregnancy or childbirth-related conditions (34 C.F.R. § 106.40(b)(1), 5 C.C.R. § 4950).

- 2) Requires, in federal and state law, that alternative educational programs for pregnant pupils be attended on a voluntary basis, and that these programs provide an education that is comparable to that of regular programs for non-pregnant pupils (34 C.F.R. § 106.40(b)(3), 5 C.C.R. § 4950(c)).
- 3) Requires, in federal law, that in the absence of a leave policy for students, or in the case of a student who does not qualify for leave under such policy, a recipient of federal funding to treat pregnancy and recovery from childbirth-related conditions as justifications for a leave of absence, for as long as is deemed medically necessary by the student's physician (34 C.F.R. § 106.40(b)(5)).
- 4) Requires, in federal law, that a student be reinstated to her previous status following leave taken for pregnancy or childbirth-related conditions (34 C.F.R. § 106.40(b)(5)).
- 5) Requires, in federal and state law, that pregnant students and those recovering from childbirth-related conditions be provided with the same accommodations and support services available to other students with temporary disabilities (34 C.F.R. § 106.40(b)(4), 5 C.C.R. § 4950(d)).
- 6) Requires school districts, COEs, and charter schools to post on their websites the name and contact information for their Title IX coordinator, pupil rights under Title IX, and a description of how to file a complaint under Title IX (EC 221.61).
- 7) Requires school districts to provide students with individualized instruction in a pupil's home or in a hospital when they have a temporary disability that prevents them from attending regular day classes or alternative educational programs, specifies that one hour of individualized instruction counts as one day of attendance for the purposes of computing ADA apportionment, and prohibits pupils from being credited with more than five days of attendance per calendar week (EC 48206.3).
- 8) Requires instruction to commence within five working days after a student is deemed eligible for individualized instruction (EC 48208).
- 9) Authorizes the governing board of a school district or a COE to offer independent study to meet the individual needs and learning styles of students (EC 51745).
- 10) Requires school districts that choose to voluntarily enroll high school students in a continuation school to establish policies that govern the identification, placement, and intake procedures for those pupils; ensure that no specific group of pupils is disproportionately enrolled in continuation schools; and ensure that transfer to a continuation school is voluntary and the pupil has the right to return to his or her previous school (EC 48432.3).
- 11) Prohibits pupils who are pregnant or the primary caregivers for their children from being counted towards a 10 percent cap on the number of pupils at opportunity or continuation schools who are deemed eligible for apportionment funding (EC 51745).
- 12) Deems excused absences to be absences in computing ADA that do not generate state apportionment payments (EC 48205).

- 13) Requires that pupils be excused from school when absences are due to several specified reasons, including when a pupil is the custodial parent of a child with an illness or a medical appointment during school hours (EC 48205).
- 14) Requires that parents be advised, via a notification provided at the beginning of the school term, that a pupil shall not have his or her grade reduced or lose academic credit for any absence excused for specified reasons, if missed assignments and tests are satisfactorily completed within a reasonable timeframe (EC 48980).
- 15) Requires that pupils absent for specified reasons be allowed to complete, and receive credit for, assignments and tests missed during their absence (EC 48205).
- 16) Prohibits an employer from refusing to allow employees with specified qualifications to take up to twelve weeks of parental leave within one year of the child's birth, adoption, or foster care placement (GOV 12945.6).
- 17) Requires an employer to guarantee employees with specified qualifications the ability to return to the same or comparable positions after returning from parental leave (GOV 12945.6).
- 18) Prohibits an employer from refusing to hire, or to discharge, fine, suspend, expel, or discriminate against an individual because an individual exercised his or her right to parental leave (GOV 12945.6).

FISCAL EFFECT: The Office of Legislative Counsel has keyed this bill as a state mandated local program.

COMMENTS:

Need for the bill. According to the author's office: "Title IX and California's Sex Equity in Education Act protects all students' rights to equal and educational opportunities, regardless of sex. Yet in California, a pregnant and parenting student's rights to an education and access to leave are dependent on their geographic location. Inconsistent educational policies across school districts have hindered a pregnant and parenting student's right to care for their child while continuing their education.

All too often, to meet the demands of pregnancy and parenting, students are pushed out to programs like independent study or continuation school. Courses at these schools often are not comparable to traditional high schools as they tend to have limited, if any, college preparatory courses that meet A-G requirements for admission into a four-year university.

A high absence rate, coupled with rigid attendance verification laws, truancy, and falling behind in their work contribute to the pushing out of pregnant and parenting students. Such prolonged absences can lead to the identification of pregnant and parenting students as truant and decrease their chances of receiving credit for their class. In addition, attendance verification policies require students to submit a doctor's note for prolonged absence. In the case of tending for a sick child or when childcare becomes a challenge, a doctor's note may be impossible to obtain.

Significant parental leave will help young parents navigate and become more familiar with their new responsibilities as parents without having to worry about the pressures of school, leaving their school, or giving up on going to their preferred school. In addition, a substantial amount of parental and sick leave will help with bonding between young parents and their child, resulting in better attachment between them and helping to stave off future behavioral issues, which will result in better educational outcomes for the child.”

Long-term consequences of becoming parents during adolescence. According to the Centers for Disease Control (CDC), the U.S. teen birth rate is substantially higher than in other western industrialized nations, although rates vary depending on ethnic or geographic characteristics. In 2015, Hispanic and African American teens had teen birth rates that were around twice the rate for non-Hispanic white teens. At 17 live births per 1,000 females in the 15 to 19 age group, California’s national ranking in 2016 for teen birth rates was 34th.

CDC also reports that by age 22, only 50 percent and 30 percent of teen mothers have received a high school diploma or general education development (GED) certificate, respectively. In contrast, 90 percent of teens who do not give birth during high school receive a high school diploma by age 22. Because of these statistics, CDC has deemed teen pregnancy prevention as one of its top seven priorities.

Although research and policy considerations of adolescent parents frequently focus on teenage mothers, the National Coalition for Women and Girls in Education (NCWGE) argues that educational barriers are also of significant concern for boys. In its 2012 report on pregnant and parenting students, the organization states that one-third of male dropouts identify fatherhood as a driving factor for their decision to leave high school. In a 2017 report on pregnant and parenting students, NCWGE further states that pregnant and parenting students require greater support than currently exists in most schools, including flexible leave options, funding for child care, and guidance in developing educational goals. Research also shows that teen fathers have a 25 to 30 percent lower probability of graduating from high school than teenage boys who are not fathers.

CDC reports that teen pregnancy and childbearing is associated with substantial social and economic costs. For example, in 2010, teen pregnancy and childbirth accounted for an estimated \$9.4 billion in taxpayer costs due to increased health care and foster care, increased incarceration rates among children of teen parents, and lost tax revenue resulting from lower educational achievement and income for teen mothers. According to the US Department of Education, “opportunity youth,” or persons between 14 and 24 years old who are not in school or working due to challenges such as teen parenting, represent a significant loss in human capital that can be addressed by reengaging them in education and career pathways, and by providing them with support services, including housing and childcare.

Title IX and California Code of Regulations establish rights for pregnant and parenting pupils. Title IX, a federal civil rights law that prohibits discrimination on the basis of sex in educational programs, includes several protections for pregnant and parenting students. Provisions similar to those listed in Title IX are included in the California Code of Regulations. Specifically, federal and state law gives pregnant and parenting students the right to:

- 1) Continue participating in classes and extracurricular activities, regardless of a pupil’s parental, marital, or family status.

- 2) Voluntarily enroll in alternative educational programs, which must be comparable to regular programs.
- 3) A leave of absence for pregnancy and recovery from childbirth-related conditions, for as long is deemed medically necessary by the student physician.
- 4) To be reinstated to previous status as a student following leave taken for pregnancy or childbirth-related conditions.
- 5) To receive the same accommodations and support services as other students with temporary disabilities.

Louisiana and North Carolina have incorporated federal Title IX protections for pregnant and parenting students into their state statutes, although neither specifies a minimum duration of parental leave to which students are entitled. For example, Louisiana’s Expectant and Parenting Students Act, enacted in 2016, states only that a school’s governing authority must maintain a policy that implements “sensible attendance policies.” In 2015, New Mexico enacted legislation that grants pregnant students a parental leave of 10 days following a child’s birth. In Georgia and Illinois, codified violations of Title IX were not addressed until lawsuits forced statutory revisions.

According to CDE, the department maintains a Title IX coordinator responsible for investigating civil rights violations for protected classes of students, monitoring Title IX implementation, and conducting approximately 40 compliance reviews annually. The department also states that school districts may maintain their own Title IX coordinators (often school principals) who are responsible for monitoring Title IX compliance and implementing a grievance process when parents or students issue complaints. Although school districts must post contact information for their Title IX coordinators on their websites, this bill’s sponsors report that pregnant and parenting pupils have encountered difficulty reporting Title IX violations because they are not always able to identify the Title IX coordinators responsible for their schools.

No complaint or enforcement mechanism is proposed in this bill for allegations of non-compliance with the proposed protections for pregnant and parenting pupils. ***The committee may wish to consider*** if an existing process administered by local educational agencies, called the Uniform Complaint Procedures (UCP), which is available on an expedited timeframe for lactating students, could be an appropriate means of addressing such complaints.

Inadequate leave negatively impacts wellbeing and health for parents and babies. In 2017, New America published an extensive review of existing research on how parental leave impacts mothers, fathers, and babies, entitled *Paid Family Leave: How Much Time is Enough?* The authors discuss optimal durations of paid parental leave in the context of four issue areas: infant and child health and wellbeing, maternal health and wellbeing, gender equality, and economic impact. With respect to infant and child health and wellbeing, the report states that the national average duration of paid and unpaid maternity leave—10 weeks—does not allow parents to fully address the developmental needs of their infants. In addition, the authors report that longer durations of paid family leave can decrease the number of low birth weight and early term babies, particularly for the children of single and African American mothers; promote higher rates of breastfeeding (which has both short and long-term benefits for a child’s immune system

and cognitive development); promote higher rates of immunizations; decrease rates of child abuse; and increase long-term achievement for children. In addition, increased leave durations have been linked to decreased rates of infant mortality, a particularly notable finding given that, among countries with advanced economies, the U.S. has one of the highest rates of infant mortality.

For mothers, returning to work too soon is associated with multiple negative outcomes, including higher rates of maternal depression and anxiety, reduced sensitivity to their infants, reduced understanding of infant development, impaired self-esteem, increased feelings of overload, increased rates of relationship dissatisfaction, and difficulty recovering from common physical symptoms that persist several weeks postpartum. Conversely, longer durations of maternity leave were associated with improved mental health and a decrease in depressive symptoms, longer parental lifespans, reductions in maternal stress, and reductions in intimate partner violence. Regarding the economic impacts of maternity leave, the report states that women who take paid leave are 93 percent more likely to be in the workforce 9 to 12 months after a child’s birth, compared to mothers who do not take leave.

Less is known about the impact of parental leave on fathers, but available research suggests the following benefits when fathers take leave: reduced family stress, more involved parenting by fathers in the long-term, more stable relationships with partners, better understanding by fathers of their children’s needs, increased emotional attachment of fathers to their children, and increased short and long-term participation of fathers in childcare.

Their extensive review of the consequences of specific leave times led the authors to identify the following optimal leave durations, across the four issue areas mentioned above:

Optimal Paid Leave Duration Recommendations	
<i>To maximize benefits of leave for:</i>	<i>A minimum of this much leave is needed:</i>
Infant and child health and wellbeing	1 year, split between parents
Maternal health and wellbeing	6 months
Gender equality	Equal bonding leave time, continuous or intermittent, with policy and culture support for men to use leave
Economic impact	9 months to 1 year for women’s labor force participation, with graduated return to flexible work

In light of these findings, ***the committee may wish to consider*** whether pupils should be afforded protected parental leaves in which they are not required to complete schoolwork, so that they have adequate opportunity to rest and recover from labor and delivery, learn how to care for their infants, and bond with their children. Furthermore, ***the committee may wish to consider*** whether students, particularly those who are co-parenting, would benefit from having the ability to take their leave anytime within one year of their child’s birth.

Existing educational options for pregnant and parenting pupils. According to CDE, pregnant and parenting pupils may enroll in several alternative educational options, including independent study, individualized instruction, and continuation schools. Independent study programs are voluntary (students cannot be assigned to independent study) and offered in some, but not all school districts. The intent of independent study is to provide a flexible educational option that is comparable in quality and quantity to regular school programs, adapts to the individual needs and learning styles of a student, and can be used on either a short or long-term basis. CDE states

that several types of students may benefit from independent study, including pregnant minors and teen parents. In 2014-15, CDE reports that nearly 168,000 students in grades K-12 were receiving 50% or more of their instruction through independent study; it is unclear how many of these students were pregnant or parenting.

Individualized instruction, also known as home and hospital instruction, is an alternative educational option that students with temporary disabilities are entitled to, if they cannot reasonably be expected to return to regular day classes or an alternative education program without special intervention. The goal of home and hospital instruction is to provide these students with instruction in the student's home, or in a hospital or other residential health facility, for a minimum of one clock hour per day, which is considered equivalent to one day of attendance for the purposes of determining ADA apportionment. According to CDE, for the 2016-17 school year, there were a total of 99,681 students who were reported as either enrolled in a home/hospital school or taking courses with a home/hospital instructional strategy. CDE further states that school districts are already using home/hospital instruction for pupils who have given birth, when health concerns inhibit them from returning to the classroom.

Continuation education is a high school diploma program designed to meet the needs of students ages 16 or older who have not graduated from high school, are not exempt from compulsory school attendance, and are considered at risk for not completing high school. According to CDE, students enrolling in continuation schools are often credit deficient, or may need a more flexible educational environment because they are working or have family obligations. For apportionment purposes, minimum attendance is 15 hours per week, or 180 minutes per day. Although CDE states that continuation education may be an appropriate option for pregnant and parenting pupils, it also states that educational services vary widely on a local basis, depending upon the resources that each LEA commits to a continuation high school. Specifically, CDE states, "When LEAs devote few resources, continuation high school students suffer from the lack of quality educational services and may drop out of school."

Although the California Code of Regulations and Title IX already prohibit schools from denying students educational opportunities, or forcing them to enroll in alternative educational programs on the basis of their parental or marital status, the sponsors of this bill report that pregnant and parenting pupils are often compelled to leave their regular educational programs and enroll in continuation schools. These claims raise concerns that pregnant and parenting pupils are being denied access to future educational and career opportunities, despite the protections afforded them by law.

Programs supporting pregnant pupils rolled into LCFF. The establishment of the Local Control Funding Formula (LCFF) eliminated almost all categorical programs, including the California School Age Families Education (Cal-SAFE) program, which provided expectant and parenting students and their children with comprehensive, integrated, community-linked, school-based services. According to CDE, from 2000-2010, the program had enrolled 98,000 expectant and parenting students and 62,000 young children. Cal-SAFE provided academic and support services to both female and male students under 18 who had not graduated from high school and were expectant, custodial, or non-custodial parents. The program also provided enrollees with training on effective parenting skills and their children with child care, health screenings, and early childhood development programs. While teen parents were enrolled in the program, their children were eligible for services until age five or entry into kindergarten. The ACLU reports

that 73% of participants completed high school with the support provided by Cal-SAFE. It is unclear how many school districts have continued the program using LCFF funds.

Committee amendments. This bill mandates the provision of certain services and supports to pregnant and parenting pupils, but does not explicitly identify rights for these students. Because this bill proposes extensions of protections included in Title IX, which is a body of law that identifies required accommodations for pregnant and parenting students on the basis of pupil rights, *the committee may wish to consider* whether restructuring this bill to similarly identify pupil rights is more consistent with established law. Because the availability of certain instructional programs and pregnant minor programs may vary on a local basis, restructuring the bill in this manner may have the added benefit of giving LEAs greater flexibility in deciding how to use their existing programs to best honor each student's rights.

Staff recommends the following amendments, so that the bill:

- 1) Codifies the following requirements, prohibitions, and authorizations for educational institutions, regarding protections for pregnant and parenting pupils that are listed in the California Code of Regulations:
 - a. A prohibition on applying any rule concerning a pupil's parental, family, or marital status that treats students differently on the basis of sex.
 - b. A prohibition on excluding or denying any student from any educational program or activity solely on the basis of a student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from pregnancy-related conditions.
 - c. An authorization to require a student to obtain a physician's or nurse practitioner's certification that shows the student is physically and emotionally able to continue participating in the regular educational program.
 - d. A prohibition on requiring pregnant minors and minor parents to participate in pregnant minor or alternative educational programs.
 - e. A requirement that alternative educational programs be comparable the regular program.
 - f. A requirement that a student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from pregnancy-related conditions be treated under the same policies as other temporary disabling conditions.
- 2) Explicitly states that pregnant and parenting pupils have the following rights:
 - a. Protected parental leave, which pupils may take within one year of a child's birth, and during which a pupil is not required to work.
 - b. Return to the pupil's original school and course of study.
 - c. The option of a fifth year of instruction, if necessary.

- d. Voluntarily enroll in alternative educational programs, which must be comparable in quality to the regular school program.
- e. Issue a complaint of noncompliance with the required protections for pregnant and parenting pupils, using UCP.

In addition, *staff recommends*:

- 1) Striking the prohibition on identifying parental leave as absences for the purposes of computing ADA apportionment.
- 2) Striking the requirement that pregnant and parenting pupils state their intent to take parental leave by the 32nd week of pregnancy.
- 3) Requiring school districts to provide at least, rather than a maximum of, four days of excused absences to care for a sick child.
- 4) Striking the requirement that schools provide pregnant and parenting pupils with home/hospital instruction.
- 5) Stating that it is the intent of the Legislature to allow pregnant and parenting pupils to participate in graduation ceremonies alongside their four-year cohort peers, whenever possible.

Related legislation. AB 2785 (Rubio) of this Session extends the protections proffered by AB 302 (see below) to lactating students on the campuses of the California Community Colleges and the California State University.

AB 1938 (Burke) of this Session prohibits employers or employment agencies from printing or circulating publications, or making inquiries unrelated to an employee's job, that express limitations based upon a person's familial status, including pregnancy and parenting.

Previous legislation. SB 1014 (Liu) of the 2016-17 Session proposed protections for pregnant and parenting pupils that were very similar to those listed in this bill. SB 1014 died in the Assembly Appropriations Committee.

AB 302 (Garcia), Chapter 690, Statutes of 2015 requires a school district or county office of education to provide reasonable accommodations—including enough time to express breast milk or breastfeed an infant child, and access to a private and secure room with a power source—to a lactating student on their respective campuses. AB 2785 also prohibits these institutions from applying academic penalties to mothers who use these accommodations.

AB 2111 (Ammiano) of the 2014-15 Session proposed to repeal existing statutes that govern Cal-SAFE and reestablish it as an optional program that may be offered by an LEA. The bill would have required Cal-SAFE programs to adhere to several health, safety, and quality requirements and to participate in data collection and evaluation systems to track program outcomes and effectiveness. AB 2111 died in the Assembly Appropriations Committee.

SB 1064 (Johnston), Chapter 1078, Statutes of 1998 established Cal-SAFE to provide educational and other support services to pregnant and parenting teens and their children.

AB 731 (Gallagher), Chapter 303, Statutes of 2015 defined the rights of pregnant and parenting graduate students attending postsecondary institutions in California.

REGISTERED SUPPORT / OPPOSITION:

Support

ACCESS Women's Health Justice (co-sponsor)
ACT for Women and Girls (co-sponsor)
Black Women for Wellness (co-sponsor)
California Latinas for Reproductive Justice (co-sponsor)
Alliance for Boys and Men of Color
Alliance for Children's Rights
American Academy of Pediatrics
American Civil Liberties Union of California Center for Advocacy and Policy
American College of Obstetricians and Gynecologists District IX
Brighter Beginnings
California Academy of Family Physicians
California Catholic Conference
California Federation of Teachers
California Nurse-Midwives Association
California Pan-Ethnic Health Network
California School Boards Association
California State PTA
California Voices for Progress
Center on Reproductive Rights and Justice at UC Berkeley School of Law
Common Sense Kids Action
County Health Executives Association of California
Equal Rights Advocates
Forward Together
Fresno Barrios Unidos
Having our Say Coalition
Maternal and Child Health Access
NARAL Pro-Choice California
National Council of Jewish Women, California
National Center for Youth Law
Planned Parenthood Affiliates of California
Physicians for Reproductive Health
Public Health Justice Collective
The San Diego LGBT Community Center
Teen Success, Inc.
Women's Foundation of California
Youth Alliance

Opposition

None received

Analysis Prepared by: Naomi Ondrasek / ED. / (916) 319-2087