

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2673 (Reyes) – As Amended March 20, 2018

SUBJECT: Educational equity: severe bullying complaints: local educational agency protocol

SUMMARY: Requires the Superintendent of Public Instruction (SPI) to issue a mandatory protocol to local education agencies (LEAs) on responding to substantiated incidents of severe bullying. Specifically, **this bill:**

- 1) Requires the SPI, by May 31, 2019, to develop and issue mandatory protocol to LEAs regarding how to advise schools with the LEA's jurisdiction to proceed in a situation in which a severe bullying complaint has been substantiated. The protocol must include, but is not limited to, the following:
 - a) Conducting an investigation into the allegation.
 - b) Conflict resolution strategies, including both of the following:
 - i. Informal conferences with the parties.
 - ii. Referrals of involved parties to the appropriate school counseling services.
 - iii. Internal review of school compliance with the state's priorities for school climate.
- 2) Specifies that this protocol is not subject to regulatory review requirements by the Office of Administrative Law.
- 3) Defines the following terms:
 - a) "Local education agency" means a school district, county office of education, or charter school.
 - b) "Severe bullying complaint" means a situation in which both of the following occur:
 - i. A parent has contacted a school to file a complaint and seek redress regarding an instance of harassment or bullying of his or her child by another pupil.
 - ii. A school has reasonable suspicion that a pupil has: (1) used threatening words or behavior or engaged in disorderly behavior; or (2) displayed any writing, sign, or other visible representation that is threatening, abusive, or insulting.

EXISTING LAW:

- 1) Requires each LEA to adopt policies and procedures for the investigation and resolution of complaints and requires school districts and county offices of education to submit these to the local governing board for adoption. (California Code of Regulations (CCR) Title 5, Section 4621).

- 2) Establishes a uniform system of complaint processing that applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, harassment, intimidation, or bullying (CCR 4610).
- 3) Requires the LEA to conduct and complete an investigation of a complaint and prepare a written decision and provide it to the complainant within 60 days or less, and requires that the LEA provide an opportunity for the complainant to present the complaint and any evidence or information to support the allegations of non-compliance with state and federal laws. Specifies that the written decision should contain the following: (CCR 4631)
 - a) The findings of the fact based on the evidence gathered.
 - b) Conclusion of law.
 - c) Disposition of the complaint.
 - d) The rationale for such disposition.
 - e) Corrective actions if they are warranted.
 - f) Notice of the complainant's right to appeal the LEA decision to the CDE.
 - g) Procedures to be followed for initiating an appeal to the CDE.
- 4) Requires the CDE to monitor, through its federal program monitoring process, whether local education agencies (LEAs) have: (EC 234.1)
 - a) Adopted a policy that prohibits discrimination, harassment, intimidation, and bullying based on the actual or perceived characteristics defined as hate crimes, 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. The policy must include 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.
 - b) Adopted a process for receiving and investigating complaints relating to discrimination, harassment, intimidation, and bullying, including:
 - i. A requirement that school personnel who witness such acts take immediate steps to intervene when safe to do so.
 - ii. A timeline for the investigation and resolution of complaints, and an appeal process.
 - c) Publicized antidiscrimination, anti-harassment, anti-intimidation, and anti-bullying policies, including information about the manner in which to file a complaint, to pupils, parents, employees, agents of the governing board, and the general public.

- d) Provided certificated school employees in schools serving pupils in grades 7 to 12, information on existing schoolsite and community resources related to the support of lesbian, gay, bisexual, transgender, and questioning (LGBTQ) pupils, or related to the support of pupils who may face bias or bullying on the basis of religious affiliation, or perceived religious affiliation.
 - e) Posted the policy in all schools and offices, including staff lounges and pupil government meeting rooms.
 - f) Maintained documentation of complaints and their resolution for a minimum of one review cycle.
 - g) Ensured that complainants are protected from retaliation and that their identity remains confidential, as appropriate.
 - h) Identified a responsible LEA officer for ensuring compliance.
- 5) Requires a charter school to include in its petition the procedures that the charter school will follow to ensure the safety of pupils and staff (EC 47605).
- 6) Prohibits the suspension of a pupil or an expulsion, unless it has been determined that the pupil has committed certain acts, including engaging in an act of bullying or cyberbullying. The following terms have the following meanings (EC 48900):
- a) “Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils, including sexual harassment, an act of hate violence, or harassment, threats or intimidation, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:
 - i. Placing a reasonable pupil or pupils in fear of harm to that pupil’s or those pupils’ person or property.
 - ii. Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.
 - iii. Causing a reasonable pupil to experience substantial interference with his or her academic performance.
 - i. Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.
 - b) “Electronic act” means the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, any of the following:
 - i. A message, text, sound, video, or image.
 - ii. A post on a social network Internet Web site, including, but not limited to:

- I. Posting to or creating a burn page, defined as an Internet Web site created for the purpose of having one or more of the effects listed in paragraph (3)(a).
 - II. Creating a credible impersonation of another actual pupil for the purpose of having one or more of the effects listed in paragraph (3)(a). “Credible impersonation” means to knowingly and without consent impersonate a pupil for the purpose of bullying the pupil and such that another pupil would reasonably believe, or has reasonably believed that the pupil was or is the pupil who was impersonated.
 - III. Creating a false profile for the purpose of having one or more of the effects listed in paragraph (3)(a). “False profile” means a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil other than the pupil who created the false profile.
- iii. An act of cyber sexual bullying. Defines “cyber sexual bullying” as the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act. A photograph or other visual recording, as described above, shall include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act. Specifies that “cyber sexual bullying” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.
- c) “Reasonable pupil” means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.
- 7) Requires that suspension for specified offenses, including bullying, is to be imposed only when other means of correction fail to bring about proper conduct. A school district may document the other means of correction used and place that documentation in the pupil’s record. Other means of correction include, but are not limited to, the following:
- a) A conference between school personnel, the pupil’s parent or guardian, and the pupil.
 - b) Referrals to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management and counseling.
 - c) Study teams, guidance teams, resource panel teams, or other intervention-related teams that assess the behavior, and develop and implement individualized plans to address the behavior in partnership with the pupil and his or her parents.
 - d) Referral for a comprehensive psychosocial or psychoeducational assessment, including for purposes of creating an individualized education program (IEP).

- e) Enrollment in a program for teaching prosocial behavior or anger management.
 - f) Participation in a restorative justice program.
 - g) A positive behavior support approach with tiered interventions that occur during the schoolday on campus.
 - h) After-school programs that address specific behavioral issues or expose pupils to positive activities and behaviors, including, but not limited to, those operated in collaboration with local parent and community groups.
- 8) Authorizes a school or district administrator to refer a victim of, witness to, other pupil affected by, an act of bullying, or a pupil who has engaged in an act of bullying to the school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and participation in a restorative justice program, as appropriate (EC 48900.9).
- 9) Requires the CDE to display current information, and periodically update information, on curricula and other resources that specifically address bias-related discrimination, harassment, intimidation, cyber sexual bullying, and bullying on its website (EC 234.2).
- 10) Requires the CDE to develop, and post on its website, a model handout describing the policies addressing bias-related discrimination, harassment, intimidation, and bullying in schools (EC 234.3).
- 11) Requires the CDE to develop an online training module to assist all school staff, school administrators, parents, pupils, and community members in increasing their knowledge of the dynamics of bullying and cyberbullying. The online training module shall include, but is not limited to, identifying an act of bullying or cyberbullying, and implementing strategies to address bullying and cyberbullying (EC 32283.5).

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

COMMENTS: *Need for the bill.* According to the author, “although there are currently policies in place that define bullying and there being processes in place for oversight, there is no mechanism in place to ensure that when a bullying complaint has been found to have potentially occurred and a parent or guardian has started a process of filing a complaint that a school site take specific actions in order to rectify the situation.”

Prevalence of bullying. According to the U.S. Department of Health and Human Services, 28 percent of U.S. students in grades six through twelve and 20 percent of students in grades 9-12 have experienced bullying. Approximately 30 percent of young people admit to bullying others in surveys. Over 70 percent of young people say they have seen bullying in their schools. Similarly, over 70 percent of school staff report that they have seen bullying. Research suggests that when bystanders intervene, bullying stops within 10 seconds 57 percent of the time.

Cyberbullying is also of concern with 15 percent of high school students reported having been electronically bullied in the past year and 55 percent of LGBTQ students experiencing cyberbullying.

The most common types of bullying are verbal and social with physical bullying happening less often. Most bullying takes place in school, outside on school grounds, and on the school bus. It also happens outside of school, including via electronic devices. Only about 20 to 30 percent of students who are bullied notify adults about the bullying.

Kids who are bullied can experience negative physical, school, and mental health issues. Kids who are bullied are more likely to experience:

- Depression and anxiety, increased feelings of sadness and loneliness, changes in sleep and eating patterns, and loss of interest in activities they used to enjoy. These issues may persist into adulthood.
- Health complaints
- Decreased academic achievement—GPA and standardized test scores—and school participation. They are more likely to miss, skip, or drop out of school.

Current provisions in place to respond to bullying in schools. One cannot dispute the continuing prevalence of bullying in schools. California has taken significant action to place requirements on schools to have policies and procedures in place to respond to incidents of bullying and harassment. As discussed above in the *Existing Law* sections (1) through (5), schools in California are required to adopt policies that prohibit discrimination, harassment, intimidation, and bullying, and must adopt processes and timelines to receive and investigate complaints, to provide opportunities for appeal, and to ensure that students, parents, and the school community are aware of these policies and procedures.

The CDE, through its regular monitoring process, monitors whether schools have adopted such policies, publicized them throughout the school community, and identified an individual responsible for ensuring compliance with these requirements.

These are local policies meant to address the unique needs and conditions of each school and community. ***The committee may wish to consider*** if this bill would likely have a substantive impact on bullying in schools and whether there is a need to override local control by mandating that LEAs respond to complaints of bullying in a specified manner, when there is already clear existing law in this area giving schools the discretion to respond in ways appropriate to the needs of their schools and communities.

Given that current law, includes a comprehensive definition of bullying (see (6) in the Existing Law section above), ***the committee may wish to consider*** whether the definition of “severe bullying” contained in the bill is necessary.

Similar and prior legislation. AB 2291 (Chiu) requires schools to include policies and procedures related to the prevention of bullying in comprehensive school safety plans, requires the California Department of Education (CDE) to post an online training module on bullying,

and requires schools to annually provide the training module to certificated employees. This bill is pending before the Assembly Appropriations Committee.

AB 1318 (Chiu) of this Session requires schools to provide staff members information about local resources available to support pupils subject to bias and discrimination based on certain actual or perceived characteristics; requires annual trainings of school staff on addressing intergroup conflict; requires reporting of bullying incidents to the Superintendent of Public Instruction (SPI); and requires CDE to provide specific information on its website related to bias and discrimination and intergroup conflict. This bill was held in Assembly Appropriations in 2017.

AB 2845 (Williams), Chapter 621, Statutes of 2016 requires the CDE, as part of its existing compliance monitoring activities, to assess whether LEAs have provided information to staff serving students in grades 7 through 12 on resources related to bullying due to religious affiliation, and requires the CDE to post on its website a list of the resources that support students who have been subject to school-based discrimination on the basis of actual or perceived religious affiliation, nationality, race or ethnicity.

AB 827 (O'Donnell), Chapter 562, Statutes of 2015 requires the CDE, as part of its compliance monitoring, to assess whether LEAs have provided information to certificated staff serving grades 7-12 on schoolsite and community resources for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) students.

AB 1993 (Fox), Chapter 418, Statutes of 2014 requires the CDE to develop an online training module on bullying and cyberbullying.

AB 9 (Ammiano), Chapter 723, Statutes of 2011 requires a school district to include specific information in its policies and procedures regarding discrimination, harassment, intimidation, and bullying, and requires the policies to include complaint procedures and alternative discipline policies for pupils who engage in this behavior.

AB 394 (Levine), Chapter 394, Statutes of 2007, requires the CDE to assess local educational agencies, as part of CDE's existing monitoring process, for compliance with specific anti-discrimination and harassment policies and procedures, and display on their website specific bias-related and discrimination and harassment information.

REGISTERED SUPPORT / OPPOSITION:

Support

California Immigrant Policy Center

Opposition

None on file

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