

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

AB 711 (Chiu) – As Amended April 11, 2019

SUBJECT: Pupil records: name and gender changes

SUMMARY: Requires a school district to update and reissue a former pupil's records if it receives documentation that a former pupil's legal name or gender has been changed.

Specifically, **this bill:**

- 1) Requires a school district, if it receives government-issued documentation demonstrating that a former pupil's legal name or gender has been changed, to update the former pupil's records accordingly.
- 2) Requires that the type of documentation provided by a former pupil demonstrating legal name or gender change may include:
 - a) State-issued driver's license
 - b) Birth certificate
 - c) Passport
 - d) Social security card
 - e) Court order indicating a name change or a gender change, or both
- 3) Requires the school district to reissue any documents conferred upon the former pupil with the former pupil's updated legal name or gender, if requested by the former pupil. Documents that may be reissued by the school district include, but are not limited to, a transcript, a high school diploma, or a high school equivalency certificate.

EXISTING LAW:

- 1) Establishes that no person will be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate, including immigration status, 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. (Education Code Section 220)
- 2) Requires school districts to adopt a policy that prohibits discrimination, harassment, intimidation, and bullying based on the actual or perceived characteristics, including immigration status, 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. Requires the policy to 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. (Education Code Section 234.1 (a))

- 3) Requires school districts to adopt a process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying based on any of the actual or perceived characteristics, including immigration status, 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. (Education Code Section 234.1 (b))
- 4) Defines “Parent” to mean a natural parent, an adopted parent, or legal guardian, as it relates to pupil records. If the parents are divorced or legally separated, only a parent having legal custody of the pupil may challenge the content of a record, offer a written response to a record, or consent to release records to others. Either parent may grant consent if both parents have notified, in writing, the school or school district that an agreement has been made. If a pupil has attained the age of 18 years or is attending an institution of postsecondary education, the permission or consent required of, and the rights accorded to, the parents or guardian of the pupil shall thereafter only be required of, and accorded to, the pupil. (Education Code Section 49061)
- 5) Requires school districts to establish, maintain, and destroy pupil records according to regulations adopted by the State Board of Education. (Education Code Section 49062)
- 6) Requires school districts to notify parents of the procedures for challenging the content of pupil records. (Education Code Section 49063 (g))
- 7) Allows school districts to make a reasonable charge in an amount not to exceed the actual cost of furnishing copies of any pupil record; however, prohibits charges for furnishing (1) up to two transcripts of former pupils’ records or (2) up to two verifications of various records of former pupils. No charge may be made to search for or to retrieve any pupil record. (Education Code Section 49065)
- 8) Grants parents of currently enrolled or former pupils the absolute right to access to any and all pupil records related to their children that are maintained by school districts or private schools. The editing or withholding of any of those records, except as specified, is prohibited. (Education Code Section 49069)
- 9) Requires each school district to adopt procedures for the granting of requests by parents for copies of all pupil records, or to inspect and review records during regular school hours, provided that the requested access shall be granted no later than five business days following the date of the request. Procedures must include the notification to the parent of the location of all official pupil records if not centrally located and the availability of qualified certificated personnel to interpret records if requested. (Education Code Section 49069)
- 10) Permits the parent or guardian of a pupil or former pupil of a school district to challenge the content of any pupil record if the parent or guardian alleges that the information in the written records concerning their child is:
 - a) Inaccurate

- b) An unsubstantiated personal conclusion or inference
- c) A conclusion or inference outside of the observer's area of competence
- d) Not based on the personal observation of a named person with the time and place of the observation noted
- e) Misleading
- f) In violation of the privacy or other rights of the pupil

The superintendent may sustain or deny the allegation and order a correction. If the superintendent denies the allegation, the parent or guardian may appeal the decision to the governing board of the school district. If the governing board also denies the allegation, the parent or guardian may submit a written statement to the student's record. (Education Code Section 49070)

- 11) Protects the privacy of student education records in federal law with the Family Educational Rights and Privacy Act (FERPA). The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. (20 U.S.C. § 1232g; 34 CFR Part 99)
- 12) Permits students, current or former, to seek to amend their school records if the records are inaccurate, misleading, or in violation of the student's right to privacy. (34 C.F.R. § 99.7(a)(2)(ii))

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill.* According to the author, "AB 711 is a common-sense fix to ensure that former students who are transgender and who need to update their diploma or transcript have the same right to do so as current transgender students in our schools. Making sure school records reflect a person's actual name and gender is a no-brainer. If a record has a person's incorrect name or 'deadname' on it, the document can out the person to anyone who sees it, putting the person at risk of discrimination or harm. This bill will give greater protections to transgender Californians and remove barriers to applying for college and employment opportunities."

What is a school or school district's obligation when a student's stated gender identity is different than the student's gender marker in the school's or district's official records? The following information was provided by the CDE to school districts, county offices of education and charter schools as guidance related to this topic.

"A school district is required to maintain a permanent student record which includes the legal name of the student and the student's gender. If and when a school district receives documentation that such legal name or gender has been changed, the district must update the student's official record accordingly.

If the school district has not received documentation supporting a legal name or gender change, the school should nonetheless update all unofficial school records (e.g. attendance sheets, school IDs, report cards) to reflect the student's name and gender marker that is consistent with the student's gender identity. This is critical in order to avoid unintentionally revealing the student's transgender status to others in violation of the student's privacy rights.

If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with the student's gender identity, without the necessity of legal documentation or a change to the student's official district record. The student's age is not a factor. For example, children as early as age two are expressing a different gender identity. It is strongly suggested that teachers privately ask transgender or gender nonconforming students at the beginning of the school year how they want to be addressed in class, in correspondence to the home, or at conferences with the student's parents.

In addition to preserving a transgender student's privacy, referring to a transgender student by the student's chosen name and pronouns fosters a safe, supportive and inclusive learning environment. To ensure that transgender students have equal access to the programs and activities provided by the school, all members of the school community must use a transgender student's chosen name and pronouns. Schools should also implement safeguards to reduce the possibility of inadvertent slips or mistakes, particularly among temporary personnel such as substitute teachers.

If a member of the school community intentionally uses a student's incorrect name and pronoun, or persistently refuses to respect a student's chosen name and pronouns, that conduct should be treated as harassment. That type of harassment can create a hostile learning environment, violate the transgender student's privacy rights, and increase that student's risk for harassment by other members of the school community. Examples of this type of harassment include a teacher consistently using the student's incorrect name when displaying the student's work in the classroom, or a transgender student's peers referring to the student by the student's birth name during class, but would not include unintentional or sporadic occurrences. Depending on the circumstances, the school's failure to address known incidents of that type of harassment may violate California's antidiscrimination laws."

The Committee may wish to consider that California and the Legislature have established policies to ensure that students who are currently enrolled in K-12 and institutions of higher education, and who identify as transgender, are protected from discrimination, are permitted to participate in school activities and use facilities consistent with their gender identity, and have their privacy protected. Federal law requires schools to allow transgender students to update their permanent record so that their name and gender identity are accurately reflected on educational documents and official school records. However, the majority of these protections apply to current transgender students, and the law and administrative regulations are largely silent related to the rights of former students who may have transitioned or come out after leaving K-12 education. As a result, according to one of the sponsors of the bill, the Transgender Law Center and Equity California, "Some schools have been reluctant to amend educational records for former students to reflect their correct name and gender. This can effectively "out" the person to anyone who sees the old record or diploma – potentially putting them at risk of discrimination or harm, or causing potential employers or other parties to call the person by the wrong name ('deadnaming')."

Nonbinary gender. Some individuals neither identify with male nor female genders, and may consider themselves “nonbinary.” This bill as written is inclusive of individuals who identify as nonbinary.

The California Longitudinal Pupil Achievement Data System (CALPADS) is currently being updated to include a nonbinary gender code by the 2019-20 academic year, and the CDE has notified LEAs to ensure that there is local agreement on which gender to report for a student who has elected to identify themselves with the “nonbinary” gender during the 2018-19 academic year.

Committee Amendment: Staff recommends the bill be amended to:

- 1) Apply to local educational agencies (LEAs), including: school districts, charter schools and county offices of education.
- 2) Clarify that the LEA is only required to update the documents requested by the former pupil.
- 3) Requires the LEA to add a new document to the former pupil’s file that includes information such as the date of the request, and a list of the records that were reissued to the former pupil.

Prior legislation. SB 179 (Atkins), Chapter 853, Statutes of 2017, authorizes, beginning September 1, 2018, persons to change their gender on birth certificates to be female, male, or nonbinary. Beginning January 2, 2019, the bill requires an application for an original or a renewal of a driver’s license to provide applicants the opportunity to choose a gender of female, male, or nonbinary.

AB 2153 (Thurmond) of the 2017-18 Session, would have required each school operated by a school district or county office of education and each charter school to annually provide in-service training to teachers of pupils in grades 7 to 12, and to all other certificated employees at that school, on schoolsite and community resources for the support of lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) pupils as well as strategies to increase support for LGBTQ pupils and thereby improve overall school climate. This bill was vetoed by the Governor with the following message:

This bill requires local schools to provide annual in-service training on available community and school site resources for lesbian, gay, bisexual, transgender, queer (LGBTQ) students to teachers and supporting staff of grades 7-12 students.

I signed AB 827 (O'Donnell) in 2015, which required the Department of Education, as part of its compliance monitoring, to assess whether local schools have provided information to certificated staff serving of grades 7-12 on school site and community resources for LGBTQ students. Current law also requires the Department to monitor local schools to ensure the adoptions of policies prohibiting discrimination, harassment, intimidation, and bullying on the basis of sexual orientation, gender, gender identity, or gender expression.

If local schools find that more training or resources on this topic is needed, they have the flexibility to use their resources as they see best.

AB 677 (Chiu), Chapter 744, Statutes of 2017, expands the list of state entities currently required to collect voluntary self-identification information on sexual orientation and gender identity to include various education and employment-related state agencies and prohibits an LEA that

administers the California Healthy Kids Survey to middle or high school pupils from removing a specific question regarding sexual orientation and gender identity.

AB 1318 (Chiu) of the 2017-18 Session would have required an LEA to provide staff members with information about local resources available to support pupils subject to bias and discrimination; would have required professional development trainings of certificated staff to address intergroup conflict; and would have required the California Department of Education (CDE) to provide specific information on its website related to bias and discrimination and intergroup conflict. This bill was referred to the Assembly Appropriations Committee Suspense file.

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 Web site, and annually update a list of statewide resources, including community-based organizations, that provide support to youth, and their families, who have been subjected to school-based discrimination, harassment, intimidation, or bullying, including school-based discrimination, harassment, intimidation, or bullying on the basis of nationality, race, or ethnicity, or perceived nationality, race, or ethnicity.

AB 827 (O'Donnell), Chapter 562, Statutes of 2015, requires the CDE to monitor whether LEAs have provided information on existing schoolsite and community resources related to the support of LGBTQ pupils to certificated schoolsite employees who serve pupils in any of grades 7 to 12.

REGISTERED SUPPORT / OPPOSITION:

Support

Api Equality Northern California
California School Nurses Organization
El/La Para TransLatinas
Equality California
Gay Asian Pacific Alliance (Gapa)
Glsen Los Angeles
National Center For Lesbian Rights
San Francisco Lesbian Gay Bisexual Transgender Community Center
San Francisco Unified School District
Transgender Law Center

Opposition

None on file.

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