

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1370

Introduced by Senator Yee
(Coauthor: Senator Romero)
(Coauthors: Assembly Members Brownley and Portantino)

February 21, 2008

An act to amend Sections 48907, 48950, and 66301 of the Education Code, relating to education.

LEGISLATIVE COUNSEL'S DIGEST

SB 1370, as amended, Yee. Education: Journalism Teacher Protection Act.

(1) Existing law grants to public school pupils the right to exercise freedom of speech and of the press, as specified. Existing law also prohibits school districts operating one or more high schools and private secondary schools from making or enforcing a rule that subjects a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that is protected by specified provisions of the United States Constitution and the California Constitution.

This bill would prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for acting to protect a ~~pupil's conduct authorized or pupil engaged in conduct authorized by a specified provision of state law or refusing to abridge or infringe upon conduct that is~~ protected pursuant to those *constitutional* provisions.

(2) Existing law prohibits the Regents of the University of California, the Trustees of the California State University, and the governing board of a community college district from making or enforcing a rule

subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that is protected by specified provisions of the United States Constitution and the California Constitution.

This bill would prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for acting to protect a ~~student's conduct~~ *student engaged in conduct authorized by a specified provision of state law or refusing to abridge or infringe upon conduct that is protected pursuant to those constitutional provisions.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Journalism Teacher Protection Act.
- 3 SEC. 2. Section 48907 of the Education Code is amended to
- 4 read:
- 5 48907. (a) Pupils of the public schools shall have the right to
- 6 exercise freedom of speech and of the press including, but not
- 7 limited to, the use of bulletin boards, the distribution of printed
- 8 materials or petitions, the wearing of buttons, badges, and other
- 9 insignia, and the right of expression in official publications,
- 10 whether or not the publications or other means of expression are
- 11 supported financially by the school or by use of school facilities,
- 12 except that expression shall be prohibited which is obscene,
- 13 libelous, or slanderous. Also prohibited shall be material which
- 14 so incites pupils as to create a clear and present danger of the
- 15 commission of unlawful acts on school premises or the violation
- 16 of lawful school regulations, or the substantial disruption of the
- 17 orderly operation of the school.
- 18 (b) Each governing board of a school district and each county
- 19 board of education shall adopt rules and regulations in the form
- 20 of a written publications code, which shall include reasonable
- 21 provisions for the time, place, and manner of conducting such
- 22 activities within its respective jurisdiction.
- 23 (c) Pupil editors of official school publications shall be
- 24 responsible for assigning and editing the news, editorial, and
- 25 feature content of their publications subject to the limitations of

1 this section. However, it shall be the responsibility of a journalism
2 adviser or advisers of pupil publications within each school to
3 supervise the production of the pupil staff, to maintain professional
4 standards of English and journalism, and to maintain the provisions
5 of this section.

6 (d) There shall be no prior restraint of material prepared for
7 official school publications except insofar as it violates this section.
8 School officials shall have the burden of showing justification
9 without undue delay prior to a limitation of pupil expression under
10 this section.

11 (e) “Official school publications” refers to material produced
12 by pupils in the journalism, newspaper, yearbook, or writing classes
13 and distributed to the student body either free or for a fee.

14 (f) Nothing in this section shall prohibit or prevent the governing
15 board of a school district from adopting otherwise valid rules and
16 regulations relating to oral communication by pupils upon the
17 premises of each school.

18 (g) An employee shall not be dismissed, suspended, disciplined,
19 reassigned, transferred, or otherwise retaliated against for acting
20 to protect a pupil engaged in the conduct authorized under this
21 section, or *refusing to abridge or infringe upon* conduct that is
22 protected by the First Amendment to the United States Constitution
23 or Section 2 of Article I of the California Constitution.

24 SEC. 3. Section 48950 of the Education Code is amended to
25 read:

26 48950. (a) School districts operating one or more high schools
27 and private secondary schools shall not make or enforce a rule
28 subjecting a high school pupil to disciplinary sanctions solely on
29 the basis of conduct that is speech or other communication that,
30 when engaged in outside of the campus, is protected from
31 governmental restriction by the First Amendment to the United
32 States Constitution or Section 2 of Article I of the California
33 Constitution.

34 (b) A pupil who is enrolled in a school that has made or enforced
35 a rule in violation of subdivision (a) may commence a civil action
36 to obtain appropriate injunctive and declaratory relief as determined
37 by the court. Upon motion, a court may award attorney’s fees to
38 a prevailing plaintiff in a civil action pursuant to this section.

39 (c) This section does not apply to a private secondary school
40 that is controlled by a religious organization, to the extent that the

1 application of this section would not be consistent with the religious
2 tenets of the organization.

3 (d) Nothing in this section prohibits the imposition of discipline
4 for harassment, threats, or intimidation, unless constitutionally
5 protected.

6 (e) Nothing in this section shall be construed to supersede, or
7 otherwise limit or modify, the provisions of Section 48907.

8 (f) The Legislature finds and declares that free speech rights
9 are subject to reasonable time, place, and manner regulations.

10 (g) An employee shall not be dismissed, suspended, disciplined,
11 reassigned, transferred, or otherwise retaliated against for acting
12 to protect a pupil engaged in conduct authorized under this section,
13 or conduct that is protected by the First Amendment to the United
14 States Constitution or Section 2 of Article I of the California
15 Constitution.

16 SEC. 4. Section 66301 of the Education Code is amended to
17 read:

18 66301. (a) Neither the Regents of the University of California,
19 the Trustees of the California State University, the governing board
20 of a community college district, nor an administrator of any campus
21 of those institutions, shall make or enforce a rule subjecting a
22 student to disciplinary sanction solely on the basis of conduct that
23 is speech or other communication that, when engaged in outside
24 a campus of those institutions, is protected from governmental
25 restriction by the First Amendment to the United States
26 Constitution or Section 2 of Article I of the California Constitution.

27 (b) A student enrolled in an institution, as specified in
28 subdivision (a), that has made or enforced a rule in violation of
29 subdivision (a) may commence a civil action to obtain appropriate
30 injunctive and declaratory relief as determined by the court. Upon
31 a motion, a court may award attorney's fees to a prevailing plaintiff
32 in a civil action pursuant to this section.

33 (c) Nothing in this section shall be construed to authorize a prior
34 restraint of student speech or the student press.

35 (d) Nothing in this section prohibits the imposition of discipline
36 for harassment, threats, or intimidation, unless constitutionally
37 protected.

38 (e) Nothing in this section prohibits an institution from adopting
39 rules and regulations that are designed to prevent hate violence,
40 as defined in subdivision (a) of Section 4 of Chapter 1363 of the

1 Statutes of 1992, from being directed at students in a manner that
2 denies them their full participation in the educational process, if
3 the rules and regulations conform to standards established by the
4 First Amendment to the United States Constitution and Section 2
5 of Article I of the California Constitution for citizens generally.

6 (f) An employee shall not be dismissed, suspended, disciplined,
7 reassigned, transferred, or otherwise retaliated against for acting
8 to protect a student engaged in conduct authorized under this
9 section, or *refusing to abridge or infringe upon* conduct that is
10 protected by the First Amendment to the United States Constitution
11 or Section 2 of Article I of the California Constitution.

O