

AMENDED IN ASSEMBLY MAY 13, 2008

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1370

Introduced by Senator Yee

(~~Coauthor: Senator Romero~~ *Coauthors: Senators Kuehl and Romero*)

(Coauthors: Assembly Members Brownley and Portantino)

February 21, 2008

An act to amend Sections 48907, 48950, ~~and 66301~~ *66301, and 94367* 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. *A pupil enrolled in a school that has made or enforced a rule in violation of this prohibition is authorized to commence a civil action for injunctive and declaratory relief.*

This bill would prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for acting to protect a 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 *state law or* those constitutional provisions. *The bill would limit the authority to commence a civil action*

to a pupil who is enrolled at the time the school made or enforced a rule in violation of the prohibition.

(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. *A student enrolled in an institution that has made or enforced a rule in violation of this prohibition is authorized to commence a civil action for injunctive and declaratory relief.*

This bill would prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for acting to protect a 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 *state law or those constitutional provisions. The bill would limit the authority to commence a civil action to a student who is enrolled at the time the institution made or enforced a rule in violation of the prohibition.*

(3) *Existing law also prohibits a private postsecondary educational institution from making or enforcing a rule that subjects a student 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 or the California Constitution and authorizes a student enrolled in an institution that has made or enforced a rule in violation of this prohibition to commence a civil action.*

This bill would limit the authority to commence a civil action to a student who is enrolled at the time the institution made or enforced a rule in violation of the prohibition.

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

1 limited to, the use of bulletin boards, the distribution of printed
2 materials or petitions, the wearing of buttons, badges, and other
3 insignia, and the right of expression in official publications,
4 whether or not the publications or other means of expression are
5 supported financially by the school or by use of school facilities,
6 except that expression shall be prohibited which is obscene,
7 libelous, or slanderous. Also prohibited shall be material ~~which~~
8 *that* so incites pupils as to create a clear and present danger of the
9 commission of unlawful acts on school premises or the violation
10 of lawful school regulations, or the substantial disruption of the
11 orderly operation of the school.

12 (b) Each governing board of a school district and each county
13 board of education shall adopt rules and regulations in the form
14 of a written publications code, which shall include reasonable
15 provisions for the time, place, and manner of conducting such
16 activities within its respective jurisdiction.

17 (c) Pupil editors of official school publications shall be
18 responsible for assigning and editing the news, editorial, and
19 feature content of their publications subject to the limitations of
20 this section. However, it shall be the responsibility of a journalism
21 adviser or advisers of pupil publications within each school to
22 supervise the production of the pupil staff, to maintain professional
23 standards of English and journalism, and to maintain the provisions
24 of this section.

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

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

33 (f) ~~Nothing in this section shall~~ *This section does not* prohibit
34 or prevent the governing board of a school district from adopting
35 otherwise valid rules and regulations relating to oral
36 communication by pupils upon the premises of each school.

37 (g) An employee shall not be dismissed, suspended, disciplined,
38 reassigned, transferred, or otherwise retaliated against for acting
39 to protect a pupil engaged in the conduct authorized under this
40 section, or refusing to abridge or infringe upon conduct that is

1 protected by *this section*, the First Amendment to the United States
2 Constitution, or Section 2 of Article I of the California Constitution.

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

5 48950. (a) School districts operating one or more high schools
6 and private secondary schools shall not make or enforce a rule
7 subjecting a high school pupil to disciplinary sanctions solely on
8 the basis of conduct that is speech or other communication that,
9 when engaged in outside of the campus, is protected from
10 governmental restriction by the First Amendment to the United
11 States Constitution or Section 2 of Article I of the California
12 Constitution.

13 (b) A pupil who is enrolled in a school ~~that~~ *at the time that the*
14 *school* has made or enforced a rule in violation of subdivision (a)
15 may commence a civil action to obtain appropriate injunctive and
16 declaratory relief as determined by the court. Upon motion, a court
17 may award attorney's fees to a prevailing plaintiff in a civil action
18 pursuant to this section.

19 (c) This section does not apply to a private secondary school
20 that is controlled by a religious organization, to the extent that the
21 application of this section would not be consistent with the religious
22 tenets of the organization.

23 (d) ~~Nothing in this section prohibits~~ *This section does not*
24 *prohibit* the imposition of discipline for harassment, threats, or
25 intimidation, unless constitutionally protected.

26 (e) ~~Nothing in this section shall be construed to~~ *This section*
27 *does not* supersede, or otherwise limit or modify, the provisions
28 of Section 48907.

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

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

37 SEC. 4. Section 66301 of the Education Code is amended to
38 read:

39 66301. (a) Neither the Regents of the University of California,
40 the Trustees of the California State University, the governing board

1 of a community college district, nor an administrator of any campus
2 of those institutions, shall make or enforce a rule subjecting a
3 student to disciplinary sanction solely on the basis of conduct that
4 is speech or other communication that, when engaged in outside
5 a campus of those institutions, is protected from governmental
6 restriction by the First Amendment to the United States
7 Constitution or Section 2 of Article I of the California Constitution.

8 (b) A student enrolled in an institution, as specified in
9 subdivision (a), ~~that at the time that the institution~~ has made or
10 enforced a rule in violation of subdivision (a) may commence a
11 civil action to obtain appropriate injunctive and declaratory relief
12 as determined by the court. Upon a motion, a court may award
13 attorney’s fees to a prevailing plaintiff in a civil action pursuant
14 to this section.

15 (c) ~~Nothing in this section shall be construed to~~ *This section*
16 *does not* authorize a prior restraint of student speech or the student
17 press.

18 (d) ~~Nothing in this section prohibits~~ *This section does not*
19 *prohibit* the imposition of discipline for harassment, threats, or
20 intimidation, unless constitutionally protected.

21 (e) ~~Nothing in this section prohibits~~ *This section does not*
22 *prohibit* an institution from adopting rules and regulations that are
23 designed to prevent hate violence, as defined in subdivision (a) of
24 Section 4 of Chapter 1363 of the Statutes of 1992, from being
25 directed at students in a manner that denies them their full
26 participation in the educational process, if the rules and regulations
27 conform to standards established by the First Amendment to the
28 United States Constitution and Section 2 of Article I of the
29 California Constitution for citizens generally.

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

36 *SEC. 5. Section 94367 of the Education Code is amended to*
37 *read:*

38 94367. (a) No private postsecondary educational institution
39 shall make or enforce ~~any~~ a rule subjecting ~~any~~ a student to
40 disciplinary sanctions solely on the basis of conduct that is speech

1 or other communication that, when engaged in outside the campus
2 or facility of a private postsecondary institution, is protected from
3 governmental restriction by the First Amendment to the United
4 States Constitution or Section 2 of Article 1 of the California
5 Constitution.

6 (b) ~~Any~~ A student enrolled in a private postsecondary institution
7 ~~that at the time that the institution has made or enforced any rule~~
8 in violation of subdivision (a) may commence a civil action to
9 obtain appropriate injunctive and declaratory relief as determined
10 by the court. Upon motion, a court may award attorney's fees to
11 a prevailing plaintiff in a civil action pursuant to this section.

12 (c) This section does not apply to ~~any~~ a private postsecondary
13 educational institution that is controlled by a religious organization,
14 to the extent that the application of this section would not be
15 consistent with the religious tenets of the organization.

16 (d) ~~Nothing in this section shall be construed to~~ *This section*
17 *does not authorize any the* prior restraint of student speech.

18 (e) ~~Nothing in this section prohibits~~ *This section does not*
19 *prohibit* the imposition of discipline for harassment, threats, or
20 intimidation, unless constitutionally protected.

21 (f) ~~Nothing in this section prohibits~~ *This section does not*
22 *prohibit* an institution from adopting rules and regulations that are
23 designed to prevent hate violence, as defined in subdivision (a) of
24 Section 4 of Chapter 1363 of the Statutes of 1992, from being
25 directed at students in a manner that denies them their full
26 participation in the educational process, so long as the rules and
27 regulations conform to standards established by the First
28 Amendment to the United States Constitution and Section 2 of
29 Article 1 of the California Constitution for citizens generally.