

AMENDED IN ASSEMBLY JUNE 30, 2008

AMENDED IN ASSEMBLY JUNE 2, 2008

AMENDED IN ASSEMBLY MAY 19, 2008

AMENDED IN ASSEMBLY MAY 13, 2008

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1370

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

February 21, 2008

An act to amend Sections 48907, 48950, 66301, and 94367 of the Education Code, relating to education.

LEGISLATIVE COUNSEL'S DIGEST

SB 1370, as amended, Yee. Education: freedom of speech and of the press.

(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 specify that the authority to commence a civil action applies to a pupil who is enrolled at the time the postsecondary educational institution made or enforced a rule in violation of the prohibition. The bill also would prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against *solely* for acting to protect a pupil engaged in conduct authorized by a specified provision of state law or refusing to infringe upon conduct that is protected pursuant to state law or 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. 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 specify that the authority to commence a civil action applies to a student who is enrolled at the time the school made or enforced a rule in violation of the prohibition. The bill also would prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against *solely* for acting to protect a student engaged in conduct authorized by a specified provision of state law or refusing to infringe upon conduct that is protected pursuant to state law or those constitutional provisions.

(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 specify that the authority to commence a civil action applies 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.** *It is the intent of the Legislature that nothing in*
2 *Section 48907 or 48950 of the Education Code shall be construed*
3 *to diminish a district's ability to take actions authorized by current*
4 *law in order to maintain instruction that is consistent with the*
5 *statewide academic standards defined in Article 2 (commencing*
6 *with Section 60604) of Chapter 5 of Part 33 of Division 4 of Title*
7 *2 of the Education Code.*

8 ~~**SECTION 1.**~~

9 **SEC. 2.** Section 48907 of the Education Code is amended to
10 read:

11 48907. (a) Pupils of the public schools shall have the right to
12 exercise freedom of speech and of the press including, but not
13 limited to, the use of bulletin boards, the distribution of printed
14 materials or petitions, the wearing of buttons, badges, and other
15 insignia, and the right of expression in official publications,
16 whether or not the publications or other means of expression are
17 supported financially by the school or by use of school facilities,
18 except that expression shall be prohibited which is obscene,
19 libelous, or slanderous. Also prohibited shall be material that so
20 incites pupils as to create a clear and present danger of the
21 commission of unlawful acts on school premises or the violation
22 of lawful school regulations, or the substantial disruption of the
23 orderly operation of the school.

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

29 (c) Pupil editors of official school publications shall be
30 responsible for assigning and editing the news, editorial, and
31 feature content of their publications subject to the limitations of
32 this section. However, it shall be the responsibility of a journalism
33 adviser or advisers of pupil publications within each school to
34 supervise the production of the pupil staff, to maintain professional
35 standards of English and journalism, and to maintain the provisions
36 of this section.

37 (d) There shall be no prior restraint of material prepared for
38 official school publications except insofar as it violates this section.

1 School officials shall have the burden of showing justification
2 without undue delay prior to a limitation of pupil expression under
3 this section.

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

7 (f) This section does not prohibit or prevent the governing board
8 of a school district from adopting otherwise valid rules and
9 regulations relating to oral communication by pupils upon the
10 premises of each school.

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

17 ~~SEC. 2.~~

18 *SEC. 3.* Section 48950 of the Education Code is amended to
19 read:

20 48950. (a) School districts operating one or more high schools
21 and private secondary schools shall not make or enforce a rule
22 subjecting a high school pupil to disciplinary sanctions solely on
23 the basis of conduct that is speech or other communication that,
24 when engaged in outside of the campus, is protected from
25 governmental restriction by the First Amendment to the United
26 States Constitution or Section 2 of Article I of the California
27 Constitution.

28 (b) A pupil who is enrolled in a school at the time that the school
29 has made or enforced a rule in violation of subdivision (a) may
30 commence a civil action to obtain appropriate injunctive and
31 declaratory relief as determined by the court. Upon motion, a court
32 may award attorney’s fees to a prevailing plaintiff in a civil action
33 pursuant to this section.

34 (c) This section does not apply to a private secondary school
35 that is controlled by a religious organization, to the extent that the
36 application of this section would not be consistent with the religious
37 tenets of the organization.

38 (d) This section does not prohibit the imposition of discipline
39 for harassment, threats, or intimidation, unless constitutionally
40 protected.

1 (e) This section does not supersede, or otherwise limit or modify,
2 the provisions of Section 48907.

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

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

11 ~~SEC. 3.~~

12 *SEC. 4.* Section 66301 of the Education Code is amended to
13 read:

14 66301. (a) Neither the Regents of the University of California,
15 the Trustees of the California State University, the governing board
16 of a community college district, nor an administrator of any campus
17 of those institutions, shall make or enforce a rule subjecting a
18 student to disciplinary sanction solely on the basis of conduct that
19 is speech or other communication that, when engaged in outside
20 a campus of those institutions, is protected from governmental
21 restriction by the First Amendment to the United States
22 Constitution or Section 2 of Article I of the California Constitution.

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

29 (c) This section does not authorize a prior restraint of student
30 speech or the student press.

31 (d) This section does not prohibit the imposition of discipline
32 for harassment, threats, or intimidation, unless constitutionally
33 protected.

34 (e) This section does not prohibit an institution from adopting
35 rules and regulations that are designed to prevent hate violence,
36 as defined in subdivision (a) of Section 4 of Chapter 1363 of the
37 Statutes of 1992, from being directed at students in a manner that
38 denies them their full participation in the educational process, if
39 the rules and regulations conform to standards established by the

1 First Amendment to the United States Constitution and Section 2
2 of Article I of the California Constitution for citizens generally.

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

9 ~~SEC. 4.~~

10 *SEC. 5.* Section 94367 of the Education Code is amended to
11 read:

12 94367. (a) No private postsecondary educational institution
13 shall make or enforce a rule subjecting a student to disciplinary
14 sanctions solely on the basis of conduct that is speech or other
15 communication that, when engaged in outside the campus or
16 facility of a private postsecondary institution, is protected from
17 governmental restriction by the First Amendment to the United
18 States Constitution or Section 2 of Article I of the California
19 Constitution.

20 (b) A student enrolled in a private postsecondary institution at
21 the time that the institution has made or enforced any rule in
22 violation of subdivision (a) may commence a civil action to obtain
23 appropriate injunctive and declaratory relief as determined by the
24 court. Upon motion, a court may award attorney's fees to a
25 prevailing plaintiff in a civil action pursuant to this section.

26 (c) This section does not apply to a private postsecondary
27 educational institution that is controlled by a religious organization,
28 to the extent that the application of this section would not be
29 consistent with the religious tenets of the organization.

30 (d) This section does not authorize the prior restraint of student
31 speech.

32 (e) This section does not prohibit the imposition of discipline
33 for harassment, threats, or intimidation, unless constitutionally
34 protected.

35 (f) This section does not prohibit an institution from adopting
36 rules and regulations that are designed to prevent hate violence,
37 as defined in subdivision (a) of Section 4 of Chapter 1363 of the
38 Statutes of 1992, from being directed at students in a manner that
39 denies them their full participation in the educational process, so
40 long as the rules and regulations conform to standards established

1 by the First Amendment to the United States Constitution and
2 Section 2 of Article I of the California Constitution for citizens
3 generally.

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