

AMENDED IN SENATE DECEMBER 16, 2009

AMENDED IN SENATE MAY 6, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 438

Introduced by Senator Yee

February 26, 2009

~~An act to add Section 14011.61 to the Welfare and Institutions Code, relating to Medi-Cal. An act to amend Sections 48907 and 48950 of the Education Code, relating to education.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 438, as amended, Yee. ~~Medi-Cal. Charter schools: freedom of speech and of the press.~~

~~Existing law establishes the Medi-Cal program administered by the State Department of Health Care Services and county welfare departments under which qualified low-income persons are provided with health care services.~~

~~Under existing law, the State Department of Health Care Services is required, to the extent federal financial participation is available and subject to federal approval of any necessary state plan amendments, to exercise an option under federal law to implement a program for accelerated enrollment of children in the Medi-Cal program.~~

~~This bill would also require the department, to the extent federal financial participation is available and subject to approval of any necessary state plan amendments, to exercise an option under federal law to implement a program for accelerated enrollment of children and pregnant women in the Medi-Cal program and would make each county welfare department a qualified entity for determining eligibility for~~

~~Medi-Cal benefits for those children and pregnant women. If the county determines that the child is eligible for the Medi-Cal program with a share of cost, the county would be required to enroll the child in the Medi-Cal program and forward the application to the Managed Risk Medical Insurance Board for an evaluation of the child's eligibility for the Healthy Families Program. Because the bill would impose additional duties on those county departments, the bill would impose a state-mandated local program.~~

Existing law grants to public school pupils the right to exercise freedom of speech and of the press, as specified. Existing law requires each governing board of a school district and each county board of education to adopt rules and regulations in the form of a written publications code that includes reasonable provisions for the time, place, and manner for conducting expressive activities within the agency's jurisdiction. 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.

The Charter Schools Act of 1992 requires a charter school to comply with the act and all of the provisions of the school's charter, but provides that a charter school is otherwise exempt from the laws governing school districts, except for specified provisions.

This bill would make those provisions regarding free speech and expressive activities applicable to charter schools. By requiring charter schools to perform additional duties, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 **SECTION 1.** *Section 48907 of the Education Code is amended*
2 *to read:*

3 48907. (a) Pupils of the public schools, *including charter*
4 *schools*, shall have the right to exercise freedom of speech and of
5 the press including, but not limited to, the use of bulletin boards,
6 the distribution of printed materials or petitions, the wearing of
7 buttons, badges, and other insignia, and the right of expression in
8 official publications, whether or not the publications or other means
9 of expression are supported financially by the school or by use of
10 school facilities, except that expression shall be prohibited which
11 is obscene, libelous, or slanderous. Also prohibited shall be material
12 that so incites pupils as to create a clear and present danger of the
13 commission of unlawful acts on school premises or the violation
14 of lawful school regulations, or the substantial disruption of the
15 orderly operation of the school.

16 (b) ~~Each~~ *The governing board or body of a each school district*
17 *or charter school* and each county board of education shall adopt
18 rules and regulations in the form of a written publications code,
19 which shall include reasonable provisions for the time, place, and
20 manner of conducting such activities within its respective
21 jurisdiction.

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

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

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

1 (f) This section does not prohibit or prevent the governing board
2 *or body* of a school district *or charter school* from adopting
3 otherwise valid rules and regulations relating to oral
4 communication by pupils upon the premises of each school.

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 the conduct authorized under
8 this section, or refusing to infringe upon conduct that is protected
9 by this section, the First Amendment to the United States
10 Constitution, or Section 2 of Article I of the California Constitution.

11 *SEC. 2. Section 48950 of the Education Code is amended to*
12 *read:*

13 48950. (a) ~~School districts~~ *A school district* operating one or
14 more high schools ~~and, a charter school, or a private secondary~~
15 ~~schools~~ *school* shall not make or enforce a rule subjecting a high
16 school pupil to disciplinary sanctions solely on the basis of conduct
17 that is speech or other communication that, when engaged in
18 outside of the campus, is protected from governmental restriction
19 by the First Amendment to the United States Constitution or
20 Section 2 of Article I of the California Constitution.

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

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

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 supersede, or otherwise limit or modify,
35 the provisions of Section 48907.

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

38 (g) An employee shall not be dismissed, suspended, disciplined,
39 reassigned, transferred, or otherwise retaliated against solely for
40 acting to protect a pupil engaged in conduct authorized under this

1 section, or refusing to infringe upon conduct that is protected by
2 this section, the First Amendment to the United States Constitution,
3 or Section 2 of Article I of the California Constitution.

4 SECTION 1. ~~Section 14011.61 is added to the Welfare and~~
5 ~~Institutions Code, to read:~~

6 ~~14011.61. (a) To the extent federal financial participation is~~
7 ~~available, the department shall exercise the option provided in~~
8 ~~Section 1920a of the federal Social Security Act (42 U.S.C. Sec.~~
9 ~~1396r-1a) to implement a program for accelerated enrollment of~~
10 ~~children and pregnant women.~~

11 ~~(b) The department shall designate each county welfare~~
12 ~~department as a qualified entity for determining eligibility under~~
13 ~~this section.~~

14 ~~(c) The department shall implement this section only if, and to~~
15 ~~the extent that, federal financial participation is available.~~

16 ~~(d) The department shall seek federal approval of any state plan~~
17 ~~amendments necessary to implement this section. When federal~~
18 ~~approval of the state plan amendment or amendments is received,~~
19 ~~the department shall commence implementation of this section on~~
20 ~~the first day of the second month following the month in which~~
21 ~~federal approval of the state plan amendment or amendments is~~
22 ~~received, or on July 1, 2010, whichever is later.~~

23 ~~(e) Notwithstanding Chapter 3.5 (commencing with Section~~
24 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code,~~
25 ~~the department shall, without taking any regulatory action,~~
26 ~~implement this section by means of all-county letters. Thereafter,~~
27 ~~the department shall adopt regulations in accordance with the~~
28 ~~requirements of Chapter 3.5 (commencing with Section 11340) of~~
29 ~~Part 1 of Division 3 of Title 2 of the Government Code.~~

30 ~~(f) Upon the receipt of an application for a child directly from~~
31 ~~the parent or another source on behalf of the child, or for a pregnant~~
32 ~~woman directly from the pregnant woman or another source on~~
33 ~~behalf of the pregnant woman, the county shall determine whether~~
34 ~~the child or pregnant woman appears eligible for Medi-Cal benefits~~
35 ~~and, if so, grant accelerated enrollment to the child or pregnant~~
36 ~~woman. Upon the granting of accelerated enrollment for a child~~
37 ~~or pregnant woman, the county shall determine whether the child~~
38 ~~or pregnant woman is eligible for Medi-Cal benefits. If the county~~
39 ~~determines that the child or pregnant woman does not meet the~~
40 ~~eligibility requirements for participation in the Medi-Cal program,~~

1 the county shall report this finding to the Medical Eligibility Data
2 System so that accelerated enrollment coverage benefits are
3 discontinued. If the county determines that the child is eligible for
4 the Medi-Cal program with a share of cost, the county shall enroll
5 the child in the Medi-Cal program and forward the application to
6 the Managed Risk Medical Insurance Board for an evaluation of
7 the child's eligibility for the Healthy Families Program.

8 SEC. 3. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.