

AMENDED IN SENATE JANUARY 14, 2010
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 amend Sections 48907 and 48950 of the Education Code, relating to education.

LEGISLATIVE COUNSEL'S DIGEST

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

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. It is the intent of the Legislature in enacting this
 2 act to construe and clarify the meaning and effect of existing law
 3 with respect to the right of pupil expression.

4 ~~SECTION 1.~~

5 SEC. 2. Section 48907 of the Education Code is amended to
 6 read:

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

20 (b) The governing board or body of each school district or
 21 charter school and each county board of education shall adopt rules
 22 and regulations in the form of a written publications code, which

1 shall include reasonable provisions for the time, place, and manner
2 of conducting such activities within its respective jurisdiction.

3 (c) Pupil editors of official school publications shall be
4 responsible for assigning and editing the news, editorial, and
5 feature content of their publications subject to the limitations of
6 this section. However, it shall be the responsibility of a journalism
7 adviser or advisers of pupil publications within each school to
8 supervise the production of the pupil staff, to maintain professional
9 standards of English and journalism, and to maintain the provisions
10 of this section.

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

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

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

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

29 ~~SEC. 2.~~

30 *SEC. 3.* Section 48950 of the Education Code is amended to
31 read:

32 48950. (a) A school district operating one or more high
33 schools, a charter school, or a private secondary school shall not
34 make or enforce a rule subjecting a high school pupil to disciplinary
35 sanctions solely on the basis of conduct that is speech or other
36 communication that, when engaged in outside of the campus, is
37 protected from governmental restriction by the First Amendment
38 to the United States Constitution or Section 2 of Article I of the
39 California Constitution.

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

7 (c) This section does not apply to a private secondary school
8 that is controlled by a religious organization, to the extent that the
9 application of this section would not be consistent with the religious
10 tenets of the organization.

11 (d) This section does not prohibit the imposition of discipline
12 for harassment, threats, or intimidation, unless constitutionally
13 protected.

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

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

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

24 ~~SEC. 3.~~

25 *SEC. 4.* If the Commission on State Mandates determines that
26 this act contains costs mandated by the state, reimbursement to
27 local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.