

Assembly Bill No. 302

Passed the Assembly September 3, 2015

Chief Clerk of the Assembly

Passed the Senate September 1, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 222 to the Education Code, relating to pupil services.

LEGISLATIVE COUNSEL'S DIGEST

AB 302, Cristina Garcia. Pupil services: lactation accommodations.

Existing law requires an employer to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. Existing law requires the employer to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. Existing law establishes the California School Age Families Education Program, which is a comprehensive, continuous, and community linked school-based program that focuses on youth development and dropout prevention for pregnant and parenting pupils and on child care and development services for their children.

Existing federal law requires an educational institution to treat pregnancy, childbirth, recovery from childbirth, and other specified conditions in the same manner and under the same policies as any other temporary disability. Existing law also prohibits discrimination on the basis of disability, gender, or other specified characteristics in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state financial aid.

This bill would require a school operated by a school district or a county office of education, the California School for the Deaf, the California School for the Blind, and a charter school to provide, only if there is at least one lactating pupil on the school campus, reasonable accommodations to a lactating pupil on a school campus to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding. The bill would require that these reasonable accommodations include, but are not limited to, access to a private and secure room, other than a restroom, to express breast milk or breast-feed an infant child, permission to bring onto

a school campus any equipment used to express breast milk, access to a power source for that equipment, and access to a place to safely store expressed breast milk. The bill would also require that a lactating pupil on a school campus be given a reasonable amount of time to accommodate the need to express breast milk or breast-feed an infant child. The bill would prohibit a pupil from incurring an academic penalty as a result of her use, during the schoolday, of these reasonable accommodations. The bill would authorize a complaint of noncompliance with the requirements of the bill to be filed with the local educational agency, and would require the local educational agency to respond to such a complaint, in accordance with specified procedures. The bill would also authorize a complainant to appeal a decision of the local educational agency to the State Department of Education and would require the department to issue a written decision within 60 days of its receipt of the appeal. The bill would require a local educational agency to provide a remedy to the affected pupil if the local educational agency finds merit in a complaint or if the Superintendent of Public Instruction finds merit in an appeal. The bill would also include a statement of legislative findings and declarations. By imposing additional duties on local educational agencies, this 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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) prohibits sex discrimination in educational institutions, which includes discrimination against pregnant and parenting pupils.

(b) The federal regulations implementing Title IX of the Education Amendments of 1972 specify that sex discrimination includes discrimination against a pupil based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from childbirth-related conditions.

(c) The federal regulations implementing Title IX of the Education Amendments of 1972 require a pupil with temporary medical conditions occasioned by pregnancy or related to recovery from childbirth to be treated the same as any other pupil with a temporary disability.

(d) The Sex Equity in Education Act (Article 4 (commencing with Section 221.5) of Chapter 2 of Part 1 of Division 1 of Title 1 of the Education Code) prohibits sex discrimination in educational institutions, which includes discrimination against pregnant and parenting pupils.

(e) The regulations implementing the Sex Equity in Education Act prohibit educational institutions from applying any rule concerning a pupil's actual or potential parental, family, or marital status that treats a pupil differently on the basis of sex.

(f) The Unruh Civil Rights Act (Section 51 of the Civil Code) prohibits businesses, including public schools, from discriminating based on sex, which includes discrimination on the basis of pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

(g) Denial of accommodations to a pupil who chooses to breast-feed or express breast milk while at school is prohibited sex discrimination.

(h) Despite these laws, California schools are failing to accommodate the needs of lactating pupil parents on their campuses by providing them with reasonable time and private space to express breast milk, breast-feed infant children, or address other needs related to breast-feeding.

SEC. 2. Section 222 is added to the Education Code, to read:

222. (a) A school operated by a school district or a county office of education, the California School for the Deaf, the California School for the Blind, and a charter school shall provide reasonable accommodations to a lactating pupil on a school campus to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding. Reasonable accommodations under this section include, but are not limited to, all of the following:

(1) Access to a private and secure room, other than a restroom, to express breast milk or breast-feed an infant child.

(2) Permission to bring onto a school campus a breast pump and any other equipment used to express breast milk.

(3) Access to a power source for a breast pump or any other equipment used to express breast milk.

(4) Access to a place to store expressed breast milk safely.

(b) A lactating pupil on a school campus shall be provided a reasonable amount of time to accommodate her need to express breast milk or breast-feed an infant child.

(c) A school specified in subdivision (a) shall provide the reasonable accommodations specified in subdivisions (a) and (b) only if there is at least one lactating pupil on the school campus.

(d) A school subject to this section may use an existing facility to meet the requirements specified in subdivision (a).

(e) A pupil shall not incur an academic penalty as a result of her use, during the schoolday, of the reasonable accommodations specified in this section, and shall be provided the opportunity to make up any work missed due to such use.

(f) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A local educational agency shall respond to a complaint filed pursuant to paragraph (1) in accordance with Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(3) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department's receipt of the appeal.

(4) If a local educational agency finds merit in a complaint, or if the Superintendent finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2015

Governor