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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 606

Introduced by Assembly Member Levine
(Coauthors: Assembly Members Hancock, Jones, Klehs, Koretz,
Laird, Lieber, Pavley, Saldana, and Vargas)
(Coauthors: Senators Kuehl, Migden, Ortiz, and Romero)

February 17, 2005

An act to amend Section 241 of, and to add Article 5.5 (commencing with Section 234) to Chapter 2 of Part 1 of, the Education Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 606, as amended, Levine. Safe schools: discrimination and harassment.

Existing law prohibits discrimination on the basis of specified protected characteristics, including, but not limited to, actual and perceived gender identification and sexual orientation, in any program or activity conducted by an educational institution, as specified.

This bill would require the State Department of Education to develop a model antidiscrimination and antiharassment policy, *by January 1, 2008*, that prohibits discrimination and harassment based

on specified characteristics, including, but not limited to, actual or perceived gender identity and sexual orientation, for school districts to adopt, as specified. The bill would require the department to post the model policy on its Internet Web site for school districts to download. The bill would require a school district to adopt the model policy developed by the department and publicize, as defined, the policy. The bill would require a school district to take specified actions related to increasing awareness of, preventing, and ensuring appropriate responses to, incidences of discrimination and harassment based on those protected characteristics. By requiring school districts to perform additional duties, the bill would impose a state-mandated local program.

This bill would provide that a complaint of noncompliance with its provisions may be filed with the department under the existing Uniform Complaint Procedures, as specified. The bill would allow the Superintendent of Public Instruction, if he or she determines that a school district is not in compliance, to use any means authorized by law to effect compliance, including, but not limited to, the withholding of all or part of the relevant state fiscal support of the school district.

The bill would require the State Department of Education to display information on trainings, curricula, and other resources that specifically address bias-related discrimination and harassment based on any of the specified protected characteristics, as specified.

Existing law, the California Student Safety and Violence Prevention Act of 2000, declares that its provisions do not require the inclusion of specified instructional materials in any program or activity conducted by an educational institution or postsecondary educational institution. Existing law declares that its provisions are not violated by the omission of any specified instructional material in any program or activity conducted by an educational institution or postsecondary educational institution.

This bill would, in addition, declare that the existing act does not preclude the inclusion of specified instructional materials in any program or activity conducted by an educational institution or postsecondary educational institution that furthers or supports the obligation of schools to combat bias-related discrimination and harassment, provide equal educational opportunities to all pupils, and to protect the inalienable right of each pupil to attend a campus that is safe, secure, and peaceful.

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. The Legislature finds and declares all of the
2 following:
- 3 (a) All pupils in public primary, elementary, junior high, and
4 senior high schools have the inalienable right to attend campuses
5 that are safe, secure, and peaceful.
- 6 (b) Pursuant to subdivision (b) of Section 201 of the Education
7 Code, public schools in California have an affirmative obligation
8 to combat racism, sexism, and other forms of bias, and a
9 responsibility to provide equal educational opportunity.
- 10 (c) The California Student Safety and Violence Prevention Act
11 of 2000 reaffirmed the right of all pupils to a safe school
12 environment by prohibiting a person from being subjected to
13 discrimination on the basis of actual and perceived gender
14 identity and sexual orientation in any program or activity
15 conducted by an educational institution that receives, or benefits
16 from, state financial assistance or enrolls pupils who receive state
17 student financial aid.
- 18 (d) (1) Studies show that pupils in California continue to
19 experience discrimination and harassment, and that
20 discrimination and harassment based on actual and perceived
21 gender identity and sexual orientation is particularly pervasive.
- 22 (2) Many teachers, school staff members, and pupils are
23 unaware of the rights and obligations regarding discrimination
24 and harassment set forth in Sections 200, 201, and 220 of the
25 Education Code.
- 26 (3) Many teachers and school staff members have not received
27 effective and comprehensive training to prevent or respond to

1 illegal discrimination and harassment. This training is
2 particularly lacking with respect to discrimination and
3 harassment on the basis of actual and perceived gender identity
4 and sexual orientation.

5 (4) Many school districts are not effectively addressing
6 discrimination and harassment on campus, particularly with
7 respect to discrimination and harassment based on actual and
8 perceived gender identity and sexual orientation.

9 (5) Many pupils do not know the manner in which to file a
10 discrimination or harassment complaint.

11 (6) Many school districts are responding to complaints about
12 discrimination and harassment in an inconsistent manner.

13 (e) In a public hearing conducted on October 3, 2002, by the
14 California Senate Select Committee on School Safety, pupils,
15 teachers, parents, researchers, and advocates from all over the
16 state testified about incidents of ongoing discrimination and
17 harassment and an inadequate response from school authorities.

18 (f) Numerous studies point to an ongoing problem of
19 discrimination, harassment, and violence that has severe
20 consequences for pupils and schools. For example, the 2001–02
21 California Healthy Kids Survey found that 37.4 percent of
22 California pupils reported experiencing bias-related harassment
23 at school, and that 7.5 percent of California pupils reported being
24 harassed on the basis of actual and perceived gender identity and
25 sexual orientation.

26 (g) Bias-related discrimination and harassment has negative
27 consequences for pupil health, well-being, and academic success.
28 For example, the Safe Place to Learn report issued by the
29 California Safe Schools Coalition and the 4-H Center for Youth
30 Development at the Davis campus of the University of California
31 found that pupils who are harassed based on actual or perceived
32 sexual orientation are at least three times more likely to carry a
33 weapon to school, to seriously consider suicide, to make a plan
34 for attempting suicide, or to miss at least one day of school per
35 30 schooldays because they do not feel safe.

36 (h) The United States Court of Appeals for the Ninth Circuit
37 held in *High Tech Gays v. Defense Indus. Sec. Clearance Office*,
38 895 F.2d 563, 570–571 (9th Cir. 1990), that actual or perceived
39 sexual orientation can be the basis for membership in an
40 identifiable class for purposes of protection under the equal

1 protection clause of the Fourteenth Amendment to the United
2 States Constitution.

3 (i) A number of school districts have paid hundreds of
4 thousands of dollars in damages to settle lawsuits by pupils
5 claiming their schools failed to protect them from harassment,
6 intimidation, and violence, including a June 2005 jury award of
7 \$300,000 in San Diego to two former high school pupils for the
8 harassment they received at school based on their actual or
9 perceived sexual orientation.

10 SEC. 2. Article 5.5 (commencing with Section 234) is added
11 to Chapter 2 of Part 1 of the Education Code, to read:

12
13 Article 5.5. Safe Place To Learn Act
14

15 234. (a) This article shall be known and may be cited as the
16 Safe Place to Learn Act.

17 (b) It is the policy of the State of California to ensure that all
18 school districts and schools continue to work to reduce
19 discrimination, harassment, and violence. It is further the policy
20 of the state to improve pupil safety at schools and the
21 connections between pupils and supportive adults, schools, and
22 communities.

23 234.1. The department shall develop a model
24 antidiscrimination and antiharassment policy *by January 1, 2008*,
25 that prohibits discrimination and harassment based on the
26 characteristics set forth in Section 422.55 of the Penal Code and
27 Section 220, including, but not limited to, actual or perceived
28 gender identity and sexual orientation, that school districts shall
29 adopt pursuant to subdivision (a) of Section 234.2. The
30 department shall post the model policy on its Internet Web site
31 for school districts to download. *This section does not prohibit a*
32 *school district from voluntarily adopting antidiscrimination and*
33 *antiharassment policies that provide additional protections for*
34 *pupils beyond those protections included in the model policy.*

35 234.2. (a) A school district shall do all of the following:

36 (1) Adopt and publicize the model antidiscrimination and
37 antiharassment policy, developed by the department pursuant to
38 Section 234.1, that prohibits discrimination and harassment based
39 on the characteristics set forth in Section 422.55 of the Penal
40 Code and Section 220, including, but not limited to, actual or

1 perceived gender identity and sexual orientation. For purposes of
2 this paragraph, “publicize” means to post *the policy* on the
3 Internet Web site of the school district or to make a written copy
4 of the policy available, upon request, in the administrative office
5 of the district. *This subdivision does not prohibit a school district*
6 *from voluntarily engaging in any other means of publication or*
7 *distribution, including, but not limited to, the inclusion of*
8 *antidiscrimination and antiharassment policies in pupil*
9 *handbooks.*

10 (2) During the normal course of reprinting, update all
11 applicable publications on school safety, bullying, tolerance,
12 bias-motivated behavior, and hate-related violence to include
13 information on bias-related discrimination and harassment based
14 on the characteristics set forth in Section 422.55 of the Penal
15 Code and Section 220, including, but not limited to, actual or
16 perceived gender identity and sexual orientation. For purposes of
17 this paragraph, “all applicable publications” does not include
18 instructional materials as defined in subdivision (h) of Section
19 60010.

20 (3) During the normal course of offering trainings or
21 disseminating information related to discrimination and
22 harassment, include information on methods of identifying and
23 responding to bias-related discrimination and harassment based
24 on the characteristics set forth in Section 422.55 of the Penal
25 Code and Section 220, including, but not limited to, actual or
26 perceived gender identity and sexual orientation. A school
27 district may use trainings that include the information described
28 in this paragraph for purposes of the professional development of
29 teachers and other school staff members.

30 (4) Maintain documentation of all complaints of
31 discrimination and harassment.

32 (b) The department shall display information on trainings,
33 curricula, and other resources that specifically address
34 bias-related discrimination and harassment based on the
35 characteristics set forth in Section 422.55 of the Penal Code and
36 Section 220, including, but not limited to, actual or perceived
37 gender identity and sexual orientation, on the California Healthy
38 Kids Resource Center Internet Web site.

39 234.3. (a) A complaint alleging that a school district is not
40 complying with this article may be filed with the department

1 pursuant to the Uniform Complaint Procedures as set forth in
2 regulations and procedures promulgated pursuant to Section
3 11138 of the Government Code.

4 (b) If the Superintendent determines that a school district is
5 not complying with this article, pursuant to subdivision (a) or
6 otherwise, he or she may use any means authorized by law to
7 effect compliance with this article, including, but not limited to,
8 the withholding of all or part of the relevant state fiscal support
9 of the school district.

10 (c) Any funds withheld by the Superintendent pursuant to
11 subdivision (b) shall be used to implement the California Student
12 Safety and Violence Prevention Act of 2000.

13 (d) This article does not abrogate or limit any other basis of
14 liability or any other remedy that is otherwise available at law.

15 SEC. 3. Section 241 of the Education Code is amended to
16 read:

17 241. (a) Nothing in the California Student Safety and
18 Violence Prevention Act of 2000 requires the inclusion of any
19 curriculum, textbook, presentation, or other material in any
20 program or activity conducted by an educational institution or
21 postsecondary educational institution; the California Student
22 Safety and Violence Prevention Act of 2000 shall not be deemed
23 to be violated by the omission of any curriculum, textbook,
24 presentation, or other material in any program or activity
25 conducted by an educational institution or postsecondary
26 educational institution.

27 (b) Nothing in the California Student Safety and Violence
28 Prevention Act of 2000 precludes the inclusion of any
29 curriculum, textbook, presentation, or other material in any
30 program or activity conducted by an educational institution or
31 postsecondary educational institution that furthers or supports the
32 obligation of schools to combat bias-related discrimination and
33 harassment, to provide equal educational opportunities to all
34 pupils, and to protect the inalienable right of each pupil to attend
35 a campus that is safe, secure, and peaceful.

36 SEC. 4. If the Commission on State Mandates determines that
37 this act contains costs mandated by the state, reimbursement to
38 local agencies and school districts for those costs shall be made

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

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