
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair

2015 - 2016 Regular

Bill No: AB 302

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Urgency: No

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Fiscal: Yes

Subject: Pupil services: lactation accommodations

SUMMARY

This bill requires local educational agencies to 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, and expands the Uniform Complaint Procedures to include complaints of noncompliance with this requirement.

BACKGROUND

Existing federal law:

- 1) The Patient Protection and Affordable Care Act, amended the Fair Labor Standards Act to require employers to provide a reasonable break time and a place which is not a bathroom to express breast milk. (United States Code, Title 42, 18001, § 4207, et seq.)
- 2) Prohibits discrimination against any student, or exclusion of any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom. Federal law also requires pregnant students and those recovering from childbirth-related conditions to be provided with the same accommodations and support services available to other students with temporary medical conditions. (Code of Federal Regulations, Title 34, §106.40)

Existing state law:

- 1) Requires every employer, including the state and any political subdivision, to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time must, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee is to be unpaid. (Labor Code § 1030)
- 2) Requires employers 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. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section. (Labor Code § 1031)

- 3) Prohibits discriminatory practices in employment or housing accommodations on the basis of sex, and defines “sex” to include breast-feeding or medical conditions related to breast-feeding. (Government Code §12926)
- 4) Defines “harassment and other discrimination on the basis of sex” to include specified practices such as the exclusion of any person from any program or activity or employment because of pregnancy or related conditions. (Education Code § 230)
- 5) Through regulation, requires local educational agencies to adopt uniform complaint procedures through which the public can register complaints regarding educational programs and rights. (California Code of Regulations, Title 5, § 4600, et seq.)

ANALYSIS

This bill requires local educational agencies to provide reasonable accommodations to a lactating student on a school campus. Specifically, this bill:

- 1) Requires schools operated by school districts, county offices of education, the California School for the Deaf and the California School for the Blind, and charter schools to provide reasonable accommodations to lactating students to express breast milk, breast-feed, or address other needs related to breast-feeding.
- 2) Provides that reasonable accommodations include, but are not limited to:
 - a) Access to a private and secure room, other than a restroom, to express breast milk or breast-feed a child.
 - b) Permission to bring a breast pump and any other equipment used to express breast milk onto a high school campus.
 - c) Access to a power source for a breast pump or any other equipment used to express breast milk.
 - d) Access to a place to store breast milk safely.
- 3) Requires a lactating student to be provided a reasonable amount of time to accommodate her need to express breast milk or breast-feed.
- 4) Requires local educational agencies (LEAs) to provide the reasonable accommodations only if there is at least one lactating student on the school campus.
- 5) Authorizes LEAs to use existing facilities to meet the requirements for providing reasonable accommodations.
- 6) Provides that a student is not to incur an academic penalty as a result of her use, during the schoolday, of the reasonable accommodations, and requires that the student be provided the opportunity to make up any work missed due to such use.

- 7) Authorizes a complaint of non-compliance with the requirement to provide reasonable accommodations to be filed with a LEA under the existing Uniform Complaint Procedures (UCP).
- 8) Requires a local educational agency (LEA) to respond to a complaint in accordance with the existing Uniform Complaint Procedures (UCP) process.
- 9) Authorizes a complainant who is not satisfied with the decisions of a LEA to appeal the decision to the California Department of Education (CDE) through the existing UCP appeal process, and requires that the complainant receive a written decision regarding the appeal within 30 days of CDE's receipt of the appeal.
- 10) Requires the LEA to provide a remedy to the affected student if the LEA or the Superintendent of Public Instruction finds merit in a complaint.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "A 2015 report published by American Civil Liberties Union (ACLU) of California, *Breaking Down Educational Barriers for California's Pregnant and Parenting Students*, found that some lactating students were discouraged by school administrators from expressing milk at school. The report also found that, even when a student's request to pump milk at school was granted, a student may not have access to a private, secure room or refrigerator to safely store the breast milk. Not providing a private, secure room and a consistent pumping schedule for lactating students could cause significant pain and discomfort to these students and potentially lead to breast infections, as well as causing embarrassing leakage issues and general distress."
- 2) ***Existing rights for employees but not for students.*** Both state and federal law require employers to provide reasonable accommodations to lactating employees, including break time and the provision of private space (other than a restroom stall) in which to express breast milk or breast-feed. Existing law prohibits discriminatory practices in employment or housing accommodations on the basis of sex, and defines "sex" to include breast-feeding or medical conditions related to breast-feeding. Title IX prohibits discrimination on the basis of sex in all aspects of education, but does not explicitly reference breast-feeding.

This bill generally mirrors state and federal requirements that employees be provided reasonable accommodation to express breast milk or breast-feed. This bill authorizes LEAs to use an existing facility to meet the requirements of this bill. Therefore, schools should not have to designate a space for students beyond what they have already established for employees.

- 3) ***Uniform Complaint Procedures (UCP).*** Required by federal law, the UCP was established in 1991 as a means of creating a "uniform system of complaint processing" for educational programs. The authority for this process is located in regulations, not state statute. These regulations require the adoption of the UCP by school districts, county offices of education, charter schools receiving federal funds,

and local public or private agencies which receive direct or indirect state funding to provide school programs or special education or related services. The Uniform Complaint Procedures (UCP) process generally involves the following steps:

- a) The filing of a complaint by an individual, agency, or organization.
- b) The investigation and written response by the local educational agency (LEA) within 60 days.
- c) An appeal by the complainant to the California Department of Education (CDE) within 15 days of receiving the LEA response.
- d) The response by the CDE to the appeal, with the investigation completed within 60 days.
- e) A request for reconsideration by the complainant or LEA within 35 days of receiving CDE's response to the appeal.
- f) A response by the CDE within 35 days.

Complaints regarding pupil fees, harassment, discrimination, bullying, intimidation, local control accountability plans and some charter school requirements generally follow the UCP, but differ slightly in terms of timelines, anonymity of complainants, confidentiality, and with whom a complaint can be filed.

There are several bills that expand the UCP to authorize complaints in other areas of education; all use the existing UCP process. However, this bill requires the California Department of Education (CDE) to respond to an appeal within 30 days of the CDE's receipt of the appeal, while existing law provides a 60-day timeline. To ensure consistency and that the existing UCP process is used, **staff recommends** an amendment to delete the accelerated appeal timeline of 30 days and specify the existing 60-day timeline is to be utilized.

- 4) ***Fiscal impact.*** According to the Assembly Appropriations Committee, this bill would impose:
 - a) Unknown, likely minor, Proposition 98/General Fund state mandated costs for schools to provide reasonable accommodations to breastfeeding students using existing facilities.
 - b) Unknown, likely minor, Proposition 98/General Fund state mandated costs related to the expansion of the UCP. The existing UCP mandate is currently included in the K-12 Mandate Block Grant. If the Commission on State Mandates determines the requirements of this bill impose a higher level of service, this could place pressure on the Legislature to increase funding under the K-12 Mandate Block Grant.

5) *Related legislation.*

AB 379 (Gordon, 2015) expands the Uniform Complaint Procedures (UCP) to include complaints of non-compliance with certain rights and responsibilities regarding the education of students who are in foster care or who are homeless, including school placement decisions, responsibilities of foster youth liaisons, provisions regarding school transfers, exemption from locally-imposed graduation requirements, and the awarding of partial credit for completed coursework. AB 379 is pending in the Senate Appropriations Committee.

AB 1391 (Gomez, 2015) an urgency measure, expands the Uniform Complaint Procedures (UCP) to include complaints of non-compliance with the required minimum instructional minutes for physical education. AB 1391 is pending in the Senate Appropriations Committee.

AB 412 (Chavez, 2015) authorizes complaints of non-compliance with the required minimum instructional minutes for physical education to be filed with a local complaint process or through the UCP. AB 412 was never heard.

AB 1012 (Jones-Sawyer, 2015) prohibits a school district from assigning any students in grades 7-12 to any "course period without educational content" for more than one week in any semester, or to a course that the student has previously completed with a grade sufficient to meet the A-G requirements and graduation requirements, unless specifically authorized. AB 1012 also expands the UCP to include complaints of noncompliance with these requirements. AB 1012 is scheduled to be heard by this Committee on July 8.

SB 81 (Committee on Budget and Fiscal Review, Ch. 22, 2015) among other things, expands the UCP to include complaints regarding an alleged violation by a local agency of federal or state law or regulations governing adult education programs or regional occupational centers and programs.

SB 425 (Hernandez, 2015) among other things, expands the UCP to include complaints regarding an alleged violation by a local agency of federal or state law or regulations governing adult education programs or regional occupational centers and programs, including allegations of unlawful discrimination, harassment, intimidation, or bullying. SB 425 is pending in the Assembly Higher Education Committee.

AB 907 (Burke, 2015) is nearly identical to SB 425. AB 907 is pending in this Committee.

SUPPORT

ACCESS Women's Health Justice
American Congress of Obstetricians and Gynecologists
American Federation of State, County and Municipal Employees
Association of California School Administrators
California Association for Health, Physical Education, Recreation and Dance
California Black Health Network

California Immigrant Policy Center
California Latinas for Reproductive Justice
California Teachers Association
Citizens for Choice
Coalition of California Welfare Rights Organizations
Forward Together
Guam Communications Network
Latino Coalition for a Health California
Latino Health Alliance
NARAL Pro-Choice California
National Center for Youth Law
National Council of Jewish Women, Los Angeles
National Council of La Raza
Our Family Coalition
Planned Parenthood Affiliates of California
San Francisco Democratic Women in Action
URGE: Unite for Reproductive and Gender Equity

OPPOSITION

None received.

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