
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

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Consultant: Lynn Lorber
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Subject: Pupil rights: pregnant and parenting pupils

SUMMARY

This bill authorizes a school to grant parental leave to a student who is a parent, and provides that such absences generate average daily attendance if the school district files an expectant and parenting student policy with the California Department of Education.

BACKGROUND

State aid to school districts for general purposes (revenue limit funding) is driven by the average daily attendance (ADA) of the school district. Average daily attendance is generated by students actually attending classes "under the immediate supervision" of a properly credentialed teacher. (Education Code § 46300, et seq.)

Existing law:

- 1) Provides that excused absences shall not generate state apportionment payment, but does allow the student to make up any missed classroom assignments or tests during the absence. (EC § 48205)
- 2) Establishes that the absence of a student is to be excused when the absence is:
 - a) Due to his or her illness, or quarantine under the direction of a county or city health officer.
 - b) For the purpose of having medical, dental, optometric, or chiropractic services rendered.
 - c) For the purpose of attending the funeral services, as specified.
 - d) For the purpose of attending jury duty.
 - e) Due to the illness or medical appointment of a child of whom the student is the custodial parent.

- f) For justifiable personal reasons, including an appearance in court, observation of a religious holiday or ceremony, or attendance at an employment or educational conference, as specified.
 - g) For the purpose of serving as a member of a precinct board for an election pursuant to Elections Code Section 12302.
 - h) For the purpose of spending time with an immediate family member who is an active duty member of the military, as specified. (EC § 48205)
- 3) Defines “temporary disability” as a physical, mental, or emotional disability and after which the student can reasonably be expected to return to the student’s classes or education program without special intervention. (EC § 48206.3)
 - 4) Provides for home and hospital instruction for a student with a temporary disability who is in a hospital or other residential health facility or the student’s home. (EC § 48208)

Existing state regulations prohibit an educational institution from excluding or denying any student from any educational program or activity solely on the basis of the student’s pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom. State regulations require educational institutions to treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom in the same manner and under the same policies as any other temporary disabling condition. (California Code of Regulations, Title 5, § 4950)

Existing federal law, known as Title IX, prohibits discrimination on the basis of sex, including pregnancy and parental status, in educational programs and activities. Title IX requires schools to allow pregnant or parenting students to continue participating in classes and extracurricular activities, allow students to choose whether to attend special programs or classes for pregnant students, excuse absences due to pregnancy or childbirth for as long as the student’s doctor says is necessary, allow students to return to the same academic and extracurricular status as before giving birth, and give students the opportunity to make up any missed assignments. (United States Code, Title 20, § 1681, et seq.)

Existing federal regulations:

- 1) Prohibit a recipient of federal financial aid, including a local educational agency, from discriminating against any student, or exclude any student from its education program or activity, on the basis of the student’s pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.
- 2) Require a recipient of federal financial aid to treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom in the same manner and under the same policies as any other temporary disability.
- 3) Requires a recipient of federal financial aid to treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically

necessary by the student's physician, at the conclusion of which the student must be reinstated to the status which she held when the leave began.
(Code of Federation Regulations, Title 34, § 106.40)

ANALYSIS

This bill authorizes a school to grant parental leave to a student who is a parent, and provides that such absences generate average daily attendance if the school district files an expectant and parenting student policy to the California Department of Education. Specifically, this bill:

- 1) Authorizes a school to allow a parenting student who gives birth up to six weeks of parental leave for births without complications or eight weeks of parental leave for Caesarian section births.
- 2) Authorizes a school to allow a parenting student who did not give birth (such as the father of a baby) up to four weeks of parental leave after the birth.
- 3) Provides that absences due to parental leave are not deemed absences in computing average daily attendance (ADA), thereby allowing absences due to parental leave to generate ADA. This bill provides that absences due to parental leave are to count toward calculating ADA only if the governing board of the school district of attendance files an expectant and parenting student policy with the California Department of Education, including procedures for ensuring students are provided with schoolwork while on parental leave.
- 4) Requires an expectant and parenting student policy to require a student to submit a parental leave request form, similar or the same as request forms used to request temporary disability time off, to the student's school before the end of the pregnant student's second trimester. This bill requires a school to process a request within five business days and provide makeup work plan development process guidelines to a student in conjunction with the positive determination of parental leave.
- 5) Deems as an excused absence, which does not generate ADA, up to four absences per school year to care for a sick child, for which the school shall not require a note from a doctor.
- 6) Modifies the existing definition of "temporary disability" to include pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom.
- 7) Requires the notification of the presence of a student with a temporary disability in a qualifying hospital as a result of pregnancy to be provided to the school district before the end of the student's second trimester.
- 8) Requires a school district to provide a student with a temporary disability in a qualifying hospital as a result of pregnancy with guidelines for makeup work plan development if the option for individualized instruction is not available at the student's school or school district.

- 9) Requires a school district to notify pregnant and parenting students of their rights and options through annual school year welcome packets, through independent study packets, online, in lactation rooms, in locker rooms, and in libraries.
- 10) States legislative findings and declarations relative to educational challenges faced by pregnant and parenting students.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “In 2012, about 35,000 children were born to 15 to 19 year olds in California. A report from the African American Policy Forum notes that pregnancy is the number one reason for girls and especially girls of color to drop out of school. Statistics show that only 38% of young moms who have a child before they are 18 graduate from high school, 19% get a GED, and only 2% go to college before age 30. Policies that help to keep pregnant and parenting students in school will help to improve economic and health outcomes for these young families.
- 2) ***Existing leave options for pregnant or parenting students.*** Existing state and federal regulations require educational institutions to treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom in the same manner and under the same policies as any other temporary disabling condition. Existing law requires that a student with a temporary disability that makes attendance impossible or inadvisable receive individual instruction provided by the school district in which the student is deemed to reside. Individual instruction for students with a temporary disability is included in the computation of average daily attendance (ADA).

This bill modifies the definition of “temporary disability” to specifically include pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom. The modified definition is consistent with existing state regulations.

Existing law provides for home and hospital instruction for a student with a temporary disability who is in a hospital or other residential health facility or the student’s home. The student’s school district is required to determine whether the student will be able to receive individualized instruction.

This bill requires a school district to provide a student with a temporary disability as a result of pregnancy and who is on home and hospital instruction with guidelines for makeup work plan development if the option for individualized instruction is not available at the student’s school or school district.

- 3) ***What new options are created for students?*** This bill creates additional options for pregnant and parenting student to be home from school to recover and bond with a new baby. First, it creates the ability for fathers to be eligible for parental leave. Second, while federal law requires the student’s physician to determine the length of leave medically necessary, this bill would not require that the length of the leave be subject to a determination of medical necessity by a physician.

- 4) **Net effect.** Existing law authorizes a student with a temporary disability to receive individual instruction and provides that each clock hour of this teaching time counts as one day of attendance. In addition to the new options created for student parents, this bill requires a school to ensure a student on parental leave is provided with school work and authorizes a school district to generate average daily attendance (ADA) for the duration of the student's parental leave. This bill does not, however, require the school to provide direct instruction or to provide oversight of instructional activities in order to generate the ADA. The committee may wish to consider:
- a) Should the school or district be expected to provide any instruction or support to students who are on parental leave in order to generate ADA?
 - b) Does allowing schools to claim ADA funding without requiring direct instruction provide sufficient incentive for schools to better serve parenting students while the student is on leave?
 - c) Should students be required to complete any classwork provided while on leave in order for the school district to claim ADA?
 - d) Should medical documentation be required to support a student's request for parental leave?
 - e) Should fathers be required to provide a birth certificate proving their parental status?
- 5) **How much time for parental leave?** This bill authorizes a school to allow a parenting student who gives birth up to six weeks of parental leave for births without complications or eight weeks of parental leave for Caesarian section births. This bill authorizes a school to allow a parenting student who did not give birth (the father) up to four weeks of parental leave after the birth. Paid Family Leave, administered by the Employment Development Department, provides up to six weeks of benefits within a 12 month period for eligible employees.

This bill is silent with regard to who will determine the length of parental leave.

Staff recommends an amendment to clarify that the student is to determine the length of leave, up to the length of time authorized pursuant to this bill.

- 6) **Notice of rights.** Title IX requires schools to provide non-discrimination notification in specified school publications. Existing state law requires the California Department of Education (CDE) to post Title IX information on its website. Existing law authorizes the CDE to use a list of rights that are based on Title IX to meet notification requirements.

This bill requires a school district to notify pregnant and parenting students of their rights and options through annual school year welcome packets, independent study packets, online, in lactation rooms, in locker rooms, and in libraries. **Staff recommends amendments** as follows:

- a) Clarify that the rights are those pursuant to Title IX, the requirement that schools provide reasonable accommodations to a lactating student pursuant to Education Code section 222, temporary disability pursuant to Section 48206.3, and the parental leave option proposed by this bill.
 - b) Clarify that the “annual school year welcome packets” are the currently-required annual notifications to parents regarding rights and responsibilities pursuant to Education Code section 48980.
 - c) Clarify that “online” means the school district’s website.
 - d) Clarify that the notice is to be posted in *school* libraries.
 - e) Require the notification to also be provided as part of the makeup work plan development process guidelines pursuant to this bill.
- 7) ***Home and Hospital Instruction.*** The Home and Hospital Instruction Program provides instruction to a student with a temporary disability in the student’s home or in a hospital or other residential health facility. This bill requires the notification of the presence of a student with a temporary disability in a qualifying hospital as a result of pregnancy to be provided to the school district before the end of the student’s second trimester. It is unclear why it is necessary, and if it is feasible, for a student who is in need of home or hospital instruction to provide notification to the school district prior to the end of the student’s second trimester. Therefore, **staff recommends an amendment** to strike this provision (on page 7, lines 13-15).
- 8) ***California School Age Families Education.*** This program, known as Cal-SAFE, was developed for the purpose of providing targeted supportive services related to school success. Participation by a school district or county office of education in the Cal-SAFE program is voluntary. The California Department of Education no longer administers this program, nor does the State provide categorical funding. School districts and county offices of education may operate a Cal-SAFE program using funds pursuant to the Local Control Funding Formula. It is not clear how many school districts or county offices of education provide support services through the Cal-SAFE program.
- 9) ***How many students?*** According to information provided by the author, in 2012, about 35,000 children were born to 15 to 19 year olds in California, and in 2013, there were 8,840 births to mothers age 17 and younger.
- 10) ***Technical amendments.*** **Staff recommends technical amendments** as follows:
- a) Authorize the governing board of a school district, rather than authorize a school, to allow parental leave.
 - b) Clarify that a student who gives birth, *or expects to give birth*, may be allowed parental leave.

- 11) ***Fiscal impact.*** This bill imposes unknown but likely significant costs. Actual costs are dependent upon how many school districts choose to file an expectant and parenting student policy, how many students choose to seek parental leave, and how long students are on parental leave.
- 12) ***Related legislation.*** SB 1375 (Jackson) requires public schools and private schools that receive federal funding to post on their website specified information relative to the designated Title IX coordinator, rights of students and responsibilities of the school, and information about how to file a complaint. SB 1375 is pending in this Committee.

SB 946 (Leyva) deems a student who is serving as a member of a precinct board for an election to be participating in independent study for purposes of calculating average daily attendance, and thus allows the school district to generate state apportionment payments for the student's absence. SB 946 is scheduled to be heard by this Committee on March 16, 2016.

SUPPORT

ACT for Women and Girls
 American Academy of Pediatrics
 American Civil Liberties Union
 Black Women for Wellness
 Brighter Beginnings
 California Immigrant Policy Center
 California Latinas for Reproductive Justice
 Center on Reproductive Rights and Justice, UC Berkeley School of Law
 Coleman Advocates for Children and Youth
 Forward Together
 Fresno Barrios Unidos
 Girls Incorporated of Alameda County
 Hands Together – A Center for Children
 National Center for Youth Law
 National Compadres Network
 National Council of Jewish Women - California
 Nevada County Citizens for Choice
 Physicians for Reproductive Health
 Planned Parenthood Action Fund of the Pacific Southwest
 San Francisco Women's Political Committee
 Teen Success, Inc.
 URGE: Unite for Reproductive & Gender Equity
 Wise Entertainment
 Women's Foundation of California, Women's Policy Institute

OPPOSITION

None received.

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