
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 1868 **Hearing Date:** June 13, 2018
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Urgency: No **Fiscal:** No
Consultant: Brandon Darnell

Subject: Pupil instruction: sexual health education: sexually suggestive or sexually explicit materials.

SUMMARY

This bill expressly authorizes school districts to provide optional instruction, as part of the age-appropriate comprehensive sexual health education and HIV prevention education that school districts are required to provide, regarding the potential risks and consequences of creating and sharing sexually-suggestive or explicit materials through cell phones, social networking sites, computer networks, or other digital media.

BACKGROUND

Existing law:

- 1) Requires school districts to provide age-appropriate comprehensive sexual health education, delivered by trained instructors, to all students in grades 7 to 12, at least once in middle school and once in high school. (Education Code § 51934)
- 2) Requires the comprehensive sexual health education instruction to include, among other instruction related to sexually transmitted infections and procreation, both of the following:
 - a) Information about sexual harassment, sexual assault, sexual abuse, and human trafficking. Information on human trafficking shall include information on the prevalence, nature, and strategies to reduce the risk of human trafficking, techniques to set healthy boundaries, and how to safely seek assistance.
 - b) Information about adolescent relationship abuse and intimate partner violence, including the early warning signs thereof. (EC § 51934)
- 3) Requires that parents or guardians be given the right to excuse their child from all or part of comprehensive sexual health education. (EC § 51938)
- 4) Prohibits students from being suspended or expelled, except for specified acts, including cyber sexual bullying. (EC § 48900)
- 5) Defines "bullying" as any severe or pervasive physical or verbal conduct—including communications made in writing or via an electronic act—that is

directed by a pupil or group of pupils towards one or more pupils, and can be reasonably predicted to have one or more of the following effects:

- a) Causing students to fear for themselves or their property.
 - b) Causing substantial detriment to a student's physical or mental health.
 - c) Interfering with a student's academic performance.
 - d) Interfering with a student's ability to participate in or benefit from the services, activities, or privileges provided by a school.
- 6) Specifies that an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the internet or is currently posted on the internet. (EC § 48900)
- 7) Defines "electronic act" as the creation or transmission of a communication, originated on or off school property, using an electronic device such as a telephone, wireless telephone, or other wireless communication device, computer, or pager. Examples of electronic acts include, but are not limited to, the following:
- a) A message, text, sound, or image.
 - b) A post on a social networking website, including, but not limited to:
 - i) Posting to or creating a "burn page." A burn page is defined to mean a website created for the purpose of having one or more of the effects specified under the definition of bullying.
 - ii) Creating a credible impersonation of another pupil for the purpose of having one or more of the effects specified under the definition of bullying. "Credible impersonation" is defined as intentionally impersonating a pupil, without consent, for the purpose of bullying the pupil.
 - iii) Creating a "false profile" for the purpose of having one or more of the effects specified under the definition of bullying. A false profile is defined as a profile of a fictitious pupil or a profile using the likeness or attributes of an actual pupil, other than the pupil who created the false profile. (EC § 48900)
- 8) Defines cyber sexual bullying as the use of electronic means to disseminate a photograph or visual recording that contains a nude, semi-nude, or sexually explicit depiction of a visually-identifiable minor. (EC § 48900)
- 9) Requires the California Department of Education to display on its website current, periodically updated information on curricula and other resources that address cyber sexual bullying. (EC § 234.2)

- 10) Requires the California Department of Education (CDE) to annually inform school districts of information about cyber sexual bullying located on its website. (EC § 234.2)
- 11) Encourages school districts to inform pupils about the CDE website information on cyber sexual bullying. (EC § 234.2)
- 12) Requires the CDE to develop an online training module to help school staff, school administrators, parents, pupils, and community members understand the dynamics of, and how to address, bullying and cyberbullying. (EC § 32283.5)
- 13) States that every person sending or receiving sexually-explicit images of a minor constitutes child pornography, regardless of the age of the sender or recipient, and specifies punishments that may include fines, imprisonment, or both. (Penal Code §§ 288.2; 311-311.3)

ANALYSIS

This bill expressly authorizes school districts to provide optional instruction, as part of the comprehensive sexual health education and HIV prevention education that school districts are required to provide, regarding the potential risks and consequences of creating and sharing sexually-suggestive or explicit materials through cell phones, social networking sites, computer networks, or other digital media.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Existing laws already make cyber sexual bullying an offense capable of school suspension. We must allow schools to teach that everyone is worthy of respect, and that harassment of any kind is unacceptable.

In order to address this dangerous growing epidemic, we must provide kids with the knowledge they need to know about the potential dangers, both physical and emotional, of engaging in this type of behavior.”

- 2) ***Sexting is prevalent.*** According to the author, “In a 2011 New York Times article, a columnist described how “...teenagers, who have ready access to technology and are growing up in a culture that celebrates body flaunting, sexting is laughably easy, unremarkable and even compelling: the primary reason teenagers sext is to look cool and sexy to someone they find attractive.

An Internet poll conducted for The Associated Press and MTV by Knowledge Networks indicated that 24 percent of 14- to 17-year olds had been involved in “sexting,” either by cellphone or on the Internet.”

These figures are supported by survey data of 5,500 middle and high school students from across the United States conducted by the Cyberbullying Research Center, which indicates that the prevalence of sexting increases with student age. Overall, the survey indicated that 12 percent of students surveyed said they had sent an explicit image of themselves to another person at some

point in their lifetime, “but almost one out of every five seventeen year-olds had sent an explicit image of themselves to someone else at some point in their lifetime, compared to less than 6% of twelve year-olds.”

- 3) **Updated health curriculum framework forthcoming.** The Health Framework California Public Schools, Kindergarten Through Grade Twelve was adopted by the State Board of Education (SBE) in 2003, but is no longer current, as it does not reflect the updated health education content standards that were adopted in 2008. However, The health curriculum framework is currently under revision and final adoption by SBE is scheduled for May 2019. In April 2018, the California Department of Education (CDE) released on its website a draft of the Health Education Framework. The topics required by this bill are already integrated throughout the framework. For example, the framework states that as early as third grade, students may begin using online resources for school assignments and recreational purposes, making it necessary that they “learn the school rules for Internet use” and understand that “the rules are meant to help protect [them] from online dangers and also to prevent cyber bullying.” The framework also encourages teachers to discuss potentially dangerous situations that third graders may encounter online. For grades 4-6, the framework introduces a discussion of unsafe uses of mobile devices and the internet, including sexting and the sharing of provocative photos. Students in these grades also “learn about the consequences of being a cyber bully and sexting,” and “sending sexually suggestive photos through social networks.” For grades 7-8, the framework includes an activity in which students “discuss the dangers of the Internet and sharing sexually explicit photographs,” and “recognize that once they send or allow someone else to take an explicit photograph, they no longer have control of who sees it or where it may be shared...” For grades 9-12, the framework includes a suggested activity in which students learn about the “possible negative, legal, and lasting consequences of sexting by researching and analyzing current events related to sexting and then discussing the outcomes.” Given that these topics are already addressed in the soon-to-updated framework, and that the instruction proposed by the bill is optional, *the committee may wish to consider* whether the bill is necessary.
- 4) **Related and previous legislation.** AB 1861 (Rodriguez, 1861) requires that students receive instruction on how social media and mobile device applications are used in human trafficking, by adding it to the content included in comprehensive sexual health education.

AB 2601 (Weber, 2018) requires charter schools to ensure that all pupils in 7th through 12th grade receive comprehensive sexual health education and HIV prevention education.

SB 947 (Jackson, 2018) requires the Superintendent of Public Instruction (SPI), on or before December 1, 2019, and in consultation with an advisory committee, to identify best practices and recommendations for instruction in digital citizenship, internet safety, and media literacy.

SB 830 (Dodd, 2018) requires the Instructional Quality Commission (IQC) to develop, and the State Board of Education (SBE) to adopt, modify, or revise, a model curriculum in media literacy.

AB 2536 (Chau, Chapter 419, Statutes of 2016) adds “cyber sexual bullying” as a type of bullying, by means of an electronic act, for which a student could be suspended or expelled from school. This bill also requires the California Department of Education (CDE) to provide, on its internet website, information on the dangers and consequences of cyber sexual bullying to school districts and encouraged school districts to inform students of this information.

AB 2212 (Harper, Chapter 412, Statutes of 2016) adds video to the definition of “an act of bullying by means of an electronic act.”

AB 329 (Weber, Chapter 398, Statutes of 2015) requires schools to provide comprehensive sexual health education in grades 7-12, and modified the required components of sexual health education and HIV/AIDS prevention education. This bill also renamed the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act the California Healthy Youth Act.

SB 919 (Lieu, 2011-12 Session) would have defined sexting, required a School/Law Enforcement Partnership to have the purpose of reducing sexting, and added sexting directed toward a pupil or school personnel as an offense for which a student may be suspended or expelled. This bill died in the Assembly Appropriations Committee.

AB 1043 (Torres, 2011-12 Session) would have specified that any minor engaged in "sexting" images of himself or herself or another minor may be adjudicated a ward of the juvenile court. This bill died in the Assembly Committee on Public Safety.

AB 321 (Hernández, 2011-12 Session) would have authorized a school district to provide instruction on the potential risks and consequences of creating and sharing sexually suggestive or explicit materials through cellular telephones, social networking websites, computer networks, or other digital media. This bill died in the Assembly Appropriations Committee.

AB 1993 (Fox, Chapter 418, Statutes of 2014) requires the CDE to develop an online training module on bullying and cyberbullying.

SUPPORT

AIDS Healthcare Foundation
California Association for Health, Physical Education, Recreation and Dance
California Catholic Conference
California Police Chiefs Association
California State PTA
Crime Victims United of California
National Rural Education Association

OPPOSITION

American Civil Liberties Union of California

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