

denies the allegation, the petitioner may appeal the decision to the local educational agency's (LEA's) governing board. If the governing board also denies the allegation, the petitioner may submit a written statement objecting to the contested information to be included in their academic record. (EC § 49070)

- 4) Protects the privacy of student education records in federal law in accordance with the Family Educational Rights and Privacy Act (FERPA). The law applies to all schools receiving federal funding under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their child's education records. These rights transfer to the student when the student reaches the age of 18, or attends postsecondary education. (20 United States Code § 1232g; 34 Code of Federal Regulations Part 99)
- 5) Prohibits discrimination on the basis of gender, gender identity, and gender expression, among other perceived traits, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid. Existing law provides that this statute shall not apply to educational institutions controlled by religious organizations if the application would be inconsistent with the religious tenants of that organization. (EC § 220-221)
- 6) Prohibits discrimination on the basis of sex, gender identity, and gender expression, among others perceived traits, in any aspect of the operation of alternative schools or charter schools. (EC § 235).
- 7) Establishes the Gender Recognition Act of 2017 which, among other things:
 - a) Makes findings and declarations that every person deserves full legal and equal treatment under the law and that intersex, transgender, and non-binary people have state-issued identification documents that provide full legal recognition of their accurate gender identity.
 - b) Authorizes the change of gender on a birth certificate, driver's license, or state-issued identification card to be female, male, or non-binary.
 - c) Provides for processes allowing individuals, through processes officiated by the Department of Motor Vehicles, the State Registrar, and the county courts, as applicable, to petition to
 - i. Change the original gender identification listed on a birth certificate and state-issued ID to female, male, or non-binary.
 - ii. Change the name listed on a birth certificate and state-issued identification documents. (Civil Procedure Code § 1277-1278; Health and Safety Code § 103425-103426, 103430, and 103440; Vehicle Code § 12800 and 13005)

ANALYSIS

This bill requires LEAs to update and reissue the school records of a former pupil in order to reflect the former pupil's updated and correct legal name and/or gender if the

local educational agency (LEA) receives government-issued documentation that the former pupil's legal name and/or gender has been changed. Specifically, this bill:

- 1) Requires LEAs, defined as school districts, charter schools, and county offices of education, upon receipt of government issued-identification demonstrating that a former pupil's legal name, gender, or both has been changed, to change the former pupil's records to reflect the updated legal name and gender.
- 2) Requires LEAs to reissue any school documents conferred on the former pupil with the former pupil's correct name and gender upon request of the former pupil. These reissued documents may include, but are not limited to:
 - a) Transcripts.
 - b) High school diplomas.
 - c) High school equivalency certificates.
 - d) And other similar documents that were conferred to the former pupil.
- 3) Provides that LEAs are not required to modify former pupils' records to reflect the former pupils' updated name or gender for records that the former pupils have not specifically requested to be modified or reissued.
- 4) Provides that former pupils may provide the following documentation to demonstrate a change in legal name or gender identity, including, but not limited to, any of the following:
 - a) A state-issued driver's license.
 - b) A birth certificate.
 - c) A passport.
 - d) A social security card.
 - e) A court order indicating a name or gender change, or both.
- 5) Requires LEAs, upon reissuing a former pupil's record due to a name and/or gender change request, to add a new document to the former pupil's file which includes all of the following:
 - a) The date of the request.
 - b) The date the requested records were reissued to the former pupil.
 - c) A list of the records that were requested by, and reissued to, the former pupil.
 - d) The type of documentation provided by the former pupil in order to demonstrate the legal name or gender change.

- e) The name of the local educational agency staff person that completed the request.
- f) The current and former name or gender of the former pupil.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Transgender students face many barriers at school. California has taken steps to ensure that students who are currently enrolled in K-12 and higher education institutions and who identify as transgender are protected from discrimination, are permitted to participate in school activities and use facilities consistent with their gender identity, and have their privacy protected. California also requires schools to allow transgender students to update their permanent record so that their name and gender identity are accurately reflected on educational documents and official school records.”

“However, the bulk of these protections apply to current transgender students, and the law and administrative regulations are mostly silent on the rights of former students who may have transitioned or come out after leaving K-12 education. As a result, according to the Transgender Law Center and Equality California, some schools have been reluctant to amend educational records for former students to reflect their correct name and gender. This can effectively ‘out’ the person to anyone who sees the old record or diploma -- putting them at risk of discrimination or harm, or causing potential employers or other parties to call the person by the wrong name (‘deadnaming’).”

“Under the federal Family Educational Rights and Privacy Act (FERPA), students -- current or former -- have a right to seek to amend their school records if those records are “inaccurate, misleading, or in violation of the student’s rights of privacy.” In addition, Education Code Section 49070 allows parents/guardians and adult students to challenge the content of any student record, if the record is alleged to be inaccurate, misleading, or in violation of the privacy or other rights of the student.”

“Transgender former students who seek to change their name and gender marker on their educational records should be able to use this process, but ambiguity in the law, a burdensome hearing and appeal process, and resistance from some school districts have made it more difficult for some former students to update their records.”

“Under current law, California educational institutions must recognize a (current) transgender student’s name or gender change court order and must update their permanent student record accordingly, though some recognize a Department of Motor Vehicles identification issued with a new name or gender. In addition, the law requires school districts to use a student’s preferred name and pronouns consistent with their gender identity, at the written request of a student (or a parent/guardian if appropriate), even in the absence of a court order. A school employee’s intentional and persistent refusal to respect a student’s gender identity is considered discriminatory under California law...”

- 2) ***What does it mean to identify as a transgender person?*** According to GLAAD (formerly known as the Gay & Lesbian Alliance Against Defamation), “Transgender (adj.) is an umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth.”
- 3) ***The implications of being “outed” or “deadnamed.”*** Transgender-identifying former students may wish to update their diploma, transcript, and other school-related documents to reflect their current and preferred name and gender, as opposed to the name and gender they were affiliated with while enrolled in school. School records listing the transgender-identifying former pupil’s gender as assigned at birth and “deadname” (i.e., the birth-name or pre-gender transition name), could “out” the former pupil’s transgender identity when those school records are accessed in the course of seeking employment, applying to college, accessing housing, securing loans, and the like. Being outed by student records puts transgender-identifying former pupils at risk of bullying, discrimination, violence, and loss of employment opportunities, according to the National Center for Transgender Equity and the Transgender Law Center, Gay, Lesbian, & Straight Education Network (GLSEN), and Equality California.

Studies show that transgender people disproportionately face discrimination, harassment, and violence in areas of life including housing, education, employment, health care, and law enforcement. For example, a 2018 study by the Human Rights Campaign and the University of Connecticut reports that transgender and gender non-conforming individuals are about twice as likely to be sexually assaulted or raped compared to their cis-gender peers in the lesbian, gay, bisexual, queer, and questioning (LGBTQ) community. According to the National Center for Transgender Equity, more than one in four transgender people have lost a job to trans-bias. Transgender individuals are also subject to refusal to hire, privacy violations and violence on the job at significantly higher rates relative to their cis-gender peers.

- 4) ***The responsibility of schools for currently enrolled transgender students.*** What is the responsibility of schools to acknowledge the stated gender identity and gender-conforming name of currently enrolled transgender students? According to the Department of Education (CDE) FAQ website for the Success and Opportunity Act of 2013:

A school district is required to maintain a mandatory permanent student record which includes the legal name of the student and the student’s gender. If and when a school district receives documentation that such legal name or gender has been changed, the district must update the student’s official record accordingly.

If the school district has not received documentation supporting a legal name or gender change, the school should nonetheless update all unofficial school records (e.g. attendance sheets, school IDs, report cards) to reflect the student’s name and gender marker that is consistent with the student’s gender identity. This is critical in order to avoid unintentionally revealing the student’s transgender status to others in violation of the

student's privacy rights, as discussed above in section 6.

If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with the student's gender identity, without the necessity of legal documentation or a change to the student's official district record. The student's age is not a factor. For example, children as early as age two are expressing a different gender identity. It is strongly suggested that teachers privately ask transgender or gender nonconforming students at the beginning of the school year how they want to be addressed in class, in correspondence to the home, or at conferences with the student's parents.

In addition to preserving a transgender student's privacy, referring to a transgender student by the student's chosen name and pronouns fosters a safe, supportive and inclusive learning environment. To ensure that transgender students have equal access to the programs and activities provided by the school, all members of the school community must use a transgender student's chosen name and pronouns. Schools should also implement safeguards to reduce the possibility of inadvertent slips or mistakes, particularly among temporary personnel such as substitute teachers.

If a member of the school community intentionally uses a student's incorrect name and pronoun, or persistently refuses to respect a student's chosen name and pronouns, that conduct should be treated as harassment. That type of harassment can create a hostile learning environment, violate the transgender student's privacy rights, and increase that student's risk for harassment by other members of the school community. Examples of this type of harassment include a teacher consistently using the student's incorrect name when displaying the student's work in the classroom, or a transgender student's peers referring to the student by the student's birth name during class, but would not include unintentional or sporadic occurrences. Depending on the circumstances, the school's failure to address known incidents of that type of harassment may violate California's anti-discrimination laws.

- 5) **Committee amendments.** Existing law (Education Code § 49070) provides for a process where the parents or guardians of pupils, and the parents and guardians of former pupils, may petition the superintendent of the district to correct information that the petitioner alleges to be inaccurate, unsubstantiated, misleading, or in violation of the pupil's privacy rights. Existing law also provides that when a pupil or former pupil reaches 18 years or age, or is attending an institution of higher education, that the rights and permissions afforded to the parents or guardians of the pupil or former pupil shall be afforded to the pupil or former pupil themselves. (EC § 49061)
 - a) **Staff recommends an amendment to** clarify that this existing process for challenging pupil records (EC § 49070) remains distinct and separate from the process to change records pursuant to name and/or gender as established by this bill. The amendment will also note that former pupils

who lack the proper government-issued identification necessary to use the process described in this bill may still access the process described in Section 49070 to challenge the content of their student records.

The process described in Section 49070 requires the records of these proceedings to be destroyed within one year of the decision of the superintendent or the governing board.

- b) **Staff recommends an amendment** that, relative to using the process pursuant to Section 49070 to request a name and/or gender change, the superintendent or school district governing board shall add a new document to the former pupil's file, to be retained indefinitely, that includes all of the following information:
- i) The date of the request.
 - ii) The date the requested records were corrected.
 - iii) A list of the records that were requested by the pupil to be corrected.
 - iv) The type of documentation, if any, provided by the former pupil to demonstrate the legal name or gender change. However, such documentation is not required.
 - v) The name of the staff person that completed the request.
 - vi) The current and former name or gender of the former pupil.
- 6) **Fiscal impact.** According to the Assembly Appropriations Committee, "Minor Proposition 98 General Fund cost pressures to schools. If the Commission on State Mandates determines the bill's requirements to be a reimbursable state mandate, the state would need to reimburse these costs to schools or provide funding through the K-12 Mandate Block Grant."
- 7) **Prior and related legislation.** AB 493 (Gloria, 2019) requires schools to provide online training at least once every two years to teachers of students in grades 7-12 on the topic of school-site and community resources for the support of lesbian, gay, bisexual, queer, and questioning (LGBTQ) students. This bill is pending before this committee.

AB 2153 (Thurmond, 2017) would have required each school operated by a school district or county office of education and each charter school to annually provide in-service training to teachers of pupils in grades 7 to 12, and to all other certificated employees at that school, on schoolsite and community resources for the support of lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) pupils as well as strategies to increase support for LGBTQ pupils and thereby improve overall school climate. This bill was vetoed by the Governor with the following message:

This bill requires local schools to provide annual in-service training on available community and school site resources for lesbian, gay, bisexual, transgender, queer (LGBTQ) students to teachers and supporting staff of grades 7-12 students.

I signed AB 827 (O'Donnell) in 2015, which required the Department of Education, as part of its compliance monitoring, to assess whether local schools have provided information to certificated staff serving of grades 7-12 on school site and community resources for LGBTQ students. Current law also requires the Department to monitor local schools to ensure the adoptions of policies prohibiting discrimination, harassment, intimidation, and bullying on the basis of sexual orientation, gender, gender identity, or gender expression.

If local schools find that more training or resources on this topic is needed, they have the flexibility to use their resources as they see best.

AB 1318 (Chiu, 2017) would have required a local educational agency to provide staff members with information about local resources available to support pupils subject to bias and discrimination; would have required professional development trainings of certificated staff to address intergroup conflict; and would have required the California Department of Education to provide specific information on its website related to bias and discrimination and intergroup conflict. This bill was held in the Assembly Appropriations Committee Suspense file.

SUPPORT

Equality California (co-sponsor)
Transgender Law Center (co-sponsor)
ACLU California
API Equality Northern California
California Association of Student Councils
California School Boards Association
California School Nurses Association
EI/La Para Translatinas
Gay Asian Pacific Alliance
GLSEN Los Angeles
National Center for Lesbian Rights
San Francisco Lesbian Gay Bisexual Transgender Community Center
San Francisco United School District
Stonewall Democratic Club

OPPOSITION

None on file.

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