
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 2289 **Hearing Date:** June 20, 2018
Author: Weber
Version: June 7, 2018
Urgency: No **Fiscal:** Yes
Consultant: Jennifer Chase

Subject: Pupil rights: pregnant and parenting pupils.

SUMMARY

This bill establishes certain accommodations as rights of a pregnant or parenting students; requires schools to notify both pregnant and parenting students and their associated parent or guardian of their rights and available options; requires schools to provide excused absences for students to take care of a sick child without requiring a note from a doctor; and authorizes complaints of noncompliance using the Uniform Complaint Procedures (UCP).

BACKGROUND

Existing law:

- 1) 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.)
- 2) 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)
- 3) Federal regulations:
 - a) 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.

- b) 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.
 - c) 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)
- 4) Requires that students be excused from school when absences are due to several specified reasons, including due to the illness of medical appointment during school hours of a child whom the student is the custodial parent. (Education Code (EC) § 48205)
 - 5) Requires that students absent for specified reasons be allowed to complete, and receive credit for, assignments and tests missed during their absence (EC § 48205).
 - 6) 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)

ANALYSIS

This bill establishes rights for pregnant and parenting students, including the right to take eight weeks of parental leave. The bill establishes compliant procedures for noncompliance with these rights and ensures that both pregnant and parenting students and their associated parents and guardians are notified of these rights. Specifically, this bill:

- 1) Prohibits an educational institution from applying rules related to the student's actual or potential parental, family or marital status differently on the basis of sex, including:
 - a) Denying educational programs or extracurricular activities to any student solely on the basis of the student's pregnancy.
 - b) Requiring pregnant or parenting students to participate in pregnant minor programs or alternative education programs solely on the basis of the student's pregnancy or parenting status.
- 2) Permits an educational institution to require certification from a physician or nurse practitioner that the student is able to participate in the regular education program or activity.
- 3) Specifies that temporary disability also includes pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom.

- 4) Requires a school district to notify pregnant and parenting pupils of their rights in the annual school welcome packet.
- 5) Establishes that pregnant and parenting pupils have:
 - a) The right to parental leave, during which time a student cannot be required to complete academic work or other school requirements.
 - b) The right to a minimum of eight weeks of parental leave, which can be taken before the birth if deemed a medical necessity or up to one year after the birth. Prohibits a student's failure to notify the school of his or her intent to take this leave from abridging this right.
 - c) The right to return to the school and course of study in which he or she was enrolled prior to taking parental leave.
 - d) The right to make up work missed during parental leave, upon return to school.
 - e) The right to a fifth year of instruction in the school in which the student was enrolled prior to parental leave, in order to complete state and local graduation requirements, unless the local educational agency (LEA) determines that the student is able to complete graduation requirements by the end of his or her fourth year.
 - f) The right to alternative education options that are comprised of programs, activities, and courses equal to those of the regular education program, for students who decide not to return to their original school or course of study.
 - g) The right to use the accommodations listed in this section, without incurring academic penalties.
- 6) Authorizes a student to file a complaint for noncompliance with California Department of Education if a local educational agency does not comply.
- 7) Permits a pupil to an excused absence when caring for a sick child and prohibits a school from requiring a note from a doctor to verify the child is sick.
- 8) Requires the governing board of each school district to annually notify the parent or guardian of a minor student of the rights of pregnant and parenting students.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "Title IX and California's Sex Equity in Education Act protects all students' rights to equal educational opportunities regardless of sex. Yet in California, a pregnant and parenting student's rights to an education and access to leave are dependent on their geographic location. Inconsistent educational policies across school districts have hindered a pregnant and parenting student's right to care for their child while continuing their

education. Also, pregnancy and parenting creates responsibilities and demands that are not compatible with the expectations of traditional students. They have to juggle school while meeting the financial, physical and emotional obligations of taking care of a child and themselves, which is sometimes often unpredictable. The California Legislature can help to keep young parents in school by amending and adding to additional codes that provide sick and parental leave to pregnancy and parenting students and provide avenues to ensure they are engaged in school. “

- 2) ***Pregnancy and parenting during adolescence.*** According to the Centers for Disease Control (CDC), the U.S. teen birth rate is substantially higher than in other western industrialized nations, although rates vary depending on ethnic or geographic characteristics. In 2016, just over 208,800 babies were born to teen girls between 15 and 19.

Teen pregnancy has been linked to lower academic achievement and higher dropout rates. CDC reports that by age 22, only 50 percent of teen mothers have received a high school diploma. In contrast, 90 percent of teens who do not give birth during high school receive a high school diploma by age 22. The children of teenage mothers are also more likely to have lower school achievement, drop out from high school, have more health programs and face unemployment as a young adult. Parenting can be a huge challenge for adolescent parents and a support system is often critical to success. Support programs for teenage parents provide a variety of resources including access to health services, child care, parenting support, access to social services programs and help with applying to college and financial aid.

- 3) ***Past programs supporting pregnant pupils rolled into LCFF.*** The establishment of the Local Control Funding Formula (LCFF) eliminated almost all categorical programs, including the California School Age Families Education (Cal-SAFE) program, which provided expectant and parenting students and their children with comprehensive, integrated, community-linked, school-based services. According to the California Department of Education (CDE), from 2000-2010, the program had enrolled 98,000 expectant and parenting students and 62,000 young children. Cal-SAFE provided academic and support services to both female and male students under 18 who had not graduated from high school and were expectant, custodial, or non-custodial parents. The program also provided enrollees with training on effective parenting skills and their children with child care, health screenings, and early childhood development programs. While teen parents were enrolled in the program, their children were eligible for services until age five or entry into kindergarten. The ACLU reports that 73 percent of participants completed high school with the support provided by Cal-SAFE.
- 4) ***Current options for pregnant or parenting students.*** Since the elimination of the categorical Cal-SAFE program, it is unclear how many school districts have continued the program using LCFF funds. According to CDE, pregnant and parenting pupils may enroll in several alternative educational options, including independent study, individualized instruction, and continuation schools. Independent study programs are voluntary and offered in some, but not all school

districts. The intent of independent study is to provide a flexible educational option that is comparable in quality and quantity to regular school programs, adapts to the individual needs and learning styles of a student, and can be used on either a short or long-term basis. The California Department of Education (CDE) states that several types of students may benefit from independent study, including pregnant minors and teen parents. In 2014-15, CDE reports that nearly 168,000 students in grades K-12 were receiving 50 percent or more of their instruction through independent study; it is unclear how many of these students were pregnant or parenting.

Although the California Code of Regulations and Title IX already prohibit schools from denying students educational opportunities, or forcing them to enroll in alternative educational programs on the basis of their parental or marital status, the sponsors of this bill report that pregnant and parenting pupils are often compelled to leave their regular educational programs and enroll in continuation schools. These claims raise concerns that pregnant and parenting pupils are being denied access to future educational and career opportunities, despite the protections afforded them by law.

- 5) ***What new options are created for students?*** This bill gives pregnant and parenting students, regardless of sex, a minimum of eight weeks of parental leave. Current law permits the only the mother to a leave of absence for as long as deemed medically necessary, so the bill enhances the protections of student parents and provides a standard leave time for all students across the state. It grants student parents a minimum of eight weeks of protected time to bond with his or her child where the student is not required to complete academic work. Importantly the bill also extends the right for protected leave to fathers. The bill also allows parenting students to be excused from school when caring for a sick child and prohibits the school from requiring a doctor's note. The bill also provides a mechanism to file a complaint with the Department of Education through the Uniform Complaint Procedures if the local educational agency (LEA) fails to comply with these requirements.
- 6) ***Rights and notifications.*** Title IX prohibits discrimination on the basis of sex, including pregnancy and parental status, in educational programs and activities. However, the author contends that students face varying levels of support and engagement from schools as well as inconsistent access to excused family leave. Are students and parents being notified of their rights and options under current law? AB 2289 codifies federal and state regulations that outline specific sex discrimination prohibitions in the context of pregnant and parenting students. This should provide a more consistent policy and ensure that schools treat pregnancy in the same manner as other temporary disability conditions. Furthermore, by requiring schools to notify both students and their parents/guardians of their rights as pregnant or parenting students, the bill should result in more students understanding their rights and choices. This will likely result in more students taking the protected eight weeks of leave and provide more consistent bonding opportunities for teen parents across the state.
- 7) ***How many students?*** According to the author, over 24,000 children were born to 15 to 19 year olds in California in 2015.

- 8) ***Fiscal impact.*** According to the Assembly Appropriations Committee:
- a) Unknown Proposition 98 GF costs, likely in the low hundreds-of-thousands of dollars, for LEAs to disseminate information to parents and students. To the extent the Commission on State Mandates determines these activities to be reimbursable, this could create pressure to increase the K-12 mandate block grant.
 - b) Potential GF costs to CDE to process and respond to complaints. Whether the costs are absorbable depends on the number of complaints filed and of appeals. In the event CDE receives more than 100 complaints annually, costs of about \$200,000 to hire staff to respond.
- 9) ***Technical amendments.*** Staff recommends technical amendments as follows:
- a) Replace “educational institution” with local educational agency (LEA) in Section 221.51 and add the definition of LEA to be the same as used in Section 46015.
 - b) Expand the notification requirement to all LEAs, which includes county offices of education and charter schools. This aligns with the intent of the bill, which is to provide rights to pregnant and parenting students at the defined LEAs. Notably the current appropriation estimate of this bill includes the notification for all LEAs, so this will clarify that intent, but not increase the cost of the bill.
- 10) ***Previous Legislation:*** SB 1014 (Liu, 2016-17 session) proposed protections for pregnant and parenting students that were very similar to those listed in this bill. SB 1014 died in the Assembly Appropriations Committee.

AB 302 (Garcia), Chapter 690, Statutes of 2015, requires a school to provide reasonable accommodations to a lactating student on their respective campuses.

SUPPORT

ACCESS Women’s Health Justice (co-sponsor)
 ACT for Women and Girls (co-sponsor)
 Black Women for Wellness (co-sponsor)
 California Latinas for Reproductive Justice (co-sponsor)
 Alliance for Boys and Men of Color
 Alliance for Children's Rights
 American Academy of Pediatrics, California
 American Civil Liberties Union of California Center for Advocacy and Policy
 Association of California School Administrators
 Breastfeed LA
 Brighter Beginnings
 Business & Professional Women of Nevada County
 California Academy of Family Physicians
 California Association of School Health Educators
 California Calls

California Catholic Conference
California Federation of Teachers, AFT, AFL-CIO
California Legislative Women Caucus
California Nurse-Midwives Association
California School Boards Association
California School Nurses Organization
California State PTA
Californians United for a Responsible Budget
California Women's Law Center
Center on Reproductive Rights and Justice at the University of California, Berkeley,
School of Law
Citizens for Choice
Common Sense Kids Action
County Health Executives Association
Essential Access Health
Equal Rights Advocates
Feminist Majority Foundation
First 5
First Place for Youth
Free Speech Coalition
Fresno Barrios Unidos
Having Our Say Coalition
Khmer Girls in Action
Los Angeles Trust for Children's Health
Maternal and Child Health Access
NARAL Pro-Choice California
National Center for Youth Law
National Council of Jewish Women, California
National Health Law Program
National Organization for Women, Hollywood Chapter
Physicians for Reproductive Health
Planned Parenthood Affiliates of California
Public Health Justice Collective
San Diego LGBT Community Center
San Francisco Community Health Center
Teen Success, Inc.
Women's Foundation of California
Youth Alliance
One individual

OPPOSITION

None received

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