



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

June 10, 2019

To: Superintendents, Member School Districts (K-12)
From: Kaitlyn Schwendeman, Schools Legal Counsel *KAS*
Subject: Education Code Requirement to Accommodate Pregnant or Parenting Pupils
Memo No. 14-2019

As we round out the 2018-2019 school year, we would like to remind our clients of a law that went into effect January 1, 2019, providing additional protections and accommodations to pregnant and parenting students. This information was included in our Annual Notice to Parents, Memo No. 10-2019.

The new law, a copy of which is attached to this Legal Update, establishes a protected parental leave program for any “pregnant or parenting pupil.”¹ Pupils who qualify are entitled to up to eight weeks of parental leave from school, which can be taken before or after the birth of the child, during the school year that the child is born, inclusive of summer instruction.² Pupils are not required to take all eight weeks of leave, and may not be required to take leave if they do not wish to take it. A pregnant or parenting pupil is entitled to more than eight weeks if their physician determines that it is medically necessary.³

When on leave, students may not be penalized for their absence, or required to perform any academic work. They must also be provided the opportunity to remain enrolled for a fifth year of instruction in the school they were previously enrolled, if the school determines it is necessary, to complete graduation requirements.⁴

¹ Defined as “a pupil who gives or expects to give birth or a parenting pupil who has not given birth and who identifies as the parent of the infant.” Ed. Code Section 46015. This would apply to both of the biological parents of the infant, and may also apply to a partner of the pregnant student who is not a biological parent, but is in a “parenting” relationship.

² Leave taken prior to the child’s birth is permissible “if there is a medical necessity...in order to protect the health of the pupil who gives or expects to give birth and the infant,” and leave after the birth is considered baby bonding leave. Ed. Code Section 46015.

³ Ed. Code Section 46015.

⁴ Ed. Code Section 46015.



Additional protections include:

- Students cannot be forced to participate in pregnant minor classes or other alternative education programs;⁵
- Requirement that schools provide reasonable accommodations for pregnancy and pregnancy-related conditions the same as other temporary disabilities;⁶ and
- Recognizing an excused absence when a student is absent due to their child's illness or medical appointment.⁷
 - If a student is absent to care for an ill child, the school may not require a doctor's note.

Lastly, schools must provide notice to parents and students of pregnant and parenting students' rights under the law.⁸ This requirement is satisfied if schools include the following suggested language in the Annual Notice to Parents, and includes similar language in student-facing notices, such as a student handbook, "welcome packet," or independent study packet (the following sample language was included in Memo No. 10-2019):

PREGNANT AND PARENTING PUPILS (EC §§ 221.51, 222, 222.5, 46015): Districts may not exclude nor deny any pupil from any educational program or activity on the basis of the pupil's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, and shall treat these conditions in the same manner and under the same policies as any other temporary disabling condition. A pregnant or parenting pupil is entitled to 8 weeks of parental leave, or additional leave if deemed medically necessary by the pupil's physician. During parental leave, absences shall be excused and the pupil shall not be required to complete academic work or other school requirements. After return from parental leave, a pupil may resume the course of study in which he/she was previously enrolled, is entitled to make up work missed, and to take a fifth year of high school instruction if necessary to complete graduation requirements. A pupil may elect to attend an alternative education option instead of returning to the school in which he or she was enrolled prior to parental leave. Schools shall 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. A pupil shall not incur an academic penalty as a result of his or her use of these accommodations.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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⁵ Ed. Code Section 221.51.

⁶ This may include, for example, providing a private location (other than a restroom) for a student who needs to express breastmilk during the school day, if requested. Ed. Code Section 221.51.

⁷ Ed. Code Section 48205.

⁸ Ed. Code Sections 222.5 and 48980.

State of California

EDUCATION CODE

Section 46015

46015. (a) The Legislature finds and declares that pregnant and parenting pupils are entitled to accommodations that provide them with the opportunity to succeed academically while protecting their health and the health of their children. The Legislature hereby establishes the following accommodations as rights of pregnant and parenting pupils:

(1) A pregnant or parenting pupil is entitled to eight weeks of parental leave, which the pupil may take before the birth of the pupil's infant if there is a medical necessity and after childbirth during the school year in which the birth takes place, inclusive of any mandatory summer instruction, in order to protect the health of the pupil who gives or expects to give birth and the infant, and to allow the pregnant or parenting pupil to care for and bond with the infant. It is the intent of the Legislature that the pupil, if the pupil is 18 years of age or older, or, if the pupil is under 18 years of age, the person holding the right to make educational decisions for the pupil, notify the school of the pupil's intent to exercise this right. Failure to notify the school shall not abridge the rights established by this paragraph or any other right established by this subdivision.

(2) A pregnant or parenting pupil who does not wish to take all or part of the parental leave to which they are entitled pursuant to paragraph (1) shall not be required to do so.

(3) A pregnant or parenting pupil is entitled to receive more than eight weeks of parental leave pursuant to paragraph (1) if deemed medically necessary by the pupil's physician.

(4) When a pupil takes parental leave pursuant to paragraph (1), the supervisor of attendance shall ensure that absences from the pupil's regular school program are excused until the pupil is able to return to the regular school program or an alternative education program.

(5) During parental leave taken pursuant to paragraph (1), a local educational agency shall not require a pregnant or parenting pupil to complete academic work or other school requirements.

(6) A pregnant or parenting pupil may return to the school and the course of study in which he or she was enrolled before taking parental leave pursuant to paragraph (1).

(7) Upon return to school after taking parental leave pursuant to paragraph (1), a pregnant or parenting pupil is entitled to opportunities to make up work missed during his or her leave, including, but not limited to, make-up work plans and reenrollment in courses.

(8) Notwithstanding any other law, a pregnant or parenting pupil may remain enrolled for a fifth year of instruction in the school in which the pupil was previously enrolled when it is necessary in order for the pupil to be able to complete state and any local graduation requirements, unless the local educational agency makes a finding that the pupil is reasonably able to complete the local educational agency's graduation requirements in time to graduate from high school by the end of the pupil's fourth year of high school.

(9) A pupil who chooses not to return to the school in which he or she was enrolled before taking parental leave pursuant to paragraph (1) is entitled to alternative education options offered by the local educational agency.

(10) In accordance with subdivision (d) of Section 221.51, a pregnant or parenting pupil who participates in an alternative education program shall be given educational programs, activities, and courses equal to those he or she would have been in if participating in the regular education program.

(11) A pupil shall not incur an academic penalty as a result of his or her use of the accommodations specified in this subdivision.

(b) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A local educational agency shall respond to a complaint filed pursuant to paragraph (1) in accordance with Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(3) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department's receipt of the appeal.

(4) If a local educational agency finds merit in a complaint, or if the department finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

(c) For purposes of this section, the following definitions apply, unless the context requires otherwise:

(1) "Local educational agency" means a school district, a county office of education, a school operated by a school district or a county office of education, a charter school, the California Schools for the Deaf, or the California School for the Blind.

(2) "Pregnant or parenting pupil" means a pupil who gives or expects to give birth or a parenting pupil who has not given birth and who identifies as the parent of the infant.

(3) "Pupil" means a pupil enrolled in a local educational agency.

(Added by Stats. 2018, Ch. 942, Sec. 4. (AB 2289) Effective January 1, 2019.)