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LEGAL UPDATE

October 21, 2019

To: Superintendents, Member School Districts (K-12)
From: Kaitlyn Schwendeman, Schools Legal Counsel *KAS*
Subject: AB 1767 and AB 34 – Creation and Internet Posting of Bullying, Harassment and Suicide Prevention Policies
Memo No. 36-2019

As part of the final packet of legislation for this legislative year, the Governor signed two bills addressing harassment and bullying within schools – AB 1767 and AB 34.

Assembly Bill (“AB”) 1767 requires any school district, county office of education, or charter school that serves students in kindergarten and grades 1 to 6 to adopt or update a policy on suicide prevention to apply to kindergarten and grades 1 to 6, and specifically address the needs of high-risk groups within those grades.¹

High-risk groups are defined to include (but not be limited to): students bereaved by suicide, students with disabilities (including mental health disorders), students with substance use disorders, homeless youth, foster youth, and LGBTQ students.

The policy must be adopted at a regularly-scheduled meeting prior to the start of the 2020-21 school year, after consultation with school and community stakeholders, the county mental health plan, school mental-health professionals, and suicide prevention experts. The policy must be age appropriate and address suicide prevention and post-vention. If the policy includes training, there are requirements for such training and the materials used (though training is not required); additionally, the policy must be reviewed every 5 years, minimally.

AB 34 requires any school district, county office of education, or charter school, regardless of grades served, to post specific information in a prominent location on the local educational agency’s (LEA’s) existing website in a manner that is easily accessible to parents/guardians and students.²

¹ Education Code § 215.

² AB 34 adds to the Education Code Article 5.6, which begins with § 234.6.



The information that must be posted to the LEA's website is the following:

- The LEA's policy on student suicide prevention,³
- The LEA's definition of harassment and discrimination based on sex,⁴
- Student's Title IX rights,⁵
- A link to CDE's Title IX website,⁶
- The LEA's student sexual harassment policy,⁷
- The LEA's hate violence prevention policy,⁸
- The LEA's anti-discrimination, anti-harassment policy,⁹
- The LEA's anti-cyberbullying procedures,¹⁰
- A section on social media bullying with references to all of the following possible forums for social media bullying:
 - Websites with free registration and ease of registration
 - Websites offering peer-to-peer instant messaging
 - Websites offering comment forums or sections
 - Websites offering image or video platforms
- A link to the CDE's state-wide anti-discrimination, anti-harassment and anti-bullying resources, and¹¹
- Any additional resources the LEA deems important for preventing bullying and harassment.

Both AB 1767 and AB 34 go into effect on January 1, 2020. However, as noted, AB 1767 requires compliance prior to the start of the 2020-21 school year, and AB 34 does not require compliance until the 2020-21 school year.

For your convenience, copies of AB 1767 and AB 34 are included with this Legal Update.

Please contact our office with questions regarding this Legal Update or any other 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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³ Both the new policy mandated by AB 1767, and the existing policy for grades 7-12, pursuant to Education Code § 215.

⁴ Pursuant to Education Code §§ 230, 221.8.

⁵ Education Code §§ 221.8, 221.61.

⁶ Education Code § 221.6.

⁷ Education Code § 231.5.

⁸ Education Code § 233.

⁹ Education Code § 234.1.

¹⁰ Education Code § 234.4.

¹¹ Education Code § 234.5.

Assembly Bill No. 1767

CHAPTER 694

An act to amend Section 215 of the Education Code, relating to pupil health.

[Approved by Governor October 9, 2019. Filed with Secretary of State October 9, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1767, Ramos. Pupil suicide prevention policies.

Existing law requires the governing board or body of a local educational agency that serves pupils in grades 7 to 12, inclusive, to adopt a policy on pupil suicide prevention that specifically addresses the needs of high-risk groups.

This bill would require the governing board or body of a local educational agency that serves pupils in kindergarten and grades 1 to 6, inclusive, to, before the beginning of the 2020–21 school year, adopt, and update as prescribed, a policy on pupil suicide prevention that specifically addresses the needs of high-risk groups. The bill would require this policy to be age appropriate and delivered and discussed in a manner that is sensitive to the needs of young pupils. The bill would also require this policy to be written to ensure proper coordination and consultation with the county mental health plan for a referral for mental health or related services made on behalf of a pupil who is a Medi-Cal beneficiary. The bill would require the policy to address any training on suicide awareness and prevention to be provided to teachers of pupils in all of the grades served by the local educational agency. By imposing additional duties on local educational agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 215 of the Education Code is amended to read:

215. (a) (1) The governing board or body of a local educational agency that serves pupils in grades 7 to 12, inclusive, shall, before the beginning of the 2017–18 school year, adopt, at a regularly scheduled meeting, a policy

on pupil suicide prevention in grades 7 to 12, inclusive. The policy shall be developed in consultation with school and community stakeholders, school-employed mental health professionals, and suicide prevention experts and shall, at a minimum, address procedures relating to suicide prevention, intervention, and postvention.

(2) (A) The governing board or body of a local educational agency that serves pupils in kindergarten and grades 1 to 6, inclusive, shall, before the beginning of the 2020–21 school year, adopt, at a regularly scheduled meeting, a policy on pupil suicide prevention in kindergarten and grades 1 to 6, inclusive. The policy shall be developed in consultation with school and community stakeholders, the county mental health plan, school-employed mental health professionals, and suicide prevention experts and shall, at a minimum, address procedures relating to suicide prevention, intervention, and postvention.

(B) The policy for pupils in kindergarten and grades 1 to 6, inclusive, shall be age appropriate and shall be delivered and discussed in a manner that is sensitive to the needs of young pupils.

(C) The policy for pupils in kindergarten and grades 1 to 6, inclusive, shall be written to ensure proper coordination and consultation with the county mental health plan if a referral is made for mental health or related services on behalf of a pupil who is a Medi-Cal beneficiary.

(3) The policy shall specifically address the needs of high-risk groups, including, but not limited to, all of the following:

(A) Youth bereaved by suicide.

(B) Youth with disabilities, mental illness, or substance use disorders.

(C) Youth experiencing homelessness or in out-of-home settings, such as foster care.

(D) Lesbian, gay, bisexual, transgender, or questioning youth.

(4) (A) The policy shall also address any training on suicide awareness and prevention to be provided to teachers of pupils in all of the grades served by the local educational agency.

(B) Materials approved by a local educational agency for training shall include how to identify appropriate mental health services, both at the schoolsite and within the larger community, and when and how to refer youth and their families to those services.

(C) Materials approved for training may also include programs that can be completed through self-review of suitable suicide prevention materials.

(5) The policy shall be written to ensure that a school employee acts only within the authorization and scope of the employee's credential or license. Nothing in this section shall be construed as authorizing or encouraging a school employee to diagnose or treat mental illness unless the employee is specifically licensed and employed to do so.

(6) To assist local educational agencies in developing policies for pupil suicide prevention, the department shall develop and maintain a model policy in accordance with this section to serve as a guide for local educational agencies.

(b) The governing board or body of a local educational agency that serves pupils in kindergarten and grades 1 to 12, inclusive, shall review, at minimum every fifth year, its policy on pupil suicide prevention and, if necessary, update its policy.

(c) Nothing in this section shall prevent the governing board or body of a local educational agency from reviewing or updating its policy on pupil suicide prevention more frequently than every fifth year.

(d) For purposes of this section, “local educational agency” means a county office of education, school district, state special school, or charter school.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Assembly Bill No. 34

CHAPTER 282

An act to add Article 5.6 (commencing with Section 234.6) to Chapter 2 of Part 1 of Division 1 of Title 1 of the Education Code, relating to pupils.

[Approved by Governor September 12, 2019. Filed with
Secretary of State September 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 34, Ramos. Pupils: bullying and harassment prevention information.

The Safe Place to Learn Act requires the State Department of Education to assess whether local educational agencies have taken certain actions related to educational equity, including adopting a policy that prohibits discrimination, harassment, intimidation, and bullying based on specified characteristics, such as disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of the specified characteristics. At the beginning of the first semester or quarter of the regular school term, existing law requires the governing board of a school district to notify the parent or guardian of a minor pupil regarding the right or responsibility of the parent or guardian under specified provisions. Existing law requires that notice to include, among other things, a copy of the school district's written sexual harassment policy, as it relates to pupils.

This bill would, commencing with the 2020–21 academic year, require each local educational agency, as defined, to ensure that specified information on bullying and harassment prevention is readily accessible in a prominent location on the local educational agency's existing internet website in a manner that is easily accessible to parents or guardians and pupils. The bill would require local educational agencies to include specified State Department of Education policies and the policies adopted by a local educational agency relating to hate violence, bullying, harassment, discrimination, and suicide prevention and resources relating to these topics. The bill would, contingent upon the enactment of AB 1767 of the 2019–20 Regular Session, also require each local educational agency to ensure that the local educational agency's policy on pupil suicide prevention in kindergarten and grades 1 to 6, inclusive, is readily accessible on the local educational agency's existing internet website, as specified above. By requiring school districts, county offices of education, and charter schools to ensure specified information on bullying and harassment prevention is readily accessible in a prominent location on the local educational agency's existing internet website, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The state has made a commitment to California pupils through expansive bullying prevention guidelines for school districts and school faculty.

(b) While the state has made strides in preventing bullying and harassment, pupils in California and across the country continue to face these challenges. Pupils from diverse backgrounds, especially lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) pupils, disproportionately face bullying and cyberbullying. Approximately 28 percent of pupils in grades 6 through 12, inclusive, have experienced bullying, and 70 percent of young people have witnessed bullying. While nearly 14 percent of pupils have experienced cyberbullying, 55 percent of LGBTQ pupils have reported being cyberbullied.

(c) The prevalence of social media has expanded the spaces where pupils can face bullying away from the schoolsite and onto the internet.

(d) Due to the prevalence of social media among youth, relative invisibility to parents and guardians, and difficulty intervening in cases of cyberbullying, preventing and mitigating the impact of social media bullying has proven a challenge for educators, parents, and guardians.

(e) Bullying can also have a significant impact on a pupil's academic performance, with those most severely victimized often seeing the worst declines. These academic declines can further the negative cycle created by bullying.

(f) Bullying can lead to depression, and, in some cases, self-harm or suicide. Suicide is the second leading cause of death among young people 15 to 24 years of age, inclusive, in the United States, and a nationwide survey in 2015 found that 1 in 6 high school pupils reported seriously considering suicide in the previous year, and more than 1 in 12 reported attempting it.

(g) Ending bullying and harassment will require ongoing social change. Bringing an end to bullying in California will be a continuing challenge to, and needs to be addressed by, the state, local educational agencies, individual teachers, school staff, and administrators, parents, and other members of the community.

(h) Parents and guardians should receive support in identifying and preventing bullying alongside teachers, school staff, administrators, and

others in order to expand the reach of bullying prevention measures beyond the schools.

SEC. 2. Article 5.6 (commencing with Section 234.6) is added to Chapter 2 of Part 1 of Division 1 of Title 1 of the Education Code, to read:

Article 5.6. Bullying and Harassment Prevention Information

234.6. (a) For purposes of this article, “local educational agency” means a county office of education, school district, state special school, or charter school.

(b) Commencing with the 2020–21 academic year, each local educational agency shall ensure that all of the following information is readily accessible in a prominent location on the local educational agency’s existing internet website in a manner that is easily accessible to parents or guardians and pupils:

(1) The local educational agency’s policy on pupil suicide prevention in grades 7 to 12, inclusive, adopted pursuant to Section 215.

(2) The definition of discrimination and harassment based on sex as described in Section 230. This shall include the rights set forth in Section 221.8.

(3) The Title IX information included on a local educational agency’s internet website pursuant to Section 221.61.

(4) A link to the Title IX information included on the department’s internet website pursuant to Section 221.6.

(5) The local educational agency’s written policy on sexual harassment, as it pertains to pupils, prepared pursuant to Section 231.5.

(6) The local educational agency’s policy, if it exists, on preventing and responding to hate violence as described in Section 233.

(7) The local educational agency’s anti-discrimination, anti-harassment, anti-intimidation, and anti-bullying policies as described in Section 234.1.

(8) The local educational agency’s anti-cyberbullying procedures adopted pursuant to Section 234.4.

(9) A section on social media bullying that includes all of the following references to possible forums for social media bullying:

(A) Internet websites with free registration and ease of registration.

(B) Internet websites offering peer-to-peer instant messaging.

(C) Internet websites offering comment forums or sections.

(D) Internet websites offering image or video posting platforms.

(10) A link to statewide resources, including community-based organizations, compiled by the department pursuant to Section 234.5.

(11) Any additional information a local educational agency deems important for preventing bullying and harassment.

SEC. 2.5. Article 5.6 (commencing with Section 234.6) is added to Chapter 2 of Part 1 of Division 1 of Title 1 of the Education Code, to read:

Article 5.6. Bullying and Harassment Prevention Information

234.6. (a) For purposes of this article, “local educational agency” means a county office of education, school district, state special school, or charter school.

(b) Commencing with the 2020–21 academic year, each local educational agency shall ensure that all of the following information is readily accessible in a prominent location on the local educational agency’s existing internet website in a manner that is easily accessible to parents or guardians and pupils:

(1) The local educational agency’s policy on pupil suicide prevention in grades 7 to 12, inclusive, adopted pursuant to Section 215.

(2) The local educational agency’s policy on pupil suicide prevention in kindergarten and grades 1 to 6, inclusive, adopted pursuant to Section 215, including reference to the age appropriateness of that policy.

(3) The definition of discrimination and harassment based on sex as described in Section 230. This shall include the rights set forth in Section 221.8.

(4) The Title IX information included on a local educational agency’s internet website pursuant to Section 221.61.

(5) A link to the Title IX information included on the department’s internet website pursuant to Section 221.6.

(6) The local educational agency’s written policy on sexual harassment, as it pertains to pupils, prepared pursuant to Section 231.5.

(7) The local educational agency’s policy, if it exists, on preventing and responding to hate violence as described in Section 233.

(8) The local educational agency’s anti-discrimination, anti-harassment, anti-intimidation, and anti-bullying policies as described in Section 234.1.

(9) The local educational agency’s anti-cyberbullying procedures adopted pursuant to Section 234.4.

(10) A section on social media bullying that includes all of the following references to possible forums for social media bullying:

(A) Internet websites with free registration and ease of registration.

(B) Internet websites offering peer-to-peer instant messaging.

(C) Internet websites offering comment forums or sections.

(D) Internet websites offering image or video posting platforms.

(11) A link to statewide resources, including community-based organizations, compiled by the department pursuant to Section 234.5.

(12) Any additional information a local educational agency deems important for preventing bullying and harassment.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 4. Section 2.5 of this bill shall become operative only if Assembly Bill 1767 of the 2019–20 Regular Session is enacted and becomes effective on or before January 1, 2020, in which case Section 2 of this bill shall not

become operative. Section 2 of this bill shall become operative if Assembly Bill 1767 of the 2019–20 Regular Session is not enacted or does not become effective on or before January 1, 2020, in which case Section 2.5 of this bill shall not become operative.

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