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AB-699 Educational equity: immigration and citizenship status. (2017-2018)

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Date Published: 10/05/2017 09:00 PM

Assembly Bill No. 699

CHAPTER 493

An act to amend Sections 200, 220, and 234.1 of, and to add Article 5.7 (commencing with Section 234.7) to Chapter 2 of Part 1 of Division 1 of Title 1 of, the Education Code, relating to educational equity.

[Approved by Governor October 05, 2017. Filed with Secretary of State October 05, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 699, O'Donnell. Educational equity: immigration and citizenship status.

Existing law states the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other specified characteristic, equal rights and opportunities in the educational institutions of the state. Existing law prohibits discrimination on the basis of those specific characteristics 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 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, and adopting a process for receiving and investigating complaints of, discrimination, harassment, intimidation, and bullying based on those actual or perceived specified characteristics.

This bill would expressly include immigration status in the specified characteristics for purposes of those provisions.

This bill would prohibit school officials and employees of a school district, county office of education, or charter school, except as required by state or federal law or as required to administer a state or federally supported educational program, from collecting information or documents regarding citizenship or immigration status of pupils or their family members. The bill would require the superintendent of a school district, the superintendent of a county office of education, and the principal of a charter school, as applicable, to report to the respective governing board or body of the local educational agency in a timely manner any requests for information or access to a schoolsite by an officer or employee of a law enforcement agency for the purpose of enforcing the immigration laws in a manner that ensures the confidentiality and privacy of any potentially identifying information. The bill would encourage a school, when an employee of the school is aware that a pupil's parent or guardian is not available to care for the pupil, to work with parents or guardians to update the emergency contact information and not to contact Child Protective Services to arrange for the pupil's care unless the school is unable to arrange for care through the use of emergency contact information or instructions provided by the pupil's parent or guardian. The bill would require the governing board or body of a local educational agency to

perform specified actions relating to pupils and immigration status, including, among others, providing information to parents and guardians, as appropriate, regarding their children's right to a free public education, regardless of immigration status or religious beliefs. The bill would require the Attorney General, by April 1, 2018, in consultation with appropriate stakeholders, to publish model policies limiting assistance with immigration enforcement at public schools, to the fullest extent possible consistent with federal and state law, and ensuring that public schools remain safe and accessible to all California residents, regardless of immigration status. The bill would require the Attorney General to, at a minimum, consider specified issues when developing the model policies. The bill would require all local educational agencies to adopt the model policies, or equivalent policies, by July 1, 2018. 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

(a) The United States was founded on the principles of freedom and opportunity and is a refuge for the oppressed, the persecuted, and those looking for a better life. We honor the attainment of education for the betterment of the individual and the community.

(b) In June 1982, the United States Supreme Court issued *Plyler v. Doe* (457 U.S. 202), a landmark decision holding that states cannot constitutionally deny students a free public education based on immigration status. The Supreme Court found that any resources that might be saved from excluding undocumented children from public schools were far outweighed by the harms imposed on society at large from denying these students an education.

(c) For more than 30 years, *Plyler v. Doe* has ensured equal access to education for children regardless of immigration status, but anti-immigrant sentiment continues to threaten that right, including states and localities passing measures and adopting unofficial policies that violate the spirit of the United States Supreme Court's decision.

(d) Nowhere else in the nation has been more enriched by the contributions of immigrants than California, which is home to more foreign-born residents than anywhere else in the country. Immigrants play a vital role in all sectors of our state's economy and are valuable and essential members of the California community.

(e) Almost one in three Californians is foreign born and one in two children in California has at least one immigrant parent.

(f) Children are entitled to a public education while in California, regardless of immigration status. With adequate protections in place, we will show that we are willing to take the steps necessary to ensure that our students have every opportunity to continue their education without fear or undue risk.

(g) A positive school climate is one in which students, educators, and staff feel safe, welcomed, supported, and connected. Studies show that healthy school climates contribute to academic achievement and other positive outcomes for students. In an effort to create a positive school climate, California schools must take steps to protect the integrity of their learning environments for all children.

(h) With great risks of changes to approaches to immigration policies and enforcement at the federal level, it is more important than ever for California to work to protect students and ensure that, regardless of their immigration status, they may continue to take advantage of the education to which they are entitled, free from intimidation or risk of a loss of access to resources and programs that other students enjoy.

(i) The amendment of Sections 200, 220, and 234.1 of the Education Code made by this act does not constitute a change in, but is declaratory of, existing law.

SEC. 2. Section 200 of the Education Code is amended to read:

200. It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, equal rights, and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

SEC. 3. Section 220 of the Education Code is amended to read:

220. No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, 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.

SEC. 4. Section 234.1 of the Education Code is amended to read:

234.1. The department, pursuant to subdivision (b) of Section 64001, shall monitor adherence to the requirements of Chapter 5.3 (commencing with Section 4900) of Division 1 of Title 5 of the California Code of Regulations and this chapter as part of its regular monitoring and review of local educational agencies, commonly known as the Categorical Program Monitoring process. The department shall assess whether local educational agencies have done all of the following:

(a) Adopted a policy that prohibits discrimination, harassment, intimidation, and bullying based on the actual or perceived characteristics set forth in Section 422.55 of the Penal Code, including immigration status, and Section 220 of this code, and 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 these actual or perceived characteristics. The policy shall include a statement that the policy applies to all acts related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district.

(b) Adopted a process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying based on any of the actual or perceived characteristics set forth in Section 422.55 of the Penal Code, including immigration status, and Section 220 of this code, and 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 these actual or perceived characteristics. The complaint process shall include, but not be limited to, all of the following:

(1) A requirement that, if school personnel witness an act of discrimination, harassment, intimidation, or bullying, they shall take immediate steps to intervene when safe to do so.

(2) A timeline to investigate and resolve complaints of discrimination, harassment, intimidation, or bullying that shall be followed by all schools under the jurisdiction of the school district.

(3) An appeal process afforded to the complainant should he or she disagree with the resolution of a complaint filed pursuant to this section.

(4) All forms developed pursuant to this process shall be translated pursuant to Section 48985.

(c) Publicized antidiscrimination, anti-harassment, anti-intimidation, and antibullying policies adopted pursuant to subdivision (a), including information about the manner in which to file a complaint, to pupils, parents, employees, agents of the governing board, and the general public. The information shall be translated pursuant to Section 48985.

(d) (1) Provided, incident to the publicizing described in subdivision (c), to certificated schoolsite employees who serve pupils in any of grades 7 to 12, inclusive, who are employed by the local educational agency, information on existing schoolsite and community resources related to the support of lesbian, gay, bisexual, transgender, and questioning (LGBTQ) pupils, or related to the support of pupils who may face bias or bullying on the basis of religious affiliation, or perceived religious affiliation.

(2) As used in this subdivision, both of the following apply:

(A) Schoolsite resources may include, but are not limited to, peer support or affinity clubs and organizations, safe spaces for LGBTQ or other at-risk pupils, counseling services, staff who have received antibias or other training aimed at supporting these pupils or who serve as designated support to these pupils, health and other curriculum materials that are inclusive of, and relevant to, these pupils, online

training developed pursuant to Section 32283.5, and other policies adopted pursuant to this article, including related complaint procedures.

(B) Community resources may include, but are not limited to, community-based organizations that provide support to LGBTQ or other at-risk pupils and their families, and physical and mental health providers with experience or training in treating or supporting these pupils.

(e) Posted the policy established pursuant to subdivision (a) in all schools and offices, including staff lounges and pupil government meeting rooms.

(f) Maintained documentation of complaints and their resolution for a minimum of one review cycle.

(g) Ensured that complainants are protected from retaliation and that the identity of a complainant alleging discrimination, harassment, intimidation, or bullying remains confidential, as appropriate.

(h) Identified a responsible local educational agency officer for ensuring school district or county office of education compliance with the requirements of Chapter 5.3 (commencing with Section 4900) of Division 1 of Title 5 of the California Code of Regulations and this chapter.

(i) Nothing in this section shall be construed to require school employees to engage with religious institutions in the course of identifying community support resources pursuant to this section.

SEC. 5. Article 5.7 (commencing with Section 234.7) is added to Chapter 2 of Part 1 of Division 1 of Title 1 of the Education Code, to read:

Article 5.7. Pupil Protections Relating to Immigration and Citizenship Status

234.7. (a) Except as required by state or federal law or as required to administer a state or federally supported educational program, school officials and employees of a local educational agency shall not collect information or documents regarding citizenship or immigration status of pupils or their family members.

(b) The superintendent of a school district, the superintendent of a county office of education, and the principal of a charter school, as applicable, shall report to the respective governing board or body of the local educational agency in a timely manner any requests for information or access to a schoolsite by an officer or employee of a law enforcement agency for the purpose of enforcing the immigration laws in a manner that ensures the confidentiality and privacy of any potentially identifying information.

(c) If an employee of a school is aware that a pupil's parent or guardian is not available to care for the pupil, the school shall first exhaust any parental instruction relating to the pupil's care in the emergency contact information it has for the pupil to arrange for the pupil's care. A school is encouraged to work with parents or guardians to update the emergency contact information and not to contact Child Protective Services to arrange for the pupil's care unless the school is unable to arrange for care through the use of emergency contact information or other information or instructions provided by the parent or guardian.

(d) The governing board or body of a local educational agency shall do both of the following:

(1) Provide information to parents and guardians, as appropriate, regarding their children's right to a free public education, regardless of immigration status or religious beliefs. This information shall include information relating to "know your rights" immigration enforcement established by the Attorney General and may be provided in the annual notification to parents and guardians pursuant to Section 48980 or any other cost-effective means determined by the local educational agency.

(2) Educate pupils about the negative impact of bullying other pupils based on their actual or perceived immigration status or their religious beliefs and customs.

(e) Nothing in this section prohibits the governing board or body of a local educational agency from establishing stronger standards and protections.

(f) (1) The Attorney General, by April 1, 2018, in consultation with the appropriate stakeholders, shall publish model policies limiting assistance with immigration enforcement at public schools, to the fullest extent possible consistent with federal and state law, and ensuring that public schools remain safe and accessible to all California residents, regardless of immigration status. The Attorney General shall, at a minimum, consider all of the following issues when developing the model policies:

(A) Procedures related to requests for access to school grounds for purposes related to immigration enforcement.

(B) Procedures for local educational agency employees to notify the superintendent of the school district or his or her designee, the superintendent of the county office of education or his or her designee, or the principal of the charter school or his or her designee, as applicable, if an individual requests or gains access to school grounds for purposes related to immigration enforcement.

(C) Procedures for responding to requests for personal information about pupils or their family members for purposes of immigration enforcement.

(2) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the Department of Justice may implement, interpret, or make specific this section without taking any regulatory action.

(g) All local educational agencies shall adopt the model policies developed pursuant to subdivision (f), or equivalent policies, by July 1, 2018.

(h) For purposes of this section, "local educational agency" means a school district, county office of education, or charter school.

SEC. 6. 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.