

RESOLUTION 13-06-2017

DIGEST

Schools: Students' Right to Privacy in Restrooms and Locker Rooms

Amends Education Code section 231 to allow student access to facilities, which correspond to their asserted gender identity, and to require accommodation of a student's desire for increased privacy in school restrooms and locker rooms for any reason.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Education Code section 231 to allow student access to facilities, which correspond to their asserted gender identity, and to require accommodation of a student's desire for increased privacy in school restrooms and locker rooms for any reason. This resolution should be approved in principle because schools should make reasonable accommodations to address known problems associated with student privacy, sensitivity and esteem, along with issues of bullying and harassment, most significantly occurring in the context of restrooms and gymnasium locker rooms, and assure a safe and healthy educational environment for all students.

Currently most schools provide multi-stall toilet facilities and locker rooms with open changing areas, usually without supervision. This is a setting that can easily exacerbate a child's understandable sensitivity and desire for privacy, and permits stares, bullying and harassment from other students. This is particularly poignant for the transgender or gay student or someone with a disability. It is a heartfelt problem that cannot be ignored.

The resolution offers students reasonable alternatives to having to endure a potentially embarrassing if not hurtful situation. The proposed policies and accommodations are not onerous. The Los Angeles Unified School District already implemented a policy (BUL-6224.0 (Feb. 7, 2014)) recognizing student privacy, accommodating a student's gender identity and allowing access to restrooms and locker rooms corresponding with their asserted gender identity at school, and directing the school administrator to make every effort to provide a student with reasonable access to an alternative restroom, such as a single-stall restroom or the health office restroom, if a student desires increased privacy, regardless of the reason. It also provides locker room accommodations similar to the provisions set forth in the subject resolution. Similar policies have been implemented in San Francisco and Sacramento. School districts across the nation are seeking solutions. Dozens of state legislatures have visited the issue with a variety of measures pending in an effort to address the problem. This resolution offers a workable approach, modeled after the LAUSD.

The resolution may not be perfect. Still it offers worthy ideas and an approach which merits approval in principle. The outlined proposal, coupled with the need for education and behavioral enforcement, are reasonably calculated at curbing this real problem.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Education Code section 231 to read as follows:

- 1 § 231
2 (a) Nothing herein shall be construed to prohibit any educational institution from
3 maintaining separate multiple-user toilet facilities, locker rooms, or living facilities for the
4 different sexes, so long as comparable facilities are provided.
5 (b) Students shall have access to restrooms that correspond to their gender identity
6 asserted at school. If a student desires increased privacy, regardless of the underlying reason, the
7 school administrator shall make every effort to provide the student with reasonable access to an
8 alternative restroom, such as a single-stall restroom or the health office restroom. No student
9 shall be compelled to use an alternative restroom.
10 (c) If there is a request for increased privacy when changing clothing in a locker room
11 area, any student shall be provided access to a reasonable accommodation, including:
12 (A) Assignment of a student locker in near proximity to the coaches' office or a
13 supportive peer group.
14 (B) Use of a private area within the public area of the locker room facility, such as a
15 nearby restroom stall with a door or an area separated by a curtain or privacy shield.
16 (C) Use of a nearby private area, such as a nearby restroom or a health office restroom.
17 (D) A separate changing schedule.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Most California K-12 schools were built with multi-stall restrooms and locker rooms with open changing areas. Multi-stall toilet facilities and open locker rooms are locations where student-to-student bullying and harassment may occur. This is because adult school staff members are not nearby to provide direct supervision and because one or more students can easily target an isolated student, based on the student's religion, race, disability, sexual orientation, or gender identity. As a result, there are many students who may appreciate the opportunity for greater privacy when using a multi-stall toilet facility or an open locker room.

In addition, because students are at school for several hours at a time, it is highly likely that they may need to use the restroom – with a multi-stall restroom as the only option. Further, every high school student is required to complete two years of physical education in order to graduate.

The Solution: This resolution is modeled after the restroom and locker room sections of Los Angeles Unified School District's policy number BUL-6224.0 (Feb 7, 2014). This resolution will ensure the right to privacy for all students, regardless of their religion, race, disability, sexual orientation, or gender identity. In addition, the term "multiple-user toilet facilities" is being added to section 231 because AB 1732 (Ting, 2016) prohibited gendered single-user

facilities. As a result, any single-user toilet facility on a school campus must be gender neutral.

According to the Centers for Disease Control and Prevention:

All students, regardless of sexual orientation, reported the lowest levels of depression, suicidal feelings, alcohol and marijuana use, and unexcused absences from school when they were in a positive school climate and not experiencing homophobic teasing.

See Centers for Disease Control and Prevention, “Lesbian, Gay, Bisexual, and Transgender Health,” available at: <https://www.cdc.gov/lgbthealth/youth.htm>. The CDC recommends creating a school environment where bullying and harassment are not allowed, where students support each other with student-organized clubs, and where schools provide trainings to staff members about creating safe and supportive school environments. These types of holistic support systems are ideal. California school districts can also take simple, no-cost actions to make *all* K-12 students feel comfortable in physical spaces within schools where student-to-student conflicts related to religion, race, disability, sexual orientation, or gender identity may occur. And as the CDC reported, if all students are able to feel comfortable within their school environments, then they will experience less anxiety.

See also Time Magazine, “Battle of the Bathroom: From Schools to Statehouses, What’s Really at Stake,” (May 30, 2016); National Geographic, “Special Issue: Gender Revolution,” (Jan. 2017).

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

AB 1266 (Ammiano, 2013): to require that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records. Filed with Secretary of State Aug. 12, 2013.

AB 2246 (O’Donnell, 2016): to add section 215 to the CA Education Code, to require all grade 7-12 schools to implement suicide prevention programs as of the 2017-2018 school year. The suicide prevention programs must address: youth bereaved by suicide; youth with disabilities, mental illness, or substance use disorders; youth experiencing homelessness or in out-of-home settings; and lesbian, gay, bisexual, transgender, or questioning youth. Filed with Secretary of State Sept. 26, 2016.

AB 1732 (Ting, 2016): to require all single-user toilet facilities in any government agency, including a public school, to be identified as all-gender toilet facilities. Filed with Secretary of State Sept. 29, 2016.

Education Code section 51225.3(a): a pupil shall complete two courses in physical education in order to graduate from high school, unless the pupil has been exempted pursuant to the Education Code.

See Federal Management Regulation; Nondiscrimination Clarification in the Federal Workplace, 81 FR 55148 (Aug. 18, 2016): The prohibition against sex discrimination contained with the Federal Management Regulations (FMR) includes discrimination due to gender identity, and is consistent with the legal interpretations issued by other Federal agencies, including the EEOC, ED, and DOJ, as well as guidance issued by the Office of Personnel Management (OPM).

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