

AMENDED IN ASSEMBLY APRIL 6, 2011  
AMENDED IN ASSEMBLY MARCH 21, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 9**

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**Introduced by Assembly Member Ammiano**  
*(Coauthor: Senator Kehoe)*

December 6, 2010

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An act to add Sections 234.4, 234.5, 234.6, 234.7, 234.8, and 48900.45 to the Education Code, relating to pupil rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 9, as amended, Ammiano. Pupil rights: bullying.

Existing law provides that it is the policy of the state to afford all persons in public schools, regardless of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes, equal rights and opportunities in the educational institutions of the state, and that it is the purpose of existing law to prohibit acts that are contrary to that policy and to provide remedies therefor. Existing law requires the State Department of Education to develop a model handout, posted on appropriate department Internet Web sites, describing the rights and obligations set forth in these provisions and the policies addressing bias-related discrimination and harassment in schools. Existing law also requires the department to monitor adherence to these provisions and, as part of its regular monitoring and review of local educational agencies, to assess whether local educational agencies have adopted a policy that prohibits discrimination and harassment and a process for

receiving and investigating complaints of discrimination and harassment, as specified.

Consistent with these provisions, this bill would require each school district, *on or before July 1, 2012*, to ~~adopt~~ *ensure that its policy prohibiting discrimination, harassment, intimidation, and bullying include specified components*, and to ~~adopt~~ *include in its process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying, on or before July 1, 2012 specified components*. The bill would require school districts to provide information to school personnel, school district board members, and pupils on the policy and the process, as specified.

Because this bill would require local educational agencies to perform additional duties, this bill would impose a state-mandated local program.

The bill would also ~~require~~ *encourage* all local educational agencies to collect data related to pupil experiences with discrimination, harassment, intimidation, and bullying, as specified. The bill would require the department, in the next revision of either the California Healthy Kids Survey or, if that is not feasible, in the next revision of the California Student Survey, to include questions seeking information on discrimination, harassment, intimidation, and bullying and require local educational agencies to survey their pupils with those questions. The bill would also require the department to request that the Youth Risk Behavior Survey include questions seeking information on discrimination, harassment, intimidation, and bullying, as specified. The bill would require the Superintendent of Public Instruction, at the beginning of each school year, to post on his or her Internet Web site, and to provide to each school district, a list of statewide resources, including community-based organizations, that provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, or bullying, and their families.

Under existing law a pupil enrolled in any *of* grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.

This bill would provide, notwithstanding any other law, that a pupil who is found to have committed an act of discrimination, harassment, intimidation, or bullying, as specified, shall ~~not automatically be subject, prior to suspension or expulsion, but shall~~ be subject to alternative ~~discipline or progressive discipline, as defined,~~ and suspension only when other means of correction fail to bring about proper conduct, as specified.

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 these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

- 1 SECTION 1. (a) The Legislature finds and declares that the
- 2 State of California is committed to a safe and civil educational
- 3 environment for all pupils, employees, parents and legal guardians,
- 4 volunteers, and patrons that is free from discrimination, harassment,
- 5 intimidation, or bullying.
- 6 (b) The Legislature finds and declares that the intent of this act
- 7 is to clarify and supplement the existing law on discrimination,
- 8 harassment, intimidation, and bullying in public schools.
- 9 (c) The Legislature finds and declares all of the following:
- 10 (1) Pupils who are subjected to discrimination, harassment,
- 11 intimidation, or bullying may suffer long-term social, emotional,
- 12 and psychological harms.
- 13 (2) The public policy of this state is to reduce and ultimately
- 14 eliminate school-based discrimination, harassment, intimidation,
- 15 and bullying.
- 16 (3) The public policy of this state is to provide pupils with a
- 17 safe school environment in which all pupils are included and
- 18 respected and have an equal opportunity to participate in all school
- 19 activities and events.

1 (4) The most effective way to reduce discrimination, harassment,  
2 intimidation, and bullying is to create a schoolwide culture of  
3 inclusion and respect for differences.

4 (5) The public policy of this state is to provide support for youth  
5 who are victimized by discrimination, harassment, intimidation,  
6 or bullying, and support for the families of those youth.

7 (6) The public policy of this state is to provide effective  
8 interventions for youth who engage in acts of discrimination,  
9 harassment, intimidation, and bullying to help them change their  
10 behavior and avoid entering the criminal justice system.

11 (7) The public policy of this state is to ensure that laws and  
12 policies that prohibit discrimination, harassment, intimidation, and  
13 bullying are enforced evenhandedly and are not disproportionately  
14 applied to any class or group.

15 SEC. 2. Section 234.4 is added to the Education Code, to read:

16 234.4. (a) Consistent with subdivision (a) of Section 234.1,  
17 on or before July 1, 2012, each school district shall ~~adopt~~ *ensure*  
18 *that its* policy prohibiting discrimination, harassment, intimidation,  
19 and bullying:

20 ~~(b) A school district shall have local control over the content~~  
21 ~~of the policy, except that the policy shall contain, at a minimum,~~  
22 *includes* all of the following components:

23 (1) A statement that all pupils have the right to participate fully  
24 in the educational process, free from discrimination, harassment,  
25 intimidation, and bullying pursuant to subdivision (a) of Section  
26 201.

27 (2) A statement that each school in the district has an affirmative  
28 obligation to combat all forms of bias and a responsibility to  
29 provide equal educational opportunity pursuant to subdivision (b)  
30 of Section 201.

31 (3) A statement that California law and school district policy  
32 prohibit discrimination, harassment, intimidation, and bullying  
33 based upon any of the actual or perceived characteristics contained  
34 in the definition of hate crimes set forth in Section 422.55 of the  
35 Penal Code, any of the actual or perceived characteristics listed in  
36 Section 220, and disability, gender, gender identity, gender  
37 expression, nationality, race or ethnicity, religion, sexual  
38 orientation, or association with a person or group with one or more  
39 of these actual or perceived characteristics. School districts are  
40 also encouraged to prohibit discrimination, harassment,

1 intimidation, or bullying more generally, but the statement must  
2 contain a list of the characteristics set forth in Section 220.

3 (4) A description of the school district's procedure for  
4 addressing complaints of discrimination, harassment, intimidation,  
5 and bullying pursuant to subdivision (a) of Section 234.5.

6 (5) The names of two or more administrative personnel in each  
7 school as required by subdivision (c) of Section 234.5.

8 (6) A statement that all school personnel who witness an act of  
9 discrimination, harassment, intimidation, or bullying are required  
10 to take immediate steps to intervene when safe to do so.

11 (7) A statement that the policy applies to all acts related to  
12 school activity or school attendance occurring within a school  
13 under the jurisdiction of the superintendent of the school district  
14 or principal or within any other school district that occur at any  
15 time, including, but not limited to, any of the following:

16 (A) While on school grounds.

17 (B) While going to or coming from school.

18 (C) During the lunch period whether on or off campus.

19 (D) During, or while going to or coming from, a  
20 school-sponsored activity.

21 (8) An attached copy of the written complaint form published  
22 by the school pursuant to subparagraph (3) of subdivision (b) of  
23 Section 234.5.

24 (9) A link to the Superintendent's list of statewide resources for  
25 youth who have experienced discrimination, harassment,  
26 intimidation, or bullying and for the families of those youth  
27 pursuant to Section 234.7.

28 ~~(e)~~

29 (b) The policy shall be posted and publicized on or before July  
30 1, 2012, as follows:

31 (1) In all parent-student handbooks issued in the school district,  
32 which shall also include a statement that pupils are expected to  
33 contribute to building a culture of inclusion and respect.

34 (2) On the school district's Internet Web site and all individual  
35 school Web sites.

36 (3) In all school district and school administrative offices.

37 ~~(d)~~

38 (c) A statement notifying school personnel and pupils of the  
39 existence of the policy, and where a written copy of the policy is

1 available in the school and the school district, shall be publicized  
2 and posted on or before July 1, 2012, as follows:

3 (1) The statement shall include the following language:

4

5 “Discrimination, harassment, intimidation, and bullying are not  
6 acceptable ways to treat others. California law prohibits  
7 discrimination, harassment, intimidation, and bullying based on a  
8 student’s actual or perceived disability, gender, gender identity,  
9 gender expression, nationality, race or ethnicity, religion, sexual  
10 orientation, or association with a person or group with one or more  
11 of these actual or perceived characteristics.

12 ~~“Tell~~ Tell a teacher or a school employee if you see or experience  
13 discrimination, harassment, intimidation, or bullying. You have  
14 the right to file a complaint and to have the school protect you.  
15 Complaint forms are available on all school district Internet Web  
16 sites and in all school and administrative offices.”

17

18 (2) The statement shall be posted in all teacher lounges, staff  
19 rooms, classrooms, gyms, locker rooms, bathrooms, and cafeterias  
20 in each school.

21 (e)

22 (d) The policy and the statement shall be translated pursuant to  
23 Section 48985. If translated, the policy and the statement shall be  
24 publicized and posted pursuant to subdivisions (c) and (d) in both  
25 the English and non-English versions.

26 SEC. 3. Section 234.5 is added to the Education Code, to read:

27 234.5. (a) Consistent with subdivision (b) of Section 234.1,  
28 on or before July 1, 2012, each school district shall ~~adopt~~ *include*  
29 *in its* process for receiving and investigating complaints *under the*  
30 *department’s Uniform Complaint Procedures as set forth in*  
31 *department regulations, all complaints* of discrimination,  
32 harassment, intimidation, and bullying:

33 ~~(b) A school district shall have local control over the content~~  
34 ~~of the complaint process and may use the department’s Uniform~~  
35 ~~Complaint Procedures as set forth in department regulations,,~~  
36 except that the process for receiving and investigating complaints  
37 of discrimination, harassment, intimidation, and bullying shall  
38 include all of the following components:

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

4 (2) A timeline for each school in the school district or the school  
5 district to investigate and resolve complaints of discrimination,  
6 harassment, intimidation, and bullying that does not exceed 30  
7 working days from the date the complaint was received. The  
8 school, or if applicable, school district, shall report to the  
9 complainant the resolution of the complaint within 45 working  
10 days of the initial filing, if the complainant identifies himself or  
11 herself and requests a response.

12 (3) A written complaint form published by the school district,  
13 and made available at all school and school district offices and on  
14 school and school district Internet Web sites, that includes, at a  
15 minimum, all of the following:

16 (A) Questions intended to elicit a description of the incident  
17 complained of and to identify any individual who may have been  
18 involved ~~or witnessed~~ *in, or witnessed*, the incident.

19 (B) A checklist of the actual or perceived characteristics listed  
20 in Section 220 to allow the complainant to identify whether one  
21 of these characteristics was the basis of the discrimination,  
22 harassment, intimidation, or bullying.

23 (C) A description of the complaint process and timeline.

24 (D) A statement that complainants will be protected from  
25 retaliation and that those who investigate a complaint alleging  
26 discrimination, harassment, intimidation, or bullying will protect  
27 the confidentiality of the parties to the extent possible.

28 (E) A statement that the complaint may be filed anonymously,  
29 and a space to indicate whether a response is requested.

30 (F) A description of the location at each school in the district  
31 where the complaint may be filed, pursuant to subdivision ~~(d)~~ (c).

32 (G) A statement that the complainant has a right to appeal a  
33 school or school district resolution of a complaint and a description  
34 of the appeal process, which, at a minimum, must describe the  
35 process required by the department's Uniform Complaint  
36 Procedures as set forth in department regulations.

37 (H) A statement that it is not necessary to exhaust any  
38 administrative complaint process before pursuing civil law  
39 remedies.

- 1 (I) The names of the two or more personnel on each school  
 2 campus, identified pursuant to subdivision ~~(e)~~ (b), and of the local  
 3 educational agency officer, identified pursuant to subdivision (g)  
 4 of Section 234.1, responsible for ensuring district compliance with  
 5 the department’s Uniform Complaint Procedures as set forth in  
 6 department regulations and Chapter 2 (commencing with Section  
 7 200).
- 8 (4) A process for a pupil to report complaints of discrimination,  
 9 harassment, intimidation, or bullying to any school personnel or  
 10 school district through any means other than the written complaint  
 11 form that includes:
- 12 (A) A requirement that school district or school personnel report  
 13 the nonwritten complaint within 48 hours to the school or the  
 14 school district for investigation and resolution.
- 15 (B) A requirement that the pupil who made the nonwritten  
 16 complaint is provided with the same information included in the  
 17 written complaint form, as set forth in paragraph (3).
- 18 ~~(e)~~
- 19 (b) Each school district shall identify at least two school  
 20 administrative personnel on each campus whose names and contact  
 21 information are posted with the school district policy prohibiting  
 22 discrimination, harassment, intimidation, and bullying, pursuant  
 23 to the requirements of subparagraph (I) of paragraph (3) of  
 24 subdivision ~~(b)~~ (a). These personnel shall be:
- 25 (1) Knowledgeable about the school district’s policy and  
 26 complaint procedure regarding discrimination, harassment,  
 27 intimidation, and bullying.
- 28 (2) Available to pupils as a resource to assist with complaints  
 29 of discrimination, harassment, intimidation, and bullying.
- 30 (3) Able to refer pupils to counseling, as appropriate.
- 31 ~~(d)~~
- 32 (c) Each school district shall assign a specific location for every  
 33 school in the district where complaints may be filed, such as the  
 34 principal’s office.
- 35 ~~(e)~~
- 36 (d) If applicable, pursuant to Section 48985, each school district  
 37 shall make the complaint process available in the primary language  
 38 other than English.
- 39 ~~(f)~~

1 (e) Consistent with subdivision (e) of Section 234.1, each school  
2 district shall maintain documentation of complaints and their  
3 resolution for a minimum of one review cycle of what is commonly  
4 known as the department’s Categorical Program Monitoring  
5 process.

6 SEC. 4. Section 234.6 is added to the Education Code, to read:

7 234.6. (a) School districts, consistent with the provisions of  
8 Article 3.6 (commencing with Section 32228) of Chapter 2 of Part  
9 19, shall offer professional development training for school  
10 personnel that covers all of the following topics:

11 (1) The school district policy prohibiting discrimination,  
12 harassment, intimidation, and bullying, adopted pursuant to Section  
13 234.4.

14 (2) The actual or perceived characteristics covered by the school  
15 district policy prohibiting discrimination, harassment, intimidation,  
16 or bullying, pursuant to paragraph (3) of subdivision (b) of Section  
17 234.4.

18 (3) The school district process for receiving and investigating  
19 complaints of discrimination, harassment, intimidation, and  
20 bullying, adopted pursuant to Section 234.5.

21 (4) Techniques for intervening in discrimination, harassment,  
22 intimidation, and bullying, including how teachers and other school  
23 personnel can create a schoolwide culture of inclusion and respect  
24 for differences without infringing on pupils’ free speech rights.

25 (5) The harm caused by discrimination, harassment, intimidation,  
26 and bullying.

27 (b) In the course of existing orientation provided to school  
28 district board members, each school district shall provide school  
29 board members with information about the school district policy  
30 prohibiting discrimination, harassment, intimidation, and bullying,  
31 adopted pursuant to Section 234.4, and the school district process  
32 for receiving and investigating complaints of discrimination,  
33 harassment, intimidation, and bullying, adopted pursuant to Section  
34 234.5.

35 (c) In the course of existing orientation provided to pupils, each  
36 school district, consistent with the provisions of Article 3.6  
37 (commencing with Section 32228) of Chapter 2 of Part 19, shall  
38 provide pupils with age-appropriate information about all of the  
39 following:

1 (1) The school district policy prohibiting discrimination,  
 2 harassment, intimidation, and bullying, adopted pursuant to Section  
 3 234.4.

4 (2) The actual or perceived characteristics covered by the school  
 5 district policy prohibiting discrimination, harassment, intimidation,  
 6 or bullying, pursuant to paragraph (3) of subdivision (b) of Section  
 7 234.4.

8 (3) The school district process for receiving and investigating  
 9 complaints of discrimination, harassment, intimidation, and  
 10 bullying, adopted pursuant to Section 234.5.

11 (4) The difference between protected speech and discrimination,  
 12 harassment, intimidation, and bullying.

13 (5) The harm caused by discrimination, harassment, intimidation,  
 14 and bullying.

15 SEC. 5. Section 234.7 is added to the Education Code, to read:

16 234.7. At the beginning of each school year, the Superintendent  
 17 shall post on his or her Internet Web site and provide to each school  
 18 district a list of statewide resources, including community-based  
 19 organizations, that provide support to youth who have been  
 20 subjected to school-based discrimination, harassment, intimidation,  
 21 or bullying, and their families.

22 SEC. 6. Section 234.8 is added to the Education Code, to read:

23 234.8. (a) All local educational agencies ~~shall~~ *are encouraged*  
 24 *to* collect data related to pupil experiences with discrimination,  
 25 harassment, intimidation, and bullying each year. The data may  
 26 be collected through annual participation in the California Healthy  
 27 Kids Survey or, if inclusion of the information in that survey is  
 28 not feasible, through participation in the California Student Survey.

29 (b) The department shall, in the next revision of either the  
 30 California Healthy Kids Survey or, if that is not feasible, in the  
 31 next revision of the California Student Survey, include questions  
 32 seeking information on discrimination, harassment, intimidation,  
 33 and bullying based upon any of the actual or perceived  
 34 characteristics contained in the definition of hate crimes set forth  
 35 in Section 422.55 of the Penal Code, any of the actual or perceived  
 36 characteristics listed in Section 220, and disability, gender, gender  
 37 identity, gender expression, nationality, race or ethnicity, religion,  
 38 sexual orientation, or association with a person or group with one  
 39 or more of these actual or perceived characteristics, and require

1 local educational agencies to survey their pupils with those  
2 questions.

3 (c) The department shall request that the Youth Risk Behavior  
4 Survey include questions seeking information on discrimination,  
5 harassment, intimidation, and bullying based upon any of the actual  
6 or perceived characteristics contained in the definition of hate  
7 crimes set forth in Section 422.55 of the Penal Code, any of the  
8 actual or perceived characteristics listed in Section 220, and  
9 disability, gender, gender identity, gender expression, nationality,  
10 race or ethnicity, religion, sexual orientation, or association with  
11 a person or group with one or more of these actual or perceived  
12 characteristics.

13 SEC. 7. Section 48900.45 is added to the Education Code, to  
14 read:

15 48900.45. (a) Notwithstanding any other law, a pupil who is  
16 found to have committed an act of discrimination, harassment,  
17 intimidation, or bullying under subdivision (r) of Section 48900,  
18 or Section 48900.2, 48900.3, or 48900.4, ~~shall not automatically~~  
19 ~~be subject to suspension or expulsion, but~~ *prior to suspension or*  
20 *expulsion*, shall be subject to alternative discipline or progressive  
21 discipline pursuant to this section, and shall be subject to  
22 suspension pursuant to Section 48900.5 if he or she has access to,  
23 and is otherwise given the opportunity to make up, missed  
24 coursework without additional academic penalty.

25 (b) *Notwithstanding any other law, a pupil who is the target of*  
26 *an act of discrimination, harassment, intimidation, or bullying*  
27 *under subdivision (r) of Section 48900, or Section 48900.2,*  
28 *48900.3, or 48900.4, shall not automatically be disciplined for*  
29 *defending himself or herself against an act of discrimination,*  
30 *harassment, intimidation, or bullying under those sections unless*  
31 *the superintendent or principal of the school, in his or her*  
32 *discretion, based upon the circumstances, deems discipline to be*  
33 *appropriate; however, that discipline must conform to the*  
34 *requirements of subdivision (a) prior to suspension or expulsion.*

35 (b)

36 (c) For the purpose of this section, “alternative discipline” means  
37 disciplinary action other than suspension or expulsion that is  
38 designed to correct and address the root causes of the pupils’s  
39 specific *misbehavior by giving the pupil notice of the*  
40 *inappropriateness of the behavior, teaching him or her appropriate*

1 *behavior, and instituting increasingly severe responses for repeated*  
2 *instances of the same type of misbehavior, while still retaining the*  
3 *pupil in class or school, including, but not limited to: school.*  
4 *“Alternative discipline” includes, but is not limited to:*

- 5 (1) Meeting with pupil and parent.
- 6 (2) Reflective activities such as writing an essay about the  
7 misbehavior.
- 8 (3) Mediation to address the conflict between pupils.
- 9 (4) Counseling, pursuant to subdivision (v) of Section 48900.
- 10 (5) Anger management, pursuant to subdivision (v) of Section  
11 48900.
- 12 (6) Health counseling or intervention.
- 13 (7) Mental health counseling.
- 14 (8) Social-emotional cognitive skill building.
- 15 (9) Community service, pursuant to Section 48900.6.
- 16 (10) In-school detention or suspension, during lunchtime, after  
17 school, or on weekends.

18 ~~(e) For the purpose of this section, “progressive discipline”~~  
19 ~~means the process of dealing with pupil misbehavior in a manner~~  
20 ~~that gives notice of the inappropriate behavior to the pupil and~~  
21 ~~teaches him or her appropriate behavior by instituting increasingly~~  
22 ~~severe responses for repeated instances of the same type of~~  
23 ~~misbehavior.~~

24 SEC. 8. The Legislature finds and declares that it is the intent  
25 of this act to clarify existing law as set forth in Chapter 2  
26 (commencing with Section 200) of Part 1 of Division 1 of Title 1  
27 of the Education Code. The Legislature further finds and declares  
28 that, under existing case and statutory law, a school district and  
29 school could be held vicariously liable for any discrimination,  
30 harassment, intimidation, or bullying by any individual who has  
31 contact with pupils by virtue of employment or other contractual  
32 relationship with the school district *and any discrimination,*  
33 *harassment, intimidation, or bullying related to school activity or*  
34 *attendance, as set forth in subdivision (s) of Section 48900, that*  
35 *the school district or school knew or reasonably should have known*  
36 *about.*

37 SEC. 9. This act shall not be construed to limit pupil rights to  
38 free speech as protected by the United States Constitution, the  
39 California Constitution, Sections 48907 and 48950 of the Education  
40 Code, and other applicable law.

1 SEC. 10. This act shall not be construed to require an  
2 exhaustion of any administrative complaint process before civil  
3 law remedies may be pursued.

4 SEC. 11. If the Commission on State Mandates determines  
5 that this act contains costs mandated by the state, reimbursement  
6 to local agencies and school districts for those costs shall be made  
7 pursuant to Part 7 (commencing with Section 17500) of Division  
8 4 of Title 2 of the Government Code.

O