

Senate Bill No. 1370

CHAPTER 525

An act to amend Sections 48907, 48950, 66301, and 94367 of the Education Code, relating to education.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1370, Yee. Education: freedom of speech and of the press.

(1) Existing law grants to public school pupils the right to exercise freedom of speech and of the press, as specified. Existing law also prohibits school districts operating one or more high schools and private secondary schools from making or enforcing a rule that subjects a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that is protected by specified provisions of the United States Constitution and the California Constitution. A pupil enrolled in a school that has made or enforced a rule in violation of this prohibition is authorized to commence a civil action for injunctive and declaratory relief.

This bill would specify that the authority to commence a civil action applies to a pupil who is enrolled at the time the secondary educational institution made or enforced a rule in violation of the prohibition. The bill also would prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a pupil engaged in conduct authorized by a specified provision of state law or refusing to infringe upon conduct that is protected pursuant to state law or those constitutional provisions.

(2) Existing law prohibits the Regents of the University of California, the Trustees of the California State University, and the governing board of a community college district from making or enforcing a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that is protected by specified provisions of the United States Constitution and the California Constitution. A student enrolled in an institution that has made or enforced a rule in violation of this prohibition is authorized to commence a civil action for injunctive and declaratory relief.

This bill would specify that the authority to commence a civil action applies to a student who is enrolled at the time the community college or university made or enforced a rule in violation of the prohibition. The bill also would prohibit an employee from being dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a student engaged in conduct authorized by a specified

provision of state law or refusing to infringe upon conduct that is protected pursuant to state law or those constitutional provisions.

(3) Existing law also prohibits a private postsecondary educational institution from making or enforcing a rule that subjects a student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that is protected by specified provisions of the United States Constitution or the California Constitution and authorizes a student enrolled in an institution that has made or enforced a rule in violation of this prohibition to commence a civil action.

This bill would specify that the authority to commence a civil action applies to a student who is enrolled at the time the institution made or enforced a rule in violation of the prohibition.

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

SECTION 1. It is the intent of the Legislature that nothing in Section 48907 or 48950 of the Education Code shall be construed to diminish a district's ability to take actions authorized by current law in order to maintain instruction that is consistent with the statewide academic standards defined in Article 2 (commencing with Section 60604) of Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code.

SEC. 2. Section 48907 of the Education Code is amended to read:

48907. (a) Pupils of the public schools shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges, and other insignia, and the right of expression in official publications, whether or not the publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material that so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.

(b) Each governing board of a school district and each county board of education shall adopt rules and regulations in the form of a written publications code, which shall include reasonable provisions for the time, place, and manner of conducting such activities within its respective jurisdiction.

(c) Pupil editors of official school publications shall be responsible for assigning and editing the news, editorial, and feature content of their publications subject to the limitations of this section. However, it shall be the responsibility of a journalism adviser or advisers of pupil publications within each school to supervise the production of the pupil staff, to maintain professional standards of English and journalism, and to maintain the provisions of this section.

(d) There shall be no prior restraint of material prepared for official school publications except insofar as it violates this section. School officials shall have the burden of showing justification without undue delay prior to a limitation of pupil expression under this section.

(e) “Official school publications” refers to material produced by pupils in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee.

(f) This section does not prohibit or prevent the governing board of a school district from adopting otherwise valid rules and regulations relating to oral communication by pupils upon the premises of each school.

(g) An employee shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a pupil engaged in the conduct authorized under this section, or refusing to infringe upon conduct that is protected by this section, the First Amendment to the United States Constitution, or Section 2 of Article I of the California Constitution.

SEC. 3. Section 48950 of the Education Code is amended to read:

48950. (a) School districts operating one or more high schools and private secondary schools shall not make or enforce a rule subjecting a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.

(b) A pupil who is enrolled in a school at the time that the school has made or enforced a rule in violation of subdivision (a) may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court. Upon motion, a court may award attorney’s fees to a prevailing plaintiff in a civil action pursuant to this section.

(c) This section does not apply to a private secondary school that is controlled by a religious organization, to the extent that the application of this section would not be consistent with the religious tenets of the organization.

(d) This section does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.

(e) This section does not supersede, or otherwise limit or modify, the provisions of Section 48907.

(f) The Legislature finds and declares that free speech rights are subject to reasonable time, place, and manner regulations.

(g) An employee shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a pupil engaged in conduct authorized under this section, or refusing to infringe upon conduct that is protected by this section, the First Amendment to the United States Constitution, or Section 2 of Article I of the California Constitution.

SEC. 4. Section 66301 of the Education Code is amended to read:

66301. (a) Neither the Regents of the University of California, the Trustees of the California State University, the governing board of a community college district, nor an administrator of any campus of those institutions, shall make or enforce a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.

(b) A student enrolled in an institution, as specified in subdivision (a), at the time that the institution has made or enforced a rule in violation of subdivision (a) may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court. Upon a motion, a court may award attorney's fees to a prevailing plaintiff in a civil action pursuant to this section.

(c) This section does not authorize a prior restraint of student speech or the student press.

(d) This section does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.

(e) This section does not prohibit an institution from adopting rules and regulations that are designed to prevent hate violence, as defined in subdivision (a) of Section 4 of Chapter 1363 of the Statutes of 1992, from being directed at students in a manner that denies them their full participation in the educational process, if the rules and regulations conform to standards established by the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution for citizens generally.

(f) An employee shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a student engaged in conduct authorized under this section, or refusing to infringe upon conduct that is protected by this section, the First Amendment to the United States Constitution, or Section 2 of Article I of the California Constitution.

SEC. 5. Section 94367 of the Education Code is amended to read:

94367. (a) No private postsecondary educational institution shall make or enforce a rule subjecting a student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.

(b) A student enrolled in a private postsecondary institution at the time that the institution has made or enforced any rule in violation of subdivision (a) may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court. Upon motion, a court may award attorney's fees to a prevailing plaintiff in a civil action pursuant to this section.

(c) This section does not apply to a private postsecondary educational institution that is controlled by a religious organization, to the extent that

the application of this section would not be consistent with the religious tenets of the organization.

(d) This section does not authorize the prior restraint of student speech.

(e) This section does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.

(f) This section does not prohibit an institution from adopting rules and regulations that are designed to prevent hate violence, as defined in subdivision (a) of Section 4 of Chapter 1363 of the Statutes of 1992, from being directed at students in a manner that denies them their full participation in the educational process, so long as the rules and regulations conform to standards established by the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution for citizens generally.