



SB 777 Questions and Answers

CSBA has received numerous inquiries regarding the impact of SB 777 (Ch. 569, Statutes of 2007) on school district policies and practices. The bill, pertaining to nondiscrimination, was signed into law by Governor Schwarzenegger in October and took effect on January 1, 2008.

What does SB 777 do?

SB 777 simplifies and clarifies existing civil rights protections for California students by providing an explicit and clear list of all the prohibited bases of discrimination in publicly funded kindergarten through grade twelve schools.

Does SB 777 change the law?

No. SB 777 does not expand existing law; rather, it creates consistency among the various sections of the Code which refer to nondiscrimination. These Code sections, which have been in existence for several years, prohibit school districts from discriminating on several bases. In 2000, AB 537 was signed into law to prohibit school districts from discriminating on specified basis of discrimination, including sex, gender, and sexual orientation. Subsequent legislation and implementing State Board of Education regulations further clarified definitions to prohibit discrimination on the basis of gender identity.

A number of advocacy organizations – including the California Family Council, the Capitol Resource Institute, and the Campaign for Children and Families – opposed SB 777, AB 537, and the Title 5 regulations prior to their adoption. These organizations have claimed that SB 777 will prohibit LEAs from having a prom queen and king, require textbooks to include historical references to homosexual, transgender, transsexual and bisexual figures, and require schools to allow boys to use the girls' restroom if they claim to identify with the female gender. Neither CSBA nor the California Department of Education agree with those claims. Education Code Section 231 specifically states that *nothing in the sex equity and sexual harassment statutes or regulations prohibits an LEA from maintaining separate bathroom, locker room, or residential facilities for males and females.*

Should school districts modify their policies to reflect SB 777?

No. Because SB 777 clarifies existing law, there is no need for school districts to modify their policies at this time. Districts do not have discretion to implement this policy; it is a policy of the State of California. Because this is a statewide issue, members of the

community who have concerns with the requirements of SB 777 should contact their local legislators.

Districts that choose to modify policies contrary to the legal requirements of the state and CDE could potentially lose millions of dollars in state funding. According to a Legal Advisory issued by the California Department of Education:

Local Education Agencies (LEAs) do not have the discretion to eliminate or modify those definitions in a manner that reduces the protection of California students from unlawful discrimination. The State of California has spoken on this issue, and no local district or county office has the authority to choose which laws to enforce or to adopt its own limiting definition of any protected class.¹

How are the requirements of SB 777 enforced?

Pursuant to Education Code 253, the California Department of Education, under the direction of the State Superintendent of Public Instruction, is required to monitor compliance with the sex discrimination statutes and, in particular, incidents of sexual harassment. Under Education Code Section 250, compliance with all the laws regarding equity and nondiscrimination is a condition of receiving any state funds.

When does SB 777 take effect?

SB 777 took effect January 1, 2008. A referendum campaign to overturn the law by the Capitol Resource Family Impact failed to gather a sufficient number of signatures to qualify the referendum for the ballot. A lawsuit against implementation of the statute was filed on November 27 in the United States District Court for the Southern District of California. This suit was filed by Advocates for Faith and Freedom, and the Alliance Defense Fund.

Resources:

California Department of Education:

Letter regarding SB 777, November 29, 2007:

<http://www.cde.ca.gov/nr/el/le/yr07ltr1129.asp>

California Student Safety and Violence Prevention:

<http://www.cde.ca.gov/nr/el/le/yr07ltr1129.asp>

Letter to district regarding non-compliant findings, discrimination laws, 2004:

<http://www.cde.ca.gov/nr/el/le/yr07ltr1129.asp>

¹ California Department of Education Legal Advisory, Gender Equity and Discrimination Laws in California Public Schools, LO: 1-04, April 30, 2004

<http://www.cde.ca.gov/re/lr/sv/documents/yr04ltr0430.pdf>