



Initiative 23-0018A1

October 17, 2023

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Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Oct 17 2023

Attention: Ms. Anabel Renteria
Initiative Coordinator

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed measure related to (A.G. File No. 23-0018, Amendment #1) schools notifying parents or legal guardians if students request gender-related accommodations.

Background

Sex, Gender, and Gender Identity. Sex generally refers to a person being biologically male, female, or intersex. The attitudes, feelings, and behaviors that a given culture associates with these biological designations are generally known as gender. Gender identity generally refers to a person's internal sense of being male, female, or something else. For example, transgender persons have gender identities that differ from the sex assigned to them at birth. Also, gender nonbinary persons identify as both male and female, somewhere in between male and female, or neither male or female. There are various ways transgender and nonbinary persons may transition to identifying with a gender different from their biological sex, including changing their name, using different pronouns, and modifying their body and physical appearance (such as wearing clothing that temporarily changes body shape and physical appearance).

Student Records and Data. Public schools are required to maintain official student records which include basic student information, including legal name and sex. Typically, public schools receive this information from forms filled out by parents or legal guardians or government-issued documents. Changes to official student records generally require parental consent and/or the submission of appropriate legal documents. Parents or legal guardians have a right to access all official student records. In addition to official student records, the California Department of Education collects student data from public schools to comply with state and federal reporting requirements. Beginning in 2019-20, public schools could report a student's gender as either


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male, female, or nonbinary. There is generally no state requirement for private schools to collect certain student information.

Transgender and Nonbinary Students. While there is limited data on the number of transgender and nonbinary youth, the Williams Institute at the University of California, Los Angeles School of Law estimates that nearly 50,000 of the state’s 2.6 million children aged 13 to 17 years (about 2 percent) identify as transgender. Additionally, about 5,000 of the state’s 5.9 million public school students (less than 1 percent) were recorded as nonbinary in the state-maintained data system.

School District Parental Notification Policies. School districts notify parents or legal guardians regarding a variety of school-related issues, such as instances of bullying and student absences. There is no state law that requires school districts notify parents if a student expresses a gender identity that is different from their biological sex. Recently, some school districts have adopted policies regarding notification of parents or legal guardians related to a student’s gender identity. Some school districts require notification of parents or legal guardians when students request to be treated as a gender different from their biological sex, while other school districts only allow notification of parents or legal guardians if the student provides consent. There is pending litigation against some school districts that have adopted both types of notification policies. In both cases, courts have issued either a temporary restraining order or preliminary injunction that have prevented these policies from being implemented while the cases are pending further judicial review.

Proposal

Requires Official Student Records to Include a Student’s Gender. The measure requires official student records to include other names—in addition to the student’s legal name—and the gender that would be used to refer to the student by school staff and employees. Similar to how schools typically collect information for official student records, a student’s gender and other names would be submitted by parents or legal guardians or based on government-issued documents.

Requires Schools Notify Parents and Legal Guardians if Student Requests to Be Treated as a Gender Different From Biological Sex. The measure requires schools notify parents and legal guardians as soon as practicable, but preferably within three days from the date in which a student under the age of 18 or “any person acting on behalf of a [student]” requests to be treated as a gender different from the student’s gender listed in official records, in any of the following ways:

- Be addressed by a name that differs from the student’s legal name for purposes of the student identifying as a gender different from the student’s official record.
- Be addressed using pronouns for a gender that does not correspond to the student’s official record.
- Participate in sex-segregated school programs and activities or use facilities for a gender different from the student’s official record.

- Receive accommodations at school-related activities, including field trips, excursions, or school camp programs, for a gender different from a student's official record.
- Have access to any type of body-modification clothing or materials for the purpose of appearing as a gender different from the student's official record.

The student would need to make the request of the school, including teachers, administrators, certified staff, school counselors, employees or "other agents of the school," to trigger a notification. The measure states that the notification requirement would not change existing confidentiality rules between students and school counselors.

Prohibits Schools From Providing Gender-Related Accommodations Until Parents or Legal Guardians Provide Written Consent. The measure requires schools obtain written approval from a student's parents or legal guardians before the school, teachers, administrators, certified staff, school counselors, employees, or agents of the school can provide any of the previously listed gender-related accommodations.

Fiscal Effects

As discussed above, there is pending litigation and courts have issued either temporary restraining orders or preliminary injunctions to prevent the implementation of policies that some school districts have recently adopted that either require automatic parent notification if a student expresses a gender identity that is different from their biological sex or limit parent notification to instances where the student consents. As such, there is legal uncertainty regarding the extent to which the measure would be implemented and the resulting fiscal effects on the state and local governments.

No Fiscal Effects if Not Implemented. If a court were to rule that policies similar to the measure (or the measure itself) could not be implemented, then the measure could not be legally implemented and thus would have no fiscal effect on the state or local governments.

Fiscal Effects if Implemented. If the measure could be implemented legally, it would generate minor administrative costs for school districts. For example, school districts would need to revise policy manuals and training materials; obtain approval from the school board and other school groups on the new notification procedures; inform and train school staff, employees, and contractors of the notification requirement; and process written parent consent forms. There also would be minor administrative costs associated with schools issuing notifications to parents or legal guardians, which would depend on the number of notifications. For example, if students choose not to request any gender-related accommodations at school to avoid parent notification, the amount of staff time and number of notifications needed to implement the measure would be negligible. The statewide costs would likely not exceed several millions of dollars initially (roughly .01 percent of state funding for schools) and would be absorbable within existing state funding schools receive.

Additionally, the measure may generate indirect cost pressures for other government-funded programs and services. For example, once notified by the school, parents or legal guardians may seek out counseling or other supportive services for their child. State and local government costs could increase to the extent the supportive services are provided through a government-funded

program. The potential cost pressures on other government-funded programs and services are unknown.

Summary of Fiscal Effects. We estimate the measure would have the following fiscal effects:

- Minor administrative costs to schools, which could range from no effect to several millions of dollars initially, depending on whether the measure can be legally implemented.

Sincerely,



for Gabriel Petek
Legislative Analyst



for Joe Stephenshaw
Director of Finance