Resolution 13 06 2017 Students' Rights to Privacy in Restrooms and Locker Rooms.pdf

Catherine L Rucker, Golden Gate University School of Law

Available at: https://works.bepress.com/catherine_rucker/19/
RESOLUTION 13-06-2017

DIGEST
Schools: Students’ Rights to Privacy in Restrooms and Locker Rooms
Amends Education Code section 231 to require accommodations to ensure student privacy in school restrooms and locker rooms.

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:

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

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

PROONENT: 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.


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).

**AUTHOR AND/OR PERMANENT CONTACT:** Catherine Rucker, P.O. Box 854, Novato, CA 94947, Cell: 415-246-6647, catherinerucker@me.com

**RESPONSIBLE FLOOR DELEGATE:** Catherine Rucker