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AB-2289 Pupil rights: pregnant and parenting pupils. (2017-2018)

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Assembly Bill No. 2289

CHAPTER 942

An act to amend Sections 48205 and 48980 of, and to add Sections 221.51, 222.5, and 46015 to, the Education Code, relating to pupil rights.

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2289, Weber. Pupil rights: pregnant and parenting pupils.

(1) Federal and state regulations prohibit an educational institution from applying any rule concerning a pupil's actual or potential parental, family, or marital status that treats pupils differently on the basis of sex.

This bill would codify those regulations and related regulations in state law, as they apply to local educational agencies, defined to include a school district, a county office of education, a school operated by a school district or a county office of education, a charter school, the California Schools for the Deaf, or the California School for the Blind. The bill would find and declare that pregnant and parenting pupils are entitled to accommodations that provide them with the opportunity to succeed academically while protecting their health and the health of their children, and would establish specified accommodations as rights of pregnant and parenting pupils of local educational agencies. The bill would include in these established accommodations, among other rights, that a pregnant or parenting pupil is entitled to 8 weeks of parental leave, as specified. The bill would authorize a complaint of noncompliance with those established rights to be filed with the local educational agency pursuant to the Uniform Complaint Procedures, as specified. The bill would require local educational agencies to notify pregnant and parenting pupils and parents and guardians of pupils of the rights and options available to pregnant and parenting pupils, as specified.

(2) Existing law requires a pupil to be excused from school for specified types of absences.

This bill would include as another type of excused absence an absence to care for a sick child, for which the school is prohibited from requiring a note from a doctor.

(3) To the extent that this bill would impose additional duties on schools of school districts and county offices of education, charter schools, county offices of education, and school districts, the bill would impose a state-mandated local program.

(4) This bill would incorporate additional changes to Section 48205 of the Education Code proposed by SB 816 to be operative only if this bill and SB 816 are enacted and this bill is enacted last.

(5) 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 the statutory provisions noted above.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) In 2015, over 24,000 children were born to 15- to 19-year-olds in California. Nationwide, 70 percent of young parents are pushed out of school, and fewer than 4 in 10 young mothers graduate from high school by 18 years of age.

(2) Title IX of the federal Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and California law protect all pupils' rights to equal educational opportunities regardless of sex, yet only some of California's school districts provide pregnant and parenting pupil programs.

(3) Pregnant and parenting pupils face overwhelming, system-enforced obstacles to graduating and receiving an education of equal quality to that of their peers that vary across school districts, and include all of the following:

(A) Inconsistent access to excused "family leave" absences to care for new infants during the critical period of early child development, with male parents often having no access.

(B) Involuntary pushout due to high absence rates related to pregnancy and parenting responsibilities.

(C) Rigid requirements to verify excused absences to care for a sick child.

(D) Allowed "reasonable" amount of time to make up work is defined by the school districts and not to the individual circumstances or to support a pupil's goal to graduate.

(E) Varying levels of support and engagement from schools while pupils are absent.

(F) Encouragement to pursue independent study that may not fulfill the "A–G" admission requirements for the California State University and the University of California or have inconsistent and rigorous attendance policies.

(G) Parenting pupils' lack of awareness of their rights under Title IX of the federal Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) and California law, as well as pupils' different educational options during pregnancy, postpartum, and as a parent.

(4) While California has an 80 percent high school graduation rate, only 38 percent of young moms who have a child before they are 18 years of age graduate from high school, 19 percent get a General Education Development (GED) credential, and only 2 percent go to college before 30 years of age.

(5) Educational challenges set the stage for economic hardship: The median income for women over 25 years of age without a high school degree is \$15,021, less than 53 percent of that of their peers' median income of \$31,904.

(6) Nearly 60 percent of mothers under 19 years of age live in poverty.

(7) Studies show that pregnancy can motivate pupils to complete school and pursue postsecondary education.

(8) Further, a family's ability to take more time to recover, bond, breastfeed, and go to doctor's appointments leads to improved child and parent physical and mental health. Bonding time is critical for an infant's long-term development and the well-being of parents. California has acknowledged the importance of bonding time and paved the way in supporting bonding within working families.

(9) Since 2004, workers have been entitled to up to six weeks of family leave to bond with their children. Working families benefit significantly from bonding time. Parenting pupils and their infants, some of our most vulnerable citizens, should not have to choose between their family and education.

(b) It is the intent of the Legislature that, whenever possible, pregnant and parenting pupils have the opportunity to participate in graduation ceremonies alongside their four-year cohort peers.

SEC. 2. Section 221.51 is added to the Education Code, immediately following Section 221.5, to read:

221.51. (a) A local educational agency shall not apply any rule concerning a pupil's actual or potential parental, family, or marital status that treats pupils differently on the basis of sex.

(b) A local educational agency shall not exclude nor deny any pupil from any educational program or activity, including class or extracurricular activity, solely on the basis of the pupil's pregnancy, childbirth, false pregnancy, termination of pregnancy, or

recovery therefrom.

(c) A local educational agency may require any pupil to obtain the certification of a physician or nurse practitioner that the pupil is physically and emotionally able to continue participation in the regular education program or activity.

(d) Pregnant or parenting pupils shall not be required to participate in pregnant minor programs or alternative education programs. Pregnant or parenting pupils who voluntarily participate in alternative education programs shall be given educational programs, activities, and courses equal to those they would have been in if participating in the regular education program.

(e) A local educational agency shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom in the same manner and under the same policies as any other temporary disabling condition.

(f) For purposes of this section, "local educational agency" means a school district, a county office of education, a school operated by a school district or a county office of education, a charter school, the California Schools for the Deaf, or the California School for the Blind.

SEC. 3. Section 222.5 is added to the Education Code, to read:

222.5. (a) A local educational agency shall notify pregnant and parenting pupils of their rights and options available under the law through annual school year welcome packets and through independent study packets.

(b) A local educational agency shall annually notify parents and guardians of pupils at the beginning of the regular school term of the rights and options available to pregnant and parenting pupils under the law.

(c) For purposes of this section, "local educational agency" means a school district, a county office of education, a school operated by a school district or a county office of education, a charter school, the California Schools for the Deaf, or the California School for the Blind.

SEC. 4. Section 46015 is added to the Education Code, to read:

46015. (a) The Legislature finds and declares that pregnant and parenting pupils are entitled to accommodations that provide them with the opportunity to succeed academically while protecting their health and the health of their children. The Legislature hereby establishes the following accommodations as rights of pregnant and parenting pupils:

(1) A pregnant or parenting pupil is entitled to eight weeks of parental leave, which the pupil may take before the birth of the pupil's infant if there is a medical necessity and after childbirth during the school year in which the birth takes place, inclusive of any mandatory summer instruction, in order to protect the health of the pupil who gives or expects to give birth and the infant, and to allow the pregnant or parenting pupil to care for and bond with the infant. It is the intent of the Legislature that the pupil, if the pupil is 18 years of age or older, or, if the pupil is under 18 years of age, the person holding the right to make educational decisions for the pupil, notify the school of the pupil's intent to exercise this right. Failure to notify the school shall not abridge the rights established by this paragraph or any other right established by this subdivision.

(2) A pregnant or parenting pupil who does not wish to take all or part of the parental leave to which they are entitled pursuant to paragraph (1) shall not be required to do so.

(3) A pregnant or parenting pupil is entitled to receive more than eight weeks of parental leave pursuant to paragraph (1) if deemed medically necessary by the pupil's physician.

(4) When a pupil takes parental leave pursuant to paragraph (1), the supervisor of attendance shall ensure that absences from the pupil's regular school program are excused until the pupil is able to return to the regular school program or an alternative education program.

(5) During parental leave taken pursuant to paragraph (1), a local educational agency shall not require a pregnant or parenting pupil to complete academic work or other school requirements.

(6) A pregnant or parenting pupil may return to the school and the course of study in which he or she was enrolled before taking parental leave pursuant to paragraph (1).

(7) Upon return to school after taking parental leave pursuant to paragraph (1), a pregnant or parenting pupil is entitled to opportunities to make up work missed during his or her leave, including, but not limited to, makeup work plans and reenrollment in courses.

(8) Notwithstanding any other law, a pregnant or parenting pupil may remain enrolled for a fifth year of instruction in the school in which the pupil was previously enrolled when it is necessary in order for the pupil to be able to complete state and any local graduation requirements, unless the local educational agency makes a finding that the pupil is reasonably able to complete the

local educational agency's graduation requirements in time to graduate from high school by the end of the pupil's fourth year of high school.

(9) A pupil who chooses not to return to the school in which he or she was enrolled before taking parental leave pursuant to paragraph (1) is entitled to alternative education options offered by the local educational agency.

(10) In accordance with subdivision (d) of Section 221.51, a pregnant or parenting pupil who participates in an alternative education program shall be given educational programs, activities, and courses equal to those he or she would have been in if participating in the regular education program.

(11) A pupil shall not incur an academic penalty as a result of his or her use of the accommodations specified in this subdivision.

(b) (1) A complaint of noncompliance with the requirements of this section may be filed with the local educational agency under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(2) A local educational agency shall respond to a complaint filed pursuant to paragraph (1) in accordance with Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(3) A complainant not satisfied with the decision of a local educational agency may appeal the decision to the department pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations and shall receive a written decision regarding the appeal within 60 days of the department's receipt of the appeal.

(4) If a local educational agency finds merit in a complaint, or if the department finds merit in an appeal, the local educational agency shall provide a remedy to the affected pupil.

(c) For purposes of this section, the following definitions apply, unless the context requires otherwise:

(1) "Local educational agency" means a school district, a county office of education, a school operated by a school district or a county office of education, a charter school, the California Schools for the Deaf, or the California School for the Blind.

(2) "Pregnant or parenting pupil" means a pupil who gives or expects to give birth or a parenting pupil who has not given birth and who identifies as the parent of the infant.

(3) "Pupil" means a pupil enrolled in a local educational agency.

SEC. 5. Section 48205 of the Education Code is amended to read:

48205. (a) Notwithstanding Section 48200, a pupil shall be excused from school when the absence is:

(1) Due to the pupil's illness.

(2) Due to quarantine under the direction of a county or city health officer.

(3) For the purpose of having medical, dental, optometrical, or chiropractic services rendered.

(4) For the purpose of attending the funeral services of a member of the pupil's immediate family, so long as the absence is not more than one day if the service is conducted in California and not more than three days if the service is conducted outside California.

(5) For the purpose of jury duty in the manner provided for by law.

(6) Due to the illness or medical appointment during school hours of a child of whom the pupil is the custodial parent, including absences to care for a sick child for which the school shall not require a note from a doctor.

(7) For justifiable personal reasons, including, but not limited to, an appearance in court, attendance at a funeral service, observance of a holiday or ceremony of the pupil's religion, attendance at religious retreats, attendance at an employment conference, or attendance at an educational conference on the legislative or judicial process offered by a nonprofit organization when the pupil's absence is requested in writing by the parent or guardian and approved by the principal or a designated representative pursuant to uniform standards established by the governing board.

(8) For the purpose of serving as a member of a precinct board for an election pursuant to Section 12302 of the Elections Code.

(9) For the purpose of spending time with a member of the pupil's immediate family, who is an active duty member of the uniformed services, as defined in Section 49701, and has been called to duty for, is on leave from, or has immediately returned

from, deployment to a combat zone or combat support position. Absences granted pursuant to this paragraph shall be granted for a period of time to be determined at the discretion of the superintendent of the school district.

(10) For the purpose of attending the pupil's naturalization ceremony to become a United States citizen.

(b) A pupil absent from school under this section shall be allowed to complete all assignments and tests missed during the absence that can be reasonably provided and, upon satisfactory completion within a reasonable period of time, shall be given full credit therefor. The teacher of the class from which a pupil is absent shall determine which tests and assignments shall be reasonably equivalent to, but not necessarily identical to, the tests and assignments that the pupil missed during the absence.

(c) For purposes of this section, attendance at religious retreats shall not exceed four hours per semester.

(d) Absences pursuant to this section are deemed to be absences in computing average daily attendance and shall not generate state apportionment payments.

(e) "Immediate family," as used in this section, has the same meaning as set forth in Section 45194, except that references therein to "employee" shall be deemed to be references to "pupil."

SEC. 5.5. Section 48205 of the Education Code is amended to read:

48205. (a) Notwithstanding Section 48200, a pupil shall be excused from school when the absence is:

(1) Due to the pupil's illness.

(2) Due to quarantine under the direction of a county or city health officer.

(3) For the purpose of having medical, dental, optometrical, or chiropractic services rendered.

(4) For the purpose of attending the funeral services of a member of the pupil's immediate family, so long as the absence is not more than one day if the service is conducted in California and not more than three days if the service is conducted outside California.

(5) For the purpose of jury duty in the manner provided for by law.

(6) Due to the illness or medical appointment during school hours of a child of whom the pupil is the custodial parent, including absences to care for a sick child for which the school shall not require a note from a doctor.

(7) For justifiable personal reasons, including, but not limited to, an appearance in court, attendance at a funeral service, observance of a holiday or ceremony of the pupil's religion, attendance at religious retreats, attendance at an employment conference, or attendance at an educational conference on the legislative or judicial process offered by a nonprofit organization when the pupil's absence is requested in writing by the parent or guardian and approved by the principal or a designated representative pursuant to uniform standards established by the governing board.

(8) For the purpose of serving as a member of a precinct board for an election pursuant to Section 12302 of the Elections Code.

(9) For the purpose of spending time with a member of the pupil's immediate family who is an active duty member of the uniformed services, as defined in Section 49701, and has been called to duty for, is on leave from, or has immediately returned from, deployment to a combat zone or combat support position. Absences granted pursuant to this paragraph shall be granted for a period of time to be determined at the discretion of the superintendent of the school district.

(10) For the purpose of attending the pupil's naturalization ceremony to become a United States citizen.

(11) Authorized at the discretion of a school administrator, as described in subdivision (c) of Section 48260.

(b) A pupil absent from school under this section shall be allowed to complete all assignments and tests missed during the absence that can be reasonably provided and, upon satisfactory completion within a reasonable period of time, shall be given full credit therefor. The teacher of the class from which a pupil is absent shall determine which tests and assignments shall be reasonably equivalent to, but not necessarily identical to, the tests and assignments that the pupil missed during the absence.

(c) For purposes of this section, attendance at religious retreats shall not exceed four hours per semester.

(d) Absences pursuant to this section are deemed to be absences in computing average daily attendance and shall not generate state apportionment payments.

(e) "Immediate family," as used in this section, means the parent or guardian, brother or sister, grandparent, or any other relative living in the household of the pupil.

SEC. 6. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of a minor pupil regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 46015, 48205, 48207, 48208, 49403, 49423, 49451, 49472, and 51938 and Chapter 2.3 (commencing with Section 32255) of Part 19 of Division 1 of Title 1.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification also shall advise the parents and guardians of all pupils attending a school within the school district of the schedule of minimum days and pupil-free staff development days, and if minimum or pupil-free staff development days are scheduled thereafter, the governing board of the school district shall notify parents and guardians of the affected pupils as early as possible, but not later than one month before the scheduled minimum or pupil-free day.

(d) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options, including, but not limited to, United States savings bonds.

(e) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) of Chapter 3 of Part 19 of Division 1 of Title 1 shall inform parents or guardians of the program as specified in Section 32390.

(f) The notification also shall include a copy of the written policy of the school district on sexual harassment established pursuant to Section 231.5, as it relates to pupils.

(g) The notification shall advise the parent or guardian of all existing statutory attendance options and local attendance options available in the school district. This notification component shall include all options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. This notification component also shall include a description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the school district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification component also shall include an explanation of the existing statutory attendance options, including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, and subdivision (b) of Section 48204. The department shall produce this portion of the notification and shall distribute it to all school districts.

(h) It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within its school district and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of the pupils of California.

(i) The notification shall advise the parent or guardian that a pupil shall not have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 if missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

(j) The notification shall advise the parent or guardian of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Section 52242.

(k) The notification to the parent or guardian of a minor pupil enrolled in any of grades 9 to 12, inclusive, also shall include the information required pursuant to Section 51229.

(l) If a school district elects to allow a career technical education course to satisfy the requirement imposed by subparagraph (E) of paragraph (1) of subdivision (a) of Section 51225.3, the school district shall include, in the notification required pursuant to this section, both of the following:

(1) Information about the high school graduation requirements of the school district and how each requirement satisfies or does not satisfy the subject matter requirements for admission to the California State University and the University of California.

(2) A complete list of career technical education courses offered by the school district that satisfy the subject matter requirements for admission to the California State University and the University of California, and which of the specific college admission requirements these courses satisfy.

(m) A school district that elects to adopt a policy regarding the transfer of pupils pursuant to Article 1.5 (commencing with Section 48929) shall inform parents or guardians of the policy in the notification required pursuant to this section.

SEC. 7. Section 5.5 of this bill incorporates amendments to Section 48205 of the Education Code proposed by both this bill and Senate Bill 816. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 48205 of the Education Code, and (3) this bill is enacted after Senate Bill 816, in which case Section 5 of this bill shall not become operative.

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