

AMENDED IN ASSEMBLY APRIL 26, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 9

Introduced by Assembly Member Ammiano
(Principal coauthor: Assembly Member Yamada)
(Coauthors: Assembly Members Gatto and Ma)
(Coauthor: Senator Kehoe)

December 6, 2010

An act to *amend Sections 48900 and 48900.5 of, and to add Sections 234.4, 234.5, 234.6, 234.7, 234.8, and 48900.45 to, the Education Code, relating to pupil rights.*

LEGISLATIVE COUNSEL'S DIGEST

AB 9, as amended, Ammiano. Pupil rights: bullying.

Existing law provides that it is the policy of the state to afford all persons in public schools, regardless of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes, equal rights and opportunities in the educational institutions of the state, and that it is the purpose of existing law to prohibit acts that are contrary to that policy and to provide remedies therefor. Existing law requires the State Department of Education to develop a model handout, posted on appropriate department Internet Web sites, describing the rights and obligations set forth in these provisions and the policies addressing bias-related discrimination and harassment in schools. Existing law also requires the department to monitor adherence to these provisions and,

as part of its regular monitoring and review of local educational agencies, to assess whether local educational agencies have adopted a policy that prohibits discrimination and harassment and a process for receiving and investigating complaints of discrimination and harassment, as specified.

Consistent with these provisions, this bill would require each school district, on or before July 1, 2012, to ensure that its policy prohibiting discrimination, harassment, intimidation, and bullying include specified components, and to include in its process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying specified components. The bill would require school districts to provide information to ~~school personnel~~, school district board members, and pupils on the policy and the process, as specified.

Because this bill would require local educational agencies to perform additional duties, this bill would impose a state-mandated local program.

The bill would also encourage all local educational agencies to collect data related to pupil experiences with discrimination, harassment, intimidation, and bullying, as specified. The bill would require the department, in the next revision of either the California Healthy Kids Survey or, if that is not feasible, in the next revision of the California Student Survey, to include questions seeking information on discrimination, harassment, intimidation, and bullying and require local educational agencies to survey their pupils with those questions. The bill would also require the department to request that the Youth Risk Behavior Survey include questions seeking information on discrimination, harassment, intimidation, and bullying, as specified. The bill would require the Superintendent of Public Instruction, at the beginning of each school year, to post on his or her Internet Web site, and to provide to each school district, a list of statewide resources, including community-based organizations, that provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, or bullying, and their families.

Existing law provides that a pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act, as specified, including having engaged in an act of bullying. Existing law provides that a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling

and an anger management program, for a pupil subject to discipline under this provision.

This bill would authorize a superintendent of the school district or principal to use his or her discretion to provide alternatives to suspension or expulsion that are age-appropriate and designed to correct and address the root causes of the pupil's specific misbehavior by giving the pupil notice of the inappropriateness of the behaviors, teaching him or her appropriate behavior, and instituting increasingly severe responses for repeated instances of the same type of misbehavior, while still retaining the pupil in class or school, as specified. The bill would also specify that a pupil who is the target of an act of discrimination, harassment, intimidation, or bullying, as specified, shall not automatically be disciplined for defending himself or herself unless the superintendent or principal of the school, in his or her discretion, deems discipline to be appropriate, as specified.

~~Under existing law a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment.~~

~~This bill would provide, notwithstanding any other law, that a pupil who is found to have committed an act of discrimination, harassment, intimidation, or bullying, as specified, shall, prior to suspension or expulsion, be subject to alternative discipline, as defined, and suspension only when other means of correction fail to bring about proper conduct, as specified.~~

~~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 these statutory provisions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.~~

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

1 SECTION 1. (a) The Legislature finds and declares that the
2 State of California is committed to a safe and civil educational
3 environment for all pupils, employees, parents and legal guardians,
4 volunteers, and patrons that is free from discrimination, harassment,
5 intimidation, or bullying.

6 (b) The Legislature finds and declares that the intent of this act
7 is to clarify and supplement the existing law on discrimination,
8 harassment, intimidation, and bullying in public schools.

9 (c) The Legislature finds and declares all of the following:

10 (1) Pupils who are subjected to discrimination, harassment,
11 intimidation, or bullying may suffer long-term social, emotional,
12 and psychological harms.

13 (2) The public policy of this state is to reduce and ultimately
14 eliminate school-based discrimination, harassment, intimidation,
15 and bullying.

16 (3) The public policy of this state is to provide pupils with a
17 safe school environment in which all pupils are included and
18 respected and have an equal opportunity to participate in all school
19 activities and events.

20 (4) The most effective way to reduce discrimination, harassment,
21 intimidation, and bullying is to create a schoolwide culture of
22 inclusion and respect for differences.

23 (5) The public policy of this state is to provide support for youth
24 who are victimized by discrimination, harassment, intimidation,
25 or bullying, and support for the families of those youth.

26 (6) The public policy of this state is to provide effective
27 interventions for youth who engage in acts of discrimination,
28 harassment, intimidation, and bullying to help them change their
29 behavior and avoid entering the criminal justice system.

30 (7) The public policy of this state is to ensure that laws and
31 policies that prohibit discrimination, harassment, intimidation, and
32 bullying are enforced evenhandedly and are not disproportionately
33 applied to any class or group.

34 SEC. 2. Section 234.4 is added to the Education Code, to read:

35 234.4. (a) Consistent with subdivision (a) of Section 234.1,
36 on or before July 1, 2012, each school district shall ensure that its
37 policy prohibiting discrimination, harassment, intimidation, and

1 bullying includes, *but is not limited to*, all of the following
2 components:

3 (1) A statement that all pupils have the right to participate fully
4 in the educational process, free from discrimination, harassment,
5 intimidation, and bullying pursuant to subdivision (a) of Section
6 201.

7 (2) A statement that each school in the district has an affirmative
8 obligation to combat all forms of bias and a responsibility to
9 provide equal educational opportunity pursuant to subdivision (b)
10 of Section 201.

11 (3) A statement that California law and school district policy
12 prohibit discrimination, harassment, intimidation, and bullying
13 based upon any of the actual or perceived characteristics contained
14 in the definition of hate crimes set forth in Section 422.55 of the
15 Penal Code, any of the actual or perceived characteristics listed in
16 Section 220, and disability, gender, gender identity, gender
17 expression, nationality, race or ethnicity, religion, sexual
18 orientation, or association with a person or group with one or more
19 of these actual or perceived characteristics. School districts are
20 also encouraged to prohibit discrimination, harassment,
21 intimidation, or bullying more generally, but the statement must
22 contain a list of the characteristics set forth in Section 220.

23 (4) A description of the school district's procedure for
24 addressing complaints of discrimination, harassment, intimidation,
25 and bullying pursuant to subdivision (a) of Section 234.5.

26 (5) The names of two or more administrative personnel in each
27 school as required by subdivision (c) of Section 234.5.

28 (6) A statement that all school personnel who witness an act of
29 discrimination, harassment, intimidation, or bullying are required
30 to take immediate steps to intervene when safe to do so.

31 (7) A statement that the policy applies to all acts related to
32 school activity or school attendance occurring within a school
33 under the jurisdiction of the superintendent of the school district
34 or principal or within any other school district that occur at any
35 time, including, but not limited to, any of the following:

36 (A) While on school grounds.

37 (B) While going to or coming from school.

38 (C) During the lunch period whether on or off campus.

39 (D) During, or while going to or coming from, a
40 school-sponsored activity.

1 (8) An attached copy of the written complaint form published
2 by the school pursuant to subparagraph (3) of subdivision ~~(b)~~ (a)
3 of Section 234.5.

4 (9) A link to the Superintendent's list of statewide resources for
5 youth who have experienced discrimination, harassment,
6 intimidation, or bullying and for the families of those youth
7 pursuant to Section 234.7.

8 (b) The policy shall be posted and publicized on or before July
9 1, 2012, as follows:

10 (1) In all parent-student handbooks issued in the school district,
11 which shall also include a statement that pupils are expected to
12 contribute to building a culture of inclusion and respect.

13 (2) On the school district's Internet Web site and all individual
14 school Web sites.

15 (3) In all school district and school administrative offices.

16 (c) A statement notifying school personnel and pupils of the
17 existence of the policy, and where a written copy of the policy is
18 available in the school and the school district, shall be publicized
19 and posted on or before July 1, 2012, as follows:

20 (1) The statement shall ~~include the following language~~ *be in*
21 *age-appropriate language, and shall include, at a minimum, a list*
22 *of the actual or perceived characteristics set forth in paragraph*
23 *(3) of subdivision (a). The following statement is an example of*
24 *language that may be used to comply with the requirement of this*
25 *paragraph:*

26
27 "Discrimination, harassment, intimidation, and bullying are not
28 acceptable ways to treat others. California law prohibits
29 discrimination, harassment, intimidation, and bullying based on a
30 student's actual or perceived disability, gender, gender identity,
31 gender expression, nationality, race or ethnicity, religion, sexual
32 orientation, or association with a person or group with one or more
33 of these actual or perceived characteristics.

34 Tell a teacher or a school employee if you see or experience
35 discrimination, harassment, intimidation, or bullying. You have
36 the right to file a complaint and to have the school protect you.
37 Complaint forms are available on all school district Internet Web
38 sites and in all school and administrative offices."
39

1 (2) The statement shall be posted in all teacher lounges, staff
2 rooms, classrooms, gyms, locker rooms, bathrooms, and cafeterias
3 in each school.

4 (d) The policy and the statement shall be translated pursuant to
5 Section 48985. If translated, the policy and the statement shall be
6 publicized and posted pursuant to subdivisions ~~(c) and (d)~~ (b) and
7 (c) in both the English and non-English versions.

8 SEC. 3. Section 234.5 is added to the Education Code, to read:

9 234.5. (a) Consistent with subdivision (b) of Section 234.1,
10 on or before July 1, 2012, each school district shall include in its
11 process for receiving and investigating complaints under the
12 department's Uniform Complaint Procedures as set forth in
13 department regulations, all complaints of discrimination,
14 harassment, intimidation, and bullying, except that the process for
15 receiving and investigating complaints of discrimination,
16 harassment, intimidation, and bullying shall include all of the
17 following components:

18 (1) A requirement that if school personnel witness an act of
19 discrimination, harassment, intimidation, or bullying he or she
20 shall take immediate steps to intervene when safe to do so.

21 (2) A timeline for each school in the school district or the school
22 district to investigate and resolve complaints of discrimination,
23 harassment, intimidation, and bullying that does not exceed 30
24 working days from the date the complaint was received. The
25 school, or if applicable, school district, shall report to the
26 complainant the resolution of the complaint within 45 working
27 days of the initial filing, if the complainant identifies himself or
28 herself and requests a response.

29 (3) A written complaint form published by the school district,
30 and made available at all school and school district offices and on
31 school and school district Internet Web sites, *that is written in an*
32 *age-appropriate and understandable manner to ensure that all*
33 *pupils can access it*, that includes, at a minimum, all of the
34 following *components*:

35 (A) Questions intended to elicit a description of the incident
36 complained of and to identify any individual who may have been
37 involved in, or witnessed, the incident.

38 (B) A checklist of the actual or perceived characteristics listed
39 in Section 220 to allow the complainant to identify whether one

1 of these characteristics was the basis of the discrimination,
2 harassment, intimidation, or bullying.

3 (C) A description of the complaint process and timeline.

4 (D) A statement that complainants will be protected from
5 retaliation and that those who investigate a complaint alleging
6 discrimination, harassment, intimidation, or bullying will protect
7 the confidentiality of the parties to the extent possible.

8 (E) A statement that the complaint may be filed anonymously,
9 and a space to indicate whether a response is requested.

10 (F) A description of the location at each school in the district
11 where the complaint may be filed, pursuant to subdivision (c).

12 (G) A statement that the complainant has a right to appeal a
13 school or school district resolution of a complaint and a description
14 ~~of the appeal process, which, at a minimum, must describe the~~
15 ~~process required by the department's Uniform Complaint~~
16 ~~Procedures as set forth in department regulations.~~ *of how to file*
17 *an appeal.*

18 (H) A statement that it is not necessary to exhaust any
19 administrative complaint process before pursuing civil law
20 remedies.

21 (I) The names of the two or more personnel on each school
22 campus, identified pursuant to subdivision (b), and of the local
23 educational agency officer, identified pursuant to subdivision (g)
24 of Section 234.1, responsible for ensuring district compliance with
25 the department's Uniform Complaint Procedures as set forth in
26 department regulations and Chapter 2 (commencing with Section
27 200).

28 (4) A process for a pupil to report complaints of discrimination,
29 harassment, intimidation, or bullying to any school personnel or
30 school district through any means other than the written complaint
31 form that includes:

32 (A) A requirement that school district or school personnel report
33 the nonwritten complaint within 48 hours to the school or the
34 school district for investigation and resolution.

35 (B) A requirement that the pupil who made the nonwritten
36 complaint is provided with the same information included in the
37 written complaint form, as set forth in paragraph (3).

38 (b) Each school district shall identify at least two school
39 administrative personnel on each campus whose names and contact
40 information are posted with the school district policy prohibiting

1 discrimination, harassment, intimidation, and bullying, pursuant
2 to the requirements of subparagraph (I) of paragraph (3) of
3 subdivision (a). These personnel shall be:

4 (1) Knowledgeable about the school district's policy and
5 complaint procedure regarding discrimination, harassment,
6 intimidation, and bullying.

7 (2) Available to pupils as a resource to assist with *written or*
8 *verbal* complaints of discrimination, harassment, intimidation, and
9 bullying.

10 (3) Able to refer pupils to counseling, as appropriate.

11 (c) Each school district shall assign a specific location for every
12 school in the district where complaints may be filed, such as the
13 principal's office.

14 (d) If applicable, pursuant to Section 48985, each school district
15 shall make the complaint process available in the primary language
16 other than English.

17 (e) Consistent with subdivision (e) of Section 234.1, each school
18 district shall maintain documentation of complaints and their
19 resolution for a minimum of one review cycle of what is commonly
20 known as the department's Categorical Program Monitoring
21 process.

22 SEC. 4. Section 234.6 is added to the Education Code, to read:

23 234.6. (a) School districts, consistent with the provisions of
24 Article 3.6 (commencing with Section 32228) of Chapter 2 of Part
25 19, ~~shall offer~~ *are encouraged to offer grade-level appropriate*
26 professional development training for school personnel that covers
27 all of the following topics:

28 (1) The school district policy prohibiting discrimination,
29 harassment, intimidation, and bullying, adopted pursuant to Section
30 234.4.

31 (2) The actual or perceived characteristics covered by the school
32 district policy prohibiting discrimination, harassment, intimidation,
33 or bullying, pursuant to paragraph (3) of subdivision (b) of Section
34 234.4.

35 (3) The school district process for receiving and investigating
36 complaints of discrimination, harassment, intimidation, and
37 bullying, adopted pursuant to Section 234.5.

38 (4) Techniques for intervening in discrimination, harassment,
39 intimidation, and bullying, including how teachers and other school

1 personnel can create a schoolwide culture of inclusion and respect
2 for differences without infringing on pupils' free speech rights.

3 (5) The harm caused by discrimination, harassment, intimidation,
4 and bullying.

5 (6) *Techniques for preventing discrimination, harassment,*
6 *intimidation, and bullying among pupils and for promoting positive*
7 *peer relationships.*

8 (b) In the course of existing orientation provided to school
9 district board members, each school district shall provide school
10 board members with information about the school district policy
11 prohibiting discrimination, harassment, intimidation, and bullying,
12 adopted pursuant to Section 234.4, and the school district process
13 for receiving and investigating complaints of discrimination,
14 harassment, intimidation, and bullying, adopted pursuant to Section
15 234.5.

16 (c) In the course of existing orientation provided to pupils, each
17 school district, consistent with the provisions of Article 3.6
18 (commencing with Section 32228) of Chapter 2 of Part 19, shall
19 provide pupils with age-appropriate information about all of the
20 following:

21 (1) The school district policy prohibiting discrimination,
22 harassment, intimidation, and bullying, adopted pursuant to Section
23 234.4.

24 (2) The actual or perceived characteristics covered by the school
25 district policy prohibiting discrimination, harassment, intimidation,
26 or bullying, pursuant to paragraph (3) of subdivision (b) of Section
27 234.4.

28 (3) The school district process for receiving and investigating
29 complaints of discrimination, harassment, intimidation, and
30 bullying, adopted pursuant to Section 234.5.

31 (4) The difference between protected speech and discrimination,
32 harassment, intimidation, and bullying.

33 (5) The harm caused by discrimination, harassment, intimidation,
34 and bullying.

35 SEC. 5. Section 234.7 is added to the Education Code, to read:

36 234.7. At the beginning of each school year, the Superintendent
37 shall post on his or her Internet Web site and provide to each school
38 district a list of statewide resources, including community-based
39 organizations, that provide support to youth who have been

1 subjected to school-based discrimination, harassment, intimidation,
2 or bullying, and their families.

3 SEC. 6. Section 234.8 is added to the Education Code, to read:

4 234.8. (a) All local educational agencies are encouraged to
5 collect data related to pupil experiences with discrimination,
6 harassment, intimidation, and bullying each year. The data may
7 be collected through annual participation in the California Healthy
8 Kids Survey or, if inclusion of the information in that survey is
9 not feasible, through participation in the California Student Survey.

10 (b) The department shall, in the next revision of either the
11 California Healthy Kids Survey or, if that is not feasible, in the
12 next revision of the California Student Survey, include questions
13 seeking information on discrimination, harassment, intimidation,
14 and bullying based upon any of the actual or perceived
15 characteristics contained in the definition of hate crimes set forth
16 in Section 422.55 of the Penal Code, any of the actual or perceived
17 characteristics listed in Section 220, and disability, gender, gender
18 identity, gender expression, nationality, race or ethnicity, religion,
19 sexual orientation, or association with a person or group with one
20 or more of these actual or perceived characteristics, and require
21 local educational agencies to survey their pupils with those
22 questions.

23 (c) The department shall request that the Youth Risk Behavior
24 Survey include questions seeking information on discrimination,
25 harassment, intimidation, and bullying based upon any of the actual
26 or perceived characteristics contained in the definition of hate
27 crimes set forth in Section 422.55 of the Penal Code, any of the
28 actual or perceived characteristics listed in Section 220, and
29 disability, gender, gender identity, gender expression, nationality,
30 race or ethnicity, religion, sexual orientation, or association with
31 a person or group with one or more of these actual or perceived
32 characteristics.

33 SEC. 7. Section 48900 of the Education Code is amended to
34 read:

35 48900. A pupil shall not be suspended from school or
36 recommended for expulsion, unless the superintendent or the
37 principal of the school in which the pupil is enrolled determines
38 that the pupil has committed an act as defined pursuant to any of
39 subdivisions (a) to (r), inclusive:

- 1 (a) (1) Caused, attempted to cause, or threatened to cause
2 physical injury to another person.
- 3 (2) Willfully used force or violence upon the person of another,
4 except in self-defense.
- 5 (b) Possessed, sold, or otherwise furnished a firearm, knife,
6 explosive, or other dangerous object, unless, in the case of
7 possession of an object of this type, the pupil had obtained written
8 permission to possess the item from a certificated school employee,
9 which is concurred in by the principal or the designee of the
10 principal.
- 11 (c) Unlawfully possessed, used, sold, or otherwise furnished,
12 or been under the influence of, a controlled substance listed in
13 Chapter 2 (commencing with Section 11053) of Division 10 of the
14 Health and Safety Code, an alcoholic beverage, or an intoxicant
15 of any kind.
- 16 (d) Unlawfully offered, arranged, or negotiated to sell a
17 controlled substance listed in Chapter 2 (commencing with Section
18 11053) of Division 10 of the Health and Safety Code, an alcoholic
19 beverage, or an intoxicant of any kind, and either sold, delivered,
20 or otherwise furnished to a person another liquid, substance, or
21 material and represented the liquid, substance, or material as a
22 controlled substance, alcoholic beverage, or intoxicant.
- 23 (e) Committed or attempted to commit robbery or extortion.
- 24 (f) Caused or attempted to cause damage to school property or
25 private property.
- 26 (g) Stolen or attempted to steal school property or private
27 property.
- 28 (h) Possessed or used tobacco, or products containing tobacco
29 or nicotine products, including, but not limited to, cigarettes, cigars,
30 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
31 packets, and betel. However, this section does not prohibit use or
32 possession by a pupil of his or her own prescription products.
- 33 (i) Committed an obscene act or engaged in habitual profanity
34 or vulgarity.
- 35 (j) Unlawfully possessed or unlawfully offered, arranged, or
36 negotiated to sell drug paraphernalia, as defined in Section 11014.5
37 of the Health and Safety Code.
- 38 (k) Disrupted school activities or otherwise willfully defied the
39 valid authority of supervisors, teachers, administrators, school

1 officials, or other school personnel engaged in the performance of
2 their duties.

3 (l) Knowingly received stolen school property or private
4 property.

5 (m) Possessed an imitation firearm. As used in this section,
6 “imitation firearm” means a replica of a firearm that is so
7 substantially similar in physical properties to an existing firearm
8 as to lead a reasonable person to conclude that the replica is a
9 firearm.

10 (n) Committed or attempted to commit a sexual assault as
11 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
12 Code or committed a sexual battery as defined in Section 243.4
13 of the Penal Code.

14 (o) Harassed, threatened, or intimidated a pupil who is a
15 complaining witness or a witness in a school disciplinary
16 proceeding for the purpose of either preventing that pupil from
17 being a witness or retaliating against that pupil for being a witness,
18 or both.

19 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
20 sold the prescription drug Soma.

21 (q) Engaged in, or attempted to engage in, hazing. For purposes
22 of this subdivision, “hazing” means a method of initiation or
23 preinitiation into a pupil organization or body, whether or not the
24 organization or body is officially recognized by an educational
25 institution, which is likely to cause serious bodily injury or personal
26 degradation or disgrace resulting in physical or mental harm to a
27 former, current, or prospective pupil. For purposes of this
28 subdivision, “hazing” does not include athletic events or
29 school-sanctioned events.

30 (r) Engaged in an act of bullying, including, but not limited to,
31 bullying committed by means of an electronic act, as defined in
32 subdivisions (f) and (g) of Section 32261, directed specifically
33 toward a pupil or school personnel.

34 (s) A pupil shall not be suspended or expelled for any of the
35 acts enumerated in this section, unless that act is related to school
36 activity or school attendance occurring within a school under the
37 jurisdiction of the superintendent of the school district or principal
38 or occurring within any other school district. A pupil may be
39 suspended or expelled for acts that are enumerated in this section

1 and related to school activity or attendance that occur at any time,
2 including, but not limited to, any of the following:

3 (1) While on school grounds.

4 (2) While going to or coming from school.

5 (3) During the lunch period whether on or off the campus.

6 (4) During, or while going to or coming from, a school
7 sponsored activity.

8 (t) A pupil who aids or abets, as defined in Section 31 of the
9 Penal Code, the infliction or attempted infliction of physical injury
10 to another person may be subject to suspension, but not expulsion,
11 pursuant to this section, except that a pupil who has been adjudged
12 by a juvenile court to have committed, as an aider and abettor, a
13 crime of physical violence in which the victim suffered great bodily
14 injury or serious bodily injury shall be subject to discipline pursuant
15 to subdivision (a).

16 (u) As used in this section, "school property" includes, but is
17 not limited to, electronic files and databases.

18 (v) ~~For a pupil subject to discipline under this section, a~~
19 superintendent of the school district or principal may use his or
20 her discretion to provide alternatives to suspension or expulsion
21 *that are age-appropriate and designed to correct and address the*
22 *root causes of the pupil's specific misbehavior by giving the pupil*
23 *notice of the inappropriateness of the behaviors teaching him or*
24 *her appropriate behavior, and instituting increasingly severe*
25 *responses for repeated instances of the same type of misbehavior,*
26 *while still retaining the pupil in class or school, including, but not*
27 *limited to, counseling and an anger management program, for a*
28 ~~pupil subject to discipline under this section. any of the following:~~

29 (1) *Meeting with the pupil and his or her parent or guardian.*

30 (2) *Reflective activities, such as writing an essay about the*
31 *misbehavior.*

32 (3) *Mediation to address the conflict between pupils.*

33 (4) *Counseling.*

34 (5) *Anger management.*

35 (6) *Health counseling or intervention.*

36 (7) *Mental health counseling.*

37 (8) *Social-emotional cognitive skill building.*

38 (9) *Community service, pursuant to Section 48900.6.*

39 (10) *In-school detention or supervision during lunchtime, after*
40 *school, or on weekends.*

1 (w) It is the intent of the Legislature that alternatives to
2 suspension or expulsion be imposed against a pupil who is truant,
3 tardy, or otherwise absent from school activities.

4 ~~SEC. 7.~~

5 ~~SEC. 8.~~ Section 48900.45 is added to the Education Code, to
6 read:

7 ~~48900.45. (a) Notwithstanding any other law, a pupil who is~~
8 ~~found to have committed an act of discrimination, harassment,~~
9 ~~intimidation, or bullying under subdivision (r) of Section 48900,~~
10 ~~or Section 48900.2, 48900.3, or 48900.4, prior to suspension or~~
11 ~~expulsion, shall be subject to alternative discipline pursuant to this~~
12 ~~section, and shall be subject to suspension pursuant to Section~~
13 ~~48900.5 if he or she has access to, and is otherwise given the~~
14 ~~opportunity to make up, missed coursework without additional~~
15 ~~academic penalty.~~

16 ~~(b) Notwithstanding any other law, a pupil who is the target of~~
17 ~~48900.45. A pupil who is the target of an act of discrimination,~~
18 ~~harassment, intimidation, or bullying under subdivision (r) of~~
19 ~~Section 48900, or Section 48900.2, 48900.3, or 48900.4, shall not~~
20 ~~automatically be disciplined for defending himself or herself~~
21 ~~against an act of discrimination, harassment, intimidation, or~~
22 ~~bullying under those sections unless the superintendent or principal~~
23 ~~of the school, in his or her discretion, based upon the~~
24 ~~circumstances, deems discipline to be appropriate; however, that~~
25 ~~discipline must conform to the requirements of subdivision (a)~~
26 ~~prior to suspension or expulsion.~~

27 ~~(c) For the purpose of this section, "alternative discipline" means~~
28 ~~disciplinary action other than suspension or expulsion that is~~
29 ~~designed to correct and address the root causes of the pupils's~~
30 ~~specific misbehavior by giving the pupil notice of the~~
31 ~~inappropriateness of the behavior, teaching him or her appropriate~~
32 ~~behavior, and instituting increasingly severe responses for repeated~~
33 ~~instances of the same type of misbehavior, while still retaining the~~
34 ~~pupil in class or school. "Alternative discipline" includes, but is~~
35 ~~not limited to:~~

36 ~~(1) Meeting with pupil and parent.~~

37 ~~(2) Reflective activities such as writing an essay about the~~
38 ~~misbehavior.~~

39 ~~(3) Mediation to address the conflict between pupils.~~

40 ~~(4) Counseling, pursuant to subdivision (v) of Section 48900.~~

1 ~~(5) Anger management, pursuant to subdivision (v) of Section~~
2 ~~48900.~~

3 ~~(6) Health counseling or intervention.~~

4 ~~(7) Mental health counseling.~~

5 ~~(8) Social-emotional cognitive skill building.~~

6 ~~(9) Community service, pursuant to Section 48900.6.~~

7 ~~(10) In-school detention or suspension, during lunchtime, after~~
8 ~~school, or on weekends. *appropriate. Discipline under this section*~~
9 ~~*shall be consistent with subdivisions (v) and (w) of Section 48900,*~~
10 ~~*and Section 48900.5.*~~

11 *SEC. 9. Section 48900.5 of the Education Code is amended to*
12 *read:*

13 48900.5. Suspension shall be imposed only when other means
14 of correction, *including, but not limited to, alternatives to*
15 *suspension and expulsion pursuant to subdivision (v) of Section*
16 *48900, fail to bring about proper conduct. However, a pupil,*
17 *including an individual with exceptional needs, as defined in*
18 *Section 56026, may be suspended for any of the reasons*
19 *enumerated in Section 48900 upon a first offense, if the principal*
20 *or superintendent of schools determines that the pupil violated*
21 *subdivision (a), (b), (c), (d), or (e) of Section 48900 or that the*
22 *pupil's presence causes a danger to persons or property or threatens*
23 *to disrupt the instructional process.*

24 ~~SEC. 8.~~

25 *SEC. 10.* The Legislature finds and declares that it is the intent
26 of this act to clarify existing law as set forth in Chapter 2
27 (commencing with Section 200) of Part 1 of Division 1 of Title 1
28 of the Education Code. The Legislature further finds and declares
29 that, under existing case and statutory law, a school district and
30 school could be held vicariously liable for any discrimination,
31 harassment, intimidation, or bullying by any individual who has
32 contact with pupils by virtue of employment or other contractual
33 relationship with the school district and any discrimination,
34 harassment, intimidation, or bullying related to school activity or
35 attendance, as set forth in subdivision (s) of Section 48900, ~~that~~
36 *about which* the school district or school knew or reasonably should
37 have known ~~about~~.

38 ~~SEC. 9.~~

39 *SEC. 11.* This act shall not be construed to limit pupil rights
40 to free speech as protected by the United States Constitution, the

1 California Constitution, Sections 48907 and 48950 of the Education
2 Code, and other applicable law.

3 ~~SEC. 10.~~

4 *SEC. 12.* This act shall not be construed to require an
5 exhaustion of any administrative complaint process before civil
6 law remedies may be pursued.

7 ~~SEC. 11.~~

8 *SEC. 13.* If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.

O