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**SENATE BILL 777  
NEW ANTI-DISCRIMINATION LAW – A CLARIFICATION OF EXISTING LAW**

Senate Bill 777 (“SB 777”) (Chapter 577, Statutes of 2007) is a new law designed to bring consistency to various anti-discrimination statutes within the Education Code. According to the author’s office, the intent of SB 777 was to clean up and further clarify existing civil rights protections for California students. Under this legislation, anti-discrimination provisions of the Education Code were aligned to the same standard under Education Code Section 220: “No person shall be subjected to discrimination on the basis of disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.” Further, Education Code Section 219 adds a prohibition against discrimination against any person based upon the perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

**Application to Charter Schools**

As you are likely aware, the Charter Schools Act already contained anti-discrimination language. Previously, Education Code Section 47605(d) mandated that a charter school not discriminate on the basis of ethnicity, national origin, gender, or disability. As revised, Education Code Section 47605(d) states that charter schools cannot discriminate “against any pupil on the basis of the characteristics listed in Section 220.”

As stated above, Section 220 includes disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, and Section 219 adds a prohibition against discrimination against any person based upon the perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

Education Code Section 235 previously prohibited “racial, sex, or ethnic discrimination” in charter schools. As revised by SB 777, Section 235 states “[t]here shall be no discrimination on the basis of the characteristics listed in Section 220 in any aspect of the operation of alternative schools or charter schools.”

Thus, as to charter schools, the Education Code now clarifies that discrimination based upon religion and sexual orientation is also prohibited. It is important to note that these prohibitions are not new – they already applied to charter schools through the Government Code. The final list of prohibited categories of discrimination in the Education after SB 777 includes perceived or actual:

- Ethnicity,
- Nationality,
- Race,
- Gender,
- Disability,
- Religion,
- Sexual orientation, and/or
- Association with individuals with one or more of the above characteristics.



The following definitions of these characteristics are provided by statute:

| Section | Term               | Definition  |
|---------|--------------------|---|
| 210.1   | Disability         | mental and physical disability as defined in Section 12926 of the Government Code   |
| 210.7   | Gender             | sex, and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth |
| 212     | Nationality        | citizenship, country of origin, and national origin   |
| 212.1   | Race or Ethnicity  | ancestry, color, ethnic group identification, and ethnic background.  |
| 212.3   | Religion           | all aspects of religious belief, observance, and practice and includes agnosticism and atheism  |
| 212.6   | Sexual Orientation | heterosexuality, homosexuality, or bisexuality  |

**Status of the Legislation**

SB 777 is chaptered, signed by the Governor and went into effect on January 1, 2008.

A number of advocacy organizations opposed SB 777, including the California Family Council, the Capitol Resource Institute and the Campaign for Children and Families (collectively “Opposition”). Members of the Opposition has scheduled student walk-outs, filed a lawsuit which is still unresolved, and is currently attempting to qualify for a referendum. Members of the Opposition have argued that day-to-day operations of public schools will be impacted by SB 777. The Opposition to SB 777 is arguing that the new law will require, among other things, the following:

- Schools will be required to ensure that textbooks include historical references to homosexual, transgender, transsexual and bisexual figures.
- Schools will be required to allow boys to use the girl’s restroom if they claim to identify with the female gender.

The California Department of Education (“CDE”) has issued the following statement on SB 777 in response to the efforts of one of the members of the Opposition to encourage a student walk-out:

*“SB 777 simplifies and clarifies existing civil rights protections for California students. It does not expand civil rights protections in the California Education Code, but it does clarify just what those protections include by providing an explicit and clear list of all the prohibited bases of discrimination in publicly funded kindergarten through grade twelve schools. SB 777 also updates the more specific prohibitions against discrimination scattered throughout the law to reference Education Code sections 220 and 66270.”*

The Opposition against SB 777 is attempting to stall SB 777 by referendum. If they are able to gather and submit 433,971 signatures of registered voters to county elections officials by January 10, 2008 and if the signatures are verified by elections officials, the referendum will appear on a statewide ballot allowing

voters to approve or reject the statute. If this occurs, implementation of the statute will be stayed (stalled) pending the results of the signature verification process and, should the referendum qualify, until the results of the election.

If the implementation of SB 777 changes due the Opposition, our Office shall send a further update by legal alert.

### **What Should a Charter School Do Right Now to Comply with SB 777?**

It is not likely that day-to-day operations of your charter school will be substantively impacted by SB 777. However, the legislation will require action on the part of all charter schools. The following bulleted list provides our recommendations for immediate action:

- If you are a petitioning charter school or a charter school submitting your renewal, your charter should be updated to contain the new anti-discrimination provision found in Education Code Section 47605(d). Remember, the Charter School's Act requires that your charter affirm all of the provisions of Education Code Section 47605(d) – failure to do so, would be a reason for charter denial.
- Update all applicable policies, procedures, forms, and handbooks of the charter school to accurately reflect the new anti-discrimination language used in Education Code Section 220 and 219 (and repeated above). These may include, but may not be limited to, policies and procedures on admissions, student civil rights, and anti-harassment; student and parent handbooks; and enrollment applications and registration forms. You may wish to seek legal counsel assistance with revisions.
- Ensure that daily operations align with updated policies and procedures prohibiting discriminatory practices.

If you should have any questions concerning these issues, please contact Lisa Corr ([lcorr@smymlaw.com](mailto:lcorr@smymlaw.com)), Sarah Kollman ([skollman@smymlaw.com](mailto:skollman@smymlaw.com)), or Janelle Ruley ([jruley@smymlaw.com](mailto:jruley@smymlaw.com)) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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