

Private & Home Educators of California  
*Roy Hanson, Jr. - Director*

---

PO Box 730 • Lincoln, CA 95648-0730 • (916) 786-3523 • FAX (916) 415-9470

**SB 777 – Private Schools & Private Home Schools**

Revised February 4, 2008 ©

Note: The following analysis has been prepared in consultation with attorneys at the Home School Legal Defense Association (HSLDA).

Question: Does Assembly Member Sheila Kuehl's bill, SB 777, affect every private school in California, including private home-based schools (i.e. private home schools)?

Answer: No! Regardless of how bad SB 777 is, it does not affect private home schools, or any other private school in California – unless that school meets either one of two specific financial criteria and does not meet the religious tenets test, as explained below.

Question: Does SB 777 affect home schoolers who are enrolled in a public school program such as a charter school?

Answer: Yes! SB 777 imposes very troubling requirements on all public schools, including all charter schools, whether classroom-based or home-based independent study programs. SB 777 specifically mandates, "...a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, ...and shall not discriminate against any pupil on the basis of the characteristics listed in Section 220." (See below for a brief explanation of Education Code Section 220.) This nondiscrimination law will eventually affect the curriculum authorized for use by home schoolers in any charter school program, regardless of how the curriculum is selected, paid for, or provided.

For instance, Section 220 prohibits charter schools from discriminating "in any program or activity," and a part of every school's program is its curriculum. Therefore, this broad and vague language could be interpreted to mean, for example, that: 1) curriculum depicting heterosexual marriage as the only morally acceptable form of marriage, or 2) curriculum teaching that homosexuality is morally wrong are in violation of this law.

On October 12, 2007, Governor Schwarzenegger signed SB 777 into law. SB 777 deals with discrimination, and amends numerous sections in the Education Code, including Section 220. Section 220 specifies to whom the prohibitions on discrimination are applicable.

In Section 220, SB 777 amended the lists of characteristics, which are protected from discrimination, to more clearly conform to the list of characteristics in the Penal Code's "hate crimes" laws (Penal Code Section 422.55). Section 220 of the Education Code has contained a reference to this same list of characteristics in the Penal Code since 2004. SB 777 did not change the portion of Section 220 where it specifies which private schools are subject to the education non-discrimination laws.

Section 220, as amended by SB 777 (effective January 1, 2008), reads as follows:

"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."

This Section 220 does not apply to any private school that "...is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization."<sup>1</sup>

If any private school, which does not meet the above religious tenets test, meets either or both of the two conditions specified in Section 220 above, then and only then, that private school must comply with the nondiscrimination laws addressed by the Education Code as modified by SB 777. These two conditions, which have been in the Education Code since at least 1982, are:

- 1) an educational institution<sup>2</sup> that receives, or benefits from, state financial assistance,<sup>3</sup> or
- 2) an educational institution<sup>2</sup> that enrolls pupils who receive state student financial aid.<sup>4</sup>

If a private school of any kind does not meet either of these two conditions, then the nondiscrimination laws in the Education Code do not apply to that school. It is highly unlikely that any private homeschooler, who is enrolled in a private school independent study program, would meet either of these two conditions. It is even more unlikely that any private homeschooling families, who file their own private school affidavits (i.e. are not enrolled in a private independent study program), would meet either of these two conditions.

In answer to questions that frequently arise: These two funding conditions refer only to education-related *financial assistance* or *student financial aid*. Money that might be distributed to the leader of a private school, or to any home schooling parent, in their capacity as a private individual or parent, would not cause Section 220 to apply to their private school. Similarly, if government financial assistance is paid to a child, and that money is not specifically designated to finance the child's education, then that money would not cause Section 220 to apply to any private school in which that child was enrolled. Examples of the kinds of payments to individuals, which are not education-related, would include, among other things, welfare benefits, unemployment, adoption assistance, social security payments, etc.

However, government financial assistance for education received by any leader of a private school (including a home schooling parent who has filed their own private school affidavit) in their capacity as an administrator or principal could cause Section 220 to apply to their private school. Additionally, any government financial assistance, including government education scholarships (vouchers) and public school special education funding received by or for a student for his or her education could also cause Section 220 to apply to their private school.

For a more in-depth analysis of SB 777, see the paper *SB 777 - An Analysis* at [www.pheofca.org](http://www.pheofca.org).

---

Notes:

<sup>1</sup> Education Code Section 220.5 specifies this religious exemption. SB 777 renumbers Section 220.5 to be Section 221 without making any substantive changes to the wording.

<sup>2</sup> "Educational institution" is defined in Section 210.1 of the Education Code to include "public or private preschool, elementary, or secondary school or institution."

<sup>3</sup> Education Code, Section 213 defines "state financial assistance."

<sup>4</sup> Education Code, Section 214 defines "state student financial aid."