

SB 777 - An Analysis

Revised February 4, 2008 ©

Note: The following analysis has been prepared in consultation with attorneys at the Home School Legal Defense Association (HSLDA). We recommend that you read our previous paper, *SB 777 – Private Schools & Private Home schools* (October 17, 2007), before reading this analysis. This paper is available at www.pheofca.org.

On October 12, 2007, Governor Schwarzenegger signed SB 777 into law. SB 777 deals primarily with what constitutes discrimination against homosexuals. It changes numerous sections in the Education Code (EC). Four of these sections are explained in this article. The changes made by SB 777, which became effective on January 1, 2008, further legitimize homosexuality in our culture and in our education system. (We are using the term "homosexuality" in this analysis as an abbreviated way to refer to the three categories of sexual orientation: "homosexuality", "bisexuality", and "transsexuality").

Public school instruction and activities (EC 51500):

One of the most immediate troubling sections for all public K-12 schools, is the way SB 777 changed EC Section 51500. Section 51500 specifically controls instruction by public school teachers and activities sponsored by public school districts.

In the Education Code, this section is titled "Prohibited instruction or activity." Before SB 777 became law, this Section stated:

No teacher shall give instruction nor shall a school district sponsor any activity which reflects adversely upon persons because of their race, sex, color, creed, handicap, national origin, or ancestry.

SB 777 changed existing Section 51500 by having it refer, to EC Section 220. The resulting combination of Sections 51500 and 220 effectively imposes the following requirement on every public school:

"No teacher shall give instruction nor shall a school district sponsor any activity

that promotes a discriminatory bias because of [one of the following characteristics: disability, gender, nationality, race or ethnicity, religion, sexual orientation, association with a person or group with one or more of these actual or perceived characteristics]."

Under SB 777, public school teachers are prohibited from giving any instruction, for example, that would make it look like same-sex marriages or a homosexual lifestyle was wrong. This means that any instruction, which supports marriage between a man and a woman as the only legitimate or best arrangement for a family or for raising children, could be considered an illegal discriminatory bias against homosexuals or bisexuals.

Public school textbooks and other instructional materials (EC 51500 & 51501):

There is some question as to whether or not the requirement in Section 51500 (discussed above) also controls what can or cannot be published in textbooks or other instructional materials used in public schools. We merely note that SB 777 did change Section 51500, but that it did not change the existing parallel textbook section, Section 51501.

Section 51501 specifically controls textbooks and other instructional materials used in public schools. Until SB 777 was amended the last time (September 6, 2007), it had proposed amending Section 51501 by referring to EC Section 220. Therefore, if Section 51501 had been included in SB 777 when the Governor signed it, Section 51501 would have prohibited any textbook or other teaching material used in a public school from promoting a discriminatory bias against homosexuals. In that case, textbooks in California could clearly have been used to promote homosexuality as a legitimate lifestyle. Again, because of the possible interpretation that Section 51500 could include textbooks, it is unclear how a court might rule on the issue of textbooks and other instructional materials discriminating against homosexuality.

Public charter schools (EC 235 & 47605):

SB 777 definitely applies to traditional public schools, but what about charter schools - including those with home study programs?

SB 777 amended two sections in the Education Code, both of which specifically address charter schools, to ensure that what is required in the more traditional public schools also is required in the charter schools – These are Sections 235 and 47605.

Section 235 was originally designed to prohibit any discrimination based on race, sex or ethnicity. SB 777 changed Section 235 to support the legitimacy of homosexuality under the guise of equity in education by referring to Section 220.

Section 47605 essentially contains the legal promise that operators of every charter school make concerning how they will run their school. Section 47605, specifies the conditions and requirements for establishing and operating a charter school. SB 777 added the reference to Section 220 into Section 47605 to ensure that there could be no doubt about the fact that charter schools, like all other public schools, would support homosexuality, bisexuality, and transsexuality. This ungodly requirement is in the very same sentence that prohibits every charter school from teaching Biblical truths and Christian doctrine.

Applicability of Nondiscrimination Laws (EC Section 220):

This brings us to Section 220 of the Education Code. Section 220 specifies who is protected from discrimination, and which schools (Educational Institutions) must comply with these prohibitions against discrimination.

What did SB 777 change in Section 220? SB 777 changed the list of protected characteristics in Section 220 by incorporating the specific list of characteristics in the Hate Crimes laws of the Penal Code (PC 422.55*).

Technically, this did not change the requirements that Section 220 imposed on the schools that are subject to this section. By direct reference, Section 220 has relied on the list of protected classes, which includes "sexual orientation", in PC 422.55* since 2004, along with the Penal Code's associated definitions. However, the incorporation of this list into the Education Code accomplishes at least two goals, both of which are antithetical to God's Word:

1. Now the Education Code more aggressively requires support of homosexuality as an acceptable lifestyle. Inclusion of this list, and specifically the term "sexual orientation", makes it clearer to school administrators and teachers that they are required to support the promotion of homosexuality as a legitimate lifestyle.

2. By incorporating this list and the term "sexual orientation" along with the attendant definitions from the Penal Code, Section 220 no longer needs to refer to Penal Code Section 422.55. This means that the Education code now stands on its own in full support of homosexuality.

This can be summarized as follows: The Penal Code protects the practice of homosexuality, and the Education Code teaches that homosexuality is normal and proper, while forbidding any teaching to the contrary.

But, does EC Section 220 apply to every school, public or private, or is there still an avenue of escape?

SB 777 **did not change** the portion of Section 220 **that specifies which private schools are subject to the education non-discrimination laws.** Section 220, as amended by SB 777, 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. "

Section 220, and therefore the Education Code's non-discrimination law, 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." (§221 – formerly §220.5)

If any private school, which does not meet the above religious tenets test, but does meet either or both of the two conditions specified in Section 220, then and only then, that private school must comply with the non-discrimination 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 that receives, or benefits from, state financial assistance, (§213)*

2) *an educational institution that enrolls pupils who receive state student financial aid. (§214)*

Private Home-based schools ("Home Schools"):

Parents, who choose to establish a private school in their own home, and enroll their children in that private home-based school, are free from all government control of the education they are providing their children. This is true so long as they are in compliance with the few general requirements imposed on all private schools in California, which are specified in Education Code §§33190 and 48222. For an explanation of these requirements, please read our *Home Schooling in California - Legal Fact Sheet* at www.pheofca.org.

Supplemental explanation of EC 220 financial thresholds

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.

Supplemental Code References:

* Penal Code Section 422.55 and the Hate Crimes Laws:

Penal Code Section 422.55 was instituted in 2004 through another piece of legislation authored by Sheila Kuehl (SB 1234). Section 422.55 contains the following list of protected characteristics: "disability, gender, nationality, race or ethnicity, religion, sexual orientation,

association with a person or group with one or more of these actual or perceived characteristics."

Penal Code Section 422.56 was also added in 2004 by SB 1234, and provides definitions applicable to Section 422.55 and all of California's Civil Rights Laws in the Penal Code. Three of these definitions are:

1. *"Gender" means sex, and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the persons assigned sex at birth.*
2. *"Religion" includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.*
3. *"Sexual orientation" means heterosexuality, homosexuality, or bisexuality.*

Definitions of "gender", "religion", and "sexual orientation", which are identical to the definitions in the Penal Code mentioned above, were added to Education Code Sections 210.7, 212.3, and 212.6 by SB 777. And the definition of "sex" (i.e. "... the biological condition or quality of being a male or female human being.") was deleted from the Education Code (Section 212).