

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2377 (Luz Rivas)
Version: April 1, 2024
Hearing Date: June 18, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Pupil instruction: physical education: religious exemption: fasting

DIGEST

This bill provides that a pupil in kindergarten or grades one through 12 shall be excused from engaging in any physical activity components of a physical education (P.E.) course during a period of religious fasting, provided that the student provides adequate notification to the principal; and provides that a student who is excused from P.E. classes will receive credit for the instructional time during which they were excused from the physical components of the class upon completion of alternative activities or assignments by the pupil.

EXECUTIVE SUMMARY

California requires students in grades one through twelve, inclusive, to participate in P.E. classes; the details of this requirement is explained more thoroughly in the analysis of the Senate Education Committee, which is incorporated herein by reference. California also provides a number of circumstances under which a pupil may be exempted from mandatory P.E. classes, including participation in after-school sports, illness or injury (provided that the program cannot be modified), enrollment in various alternative programs, and employment.

This bill permits a student, during a period of religious fasting, to be excused from the physical activity components of a P.E. class, provided that the student provides a written submission from their parent or guardian to the principal notifying the principal of the student's participation in religious fasting. The bill also provides that the student must complete alternative assignments or activities in order to obtain credit for the instructional time during the excused period. Because the bill does not entirely excuse a pupil from classes or the P.E. requirement, the author has agreed to amend the bill to refer to the ability to opt out of physical activity during religious fasting as an "accommodation."

This bill is sponsored by the Council on American Islamic Relations and is supported by the American Youth Association, California Health Coalition Advocacy, the California Federation of Teachers, Church State Council, and Educate.Advocate This bill is opposed by the California Association for Health, Physical Education, Recreation and Dance. The Senate Education Committee passed this bill with a vote of 7-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that it is the policy of this State to afford all persons in public schools equal rights and opportunities in the educational institutions of this state, regardless of their actual or perceived disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, immigration status, or association with a person or group with one or more of these actual or perceived characteristics. (Ed. Code, §§ 200, 210.2.)
- 2) Establishes a mandatory course of study for grades 1 to 6, which must include P.E., with emphasis upon the physical activities for the pupils that may be conducive to health and vigor of body and mind, for a total period of time of not less than 200 minutes each 10 schooldays, excluding recesses and the lunch period. (Ed. Code, § 51210(a)(7).)
- 3) Requires all pupils in grades 7 through 12 to attend P.E. courses for a total period of time of not less than 400 minutes each 10 schooldays, except that a pupil in one of grades 10, 11, or 12 may be excused from P.E. courses for a period not to exceed 24 clock hours in order to participate in automobile driver training, provided that the pupil shall attend a minimum of 7,000 minutes of P.E. instruction during each school year. (Ed. Code, § 51222.)
- 4) Authorizes the governing board of a school district or superintendent's office to grant exemptions to pupils for the required P.E. courses for specified reasons and durations, including:
 - a) A pupil may be granted a temporary exemption if the pupil is ill or injured and the program cannot be modified, or if the pupil is enrolled for one-half or less of the work normally required of full-time pupils.
 - b) A pupil may be exempted from two years of the mandatory course of P.E. during the grades 10 to 12, inclusive, if the pupil has met satisfactorily at least five of the six standards of the physical performance test administered in grade 9.
 - c) A pupil may be excused from P.E. courses in grades 11 or 12 if the pupil is enrolled in a juvenile home, ranch, camp, or forestry camp school where pupils are scheduled for recreation and exercise, as specified. (Ed. Code, § 51241.)

- 5) Authorizes the governing board of a school district to exempt any high school pupil from attending courses of P.E. if the pupil is engaged in a regular school-sponsored interscholastic athletic program carried on wholly or partially after regular school hours. (Ed. Code, § 51242.)
- 6) Permits any pupil enrolled in grade 10, 11, or 12, and who is also attending a regional occupational center or regional occupational program may be excused from attending courses in P.E. by the governing board of the school district if attendance at such classes results in hardship to the student because of travel time involved. (Ed. Code, § 52316.)
- 7) Provides that if any part of a school's instruction in health conflicts with the religious training and beliefs of a parent or guardian of a pupil, the pupil, upon written request of the parent or guardian, shall be excused from the part of the instruction that conflicts with the religious training and beliefs. "Religious training and beliefs" includes personal moral convictions. (Ed. Code, § 51240.)
- 8) Provides that a person between the ages of 6 and 18 years is generally subject to compulsory full-time education, and provides for reasons for excused absences from school, including:
 - a) For the purpose of obtaining confidential medical services without the consent of the pupil's parent or guardian.
 - b) Due to illness or quarantine, provided that the absence is verified in a manner prescribed by the Superintendent of Public Instruction.
 - c) With the written consent of a parent or guardian, to participate in religious exercises or receive moral and religious instruction, as specified, provided that the governing body of the district adopts a resolution permitting such absences; a pupil may not be absent for more than four days per school month. (Ed. Code, §§ 46010.1, 46011, 46014, 48200.)

This bill:

- 1) Provides that a pupil in kindergarten or any of grades 1 to 12, inclusive, shall be excused from engaging in any physical activity components of a P.E. course during a period of religious fasting upon the submission to the school principal of written notification from the pupil's parent or guardian, if the pupil is less than 18 years of age, or from the pupil, if the pupil is 18 years of age or older, that the pupil is participating in religious fasting.
- 2) Provides that, for purposes of calculating compliance with the instructional time requirements for P.E. classes, a pupil shall be credited with instructional time for any time for which the pupil was excused from engaging in physical activity components pursuant to 1), upon completion of alternative assignments or activities by the pupil.

COMMENTS

1. Author's comment

According to the author:

Students observing religious fasting often find themselves struggling to meet the physical education (PE) requirement, which is more pronounced during harsh weather conditions. Fasting can affect both the mind and body, so it is crucial we support students as they focus on their studies. AB 2377 will bring ease during the hardships of fasting by providing proper accommodations for PE to ensure students perform to their best in other aspects of their education.

2. This bill excuses a student from physical activity in P.E. classes during periods of religions fasting, provided that the student completes alternative assignments or activities

California requires students in grades one through twelve, inclusive, to participate in P.E. classes; the details of this requirement is explained more thoroughly in the analysis of the Senate Education Committee, which is incorporated herein by reference.

California also provides a number of circumstances under which a pupil may be exempted from mandatory P.E. classes, including participation in after-school sports, illness or injury (provided that the program cannot be modified), enrollment in various alternative programs, and employment.¹

This bill permits a student, during a period of religious fasting, to be excused from the physical activity components of a P.E. class, provided that the student provides a written submission from their parent or guardian to the principal notifying the principal of the student's participation in religious fasting. The bill also provides that the student must complete alternative assignments or activities in order to obtain credit for the instructional time during the excused period. Because the bill does not entirely excuse a pupil from classes or the P.E. requirement, the author has agreed to amend the bill to refer to the ability to opt out of physical activity during religious fasting as an "accommodation"; the amendments are discussed further in Part 4.

3. The state may permit students to complete alternative assignments during periods of fasting without running afoul of the First Amendment

The First Amendment of the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."² States are subject to the First Amendment by operation of the Fourteenth

¹ Ed. Code, §§ 51222, 51241, 51242, 52316.)

² U.S. Const., 1st amend.

Amendment.³ “The [Supreme] Court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with each other.”⁴ To resolve this tension, the Court recognizes that states are not necessarily prohibited from enacting legislation providing accommodations for religion, provided that the legislation does not resemble the “ ‘sponsorship, financial support, and active involvement of the sovereign in religious activity.’ ”⁵

This bill’s accommodation for students participating in a religious fast does not permit eligible students to avoid school, or P.E., entirely; it simply allows them to opt out of the physical activity portions, and requires them to conduct alternative assignments in order to receive credit for the class. This measure appears consistent with the state’s existing religious accommodations for students. Indeed, because this bill permits a student to skip the physical portions of P.E. only if they complete alternative assignments, this bill’s accommodation is narrower than existing laws that permit a student to opt out of participation.⁶ At the same time, state law provides students with a number of secular bases for opting out of P.E. classes, or of attendance.⁷ All told, it does not appear there is any basis for concluding that this modest accommodation for students participating in a religious fast violates the First Amendment.

4. Amendments

As noted in Part 2, the author has agreed to amend the bill to recharacterize the bill’s language; instead of providing that a student, during a period of religious fasting, “shall be excused from engaging in any physical activity components of a physical education course,” the bill will instead state that the student “shall be granted an accommodation in connection with any physical activity components of a physical education course.” The term “accommodation” more accurately describes the gist of the bill, which does not exempt a fasting pupil from P.E. entirely, but instead provides credit for the P.E. courses only if the pupil completes alternative assignments.

5. Arguments in support

According to the Council on American-Islamic Relations, the sponsor of the bill:

California is home to many diverse faith-based communities that observe fasting. The Central Valley has a high Muslim and Jewish population, especially in the Sacramento region. This diversity is also reflected in the Los Angeles region and the Bay Area. Currently, there are no guidelines within the school system that

³ *Cantwell v. State of Connecticut* (1940) 310 U.S. 296, 303.

⁴ *Walz. v. Tax Comm’n of City of New York* (1970) 397 U.S. 664, 668-669.

⁵ *Committee for Public Ed. and Religious Liberty v. Nyquist* (1973) 413 U.S. 756, 772.

⁶ *E.g.*, Ed. Code, §§ 46014, 51240.

⁷ *Id.*, §§ 46010.1, 46011, 51241, 51242, 52316.

provide students with accommodation during the PE portion of the school day. Muslims fast every day for a month from sunrise to sunset as a spiritual discipline. The Jewish community traditionally observes Yom Kippur, the holiest day of the year in Judaism, with a day-long fast and intensive prayer, and several Christian denominations practice full or partial fasting on certain occasions, including Lent.

Students who observe religious fasting often find themselves struggling to exercise during their physical education (PE) courses. The lack of liquids and no food can lead to illness during exercise. Fasting affects the mind and body, especially if PE courses are later in the school day. It is crucial that we support our students and their well-being. Fasting is at its most difficult during the long summer days. The duration of the fast, coupled with the sweltering heat, creates a challenging situation for students. Additionally, fasting can cause dizziness, fatigue, headaches, and dehydration, which may lead to weakness or fainting, especially during exercise...

AB 2377 celebrates and recognizes the diverse religions and cultures in our state by providing religious accommodations to students when they are fasting. Schools can offer supplemental instruction as a replacement for the required hours needed for PE. Specifically, this bill requires written permission for students under 18 to request PE accommodations.

6. Arguments in opposition

According to the California Association for Health, Physical Education, Recreation and Dance:⁸

Our concerns with the bill are the following:

1. The US constitution duplicates what AB2377 will allow, therefore, we feel this bill is unnecessary. The First Amendment has two clauses in it that already pertains to a person's religious rights. The Establishment and the Free Exercise Clause, both descriptions can be found in the Cornell Law explanation on the First Amendment and Article VI already give people the right to religious rights.
2. AB 2377 does not state any timeline for a pupil to be excused due to religious fasting. A student could continually request to sit out from activity and get full credit for an unlimited amount of time which will cause a disruption of their education.
3. This bill also does not state that other assignments that contain content of the lessons missed should be given. Therefore, educators would be

⁸ The California Association for Health, Physical Education, Recreation and Dance submitted its opposition to the bill while the bill was pending in the Assembly and has not reached out to Committee staff to weigh in on the bill.

mandated to blanketly give the daily credit missed without having the student be in some way accountable for the content of lessons missed.

4. The importance of Physical Education Standards and Framework to our students affects their Health, fitness and their ability to do physical activity safely as adults. Without clear guidelines we can predict parents and students misusing this bill if passed.
5. Our educators feel that the content of this bill has not been a problem in the past, so we see the time spent on this bill is unnecessary.

SUPPORT

Council on American-Islamic Relations (sponsor)
American Youth Association
California Health Coalition Advocacy
California Federation of Teachers
Church State Council
Educate.Advocate

OPPOSITION

California Association for Health, Physical Education, Recreation and Dance

RELATED LEGISLATION

Pending legislation: AB 2073 (Quirk-Silva, 2024) authorizes the governing board of a school district that maintains any of grades 6 to 12 to adopt a policy, as specified, providing for an alternate term schedule for physical education (PE) courses, which shall be deemed to satisfy the requirements of a course in PE. AB 2073 is pending before the Senate Appropriations Committee.

Prior legislation: None known.

PRIOR VOTES:

Senate Education Committee (Ayes 7, Noes 0)
Assembly Floor (Ayes 73, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
Assembly Education Committee (Ayes 7, Noes 0)
