

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 245 (Chiu)
Version: June 22, 2021
Hearing Date: June 29, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Educational equity: student records: name and gender changes

DIGEST

This bill provides a means by which a graduate of a California public college or university can obtain a diploma or transcript reflecting their correct name and/or gender.

EXECUTIVE SUMMARY

Having documents that accurately reflect a person's name and gender is essential for daily life. Current law provides a range of means by which a person may obtain state-issued documents that reflect their gender identity, such as birth certificates, drivers' licenses, and marriage certificates. This bill would extend this affirmation of basic human dignity to students and former students of California's public secondary institutions – the University of California, the California State University, and the Community Colleges of California – in two ways. First, the bill requires a public secondary institution, at the request of a former student and upon receipt of specified documentation showing that the student's name and/or gender has been changed, to update the school's records and, if requested, reissue a transcript or diploma with the updated information. Second, the bill requires a public secondary institution, starting with the 2023-24 class, to provide students the option of having their diploma conferred by the institution using the student's chosen name, whether or not the chosen name is reflected in legal documentation.

This bill is sponsored by Equality California and Lieutenant Governor Eleni Kounalakis and supported by numerous student, faculty, and LGBTQ+ groups. There is no known opposition. This bill passed out of the Senate Education Committee with a 6-1 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Sets forth the missions, functions, and governance of California's public institutions of higher education, which include the University of California, the California State University, and the California Community Colleges. (Ed. Code, tit. 3, div. 5, §§ 66000 et seq.)
- 2) Establishes the Equity in Higher Education Act, which provides that it is the policy of the state to afford all persons, regardless of specified characteristics, including gender identity and gender expression, equal rights and opportunities in the postsecondary educational institutions of the state. (Ed. Code, tit. 3, div. 5, pt. 40, ch. 4.5, §§ 66250 et seq.)
- 3) Establishes the Gender Recognition Act of 2017 (SB 179 (Atkins, Ch. 179, Stats. 2017)), which, among other things, declares that it is the policy of the State of California that every person deserves full legal recognition and equal treatment under the law and to ensure that intersex, transgender, and nonbinary people have state-issued identification documents that provide full legal recognition of their accurate gender identity.
- 4) Establishes procedures for a person to change their name in order to conform to their gender identity. (Code Civ. Proc., § 1277.5.)
- 5) Establishes procedures for a person to file a petition with the superior court seeking a judgment recognizing their change of gender and receive an order requiring the preparation of a new birth certificate reflecting the judgment. (Health & Saf. Code, §§ 103425-103445.)
- 6) Requires the Department of Motor Vehicles to establish procedures for a person to obtain a driver's license that reflects their gender identity. (Veh. Code, §§ 12800.)
- 7) Requires a school district, charter school, or county office of education, upon receiving government-issued documentation demonstrating that a former pupil's legal name or gender has been changed, to update the former pupil's records to include the updated legal name or gender, and, if requested by the former pupil, to reissue any documents conferred upon the former pupil with the former pupil's updated legal name or gender. (Educ. Code, § 49062.5.)

This bill:

- 1) Defines “public postsecondary educational institution” or “institution” to mean a campus of the University of California, the California State University, or the California Community Colleges.
- 2) Requires a public postsecondary educational institution, when it receives government-issued documentation (specified below) from a former student demonstrating that the former student’s legal name or gender has been changed, to update the former student’s records to include the updated legal name or gender; if the former student requests it, the institution shall reissue any documents conferred upon the former student with the former student’s updated legal name or gender.
- 3) Provides that documents that shall be reissued by an institution include, but are not limited to, a transcript or diploma conferred by the institution.
- 4) Provides a non-exhaustive list of documentation sufficient to demonstrate a legal name or gender change, as follows:
 - a) State-issued driver’s license or identification card.
 - b) Birth certificate.
 - c) Passport.
 - d) Social Security card.
 - e) Court order indicating a name change, gender change, or both.
- 5) Provides that an institution is not required to modify records for which the former student has not requested modification.
- 6) Requires an institution, commencing with the 2023-24 graduating class, to provide an option for a graduating student to request that a diploma to be conferred by the institution list the student’s chosen name.
- 7) Prohibits an institution, commencing with the 2023-24 graduating class, from requiring a graduating student to provide legal documentation to demonstrate a legal name or gender change in order to have the student’s chosen name listed on the student’s diploma.

COMMENTS

1. Author's comment

According to the author:

AB 245 is a common-sense bill to ensure that transgender and nonbinary college students are able to get diplomas and transcripts with their correct name. Making sure school records reflect a person's actual name and gender is a no-brainer. If a record has a person's incorrect name or "deadname" on it, the document can out the person to anyone who sees it, putting them at risk of discrimination or harm. This bill will give greater protections to transgender and nonbinary Californians and remove barriers to applying for employment or graduate opportunities.

2. This bill provides a clear procedure by which college records can be corrected or issued in a student's correct name or gender

As the author of the bill explains, having college documents – such as a diploma or transcript – that do not reflect the former student's correct name or gender can severely harm the former student. A transcript with a deadname and incorrect gender can out a graduate as transgender or nonbinary to a potential employer, increasing the likelihood of employment discrimination; an incorrect diploma might out a graduate to colleagues, clients, or others, giving rise to an increased chance of workplace hostility, discrimination, and even physical harm. Incorrect documentation also poses psychological risks: as bill co-sponsor Equality California notes, when transgender and nonbinary people are addressed by their chosen name, their risk of depression, anxiety, and suicide drop significantly.

Federal regulations provide a student the right to seek an amendment of their educational records if the student believes it is inaccurate, misleading, or otherwise in violation of the student's privacy rights.¹ This right does not, however, provide clear guidance to students and institutions for when, and with what showing, a transcript or diploma must be changed to reflect the student's new name or correct gender.

California law already establishes a procedure by which kindergarten through grade 12 students can obtain corrected documents from their school, when the request is accompanied by specified government-issued documentation.² This bill extends the same procedure for correcting school documentation to California's public universities and colleges. Specifically, a public university or college must change a former student's records and reissue documentation at the request of a former student, when the request

¹ 34 C.F.R. § 99.7(a).

² Ed. Code, § 49062.5.

is accompanied by a state-issued driver's license or identification card, birth certificate, passport, social security card, or court order indicating a name change, gender change, or both. The bill expressly states that a public university or college does not need to make any changes *sua sponte*, i.e., without a request from a former student, so the bill should not create an undue burden on schools.

This bill also enacts a measure to proactively address students who have not yet legally changed their name or gender, but who wish to have their diploma represent the name that they will legally adopt once they are able to do so. As several of the bill's supporters note, obtaining a legal name and/or gender change can be a time-consuming and expensive process (especially for college students); it is reasonable to assume that many transgender students will not have been able to complete the legal process before they graduate. In such cases, it would be needlessly formalistic to require the school to issue a diploma in the student's deadname and then require the school to reissue the diploma after the graduate came back with legal documentation. This bill avoids such a pointless two-step by requiring public universities and colleges, beginning with the 2023-2024 graduating class, to provide every student with the option to have their diploma issued with their name of choice, regardless of whether the student has had their name or gender legally changed.

Together, these measures are simple steps that impose minimal burdens on California's public universities and colleges while living up to California's policy of affirming that persons of all genders, gender expressions, and gender identities are entitled to equal treatment under the law.³

3. Arguments in support

According to bill co-sponsor Equality California:

Many colleges and universities have taken steps to provide students with the ability to designate a chosen or affirmed name on external-facing documents – such as student ID cards, college email accounts, and in grading. However, most colleges do not provide an option for transgender and nonbinary students whose name is different from their legal name to have their chosen name printed on their college diploma when they graduate. In addition, the process for getting a college transcript or diploma reissued with an updated name varies widely and is not standardized across our higher education institutions, which can make the process more cumbersome.

Students should not be “deadnamed” – referred to by the name they were assigned at birth, rather than by their chosen name – on their diploma, which is the ceremonial document commemorating years of hard work and achievement.

³ SB 179 (Atkins, Ch. 179, Stats. 2017).

AB 245 requires public colleges in California to provide graduating transgender and nonbinary students the option to have their chosen name printed on their college diploma, rather than their legal name. The bill also sets out a standard process for colleges to use when former students need to amend their records to reflect their proper names.

According to bill supporter California Faculty Association:

Our higher education institutions must have policies in place that promote education equity across all facets of campus life. Name changes and gender changes are significant events that should be appropriately recorded and recognized on official campus documentation. Without a universal policy for updating student records when these events occur, students may receive a diploma that is a “deadname” or calls the graduate by the name they were assigned at birth rather than the name they use. We need consistent, systemwide policies in place to make sure this does not occur to our students.

SUPPORT

Equality California (co-sponsor)
Lieutenant Governor Eleni Kounalakis (co-sponsor)
American Civil Liberties Union of California
Associated Students, Incorporated, California State University, Sacramento
Board of Trustees of the San Francisco Community College District
California Coalition for Youth
California Faculty Association
California Federation of Teachers
California State Student Association
California Teachers Association
El/La Para TransLatinas
Faculty Association of California Community Colleges
Fem Dems of Sacramento
GLBTQ+ Asian Pacific Alliance
Larkin Street Youth Services
Los Angeles LGBTQ Chamber of Commerce
LYRIC Center for LGBTQ Youth
National Association of Social Workers, California Chapter
Santa Barbara Women’s Political Committee
University of California Student Association

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 1578 (Assembly Judiciary Committee) among other things, requires a petition for a change of name or gender for a minor with a court-appointed guardian or a minor who is a ward of the juvenile court to be made in the court having jurisdiction over the minor. AB 1578 is pending before the Senate Judiciary Committee.

AB 218 (Ward, 2021) establishes, as of January 1, 2023, a process for a petitioner seeking a change of gender to also request that their marriage license and certificate and their children's birth certificates be reissued with updated information about the petitioner. AB 218 is pending before the Senate Rules Committee.

Prior Legislation:

AB 2023 (Chiu, 2020) would have implemented substantially similar requirements as the ones at issue in this bill. AB 2023 was held in the Assembly Higher Education Committee as a result of COVID-19-related bill limits.

AB 711 (Chiu, Ch. 179, Stats. 2019) required a local educational agency, including a school district, charter school or county office of education, to update and reissue a former pupil's records upon receipt of government-issued documentation that a former pupil's legal name and/or gender has been changed.

SB 179 (Atkins, Ch. 179, Stats. 2017) enacted the Gender Recognition Act and eliminated the requirement that a person undergo clinical treatment before obtaining state-issued documents reflecting their gender identity.

PRIOR VOTES:

Senate Education Committee (Ayes 6, Noes 1)
Assembly Floor (Ayes 63, Noes 2)
Assembly Appropriations Committee (Ayes 12, Noes 0)
Assembly Higher Education Committee (Ayes 11, Noes 0)
