

RESOLUTION 01-05-2014

DIGEST

Education: Medical Consent Forms and Privacy

Adds Education Code section 49073 to prohibit school consent forms from combining discretionary medical consents with other and avoid inadvertent privacy waivers.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Education Code section 49073 to prohibit school consent forms from combining discretionary medical consents with other issues and avoid inadvertent privacy waivers. This resolution should be disapproved because the forms as they presently exist are samples and not mandatory, and they comply with California law.

Education Code section 46011 provides: "Absences due to illness or quarantine shall be verified by the district or the county superintendent of schools in such manner as the Superintendent of Public Instruction may provide." This broad language clearly permits superintendents to request parents to sign consent forms to permit the schools to be in communication with treating physicians and to obtain such information.

To the extent section 46011 violates children's privacy as protected by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), then the remedy is to amend section 46011, not add Education Code section 49073.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add Education Code section 49073 to read as follows:

§ 49073

- 1 When a parent / guardian provides consent for an exchange of information between a
- 2 medical provider and school personnel, the consent issue shall not be combined with other
- 3 issues.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: For K-12 education, federal regulations require that when a parent / guardian provides "consent," then the parent / guardian must understand that the granting of consent is voluntary, and that the consent may be revoked at any time. (34 C.F.R. 300.9 (c)(1).) The California Education Code requires that each school district make its own rules for medical

examination of the pupils, and that the schools ensure “proper secrecy” in connection with any physical defect that is detected. (Educ. Code § 49450.)

The problem is that some schools believe that they can combine consent for an exchange of medical information with other issues – to be authorized by a single parent / guardian signature. For example, the California Department of Education’s “Chronic Illness Verification Form (CIVF)” is for the parent to notify the school about the pupil’s medical condition and the identity of the doctor. (Form available at <http://www.cde.ca.gov/ls/ai/cw/>.) But then the form includes a parent / guardian consent for an exchange of information. The parent is compelled to report the medical condition and the identity of the doctor so that the pupil will not be truant. (Educ. Code § 48260.5.) The form prompts the parent / guardian to authorize two separate issues: the notice and provide the consent – with a single signature. From above, this CDE form is faulty since federal regulations have established that parent / guardian consent must always be voluntary. Therefore, a parent / guardian can never be compelled to provide consent.

The California Department of Education (CDE) asserts that each school is “free to make its own form.” (See Educ. Code § 49450.) However, California schools rely on the CDE’s template because the CDE is the lead agency and also because the CDE has translated the form into fourteen different languages. (See <http://www.cde.ca.gov/ls/ai/cw/>.) As a result, it is much easier for the schools to follow the CDE’s form – that blatantly demands access to the pupil’s private medical information.

The Solution: This resolution will ensure that when a parent / guardian provides consent for a “request for exchange of information” between a medical provider and school personnel, the consent shall remain voluntary by preventing the consent issue from being combined with other issues.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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