

RESOLUTION 07-10-2015

DIGEST

Education: Liability Provisions for School Activities

Amends Education Code section 35330 and deletes section 44808 to eliminate the conflict between the liability provisions of “field trips/excursions” and “school-sponsored activities.”

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Education Code sections 35330 and 44808 to read as follows:

§35330. Excursions and Field Trips

1 (a) The governing board of a school district or the county superintendent of schools of a
2 county may:

3 (1) Conduct field trips or excursions in connection with courses of instruction or school-
4 related social, educational, cultural, athletic, or school band activities to and from places in the
5 state, any other state, the District of Columbia, or a foreign country for pupils enrolled in
6 elementary or secondary schools. A field trip or excursion to and from a foreign country may be
7 permitted to familiarize students with the language, history, geography, natural sciences, and
8 other studies relative to the district’s course of study for pupils.

9 (2) Engage instructors, supervisors, and other personnel to contribute their services over
10 and above the normal period for which they are employed by the district, if necessary, and
11 provide equipment and supplies for the field trip or excursion.

12 (3) Transport by use of district equipment, contract to provide transportation, or arrange
13 transportation by the use of other equipment, of pupils, instructors, supervisors or other
14 personnel to and from places in the state, another state, the District of Columbia, or a foreign
15 country where those excursions and field trips are being conducted, provided that, when district
16 equipment is used, the governing board shall secure liability insurance, and if travel is to and
17 from a foreign country, liability insurance shall be secured from a carrier licensed to transact
18 insurance business in the foreign country.

19 (4) Provide supervision of pupils involved in field trips or excursions by certificated
20 employees of the district.

21 (b) (1) No pupil shall be prevented from making the field trip or excursion because of
22 lack of sufficient funds. To this end, the governing board shall coordinate efforts of community
23 service groups to supply funds for pupils in need.

24 (2) No group shall be authorized to take a field trip or excursion authorized by this
25 section if a pupil who is a member of an identifiable group will be excluded from participation in
26 the field trip or excursion because of lack of sufficient funds.

27 (3) No expenses of pupils participating in a field trip or excursion to other state, the
28 District of Columbia, or a foreign country authorized by this section shall be paid with school
29 district funds. Expenses of instructors, chaperones, and other personnel participating in a field
30 trip or excursion authorized by this section may be paid from school district funds, and the
31 school district may pay from school district funds all incidental expenses for the use of school
32 district equipment during a field trip or excursion authorized by this section.

33 (c) (1) The attendance or participation of a pupil in a field trip or excursion authorized by
34 this section shall be considered attendance for the purpose of crediting attendance for
35 apportionments from the State School Fund in the fiscal year. Credited attendance resulting from
36 a field trip or excursion shall be limited to the amount of attendance that would have accrued had
37 the pupils not been engaged in the field trip or excursion.

38 (2) Credited attendance shall not exceed 10 schooldays except in the case of pupils
39 participating in a field trip or excursion in connection with courses of instruction, or school-
40 related educational activities, and which are not social, cultural, athletic, or school band
41 activities.

42 ~~(d) All persons making the field trip or excursion shall be deemed to have waived all~~
43 ~~claims against the district, a charter school, or the State of California for injury, accident, illness,~~
44 ~~or death occurring during or by reason of the field trip or excursion. All adults taking out of state~~
45 ~~field trips or excursions and all parents or guardians of pupils taking out of state field trips or~~
46 ~~excursions shall sign a statement waiving all claims.~~

47 Notwithstanding any other provision of this code, no school district, city or county board
48 of education, county superintendent of schools, or any officer or employee of such district or
49 board shall be responsible or in any way liable for the conduct or safety of any pupil of the
50 public schools at any time when such pupil is not on school property, unless such district, board,
51 or person has undertaken to provide transportation for such pupil to and from the school
52 premises, has undertaken a school-sponsored activity off the premises of such school, has
53 otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable
54 care under the circumstances.

55 In the event of such a specific undertaking, the district, board, or person shall be liable or
56 responsible for the conduct or safety of any pupil only while such pupil is or should be under the
57 immediate and direct supervision of an employee of such district or board.

58 No transportation allowances shall be made by the Superintendent for expenses incurred
59 with respect to field trips or excursions that have an out-of-state destination. A school district
60 that transports pupils, teachers, or other employees of the district in schoolbuses within the state
61 and to destinations within the state, pursuant to the provisions of this section, shall report to the
62 Superintendent on forms prescribed by him or her the total mileage of schoolbuses used in
63 connection with educational excursions. In computing the allowance to a school district for
64 regular transportation there shall be deducted from that allowance an amount equal to the
65 depreciation of schoolbuses used for the transportation in accordance with rules and regulations
66 adopted by the Superintendent.

67
68 ~~§44808: Rights and Duties of Certificated Employees~~

69 ~~Notwithstanding any other provision of this code, no school district, city or county board~~
70 ~~of education, county superintendent of schools, or any officer or employee of such district or~~
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72 ~~public schools at any time when such pupil is not on school property, unless such district, board,~~
73 ~~or person has undertaken to provide transportation for such pupil to and from the school~~
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75 ~~otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable~~
76 ~~care under the circumstances.~~

77 ~~In the event of such a specific undertaking, the district, board, or person shall be liable or~~
78 ~~responsible for the conduct or safety of any pupil only while such pupil is or should be under the~~
79 ~~immediate and direct supervision of an employee of such district or board.~~

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

PROPONENT: The Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Education Code § 35330 (d) provides absolute “[school] field trip immunity.” The section bars parents from filing “any claim” after a student suffers an injury during a “field trip or excursion.” In contrast, § 44808 provides qualified immunity to the schools when a student suffers an injury during an off-campus “school-sponsored event.” As a result of these conflicting Education Code sections, when a student suffers an injury, including death, during an off-campus event, then the courts must choose which section to apply. For example, if the school activity was a “field trip or excursion,” then the court will apply the absolute immunity of § 35330 (d). In contrast, if the activity was a “school-sponsored event,” then the court will apply the qualified immunity of § 44808. See *Castro v. Los Angeles Bd. of Education*, 54 Cal.App.3d 232 (1976) (§ 44808 qualified immunity applied for a student’s death during an ROTC summer camp); *Wolfe v Dublin Unified School Dist.*, 56 Cal.App.4th 126 (1997) (§ 35330 (d) absolute immunity applied); and *Myricks v. Lynwood Unified School Dist.*, 74 Cal.App.4th 231 (1999) (§ 35330 (d) absolute immunity applied). A 2002 case, *Casterson v. Superior Court*, demonstrates how unfair these artificial distinctions can be to the injured students and their families. *Casterson v. Superior Court*, 101 Cal.App.4th 177 (2002). In *Casterson*, a group of fourth grade students was on a field trip in order to visit the Capital in Sacramento. While the group was at a hotel pool, one of the school employees was assigned to supervise the students who were within the pool area. But then the employee decided to leave the pool area. As a result, one of the students “sank to the bottom” of the pool and nearly drowned. Because the court found that the activity was a “field trip or excursion,” then the court extended the absolute immunity for schools in § 35330 (d) to the employee as an individual. Even though the school employee did not provide proper supervision, she was protected by the “field trip immunity” statute. Thus, the court provided no relief to the student.

The Solution: There should not be an artificial distinction between a “field trip or excursion” and a “school-sponsored event.” For example, when schools plan and carry out an off-campus event and the parents sign the required permission slips, then the parents trust that the school will ensure that the students will be properly supervised. As *Casterson* demonstrates, for off-campus activities, schools should only have qualified immunity, and they should not have absolute immunity. In order to clarify the level of immunity, and because the duty to supervise the students should extend to all types of school employees, whether certificated or not, then the language from § 44808 from “rights and duties of certificated employees” should be placed into § 35330 (d) within “excursions and field trips.”

IMPACT STATEMENT

This resolution does not affect any other statute or case law.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found

Reasons:

This resolution amends Education Code section 35330 and deletes section 44808 to eliminate the conflict between the liability provisions of “field trips/excursions” and “school-sponsored activities”. This resolution should be disapproved because there is no inconsistency between the two code sections and the change could discourage schools from offering field trips and excursions.

There is no inconsistency between Education Code sections 35330 and 44808. Section 35330 generally applies when the students are undertaking a voluntary off-campus activity. For example, this section would apply when there is a class field trip to a local museum, but students are not required to participate in the trip and alternative activities are provided on campus for those students who do not want to go on the trip. Section 44808, by contrast, generally applies in situations where the school either voluntarily elects to look after its students while off-campus (for example, providing bus services) or is requiring students to participate in an off-campus activity. Also, such an amendment might have unforeseen liability impacts on injuries sustained by third parties and on students completing a class assignment outside of school.

The Legislature intentionally established different liability rules for injuries occurring during required, school-sponsored, off-premises activities on the one hand, and voluntary field trips or excursions on the other hand. This conclusion is based on the fact that the two sections were enacted at the same time in 1977. Moreover, courts have not found inconsistencies between the two sections, but instead have identified distinctions between the two sections in resolving claims of liability. In [*Castro v. Los Angeles Board of Education*](#) the court held that the voluntary nature of the event absolves the school district of liability. (Castro v. Los Angeles Board of Education (1976) 54 Cal.App.3d 232.)

If the two sections were to be made alike and the liability presumption for school sponsored activities of no immunity was to be extended to field trips and excursions, this would have a significant chilling effect on schools who would likely reduce if not eliminate the opportunities for students to participate in voluntary off-campus activities in order to avoid potential liability. Additionally, there are other potential unresolved and unintended consequences of eliminating the two standards for different activities. For example, the general rule is that schools are not liable for the injuries that students cause to third parties (*Hoff v. Vacaville Unified School District* (1998) 19 Cal.4th 925, 936; *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1207), or

when a student is injured when completing a class assignment outside of school. (See *Stockinger v. Feather River Community College* (2003) 111 Cal.App.4th 1014.) With a presumption in favor of liability, it is unknown how the law in these two situations might be impacted.