

**RESOLUTION 07-11-2015 (as amended and adopted)**

**DIGEST**

Education safety Code: Certified Life Guards Required for Schools

Amends Education Code section 51222 to require that K-12 school districts that offer aquatics physical education shall provide certified lifeguards.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Association recommends that legislation be sponsored to amend California Education Code section 51222 to read as follows:

§51222

1           (a) All pupils, except pupils excused or exempted pursuant to Section 51241, shall be  
2 required to attend upon the courses of physical education for a total period of time of not less  
3 than 400 minutes each 10 schooldays. Any pupil may be excused from physical education  
4 classes during one of grades 10, 11, or 12 for not to exceed 24 clock hours in order to participate  
5 in automobile driver training. Such pupil who is excused from physical education classes to  
6 enroll in driver training shall attend upon a minimum of 7,000 minutes of physical education  
7 instruction during such school year.

8           (b) The governing board of each school district that maintains a high school and that  
9 elects to exempt pupils from required attendance in physical education courses pursuant to  
10 paragraph (1) or (2) or both of subdivision (b) of Section 51241 shall offer those pupils so  
11 exempted a variety of elective physical education courses of not less than 400 minutes each 10  
12 schooldays.

13           (c) For all aquatics physical education classes taking place at a pool on a K-12 school  
14 property, the school district shall provide paid lifeguard supervision. The certified lifeguard  
15 shall be a person in addition to the physical education teacher. To qualify, the lifeguard shall be  
16 certified pursuant to Health and Safety Code Section 116033.

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

**PROPONENT:** The Bar Association of San Francisco

**STATEMENT OF REASONS**

The Problem: School districts have a duty of care to properly supervise students at school and during the school day. California Government Code (GOV) §§ 815.2 (a) & 820 (a). However, California has little or no standard of care for the supervision to be provided during aquatics physical education classes that are held at school swimming pools. This is because Health & Safety Code (HSC) § 116045 only requires lifeguard supervision at a public swimming pool when a “direct fee” is being charged. As a result, several schools have set the “standard” that a physical education teacher, even without special safety training, can supervise an aquatics physical education class during the school day. And as a result, several drownings and near-drownings have occurred during aquatics physical education classes in California. Requiring the

school to provide a paid lifeguard, who can be a student, is ideal for several reasons. First, it allows the student lifeguard to focus on the safety of the students while the physical education teacher focuses on teaching swimming skills. Second, both the lifeguard and the teacher will supervise the students. Third, because the physical education teacher is not required to become a certified lifeguard, then there is no issue with teacher employment contracts – and no issue with the local teachers’ union. Paid certified lifeguards have the duty to rescue and the duty to provide advanced first aid. Paid lifeguards have the duty to rescue because they have received training to rescue victims from the pool without endangering their own lives. Paid lifeguards are also trained to apply: rescue breathing, CPR, and an automated external defibrillator (AED) for sudden cardiac arrest. Lifeguards are also trained to apply a backboard to protect the victim’s head, neck and spine from any further injury. In contrast, untrained physical education teachers have no duty to rescue and they are not able to apply advanced lifesaving techniques. (For the purposes of this resolution, the lifeguard training standards are taken from HSC section 116033.)

The Solution: This resolution will raise the standard of care to require that during every aquatics physical education classes at a pool on a K-12 school campus, the school district shall provide paid lifeguard supervision. As a result, K-12 students will be able to learn to swim and will enjoy the benefits of aquatic exercise in an environment where the risk of drowning deaths, near-drownings, and debilitating head, neck and spine injuries will be greatly reduced. Because a school swimming pool is a more hazardous environment than the rest of the school campus, if a school offers an aquatics physical education class, then the school must provide lifeguard supervision. Further, if the school provides a paid lifeguard, then at least one person supervising the students will have both the duty to rescue and the duty to provide care.

Resolution 08-04-2012 (by this author) was adopted as amended by the CCBA. The 2012 resolution was problematic because it would have required the physical education teacher to become a certified lifeguard. And the teachers’ unions will oppose any requirements to increase teacher safety training.

#### **IMPACT STATEMENT**

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

#### **CURRENT OR PRIOR RELATED LEGISLATION**

Not known.

**AUTHOR AND/OR PERMANENT CONTACT:** Catherine Rucker, 20 Azalea Place, Novato, CA 94949 Cell: 415-246-6647, catherinerucker@me.com

**RESPONSIBLE FLOOR DELEGATE:** Catherine Rucker

#### **RESOLUTION COMMITTEE RECOMMENDATION** **APPROVE IN PRINCIPLE**

#### History:

Similar to resolution 08-04-2012 which was approved as amended.

Reasons:

This resolution amends Education Code section 51222 to require that K-12 school districts that offer aquatics physical education shall provide certified life guards. This resolution should be approved in principle because it ensures that students in school pools are adequately supervised by trained personnel.

All K-12 students are required to attend physical education courses for not less than 400 minutes each 10 school days. (Gov. Code, § 51241.) School districts have a standard of care to properly supervise students at the school during the school day. (Gov. Code §§ 815.2 subd. (a) and 820, subd. (a).) For students taking aquatic physical education classes, there is no statutory standard of care for lifeguard supervision for these classes. Often the only supervision is by the physical education instructor. The physical education instructor is not required to be trained as a lifeguard and may not be able to easily supervise all students while also providing instruction.

This resolution would require that aquatics classes to have an additional person who would be a paid licensed lifeguard. This licensed lifeguard can be a student. Adding this protection allows the student lifeguard to focus on the safety of the students while the physical education instructor can focus on teaching the class.