

RESOLUTION 13-04-2017

DIGEST

Education: Alternative Make-Up Policy for Missed Tests

Amends Education Code section 48205 to give teachers the discretion to have pupils take exams before a planned absence if the exam will be missed due to a planned absence.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Education Code section 48205 to give teachers the discretion to have pupils take exams before a planned absence if the exam will be missed due to a planned absence. This resolution should be approved in principle because it provides teachers with greater flexibility and clarity with regard to when they may require students to take scheduled exams that conflict with students’ planned absences.

Currently, Education Code section 48205 requires teachers to provide students with opportunities to make up tests that they miss due to an absence excused due to one of the ten reasons enumerated in this section, but it fails to clarify whether teachers can require students to take the exam before a planned absence instead of after. Specifically, subdivision (b) of Education Code section 48205 provides only that the pupil with an excused absence shall be allowed to complete “all assignments and tests missed during the absence” Although Education Code section 48205 is silent on the timeframe that students must take the missed exam, this is a determination best left for the individual instructor based upon the nature of the absence, the subject of the examination, and the instructor’s motivation to reduce cheating. This resolution provides that clarification by allowing teachers to issue the exam prior the pupil’s planned absence, which also infers that the instructor may issue the exam after the pupil’s planned absence as well, thereby providing the teacher with full discretion on when to issue the exam to the pupil in question.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Education Code section 48205, to read as follows:

- 1 § 48205
- 2 (a) Notwithstanding Section 48200, a pupil shall be excused from school when the
- 3 absence is:
- 4 (1) Due to his or her illness.
- 5 (2) Due to quarantine under the direction of a county or city health officer.
- 6 (3) For the purpose of having medical, dental, optometrical, or chiropractic services
- 7 rendered.

8 (4) For the purpose of attending the funeral services of a member of his or her immediate
9 family, so long as the absence is not more than one day if the service is conducted in California
10 and not more than three days if the service is conducted outside California.

11 (5) For the purpose of jury duty in the manner provided for by law.

12 (6) Due to the illness or medical appointment during school hours of a child of whom the
13 pupil is the custodial parent.

14 (7) For justifiable personal reasons, including, but not limited to, an appearance in court,
15 attendance at a funeral service, observance of a holiday or ceremony of his or her religion,
16 attendance at religious retreats, attendance at an employment conference, or attendance at an
17 educational conference on the legislative or judicial process offered by a nonprofit organization
18 when the pupil's absence is requested in writing by the parent or guardian and approved by the
19 principal or a designated representative pursuant to uniform standards established by the
20 governing board.

21 (8) For the purpose of serving as a member of a precinct board for an election pursuant to
22 Section 12302 of the Elections Code.

23 (9) For the purpose of spending time with a member of the pupil's immediate family,
24 who is an active duty member of the uniformed services, as defined in Section 49701, and has
25 been called to duty for, is on leave from, or has immediately returned from, deployment to a
26 combat zone or combat support position. Absences granted pursuant to this paragraph shall be
27 granted for a period of time to be determined at the discretion of the superintendent of the school
28 district.

29 (b) A pupil absent from school under this section shall be allowed to complete all
30 assignments and tests missed during the absence that can be reasonably provided and, upon
31 satisfactory completion within a reasonable period of time, shall be given full credit therefor. The
32 teacher of the class from which a pupil is absent shall determine which tests and assignments
33 shall be reasonably equivalent to, but not necessarily identical to, the tests and assignments that
34 the pupil missed during the absence. When the absence is planned and would reasonably be
35 known by the pupil or pupil's custodial parent(s) at least a week in advance, the teacher may
36 require the pupil complete, before the absence, any tests the pupil will miss.

37 (c) For purposes of this section, attendance at religious retreats shall not exceed four
38 hours per semester.

39 (d) Absences pursuant to this section are deemed to be absences in computing average
40 daily attendance and shall not generate state apportionment payments.

41 (e) "Immediate family," as used in this section, has the same meaning as set forth in
42 Section 45194, except that references therein to "employee" shall be deemed to be references to
43 "pupil."

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

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Existing law requires teachers to provide students opportunities to make up tests that they miss during an excused absence. That is good and necessary. However, it fails to make clear whether teachers can require students to take tests before a planned absence instead of after.

Such an option makes sense because when students get to make up a test after, they get additional time to study and may inquire from their friends about what is on it. Teachers may give a different test to negate the second advantage, but cannot negate the first benefit. When students get sick or have some other sudden justification, the additional study time is an unavoidable problem, but when the absence is planned (e.g. travel), teachers should have every right to require students take the test(s) before the absence, not after, and whether they can is legally unclear.

The Solution: This resolution clarifies that teachers may require students to take the test beforehand when they have a planned absence that would be reasonably known to them at least a week in advance. That ensures more flexibility for teachers and clarity in the education code.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

SANTA CLARA COUNTY BAR ASSOCIATION

This resolution seeks to allow a teacher to require students to complete tests prior to the scheduled test date, when the student will be absent on the date scheduled for the test due to a planned or known absence. While the concept would seem to make sense in theory, the actual resolution does not solve the problem, but only creates new ones.

The primary justification for this resolution is to prevent students from getting more time to prepare for the test than their fellow students. However, this ignores the possibility that the scheduled absence may coincide with a time period where a student would be taking multiple tests. By forcing the student to potentially take all of his or her exams “early,” this resolution would result in the student having less time to prepare (e.g., a student who would normally have exams on days 2, 6, and 9 of an absence, would potentially need to study for, and take, all 3 prior to being gone, thereby losing the gap days between exams that they otherwise would have had). Moreover, because the resolution puts the decision on when the exam must be taken solely in the hands of the teacher – “the teacher may require the pupil complete, before the absence, any tests the pupil will miss” – this is not an unlikely or impossible scenario.

As a result, this resolution gives all control to the teacher, ignores what may be best for the student, and ultimately penalizes the student just because there are those rare occasions where an absence may give a particular student or two a few extra days of study time.

Because the proponent has not demonstrated this is a major problem that needs to be addressed with legislation, much less one of such importance that the rule should be imposed state wide (vs. just in the author's local school district), Santa Clara County recommends disapproval.