



Children's Advocacy Institute

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January 13, 2003

Via U.S. Mail and Facsimile (916) 319-0155

Debra Strain, Regulations Adoption Coordinator
California Department of Education
Legal Division
1430 N Street, Room 5319
Sacramento, California 94244-2720

Re: Comment Regarding California Department of Education's Proposed Rulemaking for Administration of Medication to Pupils at School

Dear Ms. Strain:

The Children's Advocacy Institute (CAI), located at the University of San Diego School of Law, seeks to improve the health, safety, and well-being of California's children. CAI advocates in the legislature to make laws, in the courts to interpret laws, before administrative agencies to implement laws, and before the public to educate and build support for laws to improve the status of children statewide and nationwide. CAI educates policymakers about children's needs for economic security, adequate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury.

Although CAI generally agrees there should be a system for administration of medication to pupils at school, CAI has two concerns regarding the language contained in the proposed regulations.

New section 600(h) defines "parent/guardian" as "the parent or guardian who has legal custody of the pupil." CAI is concerned that this definition is too restrictive and will leave a population of children, namely foster children, who often do not have a parent or legal guardian caring for them, without a method for receiving medication at school. The regulations, as proposed, do not address this issue. Existing statutory and regulatory law also do not address this issue.

Health and Safety Code section 1530.6, which applies to Community Care Facilities (group homes providing foster care), provides an example of the lack of clarity in existing law. Section 1530.6 states as follows:

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“...persons licensed pursuant to this chapter to provide residential foster care to a child either placed with them pursuant to order of the juvenile court or voluntarily placed with them by the person or persons having legal custody of such child, **may give the same legal consent for that child as a parent except for the following...(3) medical and dental treatment, except that consent may be given for ordinary medical and dental treatment for such child including, but not limited to, immunizations, physical examinations, and X-rays...**This section does not apply to any situation in which a juvenile court order expressly reserves the right to consent to those activities to the court.”

Section 89475, Title 22 of the California Code of Regulations, which interprets Health and Safety Code section 1530.6, allows a caretaker at a group home to administer medications, but only at the group home facility.

It is unclear whether caretakers in a group home facility would be able to provide consent to the school to administer medications to foster children under the proposed regulations. That determination may depend on what type of medications are being administered and whether those would qualify as “ordinary medical treatment” pursuant to section 1530.6, above. A school district’s individual determination of this issue would be time consuming and lead to inconsistent outcomes. One of the CDE’s stated purposes in promulgating these regulations was to provide a consistent process for school districts to follow.

There is no stated intent on behalf of the CDE or the legislature to exclude any population of children from the applicability of the proposed regulations. Thus, CAI suggests that the definition of “parent/guardian” under section 600 be expanded to mirror Education Code section 56028, which applies to special education programs and contains the following definition:

"Parent" includes any of the following:

- (1) a person having legal custody of a child;
- (2) any adult pupil for whom no guardian or conservator has been appointed;
- (3) a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives). "Parent" also includes a parent surrogate;
- (4) a foster parent if the natural parents' authority to make educational decisions on the child's behalf has been specifically limited by court order in accordance with subsection (b) of section 300.20 of Title 34 of the Code of Federal Regulations.

"Parent" does not include the state or any political subdivision of government.

Inclusion of this expanded definition would ensure consistency with existing statutory law.

CAI's second concern is that a child's right to privacy to his/her medical information, as guaranteed by Article 1, section 1 of the California Constitution, may be compromised by the application of section 602(a)(2), which requires that the written statement from the child's health care provider include the name of the medication and the “reason for administration.” There may be some situations in which school officials need to know the medical diagnosis or condition of the child in order to properly administer medications and monitor the child. For instance, if administration of medication becomes necessary only after certain symptoms present (see section 602(a)(7), Article 4.1, Title 5 of the CCR), or if side effects influence the child's performance or behavior at school (see section 602(a)(6), Article 4.1, Title 5 of the CCR). It is unclear how requiring this information in every case will benefit children.

As the regulations are currently drafted, there is little discussion of the school district's need for this information, with the exception of the wording provided in CDE's statement of reasons that "the reason for administration provides information on expected outcomes." It would seem the effectiveness of medication is something to be determined by a medical professional, not the school's administrator, with the exception of those circumstances where symptoms or side effects are a factor.

More importantly, CAI has been unable to identify any statutory authority that permits the CDE to require disclosure of this information. Education Code sections 49423, 49423.6 and 49480 state that information surrounding the medication itself, such as the name of the medication, dosage, time of administration, quantity, and contact information for the health care provider must be contained in the provider's written statement. There is no mention of listing the medical condition or diagnosis, or the "reason for administration." The identified language raises issues regarding the constitutional rights of children, and should be, at a minimum, required on a case-by-case basis with parental consent.

We appreciate the opportunity to submit our concerns and look forward to a response.

Sincerely,

/s/

DEBRA L. BACK
Attorney for CAI