

# CALIFORNIA STATE BOARD OF EDUCATION

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March 5, 2003

To: Members, State Board of Education

A handwritten signature in cursive script that reads "Greg Geeting".

From: Greg Geeting, Assistant Executive Director

Subject: Item 25, March 2003 Agenda  
Regulations on Administration of Medication to Pupils at Public School

At the February 2003 meeting, the State Board held the public hearing on the regulations and, following consideration of the comments received, decided to send out an amended set of regulations for 15-day public review. The amendments reflected the recommendations of State Superintendent Jack O'Connell and the staff of the California Department of Education. In the course of the discussion, two questions arose on which some additional comment from staff appeared to be appropriate.

- Liability. *If adopted, would the proposed regulations increase liability for the state or for any local education agency that provides assistance to pupils who are required to take medication during the regular school day?*

The general answer to this question is no, the regulations would not materially affect liability, given that the regulations narrowly and reasonably implement statutory provisions and do not establish basic policy. It is important to bear in mind that, in all cases, liability is a matter that is determined in relation to specific facts.

If these regulations proposed to make the basic policy decision to allow school employees (who are not professionally licensed) to assist with medication administration, then the regulations might be said to have a material impact on liability. However, they do not establish that policy. The policy is established in Education Code Section 49423, a section that specifically authorizes "designated school personnel" (other than school nurses) to assist in the administration of medication to pupils, subject to certain conditions.

The State Board was specifically tasked by the Legislature and Governor (through enactment of SB 1549 (Chapter 281, Statutes of 2000) to adopt regulations implementing the policy established in Education Code Section 49423. Toward that end, the proposed regulations take the very reasonable and responsible approach of stating that (unless professionally licensed) an individual needs to receive appropriate and specific training for each pupil being assisted in order to become "designated school personnel." The regulations do not require generic training for all designated school personnel (which would probably be a mandate), only the specific training necessary to provide assistance to

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each affected pupil consistent with the direction of the pupil's authorized health care provider and the consent of the parent/guardian.

Beyond training, the proposed regulations establish other reasonable and appropriate specifications for such matters as:

- The content of an authorized health care provider's written statement;
- The content of the parent/guardian consent;
- The delivery and handling of medication; and
- Special circumstances relating to a pupil's self-administration of medication.

Here, too, the regulations are designed to relate to the specific needs of individual pupils. No obligation to provide assistance to pupils is established by the regulations beyond that which may be established by the Education Code Section 49423. Rather, the regulations elaborate on the statute in reasonable, appropriate, and narrowly crafted ways.

- Languages other than English. *How will parents/guardians who speak languages other than English be advised about the provisions of Education Code Section 49423 and be able to access assistance for pupils who are required to take medication during the regular school day?*

Education Code Section 48980 establishes a requirement that parents/guardians receive written notification of certain rights and responsibilities at the beginning of each school year. The provisions of Education Code Section 49423 (pertaining to assistance with medication administration) are among those that must be included in the annual notification. Education Code Section 48982 requires parents/guardians to return a signed acknowledgement of the annual notification. Finally, Education Code Section 48985 requires that, in addition to English, the annual notification (and acknowledgement form) be produced in every language that is the primary language of 15 percent or more of the district's pupils.

Beyond the annual notification, however, it is essential that a parent/guardian (whose primary language is other than English) be given necessary help at the time the pupil needs assistance with medication administration, principally in regard to executing the parent/guardian consent. The same is true for the parent/guardian who has a disability that makes it difficult to execute the parent/guardian consent. In that regard, the regulations include the following very reasonable provision:

“When necessary, reasonable accommodations are to be provided to a parent/guardian who has insufficient English language proficiency to produce a written statement or who has a disability that makes it difficult to produce a written statement.”

Cc: CDE Executive Staff