



SEPTEMBER 2003 AGENDA

SUBJECT: Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day – Adopt Proposed Title 5 Regulations.	<input checked="" type="checkbox"/> ACTION
	<input type="checkbox"/> INFORMATION
	<input type="checkbox"/> PUBLIC HEARING

RECOMMENDATION:

Adopt the proposed permanent regulations regarding Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day. Direct that CDE staff complete the rulemaking package, in accordance with the Administrative Procedure Act, including, but not limited to, responding to public comments and making a clarifying notation in the Final Statement of Reasons regarding the actual contribution of the “Medications Committee” (as described in the Informative Digest) in the development of these regulations.

Summary of Previous State Board of Education Discussion and Action.

In November 2002, the State Board initiated a rulemaking process on the topic of medication administration to pupils in the public schools. A public hearing on the proposed regulations was held in February 2003. Subsequently, draft amendments were developed, but were so substantial in nature that the State Board was advised in April 2003 to terminate that rulemaking effort and begin again.

In May 2003, this rulemaking process was initiated. The proposed regulations were circulated for public comments in accordance with the Administrative Procedure Act for at least 45 days. A public hearing (conducted by staff at the direction of the State Board) was held on August 7, 2003. An audiotape of the public hearing was made available to the members of the State Board.

CDE staff reviewed in detail the public comments received and recommend that the State Board adopt the regulations as proposed (i.e., without amendment).

Summary of Key Issue(s).

Education Code Section 49423.6 requires the CDE to develop and the State Board to adopt regulations regarding the administration of medication to pupils in the public school (as provided for in Education Code Section 49423). These proposed regulations provide guidance on who administers medications and under what conditions medications are administered. As the underlying statute is permissive, these regulations are similarly so.

The Informative Digest as presented in the rulemaking package provides extensive detail regarding the work of the “Medications Committee,” an advisory group created consistent with the specifications of Education Code Section 49423.6. The existence and effort of the advisory group merits mention in this rulemaking package, but the group’s contribution to this set of regulations is not appropriately described in the Informative Digest. A correction needs to be included in the Final Statement of Reasons.

Fiscal Analysis (as appropriate).

These regulations by their own terms do not establish a mandate and therefore have no cost implications for the state.

Background Information attached to this Agenda Item.

Attachment 1: [Notice of Proposed Rulemaking, dated June 20, 2003 \(4 pages\)](#)

Attachment 2: [Text of Proposed Regulations \(6 pages\)](#)

Attachment 3: [Initial Statement of Reasons \(5 pages\)](#)

Attachment 4: [Summary of Written Comments Received and *Draft Responses to Written Comments* \(8 pages\)](#)

Attachment 5: [Report on Public Hearing Conducted by Staff \(2 pages\)](#)

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; P.O. Box 944272
Sacramento, CA 95814-5901



TITLE 5. EDUCATION

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day

[Notice published June 20, 2003]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

The State Board will hold a public hearing beginning at **9:00 a.m. on Thursday, August 7, 2003**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on Tuesday, August 5, 2003**. The Board will consider only written comments received by the Regulations Adoption Coordinator (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814
Telephone : (916) 319-0641
E-mail: medregs@cde.ca.gov

AUTHORITY AND REFERENCE

Authority: Sections 33031 and 49423.6, Education Code.

Reference: Sections 33308.5, 44877, 49414, 49423 and Part 30 (commencing with Section 56000), Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Department of Education (CDE) has received and responded to concerns and issues from school administrators, parents and guardians, physicians, school nurses, and community agencies regarding medication administration in schools. Education Code section 49423 provides statutory authority for provision of medication administration and assistance with medication administration in California schools. The language of Education Code section 49423 has been interpreted as permissive and instances of requests to administer medication (or to render assistance with medication administration) being denied have been reported. Further, the Education Code currently does not provide statutes for implementation.

In April 1995, a representative group of parents and community agencies presented their concerns regarding the health and safety of students to the Commission on Special Education (Commission) due to the denial of medication administration and health care services in the schools as prescribed by physicians, lack of training for school staff designated to provide these services, and lack of supervision of school staff providing these services. In response to these concerns, the Commission requested that CDE issue an advisory to local education agencies regarding medication administration in school. CDE issued an advisory in September 1997.

From March 1998 to August 2000, CDE continued to receive many calls from school districts, parents and guardians, physicians, and school nurses with concerns and questions regarding medication administration in school. CDE developed a Q&A page on its web site to address these questions (<http://www.cde.ca.gov/spbranch/sed/healthup/meds1.htm>).

Senate Bill 1549 was signed by the Governor on August 31, 2000. This bill added Section 49423.6 to the Education Code and required regulations be developed, regarding the administration of medication in the public schools. The bill required that the regulations be developed in consultation with parents, representatives of the medical and nursing professions, and others jointly designated by the Superintendent of Public Instruction, the Advisory Commission on Special Education, and the Department of Health Services.

The Medications Committee (Committee), as the consultative group came to be known, was convened to begin developing regulations. The Committee used current standards of health care practice, and input from parents and guardians, physicians, school nurses, school administration staff, and community agencies to develop these regulations.

The Committee also considered information received from phone calls received by CDE from school districts seeking guidance on various problems and constraints related to medication administration services. Rural school districts, state border school districts, districts with few school nurses, and districts without school nurses face unique challenges in administering medications. In addition some districts raised issues related to the challenge of administering medications using different methods and with new technologies never before encountered in the school environment. The need for direction in the provision of over-the-counter medication administration in schools was also brought to the attention of the Committee, and has surfaced through proposed legislation. There is no specific statutory authority, however, upon which to base regulations for the administration of non-prescribed over-the-counter medications, and therefore these proposed regulations do not cover non-prescribed over-the-counter medications.

These various issues that needed addressing required the Committee to conduct extensive research and review more standards of healthcare practice for accommodating these needs in schools, and resulted in a request for

an extension of time for completion of regulations for consideration by the State Board of Education. The regulations were further delayed in order to address fiscal issues, and specific issues raised to the State Board.

These proposed regulations for the Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day provides clarification for implementing

Education Code section 49423. Specifically, these regulations help clarify who may administer medications to pupils requiring medication (or assist pupils with medication administration) during the regular school day, under what conditions such administration of medications (or assistance with administration of medications) may occur, and related issues, such as delivery, administration documentation, and disposal of medications.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Affect on small businesses: There will have no affect on small businesses because they only provide clarity for schools on a permissive statute related to medication administration and assistance with medication administration during the regular school day.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Linda Davis-Aldritt, Consultant
California Department of Education
School Health Connections
1430 N Street, Suite 6408
Sacramento, CA 95814
E-mail: medregs@cde.ca.gov
Telephone: (916) 319-0284

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Natalie Vice, at (916) 319-0642.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/regulations>.

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Title 5. EDUCATION
Division 1. State Department of Education
Chapter 2. Pupils
Subchapter 3. Health and Safety of Pupils

Add Article 4.1. to read:

Article 4.1. Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day.

§ 600. Authorization.

Pursuant to Section 49423 and subdivision (b) of Section 49423.6 of the Education Code, any pupil who is required to take, during the regular school day, prescribed medication may be assisted by a school nurse or other designated school personnel if both of the following conditions are met:

(a) The pupil’s authorized health care provider executes a written statement specifying, at a minimum, the medication the pupil is to take, the dosage, and the period of time during which the medication is to be taken, as well as otherwise detailing (as may be necessary) the method, amount, and time schedule by which the medication is to be taken.

(b) The pupil’s parent or legal guardian provides a written statement initiating a request to have the medication administered to the pupil or to have the pupil otherwise assisted in the administration of the medication, in accordance with the authorized health care provider’s written statement.

NOTE: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

§ 601. Definitions.

As used in Section 49423 and subdivision (b) of Section 49423.6 of the Education Code and in this article:

(a) “Regular school day” may include not only the time the pupil receives instruction, but also the time during which the pupil otherwise participates in activities under the auspices of the local education agency, such as field trips, extracurricular and cocurricular activities, before- or after-school programs, and camps or other activities that typically involve at least one overnight stay away from home.

(b) “Medication” may include not only a substance dispensed in the United States by prescription, but also a substance that does not require a prescription, such as over-the-counter remedies, nutritional supplements, and herbal remedies.

(c) “School nurse” means an individual employed by the local education agency who is a currently licensed registered nurse and is credentialed pursuant to Education Code section 44877.

(d) “Other designated school personnel” may include any individual employed by the local education agency who:

1 (1) Has consented to administer the medication to the pupil or otherwise assist the pupil in the
2 administration of medication; and

3 (2) May legally administer the medication to the pupil or otherwise assist the pupil in the
4 administration of the medication.

5 (e) “Authorized health care provider” means an individual who is licensed by the State of California
6 to prescribe medication.

7 (f) “Parent or legal guardian” means the individual recognized by the local education agency as
8 having authority to make medical decisions for the pupil.

9 (g) “Medication record” may include:

10 (1) The authorized health care provider’s written statement;

11 (2) The written statement of the parent or legal guardian;

12 (3) The medication log; and

13 (4) Any other written documentation related to the administration of the medication to the pupil or
14 otherwise assisting the pupil in the administration of the medication.

15 (h) “Medication log” may consist of a form developed by the local education agency for the
16 documentation of the administration of the medication to the pupil or otherwise assisting the pupil in the
17 administration of the medication. The medication log may include the following:

18 (1) Pupil’s name;

19 (2) Name of medication the pupil is required to take;

20 (3) Dose of medication;

21 (4) Method by which the pupil is required to take the medication;

22 (5) Time the medication is to be taken during the regular school day;

23 (6) Date(s) on which the pupil is required to take the medication;

24 (7) Authorized health care provider’s name and contact information; and

25 (8) A space for daily recording of medication administration to the pupil or otherwise assisting the
26 pupil in administration of the medication, such as date, time, amount, and signature of the individual
27 administering the medication or otherwise assisting in administration of the medication.

28 NOTE: Authority cited: Section 49423.6, Education Code. Reference: Sections 44877 and 49423,
29 Education Code.

30 **§ 602. Written Statement of Authorized Health Care Provider.**

31 (a) A local education agency may establish specifications for the authorized health care provider’s
32 written statement in order to ensure that:

33 (1) The pupil is clearly identified;

34 (2) The medication is clearly identified;

35 (3) The dosage is clearly specified;

1 (4) The period of time during which the medication is to be taken is clearly specified.

2 (5) Other information is obtained that is relevant to administering the medication to the pupil or
3 otherwise assisting the pupil in administration of the medication.

4 (b) A pupil's parent or legal guardian may deliver the authorized health care provider's written
5 statement to an authorized representative of the local education agency, such as the schoolsite
6 administrator or his or her designee.

7 (c) A local education agency may require that an amended or new written statement be provided
8 annually and whenever there is a change in the pupil's authorized health care provider, or a change in the
9 medication, dosage, method by which the medication is required to be taken, or date(s) or time(s) the
10 medication is required to be taken.

11 NOTE: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

12 **§ 603. Written Statement of the Parent or Legal Guardian.**

13 (a) A local education agency may establish specifications for the written statement of the pupil's
14 parent or legal guardian in order to ensure that:

15 (1) The pupil is clearly identified;

16 (2) Permission is obtained for an authorized representative of the local education agency to
17 communicate directly with the pupil's authorized health care provider, as may be necessary, regarding the
18 authorized health care provider's written statement.

19 (3) The parent or legal guardian understands what employees of the local education agency will do to
20 administer the medication to the pupil or otherwise assist the pupil in the administration of the
21 medication.

22 (4) The parent or legal guardian understands his or her responsibilities to enable employees of the
23 local education agency to administer the medication to the pupil or otherwise assist the pupil in
24 administration of the medication, e.g., to ensure that a current authorized health care provider's written
25 statement has been delivered to an authorized representative of the local education agency, or to ensure
26 that the medication is delivered to the schoolsite in a proper container by an individual legally authorized
27 to be in possession of the medication.

28 (5) The parent or legal guardian understands how he or she may terminate consent for administration
29 of the medication to the pupil or otherwise assisting the pupil in the administration of the medication.

30 (b) A local education agency may provide reasonable accommodations to a parent or legal guardian
31 who has insufficient English language proficiency to produce a written statement without assistance or
32 who has a disability that makes it difficult to produce a written statement.

33 NOTE: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

34 **§ 604. Administration of Medication to Pupils or Otherwise Assisting Pupils in the Administration**
35 **of Medication.**

1 (a) A school nurse may administer medication to a pupil or otherwise assist a pupil in the
2 administration of medication as allowed by law and in keeping with applicable standards of professional
3 practice.

4 (b) Other designated school personnel may administer medication to pupils or otherwise assist pupils
5 in the administration of medication as allowed by law and, if they are licensed health care professionals,
6 in keeping with applicable standards of professional practice for their license.

7 (c) The pupil's parent or legal guardian may administer medication to the pupil or otherwise assist the
8 pupil in the administration of medication as allowed by law.

9 (d) An individual designated to do so by the parent or legal guardian may administer medication to
10 the pupil or otherwise assist the pupil in the administration of medication as allowed by law. A local
11 education agency may establish rules governing the designation of an individual by a parent or legal
12 guardian in order to ensure that:

13 (1) The individual is clearly identified;

14 (2) The individual is willing to accept the designation;

15 (3) The individual being designated is permitted to be present on the school site;

16 (4) Any limitations on the individual's authority in his or her capacity as designee are clearly
17 established; and

18 (5) The individual's service as a designee would not be inconsistent or in conflict with his or her
19 employment responsibilities, if the individual being designated is employed by the local education
20 agency.

21 NOTE: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

22 **§605. Self-Administration of Medication.**

23 With the approval of the pupil's authorized health care provider and the approval of the pupil's parent
24 or legal guardian, a local education agency may allow a pupil to carry medication and to self-administer
25 the medication. A local education agency may establish rules governing self-administration in order to
26 protect the health and safety both of the pupil and of the whole student body and staff at the schoolsite.
27 Through such rules, a local education agency may describe circumstances under which self-
28 administration may be prohibited.

29 NOTE: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

30 **§ 606. Delivery and Storage of Medication.**

31 A local education agency may establish policies governing the delivery of medication to the
32 schoolsites (other than medication a pupil is allowed to carry for purposes of self-administration), as well
33 as the storage of medication in a manner that is secure and maintains the medication's effectiveness.

34 NOTE: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

35 **§ 607. Documentation.**

1 A local education agency may establish policies regarding documentation of the administration of
2 medication to pupils or otherwise assisting pupils in the administration of medication to ensure that:

3 (a) Pupil confidentiality is appropriately maintained;

4 (b) A medication record is maintained for each pupil to whom medication is administered or other
5 assistance is provided in the administration of medication; and

6 (c) An appropriate record is kept of pupils who are allowed to carry and self-administer medication.

7 NOTE: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

8 **§ 608. Deviation from Authorized Health Care Provider's Written Statement.**

9 A local education agency may establish policies regarding any material or significant deviation from
10 the authorized health care provider's written statement in order to ensure that, as quickly as possible upon
11 discovery, appropriate notification of the deviation is made:

12 (a) In accordance with applicable standards of professional practice, if the discovery is made by a
13 licensed health care professional; or

14 (b) To the schoolsite administrator, the pupil's parent or legal guardian, an employee of the local
15 education agency who is a licensed health care professional (if any), and the pupil's authorized health
16 care provider, if the discovery is made by an individual who is not a licensed health care professional.

17 NOTE: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

18 **§ 609. Unused, Discontinued and Outdated Medication.**

19 A local education agency may establish policies regarding unused, discontinued, and outdated
20 medication in order to ensure that:

21 (a) Such medication is returned to the pupil's parent or legal guardian where possible;

22 (b) Such medication that cannot be returned to the pupil's parent or legal guardian is disposed of by
23 the end of the school year in accordance with applicable law.

24 NOTE: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

25 **§ 610. Applicability of this Article.**

26 Nothing in this article may be interpreted as creating a state-mandated local program or as affecting in
27 any way:

28 (a) The statutes, regulations, or standards of practice governing any health care professional licensed
29 by the State of California in the carrying out of activities authorized by the license;

30 (b) The statutes or regulations governing the administration of medication to pupils or otherwise
31 assisting pupils in the administration of medication by individuals who are not licensed health care
32 professionals, other than Section 49423 and subdivision (b) of Section 49423.6 of the Education Code;

33 (c) The use of emergency epinephrine auto-injectors pursuant to Section 49414 of the Education
34 Code;

1 (d) The content or implementation of a pupil’s individualized education program prepared in
2 accordance with applicable provisions of federal and state law, or a pupil’s Section 504 Accommodation
3 Plan prepared in accordance with applicable provisions of the federal Rehabilitation Act of 1973.

4 NOTE: Authority cited: Section 49423.6, Education Code. Reference: Sections 49414, 49423, and Part
5 30 (commencing with 56000), Education Code.

6 **§ 611. Issuance and Periodic Updating of Advisory.**

7 The California Department of Education, with the approval of the State Board of Education, may
8 issue and periodically update an advisory providing non-binding guidance on the administration of
9 medication to pupils and otherwise assisting pupils in the administration of medication.

10 NOTE: Authority cited: 49423.6, Education Code. Reference: 33308.5, Education Code.

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INITIAL STATEMENT OF REASONS

SECTIONS 600 – 611.

SPECIFIC PURPOSE OF THE REGULATION

The proposed regulations will provide clarification for implementing Education Code section 49423. Specifically, the regulations clarify who may administer medications to pupils requiring medication during the regular school day, under what conditions such administration of medications may occur, and the requirements for the delivery, administration documentation, and disposal of medications.

NECESSITY/RATIONALE

Education Code section 49423.6 specifically requires the State Board of Education to adopt regulations regarding the administration of medication in the public schools pursuant to Education Code section 49423. Currently confusion exists regarding the of application of Education Code section 49423, and local education agencies, parents/guardians, and pupils are seeking and would benefit from clarification of the requirements related to the administration of medications to pupils during the regular school day.

Section 600. Authorization.

Education Code section 49423.6, Subdivisions (a), (b), and (c) states that medication must be prescribed by a physician. Current law allows medication to be prescribed by authorized health care providers (Business and Professions Code, sections 2746.51, 2836.1, 4040, 4174).

Note: Authority cited: Section 49423.6 Education Code. Reference: Section 49423, Education Code.

Section 601. Definitions.

Subsection (e) – Education Code section 49423.6, subdivision (b) states that medication must be prescribed by a physician or other authorized medical personnel. California law authorizes medication to be prescribed by authorized health care providers including: physicians, osteopaths, dentists, podiatrists, and optometrists who have an active, current, California license; nurse practitioners and nurse midwives who have been assigned furnishing numbers, possess an active, current, California license, and function under standardized procedures as defined by Business and Professions Code section 2725; and physician assistants who have been assigned furnishing numbers, possess an active, current, California license, and function under a physician's supervision and written protocols.

Note: Authority cited: Section 49423.6 Education Code. Reference: Section 49423, Education Code.

Section 602. Written Statement of Authorized Health Care Provider.

Subsection (a)(1) - The clear identification of the pupil identifies for whom the medication is authorized.

Subsection (a)(2) - The clear identification of the medication identifies what needs to be administered. The name of the medication is needed for identification and the reason for administration provides information for expected outcomes.

Subsection (a)(3) - The amount or dose of medication prescribed is required for correct administration of the authorized medication.

Subsection (a)(4) – The period of time during which the medication is to be taken is required for the correct administration of the authorized medication and is required by Section 49423.

Subsection (a)(5) – Other information may be necessary to provide information for expected outcomes, possible adverse reactions to the medication, the need for medical intervention, and to ensure the health and safety of the pupil.

Subsection (b) - Authorized health care providers are prohibited from releasing medical information without written consent. A school district cannot communicate with a pupil's authorized health care provider without written consent from the parent/guardian. Therefore, it is necessary for the parent to be responsible for obtaining and providing the school with the authorized health care provider's written statement regarding administration of medication at school. Medication administration must be provided in compliance with Section 49423; therefore, an authorized health care provider's written statement must be provided before medication can be administered in school.

Subsection (c) - The standard of practice is to renew medication authorizations on a periodic basis and whenever a change in the medication is required. The established time frame of annually and if there are changes in the order, are consistent with this standard. This also ensures safety for correct medications, dosages, time of administration, and method of administration.

Note: Authority cited: Section 40423.6, Education Code. Reference: Section 49423, Education Code, and Sections 2746.51, 2836.1, 4040, and 4174, Business and Professions Code.

Section 603. Written Statement of the Parent or Legal Guardian.

Subsection (a)(1) - A written statement of consent from the parent/guardian for medication administration in school is in compliance with Section 49423. All services provided to pupils in school must have parent/guardian consent.

Subsection (a)(2) - In order to ensure that the medication is administered in a safe and effective manner, it may be necessary to communicate with the authorized health care provider/pharmacist regarding the written statement.

Subsection (a)(3) – Parents have the right to know what employees of the local education agency will do to assist their children with medication administration.

Subsection (a)(4) – Parents need to know what they must do to enable employees of the local education agency to administer medication or otherwise assist their children in the administration of medication.

Subsection (a)(5) - Just as the parents and guardians have the right to consent to administration of medication to their children in school, they also have the right to rescind the request at any time.

Subsection (b) – Some parents may need assistance in the development of the written statement consenting to the administration of medication or assistance in the administration of medication to their children.

Note: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

Section 604. Administration of Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication.

Subsection (a) - The school nurse, in keeping with applicable standards of professional practice, may administer medication or assist pupils in the administration of medication in school pursuant to Education Code section 49423.

Subsection (b) – Other designated school personnel, including other licensed health care professionals, in keeping with applicable standards of professional practice, may administer medication or assist pupils in the administration of medication to the extent they are allowed by law.

Subsection (c) – Parents and legal guardians have legal authority for their children and may administer medications to their children during the regular school day.

Subsection (d) – Parents and legal guardians are responsible for the care provided to their children; therefore, they or one of their designees may administer medications to their children during the regular school day as allowed by law. The local education agency has the right to establish rules governing who may be designated by the parent or legal guardian to ensure the health and safety of all pupils.

Subsection (d)(3) – The parents or legal guardians or anyone they designate cannot be a person who for legal reasons cannot come on a school campus or accompany pupils on a field trip: for example, an individual found guilty of being a sex offender.

Note: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

Section 605. Self-Administration of Medication.

Many students with chronic illnesses have the need to carry life-sustaining medications on their person at all times. A collaborative and shared responsibility for authorization for this accommodation in school provides parameters for safety in schools. The local education agency may establish rules governing self-administration. Such rules may include ways to address situations arising from the abuse of this privilege.

Note: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

Section 606. Delivery and Storage of Medication.

This section allows local education agencies to consider the relevant issues and ensure that medications are delivered to school and stored in a manner that maintains the medication's effectiveness and is safe for all school staff and pupils. Such policies would not necessarily include medication that is to be self-administered.

Note: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

Section 607. Documentation.

Documentation of medication administration validates provision.

Subsections (a)(b) - An individual pupil log for medication administration documentation ensures privacy and provides accountability in the appropriate administration of medications.

Subsection (c) – This provides for the health and safety of pupils who self-administer medication.

Note: Authority cited: Section 49423.6, Education Code, Reference: Section 49423, Education Code.

Section 608. Deviation from Authorized Health Care Provider's Written Statement.

Failure to administer medication according to the written statement from the authorized licensed health care provider can be detrimental to a pupil's health. Administration of the wrong medication to a pupil can be life threatening. Notifying the site administrator, applicable local education agency employed licensed health care professional (if any) and the authorized health care provider as indicated insures prompt response. Notification of the parent of this information is providing the parent their right.

Note: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

Section 609. Unused, Discontinued and Outdated Medication.

This section allows local education agencies to consider the issues and ensure that medications are disposed of in a manner that is safe for all school personnel and pupils.

Subsections (a) - Medications are paid for and belong to the parent/guardian of the student. The medication, at the end of the school year, or medication that has been discontinued, should be returned to the parent or legal guardian.

Subsection (b) - Provides a system for safe and appropriate disposal of medications if such medication cannot be returned to the pupil's parent or legal guardian at the end of the school year.

Note: Authority cited: Section 49423.6, Education Code. Reference: Section 49423, Education Code.

Section 610. Applicability of this Article.

This section clarifies that it does not create a state-mandated local program nor does it affect in any way the statutes, regulations or standards of practice governing any California licensed health care professional and the statutes and regulations governing unlicensed individuals in regard to medication administration or the provision of assistance to pupils with medication administration. This section further clarifies that it does not affect statute in regard to the use of epinephrine auto-injectors nor does it affect the content or implementation of properly prepared individualized education program plans or Section 504 Accommodation Plans.

NOTE: Authority cited: Section 49423.6, Education Code. Reference: Sections 49414, 49423, and Part 30 (commencing with 56000), Education Code.

Section 611. Issuance and Periodic Updating of Advisory.

This section allows the California Department of Education, with the approval of the State Board of Education, to develop, issue and update non-binding advisory information on the medication administration.

NOTE: Authority cited: Section 33031, Education Code Reference: Section 33308.5, Education Code.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The State Board did not rely upon any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives were presented to or considered by the State Board.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The State Board has not identified any alternatives that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

The proposed regulations would not have a significant adverse economic impact on any business.

Pupil Medication Regulations¹
Summary of Written Comments Received and
*Draft Responses to Written Comments*²

As of August 5, 2003, 5:00 P.M., fifteen written comments regarding the proposed pupil medication regulations were received by the California Department of Education in accordance with the Administrative Procedure Act. Among the comments received:

- Three made general statements to the effect that some of the language in the proposed regulations is unclear.

Response: The language of the proposed regulations provides as much clarity as possible within the framework of the underlying statute.

- Two expressed concerns with Section 611 of the proposed regulations and recommended that this section be deleted.

Response: Education Code Section 49423.6 requires the State Board of Education to adopt regulations "regarding the administration of medication in the public schools pursuant to [Education Code] Section 49423." The State Board believes that an advisory (as provided for in Section 611) would be necessary or beneficial to carrying out its responsibilities under Education Code Section 49423.6. Therefore, it is perfectly reasonable to include this provision in the regulations. Moreover, the State Board retains approval authority over the advisory to ensure (among other things) that the advisory is consistent with applicable statutes and regulations and promotes clarity in relation to the regulations.

- Two suggested replacing "may" with "shall" in several sections.

Response: The underlying statute to which the regulations are primarily addressed (Education Code Section 49423) is discretionary (permissive) with respect to school districts. Therefore, there is no authority to establish regulations that mandate responsibilities on school districts.

The other substantive comments are summarized below, by section number.

600. Authorization.

The writer wants to know who is included in the definition of "authorized health care provider," and wonders if the regulations supersede a physician's orders.

Response: The definition of "authorized health care provider" (included in Section 601) clearly states that such an individual is one licensed by the State of California to prescribe medication. Licensing to prescribe medication is authority outside the purview of the State Board of

¹ Formally titled "Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day."

² Subject to modification prior to the submission of the Final Statement of Reasons to the Office of Administrative Law.

Education. Thus, this definition is the only practical way the State Board of Education has of describing such an individual.

The proposed regulations cannot (and do not) supersede a physician's orders. The statute itself makes clear that medication administration (or the providing of assistance with medication administration) is to be done within the context of a written statement by a physician or other authorized medical personnel.

601. Definitions.

The writer wants to know what “may legally administer the medication . . .” means.

Response: The referenced language is clear in stating that in order to administer medication (or assist with medication administration), an individual must be legally capable of so doing. The State Board of Education has no authority to determine the legality of a given individual administering medication (or rendering assistance in the administration of medication). Moreover, the State Board understands that statutes (other than the Education Code) and state agencies (other than itself) do have authority in regard to determining the legality of an individual administering medication (or assisting with the medication administration). The referenced language clearly reflects those facts. The State Board is unable through regulation to empower an individual in regard to medication administration (or assisting with medication administration) in ways that are contrary to statute or to the authority of other state agencies. Furthermore, in a practical sense, the State Board cannot list in these regulations all of those categories of individuals who may administer medication (or assist with the administration of medication). Even if accurate at the time of approval, such a list would become inaccurate or incomplete in short order.

The writer wants to know who determines the definition of “regular school day” and how LEAs will cover all of the activities included in the definition as proposed.

Response: The statute itself uses the phrase “regular school day.” LEAs may view the phrase differently. The proposed regulations merely make clear that the “regular school day” may include activities that are outside of traditional instructional time (e.g., before- or after-school programs). An LEA choosing to provide medication administration (or assistance with medication administration) to a given pupil outside of traditional instructional time would “cover” this time in the same way that the LEA would “cover” traditional instructional time, i.e., with an individual who is a licensed health care professional or with a volunteer who is legally authorized to administer medication (or assist with medication administration).

The writer suggests replacing “may” with “shall” in the description of what information belongs in the medication log.

Response: The suggested change would create a mandate upon those LEAs choosing to maintain a medication log. In so doing, the suggestion would create a higher level of service for which no source of reimbursement funding is available.

602. Written Statement of Authorized Health Care Provider.

The writer suggests that the method for medication administration be added to the health care provider's written statement.

Response: This addition is not necessary. If the medication is prescribed, then the label affixed by the pharmacist will state the method of administration. If the medication is an over-the-counter remedy, then the container will indicate the method of administration. If, in any given case, there is something unusual or not plainly evident about the method of administration, then the authorized health care provider will include that as “other information” in the written statement.

The writer suggests that the regulations be amended to state that prior to the first administration of medication or when there has been a medication change order, the physician’s written statement may be reviewed by a Duly Qualified Supervisor of Health, who will determine who is the most appropriate provider of the medication and what level of supervision is required.

Response: Nothing in the proposed regulations prohibits an LEA from adopting a procedure for the review of authorized health care providers’ written statements by a Duly Qualified Supervisor of Health. Therefore, the additional authorization suggested in this comment is unnecessary. Requiring such review would constitute a mandate for a higher level of service for which no source of reimbursement is available.

603. Written Statement of the Parent or Legal Guardian.

The writer suggests that “proper container” be replaced with “original container” or “container provided by the pharmacist.”

Response: “Proper container” as used in the proposed regulations is the appropriate reference. “Container provided by the pharmacist” would not apply to all types of medication that may be administered (or for which pupils may receive assistance with administration). “Original container” could be interpreted as taking away important discretion to refuse to administer medication in the “original container” if, for example, that container has been damaged in such a way as to compromise the contents. In such a circumstance, the medication, while in the “original container,” would not be in a “proper container.”

The writer suggests that the wording of line 16 be changed to “Permission is obtained for the credentialed school nurse, site administrator, or an authorized representative of the local education agency to communicate directly with the pupil’s authorized health care provider...”

Response: The proposed additions of “credentialed school nurse” and “site administrator” are unnecessary, as these individuals would be examples of authorized representatives of the LEA (and all authorized representatives are already included). Moreover, the proposed additions use somewhat different references to these individuals than the references used elsewhere in the regulations.

The writer suggests replacing “reasonable accommodations” on line 30 with “linguistically and culturally appropriate assistance.”

Response: “Reasonable accommodations” is the appropriate reference in this context. It subsumes and goes beyond the narrower reference suggested. “Linguistically and culturally appropriate assistance,” for example, might be interpreted as excluding assistance in the form of transcribing an oral statement made by a disabled individual who is unable to hold a writing

instrument or manipulate a keyboard. Such a disabled individual would not necessarily be challenged by a linguistic or cultural barrier, only a physiological barrier.

604. Administration of Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication.

The writer expresses serious concern about office staff administering insulin injections and the legal aspect of “offering advice without a medical degree.”

Response: This comment is effectively beyond the scope of the proposed regulations. These regulations speak only to individuals (whether or not professionally licensed) administering medication or rendering assistance with medication administration “as allowed by law.” If the commenter is concerned that too many individuals are allowed by law to administer insulin, he or she needs to take up that matter with authorities other than the State Board of Education. These regulations speak only to the prospect of non-professionally-licensed school staff administering any medication (regardless of the means) “as allowed by law.” Moreover, nothing in the regulations condones or promotes offering medical advice without a medical degree.

The writer believes that the issue of training personnel needs to be discussed. The writer believes the regulations should have a separate section discussing medication that can only be administered by a nurse, such as insulin.

Response: Creation of a section of the regulations limiting to certain individuals the authority to administer (or render assistance with) certain medications is unnecessary, would be ill-advised, and would likely go beyond the scope of the statutory authority. The regulations already speak to all individuals (whether or not professionally licensed) administering (or rendering assistance with) medication doing so only “as allowed by law.” Creating a point-in-time list of authorized or excluded individuals in relation to specific medications is, therefore, unnecessary, and it would be ill-advised because the list would likely be out-of-date very quickly. Moreover, unless the list was precisely in line with other legal authority, its existence could create a mandate for a higher level of service for which no reimbursement funding is available.

The writer believes the intent of section 604(b) is unclear.

Response: Section 604(b) is clear. Because the statute itself separately lists “school nurse” as a category of individuals who may administer medication (or render assistance with medication administration), they are covered in subdivision (a) of Section 604. Subdivision (b) of that section, therefore, covers “other designated school personnel,” the other category listed in statute, and that phrase (“other designated school personnel”) is specifically defined in Section 601(d).

The writer wants to know what “as allowed by law” means, what are the “applicable standards of professional practice,” and who determines what standards apply.

Response: “As allowed by law” is the only reasonable means the State Board of Education has of taking into account the existence of statutes (outside of the Education Code) and the authority of other state agencies that regulate medication administration (and the rendering of assistance with medication administration). It is simply impractical to create in regulation lists detailing

every circumstance under which medication administration is lawful and unlawful at a schoolsite. "Applicable standards of professional practice" is a phrase used in the proposed regulations only in relation to specifically licensed health care professionals. Such individuals (in their capacities as licensees of the state) will understand the meaning of the phrase and will know what they are permitted and not permitted to do. Standards of professional practice are generally established by the various state licensing boards for health care professions (e.g., Board of Dental Examiners, Medical Board of California, Board of Optometry, and Board of Registered Nursing).

The writer wants to know what "may legally administer" means and does not think that the role of designated personnel is clearly addressed.

Response: "May legally administer" (like "as allowed by law") is the only reasonable means the State Board of Education has of taking into account the existence of statutes (outside of the Education Code) and the authority of other state agencies that regulate medication administration (and the rendering of assistance with medication administration). It is simply impractical to create in regulation lists detailing every circumstance under which medication administration is lawful and unlawful at a schoolsite. The "role" of designated personnel (which presumably means personnel other than school nurses) is clear: They may administer medication to pupils (or assist pupils with the administration of medication) "as allowed by law," presuming the personnel have volunteered (consented) to do so.

605. Self-Administration of Medication.

The writer suggests that the school nurse and student's teacher should be involved in discussions about whether to have the student self-administer medication since the school nurse and teacher may have a better understanding of how the student behaves around his or her peers.

Response: Nothing in the proposed regulations precludes an LEA from establishing policies or rules under which the school nurse and/or a pupil's teacher(s) are involved in discussions regarding self-administered medication (presuming no complicating issue is involved, e.g., doctor-patient confidentiality). Therefore, authorization for such involvement need not be included in these regulations. Requiring such involvement would constitute a mandate for a higher level of service for which no source of reimbursement funding exists and, therefore, could not be included in these regulations.

The writer believes that this section provides no guidance, and suggests several questions that should be addressed in this section including procedures and intervals for reviewing the medication log, identifying who is responsible for the log, who has authority to make notations, how will pupil confidentiality be maintained, how is the child who is to receive medication identified, how are errors or misses documented, what are the procedures for handling controlled substances, what is the procedure for school trips.

Response: To the extent the comments suggest the inclusion or exclusion of specific individuals in regard to specific tasks, the changes in the regulations would constitute a mandate for a higher level of service for which no source of reimbursement exists. To the extent the comments suggest non-binding guidance for this specific area (self-administration), the State Board has provided for issuance and periodic updating of an advisory in Section 611. The advisory would

be the appropriate place for non-binding guidance which is of a lengthy nature; regulations would not be the appropriate place for lengthy guidance of this type.

The writer believes this section gives local officials “carte blanche to make children with diabetes go to the nurse's office...” to administer insulin. The writer suggests that language be added to clarify that limits should only be imposed if a real danger exists.

Response: To the contrary, the establishment of locally approved rules regarding self-administration (as envisioned in this section of regulations) is specifically tied to protecting “the health and safety both of the pupil and of the whole student body and staff at the schoolsite.” The authorization for local rules, by its own terms, is not envisioned as “carte blanche.” The suggested addition of a reference to “real danger” would not substantively change the meaning of the existing reference to health and safety protection.

606. Delivery and Storage of Medication.

The writer suggests medication that is self-administered should meet the same criteria as other medication.

Response: The exception related to self-administered medication in this section is appropriate, and it is properly phrased in terms of being medication a student is “allowed to carry for purposes of self-administration.” It would simply be nonsense to say that medication a student is to carry for self-administration is to be stored in a cabinet. It’s a non sequitur.

607. Documentation.

The writer suggests replacing “may” with “shall” on line 1 and adding “consistent with Sections 600-611” in front of “regarding.”

Response: Changing “may” to “shall” would create a mandate for a higher level of service for which no source of reimbursement funding is available. Such a change would be inconsistent with the underlying statute which is discretionary (permissive).

608. Deviation from Authorized Health Care Provider’s Written Statement.

The writer wants to know what “applicable standards of professional practice” mean in this context, who determines the standards, and what the standards are.

Response: “Applicable standards of professional practice” is a phrase used in the proposed regulations only in relation to specifically licensed health care professionals. Such individuals (in their capacities as licensees of the state) will understand the meaning of the phrase and will know what they are required and not required to do. Standards of professional practice are generally established by the various state licensing boards for the health care professions (e.g., Board of Dental Examiners, Medical Board of California, Board of Optometry, and Board of Registered Nursing).

The writer is concerned about the lack of guidance and suggests that there be more stringent regulations for LEAs to follow in the case of medication errors.

Response: The proposed regulations provide as much direction as is possible in relation to the underlying statute. "More stringent regulations" could only be established by creating mandates for higher levels of service for which no source of reimbursement funding is available.

609. Unused, Discontinued and Outdated Medication.

The writer suggests adding "While a local education agency shall not be mandated to assist in administering medications, if they choose to do so, then..." and replacing "may" with "shall" on line 19.

Response: Section 6 of Article XIII B of the California Constitution provides that whenever a state agency (e.g., through regulation) mandates a new program or a "higher level of service" on a local government agency, the state must reimburse the local agency accordingly. Thus, if this suggestion were to be incorporated in the regulations, the result would be the creation of a reimbursable state mandate to the extent that an LEA might choose to administer medication (or assist with medication administration), but not voluntarily implement all of the provisions of this section. In other words, when a program or activity is (per se) discretionary (permissive), then each of the components potentially included in the program or activity is similarly discretionary. Requiring that a whole set of components be provided if any portion of a discretionary program or activity is undertaken creates a reimbursable state mandate to the extent that any of the components is not voluntarily included by the local agency. The non-voluntary components would reflect a mandatory higher level of service.

610. Applicability of This Article.

The writer feels that because the regulations do not provide clear guidance, they may consequently cause LEAs to have to hire additional staff because over disputes of the meaning of the regulations.

Response: The proposed regulations provide as much guidance as is possible within the context of the underlying statute. Prescriptive regulations would create a mandate for a higher level of service for which no source of reimbursement funding exists. The underlying statute is discretionary (permissive); no "additional staff" is required to be employed by any LEA.

The writer does not feel that this section states clearly enough that LEAs may be required to administer medications to certain students in accordance with Section 504 and that as it is worded may be burdensome (as defined in Government Code section 11346.5(a)(13) to parents of children eligible for 504 accommodations.

Response: This section helps emphasize that the underlying statute is discretionary (permissive) and states the simple fact that other enumerated statutes and regulations (within the Education Code and other codes) may be pertinent to the topic of medication administration (or rendering assistance with medication administration) in regard to individual pupils. This section does not change (or purport to change) any requirements of Section 504 of the Rehabilitation Act of 1973. A parent or legal guardian may pursue development of a Section 504 Accommodation Plan and, if he or she does so, must follow all applicable requirements pertaining thereto. There is no need to restate here all of the potentially pertinent requirements of Section 504. The section is clear as written; no change is necessary.

611. Issuance and Periodic Updating of Advisory.

The writer recommends deleting this section. The *Education Code* sections cited to not describe nor require such an advisory, and a non-binding advisory may actually confuse local education agencies since the proposed regulations themselves are “advisory.”

Response: Education Code Section 49423.6 requires the State Board of Education to adopt regulations "regarding the administration of medication in the public schools pursuant to [Education Code] Section 49423." The State Board believes that an advisory would be necessary or beneficial to carrying out its responsibilities under Education Code Section 49423.6. Therefore, it is perfectly reasonable to include this provision in the regulations. The contention that the advisory “may actually confuse” LEAs is simply an assertion, and no compelling argument is offered in support of the assertion. Moreover, the State Board retains approval authority over the advisory to ensure (among other things) that the advisory is consistent with applicable statutes and regulations and promotes clarity in relation to the regulations.

The writer suggests deleting this section because this section would permit the issuance of underground regulations in the guise of “non-binding guidance.”

Response: No foundation is established for this contention. To the contrary, Section 611 (by its own terms) requires that any guidance provided in the advisory must be "non-binding." Moreover, the reference cited for this provision (Education Code Section 33308.5) allows for the issuance only of guidelines that "are merely exemplary." This section of law is typically cited in CDE publications of the type envisioned in this regulation within the context of a statement along the following lines, "The guidance in [name of document] is not binding on local educational agencies or other entities. Except for the statutes, regulations, and court decisions that are referenced herein, the document is exemplary, and compliance with it is not mandatory."

CALIFORNIA STATE BOARD OF EDUCATION

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REPORT ON PUBLIC HEARING CONDUCTED BY STAFF

DATE: August 7, 2003
TO: Members, State Board of Education
FROM: Greg Geeting, Assistant Executive Director

SUBJECT: Permanent Regulations Regarding Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day
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Background

At the May 2003 meeting, the State Board initiated the permanent rulemaking process regarding Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day. This rulemaking process was begun following the termination of a previous rulemaking effort on medication administration. The previous effort was terminated because amendments being considered were determined to be so substantial as to necessitate a new rulemaking process.

The State Board directed that the public hearing for this rulemaking process be conducted by staff in accordance with subdivision (b) of Section 18460 of Title 5 of the California Code of Regulations.

Report on Public Hearing

Consistent with the requirements of the Administrative Procedure Act, the public hearing regarding the proposed regulations was scheduled for Thursday, August 7, 2003, at the California Department of Education, 1430 N Street, Room 1101, Sacramento, California, beginning at 9:00 a.m. An audiotape of the public hearing was made, and Maryanna Rickner will provide a copy of the audiotape to any State Board member so desiring.

The public hearing was called to order at 9:04 a.m. on the prescribed date. A brief welcoming and introductory statement was given. In the course of that statement, the individual presiding noted that staff of the Board of Registered Nursing – although not presenting formal remarks on the proposed regulations – had commented orally that the portion of the rulemaking package titled “Informative Digest/Policy Statement Overview” is misleading in part. The Informative Digest includes considerable detail concerning the work of the “Medications Committee,” an advisory group established consistent with Education Code Section 49423.6, which called for consultation with specified parties. The detail – while applicable at one point in time to the regulations (regarding medication administration)

REPORT ON PUBLIC HEARING CONDUCTED BY STAFF
Permanent Regulations Regarding Administering Medication to Pupils

August 7, 2003

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previously considered – is not pertinent to the regulations now under consideration, and it may lead to the conclusion that the advisory group’s work reflected a greater contribution to the now-proposed regulations than was actually the case. Accordingly, the presiding officer offered a modification of the Informative Digest. Subsequently, the California Department of Education’s Regulations Adoption Coordinator indicated that this matter would be appropriately handled as a notation in the Final Statement of Reasons instead of as an amendment to the Informative Digest.

One individual made a presentation at the public hearing. Nancy Spradling, representing the California School Nurses Association (CSNO), presented in concept one change to the proposed regulations.

- Though respecting the fact that statute does not require a school district to administer medication to pupils (or to assist with the administration of medication), CSNO recommends the inclusion of language in the regulations as necessary to require that the regulations’ provisions be followed if a school district chooses to administer medication (or assist with medication administration), as authorized under Education Code Section 49423.

With no other individuals desiring to make presentations, but given that it was only eleven minutes past 9:00 a.m., the individual presiding recessed the public hearing until 9:30 a.m. in the event that another potential presenter might have been delayed. The public hearing was reconvened at 9:32 a.m. No additional presenters had arrived. The public hearing was adjourned at 9:32 a.m.

Response to Comment Presented

Section 6 of Article XIII B of the California Constitution provides that whenever a state agency (e.g., through regulation) mandates a new program or a “higher level of service” on a local government agency, the state must reimburse the local agency accordingly. Thus, if the CSNO recommendation were to be incorporated in the regulations, the result would be the creation of a reimbursable state mandate to the extent that a school district might choose to administer medication (or assist with medication administration), but not voluntarily implement all of the provisions in the regulations. In other words, when a program or activity is (per se) discretionary, then each of the components potentially included in the program or activity is similarly discretionary. Requiring that a whole set of components be provided if any portion of a discretionary program or activity is undertaken creates a reimbursable state mandate to the extent that any of the components is not voluntarily included by the local agency. The non-voluntary components would reflect a mandatory higher level of service.

The CSNO recommendation if incorporated in the regulations would have potentially major cost implications for the state. Thus, as there is no source of funding for a reimbursable state mandate associated with these regulations, incorporation of the CSNO recommendation would render the regulations incapable of being approved by the Department of Finance and the Office of Administrative Law.