

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2329 (Carrillo)
Version: June 6, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
CK

SUBJECT

Pupil health: vision examinations: schoolsites

DIGEST

This bill authorizes school districts to contract for additional vision examinations in schools. It does not require parental consent and provides qualified immunity to schools, the state, and those conducting the examinations.

EXECUTIVE SUMMARY

Evidence suggests, unsurprisingly, that children struggling with vision problems are likely to experience difficulties in the classroom, which can ultimately lead to disengagement in the learning process. Therefore, it is important to ensure that students and their families are provided adequate resources to diagnose and treat such issues.

This bill attempts to address this problem by authorizing schools to enter into memorandums of understanding with vision examination providers to provide vision examinations in addition to screenings already required by law. The problem identified is that securing parental consent first limits the reach of such collaborations. Under this bill, parents are not required to affirmatively consent to screenings but must fill out an opt-out form. Failure to opt out is deemed informed medical consent and waives all claims for damages against the school and state. Licensed health care professionals and their independent contractors that provide the examinations authorized by this bill are immunized from civil and criminal liability, and shall not be subject to disciplinary action by a licensing board. The bill immunizes against negligent and other misconduct falling short of gross negligence or willful or wanton misconduct. It does not immunize persons against liability for a crime not authorized by the bill.

This bill is sponsored by the Los Angeles Unified School District. It is supported by the California Chapters of the National Association of Pediatric Nurse Practitioners

(NAPNAP). There is no known opposition. The bill passed out of the Senate Education Committee on a 6 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)
- 2) Requires a pupil's vision to be appraised by the school nurse or other authorized person during the kindergarten year or upon first enrollment or entry in a California school district of a pupil at an elementary school, and in grades 2, 5, and 8. (Educ. Code § 49455.)
- 3) Requires the governing board of any school district to provide for the testing of the sight and hearing of each pupil enrolled in the schools of the district. The test shall be adequate in nature and shall be given only by duly qualified individuals, as specified. (Educ. Code § 49452.)
- 4) Authorizes a parent or guardian of a pupil enrolled in public schools to file an annual statement in writing, stating that they will not consent to a physical examination of their child, and requires that the child be exempt from any physical examination. (Educ. Code § 49451.)

This bill:

- 1) Authorizes a public school maintaining kindergarten or any of grades 1 to 12, to enter into a memorandum of understanding with a nonprofit vision examination provider to provide vision examinations to pupils at the schoolsite. Such examinations must be noninvasive and provided exclusively for the purpose of providing vision examinations and eyeglasses.
- 2) Requires these providers to provide reports to parents and guardians consistent with Section 49456.
- 3) Requires, before such examinations can take place, a public school to notify parents and guardians of the upcoming provision of vision examinations at the schoolsite. Notification shall include a form on which a parent or guardian may indicate that they do not consent to a vision examination being provided to their

child. The parent or guardian may opt out of their child receiving a vision examination by submitting the completed form to the public school.

- 4) Requires the California Department of Education (CDE), no later than March 1, 2023, to develop and post on appropriate department internet websites a model opt-out form.
- 5) Provides that parents, guardians, or pupils who do not opt out are deemed to have waived all claims against the public school and the State of California for injury, accident, illness, or death that occurs during or by reason of participating in a vision examination. Failure to opt out shall also be deemed informed medical consent for the vision examination. Parents, guardians, or pupils who participate in a vision examination are deemed to have waived all claims against participating licensed health care professionals for providing services without parent or guardian consent.
- 6) Immunizes participating licensed health care professionals, including independent contractors of those professionals, who provide services that are authorized by this bill, from civil and criminal liability, and shall not be subject to disciplinary action by a licensing board.
- 7) Provides that it does not affect liability for damages caused by an act or omission that constitutes gross negligence or willful or wanton misconduct or culpability for an act that constitutes a crime not specifically authorized by this bill. Nothing therein affects the ability of a licensing board to take disciplinary action against a licensed health care professional for an act not specifically authorized by the bill.

COMMENTS

1. Facilitating vision examinations without requiring parental consent

According to the author: "Studies show that addressing a vision problem is a powerful childhood intervention that improves grades, classroom and extracurricular engagement, and even prevents physical pain, and this bill will make vision exams and services more widely available to families in need."

This bill seeks to increase access to vision screenings by authorizing public schools to partner with nonprofit vision examination providers ("providers") to provide vision examinations at schoolsites. These are in addition to existing vision screenings.

Schools must notify parents of the examinations and allow them to opt out. Existing law prohibits a student from being tested for a behavioral, mental, or emotional evaluation without the informed written consent of their parent or guardian. (Educ. Code §

49091.12.) This bill provides that failure to opt out is deemed to be informed medical consent for these purposes.

This opt-out rather than opt-in mechanism is to address issues identified by the author, specifically that requiring parental consent creates “administrative burdens on school districts that they must devote extra staff time and resources to addressing if they want to make vision exams widely available to students.”

It should be noted that the existing process allowing parents or guardians to opt out of all physical examinations is not affected by this bill and is treated as an opt out of the vision examinations provided for by the bill. (Educ. Code § 49451.)

NAPNAP states in support:

Requiring parental consent for no-cost vision exams creates an unnecessary barrier that limits the reach of partnerships between schools and third-party health service providers. This bill would allow school districts to enter into a memorandum of understanding with a nonprofit vision examination provider regarding their partnership and scope of the program, and then provide a reasonable amount of time to allow parents to opt-out of the scheduled vision exam. This will provide more students access to no-cost vision exams and the necessary glasses that are essential in narrowing opportunity gaps.

Similar to this bill, AB 2904 (Carrillo, 2018) would have authorized the governing board of a school district to enter into a memorandum of understanding with a nonprofit mobile vision care services provider to provide vision care services to pupils at the schoolsite of a public school that are supplemental to required vision screenings. It did not include any provisions providing immunity from liability.

2. Granting broad immunity to LEAs, private schools, and CDE

As a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).) Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty.

Conversely, immunity from liability disincentivizes careful planning and acting on the part of individuals and entities. When one enjoys immunity from civil liability, it is relieved of the responsibility to act with due regard and an appropriate level of care in

the conduct of its activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.

Although immunity provisions are rarely preferable, the Legislature has in limited scenarios approved measured immunity from liability (as opposed to blanket immunities) to promote other policy goals that could benefit the public. Immunities are generally afforded when needed to ensure the willingness of individuals to continue taking on certain roles that may involve some risk and to incentivize certain conduct, such as the provision of life-saving or other critical services. Examples include protections for use of CPR (Civ. Code § 1714.2); use of an automated external defibrillator (Civ. Code § 1714.21); use of opiate overdose treatment (Civ. Code § 1714.22); providing emergency care at the scene of an emergency (Health & Saf. Code §§ 1799.102, 1799.106); and performing emergency rescue services (Health & Saf. Code § 1799.107). However, as indicated above, rarely is immunity absolute, and these immunities generally do not cover grossly negligent conduct or intentional misconduct.

This bill provides that parents, guardians, or pupils who do not opt out are deemed to have waived all claims against the public school and the State of California for injury, accident, illness, or death that occurs during or by reason of participating in a vision examination. Participation in the examination is also deemed a waiver of all claims against participating licensed health care professionals for providing services without parent or guardian consent pursuant to the bill or Section 49091.12.

The bill also provides broad immunity to participating licensed health care professionals, including independent contractors of those professionals, who provide services authorized by the bill. They are immune from civil and criminal liability, and are shielded from disciplinary action by a licensing board. Such persons are only liable if their conduct or omissions amount to gross negligence or willful or wanton misconduct. The bill makes clear that it does not affect a person's culpability for a crime not specifically authorized by the bill.

It is unclear why such broad immunity is necessary for those performing the examinations. Generally, if a health care professional or their independent contractor injures a child through their negligence, they can be held accountable by the injured child and disciplined by a licensing board. There is no evidence that has been provided that nonprofit providers and their staff are unwilling to perform these services without this shield. The main motivation appears to be the barrier of securing consent.

In order to better tailor the bill to the identified problem, the author has agreed to amendments that remove the presumed informed medical consent provision and the immunity provisions. In its place will be a provision that provides immunity solely for

failing to get informed medical consent and only in connection with the provision of the noninvasive services explicitly authorized by this bill.

Amendment

Remove Section 49455.5(c), (d)(1) and (d)(2) and insert the following:

“Notwithstanding any other law and subject to paragraph (3), participating licensed health care professionals, including independent contractors of those professionals, and the public school, shall have immunity from civil and criminal liability, and shall not be subject to disciplinary action by a licensing board, for providing services that are authorized by this section without parent or guardian consent pursuant to this section or Section 49091.12.”

SUPPORT

Los Angeles Unified School District (sponsor)
California Chapters of the National Association of Pediatric Nurse Practitioners

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 35 (Reyes & Umberg, Ch. 17, Stats. 2022) provides for increases to the caps on noneconomic damages and the contingency fees that can be earned by attorneys that were imposed by the Medical Injury Compensation Reform Act. It also prohibits the use of expressions of sympathy, benevolence, or fault as evidence of an admission of liability in nearly all civil and administrative proceedings and prevents them from being used in relation to any sanction, penalty, or liability

AB 2904 (Carrillo, 2018) *See* Comment 1.

PRIOR VOTES:

Senate Education Committee (Ayes 6, Noes 0)

Assembly Floor (Ayes 61, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

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Assembly Judiciary Committee (Ayes 10, Noes 0)

Assembly Education Committee (Ayes 7, Noes 0)
