

ASSEMBLY BILL

No. 349

Introduced by Assembly Member Mountjoy

February 10, 2005

An act to add Article 7 (commencing with Section 51560) to Chapter 4 of Part 28 of the Education Code, relating to instruction.

LEGISLATIVE COUNSEL'S DIGEST

AB 349, as introduced, Mountjoy. Prohibited instruction: sexual instruction or counseling.

Existing law permits the parent or guardian of a pupil to excuse his or her child from all or part of comprehensive sexual health education, HIV/AIDS prevention education, and assessments related to that education, as specified.

This bill would prohibit certain sexual instruction or counseling of pupils in kindergarten and grades 1 to 6, inclusive, and would require a school district to provide notice and obtain the written approval of the parent or guardian of a pupil to provide this instruction or counseling to a pupil in grades 7 to 12, inclusive, as specified. Because this bill would impose additional requirements on school districts, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7 (commencing with Section 51560) is
2 added to Chapter 4 of Part 28 of the Education Code, to read:

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4 Article 7. Approval of Sexual Instruction or Counseling

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6 51560. As used in this article:

7 (a) "Parent" means the biological parent of a pupil, or the
8 legally adoptive parent of a pupil.

9 (b) "Guardian" means the legal guardian of a pupil.

10 (c) "Instruction" means an assignment, demonstration,
11 depiction, discussion, dissemination, display, explanation,
12 posting, question, survey, or test.

13 (d) "Notice" or "notify" means a written advisory that
14 complies with the requirements of Section 51563, that instruction
15 or counseling will be provided on one or more of the subjects
16 specified in Section 51561.

17 (e) "Public school setting" includes any school sponsored
18 activity involving an employee, contractor, volunteer, or agent of
19 a school district, regardless of its location.

20 51561. If a school district intends to provide instruction or
21 counseling in a public school setting to, or in the presence of, a
22 pupil in grades 7 to 12, inclusive, relating to bestiality,
23 bisexuality, cunnilingus, domestic partnerships, fellatio,
24 homosexuality, lesbianism, masochism, masturbation,
25 necrophilia, orgies, pederasty, pedophilia, sadism, sodomy,
26 transexuality, transgenderism, or transvestitism, the school
27 district shall provide notice as described in Section 51563 to the
28 parent or guardian of the pupil, in writing, no more than 15 days
29 and no less than 10 days in advance of the instruction or
30 counseling, and shall obtain the written approval of the pupil's
31 parent or guardian consenting to the instruction or counseling. A
32 school district shall provide a separate notice as described in
33 Section 51563 to the parent or guardian of a pupil, and shall
34 obtain the separate written approval of the pupil's parent or

1 guardian for each day the school district will provide instruction
2 or counseling on subjects specified in this section.

3 51562. Instruction or counseling shall not be provided to, or
4 in the presence of, a pupil in kindergarten or grades 1 to 6,
5 inclusive on the subjects specified in Section 51561 in a public
6 school setting.

7 51563. The notice required in Section 51561 shall be titled
8 “Request for Parental Approval of Specified Sexual Instruction
9 or Counseling” and this title shall be printed at the top of the
10 page, in boldface and no less than 16 point type, and shall be
11 immediately followed by the text of Sections 51561 and 51562 in
12 no less than 14 point type. The notice shall include all of the
13 following information printed in no less than 12 point type:

14 (a) The date, time, and location of the instruction or
15 counseling.

16 (b) The name of the teacher or administrator in charge of the
17 instruction or counseling, and the name and affiliation of any
18 presenters.

19 (c) The telephone number at which the teacher or
20 administrator in charge may be reached during regular school
21 hours.

22 (d) A reminder that parents and guardians may attend the class
23 or assembly.

24 (e) A detailed and accurate description of the instruction to be
25 provided, including, but not limited to, the scope and content of
26 any activity, counseling, instruction, program, or testimonial, and
27 copies of any audio or visual presentation, curriculum, handout,
28 illustration, literature, poster, survey, test, or text, and the address
29 of any Internet site to be used in the instruction.

30 51564. An audio or visual presentation, curriculum, handout,
31 illustration, literature, poster, survey, test, or text to be used in
32 the instruction or counseling of any of the subjects specified in
33 Section 51561 shall be kept in a school office, out of the sight of
34 pupils, and shall be available for inspection and copying by any
35 parent, guardian, or agent of the parent or guardian of a pupil
36 beginning at least 15 days in advance of, and for at least 15 days
37 after, the instruction or counseling. The school district shall
38 retain the original written approval required pursuant to Section
39 51561 for at least 90 days. A parent, guardian, or agent of the
40 parent or guardian of a pupil is entitled to inspect and copy the

1 written approval submitted by that parent or guardian upon
2 request. A school district may charge a reasonable fee to cover
3 costs associated with copying.

4 51565. If a parent or guardian of a pupil does not provide
5 written approval pursuant to Section 51561, the pupil shall be
6 excused from the instruction or counseling, and offered other
7 activities worth equal credit. A pupil may not be academically
8 penalized if his or her parent or guardian does not provide written
9 approval pursuant to Section 51561. If the parents or guardians of
10 a majority of the pupils in a class or assembly do not provide
11 written approval pursuant to Section 51561, then the school
12 district shall not conduct the instruction or counseling relating to
13 the subjects specified in the notice provided pursuant to Section
14 51563 in that class or assembly, but may conduct the instruction
15 or counseling with pupils whose parents have provided written
16 approval at an alternate location and time.

17 51566. A school district that is determined to be in violation
18 of Section 51561 or 51562 by a court of competent jurisdiction
19 shall be liable to the pupil or the parent or guardian of the pupil
20 for damages in the amount of five thousand dollars (\$5,000) per
21 incident, for actions filed between January 1, 2006, and
22 December 31, 2007. Beginning January 1, 2007, the amount of
23 damages shall be adjusted annually by an inflation factor based
24 on the change in the California Consumer Price Index. In any
25 action brought under this section, the school district has the
26 burden of proving by a preponderance of the evidence that it
27 complied with the notice and written approval required by
28 Section 51561. A prevailing plaintiff is entitled to reasonable
29 attorney fees and court costs.

30 51567. (a) This article shall not be construed to prevent or
31 limit a school district from disciplining any person who engages
32 in unlawful conduct with respect to a pupil or school district
33 employee.

34 (b) This article does not apply to instruction or counseling
35 regarding the prevention of disease that is federally approved, or
36 to individual pupils who request confidential counseling with a
37 school psychologist or peace officer.

38 (c) This article does not apply to a pupil who is 18 years of age
39 or older.

1 (d) This article shall be liberally construed in favor of
2 prohibiting instruction on the subjects specified in Section 51561.

3 (e) The provisions of this article are severable. If any
4 provision of this article or its application is held invalid, that
5 invalidity shall not affect other provisions or applications that can
6 be given effect without the invalid provision or application.

7 SEC. 2. If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.

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