

ASSEMBLY BILL

No. 1348

Introduced by Assembly Member Mansoor

February 18, 2011

An act to add Article 3 (commencing with Section 49440) to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 1348, as introduced, Mansoor. Pupils: mental health screenings.

(1) Existing law prohibits any employee of a school district from administering psychological tests or engaging in other psychological activities involving the application of psychological principles, methods, or procedures, except under specified conditions. Existing law states that parents and guardians of pupils enrolled in public schools have the right to receive information about any psychological testing the school conducts involving their child and to deny permission to give the test, except as specified.

This bill would prohibit the governing board of each school district maintaining kindergarten or any of grades 1 to 12, inclusive, from conducting any mental or psychological screening or testing of a minor pupil unless it uses a consent form developed by the State Department of Education to obtain the written consent of the pupil's parent or guardian not less than 45 days prior to conducting the screen or test. The bill would require a school district, in the process of obtaining the written consent of a pupil's parent or guardian, to provide the parent or guardian with access to a manual and other published information which fully describes specified information. The bill would require the department to develop the consent form, as specified, and make it

available to school districts. By requiring school districts to perform additional duties, the bill would impose a state-mandated local program.

(2) 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. The Legislature finds and declares all of the
2 following:

3 (a) When children and adolescents are screened for mental
4 disorders in educational settings, parents are not given sufficient
5 information about the purpose of these screenings and the possible
6 ramifications of consenting to these screenings, such as mandatory
7 psychological or psychiatric treatment for their child and family.

8 (b) In educational settings, a system of passive consent is often
9 utilized whereby consent to a mental health screening is considered
10 provided when the parent does not return the consent form. This
11 system places the burden of obtaining consent on the pupil and
12 parent, rather than on the school and the mental health professional
13 or agency seeking to conduct the screening.

14 (c) Because mental health screening consent forms often omit
15 pertinent information, such as information about the personal
16 questions the child will be asked and information about what types
17 of mental disorders are being tested, consent forms often mislead
18 parents as to the nature of the mental health screening and leave
19 the parent with insufficient information to make a decision
20 regarding consent.

21 (d) The mental disorders that are being screened in educational
22 settings are based on those defined in the Diagnostic and Statistical
23 Manual of Mental Disorders (DSM), but according to the
24 introductory text of the DSM, there is no definition that adequately
25 specifies precise boundaries for the concept of “mental disorder.”

1 (e) Unlike physical diseases such as cancer, diabetes, or
2 tuberculosis, mental disorders or syndromes cannot be diagnosed
3 by medical tests, such as brain scans, X-rays, or blood tests. The
4 former United States Surgeon General, in his 1999 report on Mental
5 Health, stated, “The diagnosis of mental disorders is often believed
6 to be more difficult than diagnosis of medical disorders since there
7 is no definitive lesion, laboratory test, or abnormality in brain
8 tissue that can identify the illness.”

9 (f) According to Dr. Joseph Glenmullen of the Harvard Medical
10 School, the rating scales that are used to screen people for
11 conditions such as depression are designed to fit hand-in-glove
12 with the effects of drugs, and furthermore, while using a rating
13 scale to diagnose depression may appear to be scientific, when
14 one examines the questions asked and the scales used, they are
15 utterly subjective measures.

16 (g) Based on the subjective nature of the mental health
17 diagnostic system and mental health screenings, millions of
18 children are prescribed antidepressants or stimulants recognized
19 by leading drug regulatory agencies as causing suicidal behavior,
20 suicide, violence, hostility, and, in the case of stimulants, the
21 potential for strokes and heart attacks. In 2004, the United States
22 Food and Drug Administration (FDA) required that a warning of
23 suicide risk be placed on all antidepressants prescribed to
24 individuals under 18 years of age. In 2005, the Commission of
25 European Communities issued the strongest warning yet against
26 child antidepressant use, warning of the potential of drugs to cause
27 suicide, aggression, hostility, and related behavior. In 2006, the
28 FDA Advisory Committee recommended that a warning of heart
29 attacks and strokes be placed on stimulants.

30 (h) Therefore, parents must be given sufficient information
31 about the nature and ramifications of mental health screenings in
32 educational settings in order to give their informed consent to these
33 screenings.

34 SEC. 2. Article 3 (commencing with Section 49440) is added
35 to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education
36 Code, to read:

Article 3. Mental Health Screenings

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49440. This article shall be known and may be cited as the Mental Health Screening, Child Protection, and Informed Consent Act.

49441. (a) The governing board of each school district maintaining kindergarten or any of grades 1 to 12, inclusive, shall not conduct any mental or psychological screening or testing of a minor pupil unless it has obtained the written consent of the pupil’s parent or guardian on the consent form developed by the department pursuant to subdivision (c) not less than 45 days before conducting the planned screen or test.

(b) Prior to obtaining the written consent of a pupil’s parent or guardian, a school district shall provide the parent or guardian with access to a manual or other published information which fully describes all of the following:

- (1) The nature and purpose of the screening or testing.
- (2) The development of the screening or testing, its scientific validity as replicated in scientific studies, and the rationale for and reliability of the screening or testing.
- (3) Scientific journal citations demonstrating that the proposed screening or testing has been proven to be reliable and valid by replicated scientific studies.
- (4) A guarantee that no screening or testing is based on or related to any mental disorder as covered in the Diagnostic and Statistical Manual of Mental Disorders.
- (5) The intended use of the results or outcomes of screening or testing.
- (6) The right to rescind consent at any time before, during, or after the screening or testing.

(c) The department shall develop and make available to school districts a consent form as follows.

- (1) The consent form shall be in a clear and legible format, comply with any applicable provisions of state or federal law regarding consent to mental health or psychological screening or testing, and be in the primary language of the parent or guardian.
- (2) The consent form shall include all of the following:
 - (A) The following title centered and in bold type at the top of the form:

1 “FULLY INFORMED CONSENT FOR MENTAL HEALTH OR
2 PSYCHOLOGICAL SCREENING OR TESTING.”
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4 (B) A designated line in which to print the name of the pupil’s
5 parent or guardian.

6 (C) A designated line in which to print the name of the school
7 or organization conducting the screening or testing.

8 (D) The name of the screening or testing program, and the
9 proposed time and location of the screen or test.

10 (E) All of the following informational statements:

11 (i) “Mental health or psychological screening or testing methods
12 for children and adolescents vary from state to state, but may
13 involve a self-administered computer interview or survey to
14 determine how a pupil feels emotionally (anxious or worried, sad
15 or depressed) or to judge his or her behavior at the present time or
16 in the past. These questions can cover thoughts or feelings your
17 child has had or thoughts and feelings your child thinks you may
18 have had or currently have about him or her.”

19 (ii) “As a result of the screening or testing of your child, you
20 may be asked to take your child for a followup interview or
21 evaluation to determine if he or she has a mental disorder or
22 syndrome. Based on an evaluation of your child’s answers to
23 questions posed by a mental health professional, your child may
24 be diagnosed with a mental or psychiatric disorder. These diagnoses
25 have to be made by a psychologist, psychiatrist, or a medical
26 doctor, but the subjectivity of this diagnostic process makes it a
27 risk.”

28 (iii) “Questionnaires or tests are frequently based on symptoms
29 outlined in the Diagnostic and Statistical Manual of Mental
30 Disorders (DSM) or the mental disorders section of the
31 International Classification of Diseases (ICD). Psychologists,
32 psychiatrists, and medical doctors often depend upon these
33 diagnoses in order to bill private or government insurance
34 providers.”

35 (iv) “The determination of whether the attitudes, beliefs, actions,
36 inactions, or behaviors of a child or adolescent constitute a mental
37 disorder is based only on the opinion of the person making the
38 diagnosis. Unlike methods to determine physical diseases like
39 cancer, diabetes, or tuberculosis, a diagnosis of a mental disorder
40 or syndrome cannot be determined by any physical, medical test,

1 such as a brain scan, chemical imbalance test, X-ray, or blood
2 test.”

3 (v) “Mental health or psychological screening or testing may
4 be presented to you as a means of preventing suicide. However,
5 there is no scientific evidence to substantiate this assertion at this
6 time. The United States Preventive Services Task Force (USPSTF)
7 studied this assertion and recommended against screening for
8 suicide in 2004, stating that it ‘found no evidence that screening
9 for suicide risk reduces suicide attempts or mortality.’”

10 (vi) “Psychiatric drugs that are commonly prescribed to treat
11 mental disorders can have very serious effects on some children.
12 In 2005, the European Committee for Medicinal Products for
13 Human Use (CHMP), which includes members from 25 European
14 member states, determined that antidepressants should not be
15 prescribed to children who are less than 18 years of age because
16 they can produce suicidal behavior, including suicide attempts and
17 thinking about suicide, and related behavior, including self-harm,
18 hostility, or mood changes.”

19 (vii) “The United States Food and Drug Administration (FDA)
20 ordered that a black box, its highest level of drug warning, be
21 placed on antidepressant packaging to warn consumers that the
22 drugs can induce suicide in children and teens. The FDA also has
23 stated concerns that stimulant drugs prescribed for children may
24 cause ‘psychiatric events,’ including ‘visual hallucinations, suicidal
25 ideation, psychotic behavior, as well as aggression or violent
26 behavior.’”

27 (F) A statement of the requirements described in subdivision
28 (b) and an acknowledgment by the parent or guardian that the
29 school district complied with those requirements.

30 (G) An acknowledgment by the parent or guardian that he or
31 she has read and understood the information on the consent form,
32 and either consents or does not consent to the screen or test.

33 (H) An acknowledgment, if the parent or guardian consents to
34 the screen or test, that he or she permits the information obtained
35 from the screen or test to be part of the pupil’s school record, to
36 the extent consistent with state or federal law.

37 (I) An acknowledgment, if the parent or guardian consents to
38 the screen or test, that he or she permits the information obtained
39 from the screen or test to be transmitted to any outside agencies
40 or individuals, to the extent consistent with state or federal law.

1 (J) Separate signature lines for the parent or guardian to consent
2 to the screening or testing or to indicate that he or she does not
3 consent to the screening or testing.

4 SEC. 3. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

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