

AMENDED IN ASSEMBLY MARCH 24, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1348

Introduced by Assembly Member Mansoor

February 18, 2011

An act to amend Sections 51513, 51938, and 51939 of, to add Article 3 (commencing with Section 49440) to Chapter 9 of Part 27 of Division 4 of Title 2 of, and to repeal and add Section 46010.1 of, the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 1348, as amended, Mansoor. Pupils: ~~mental health screenings.~~ parental consent.

(1) Existing law requires the governing board of a school district to notify pupils in grades 7 to 12, inclusive, and the parents or guardians of those pupils that school authorities may excuse a pupil from school to obtain confidential medical services without the consent of the pupil's parent or guardian. Existing law authorizes a school district to include that notice with any other notice made to a parent or guardian of a pupil pursuant to existing law.

This bill would delete this provision, and instead prohibit a school official, as defined, from excusing a pupil who is a minor and enrolled in any of grades 1 to 12, inclusive, from the school campus before the end of a schoolday without the written consent of his or her parent or legal guardian.

(1)

(2) 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 *has obtained the written consent of the pupil's parent or legal guardian.*

(3) Existing law prohibits a test, questionnaire, survey, or examination containing any questions regarding the beliefs or practices of the pupil or the parents or guardians of the pupil related to sex, family life, morality, and religion, from being administered to any pupil in kindergarten or grades 1 to 12, inclusive, unless the parent or guardian of the pupil is notified in writing that this test, questionnaire, survey, or examination is to be administered and the parent or guardian of the pupil gives written permission for the pupil to take this test, questionnaire, survey, or examination.

This bill would add gender and sexual orientation to the topics about which a test, questionnaire, survey, or examination containing any questions regarding the beliefs or practices of a pupil or the parents or legal guardians of a pupil would be prohibited unless the parent or legal guardian of the pupil is notified in writing and gives written permission as specified.

(4) The existing California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act authorizes school districts to provide comprehensive sexual health education, as defined, in any kindergarten or grades 1 to 12, inclusive, and requires that school districts ensure that all pupils in grades 7 to 12, inclusive, receive HIV/AIDS prevention education, as defined. Existing law requires a

school district to notify the parent or guardian of a pupil about instruction in comprehensive sexual health education and HIV/AIDS prevention and empowers a parent or guardian to excuse his or her pupil from all or part of that instruction.

This bill would instead prohibit a pupil from receiving this comprehensive sexual education, HIV/AIDS prevention education, or assessments related to that education without the prior written consent of his or her parent or legal guardian. Because this provision would impose new duties on school districts, it would constitute a state-mandated local program.

(5) The California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act prohibits a pupil from attending any class in comprehensive sexual education or HIV/AIDS prevention education, or participate in any anonymous, voluntary, or confidential test, questionnaire, or survey on pupil health behaviors and risk, if the school has received a written request from the pupil’s parent or guardian excusing the pupil from participation.

This bill would instead prohibit a pupil from attending a class in comprehensive sexual education or HIV/AIDS prevention education, or participate in any anonymous, voluntary, or confidential test, questionnaire, or survey on pupil health behaviors and risk, unless the school has received prior written consent for the pupil’s participation from the pupil’s parent or legal guardian.

~~(2)~~

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

3 *(1) The Legislature reaffirms subdivision (a) of Section 51100*
4 *of the Education Code, which states: “It is essential to our*

1 democratic form of government that parents and guardians of
2 schoolage children attending public schools and other citizens
3 participate in improving public education institutions. Specifically,
4 involving parents and guardians of pupils in the education process
5 is fundamental to a healthy system of public education.”

6 (2) The Legislature reaffirms subdivision (c) of Section 51100
7 of the Education Code, which states: “All participants in the
8 education process benefit when schools genuinely welcome,
9 encourage, and guide families into establishing equal partnerships
10 with schools to support pupil learning.”

11 (3) The Legislature reaffirms subdivision (a) of Section 51120
12 of the Education Code, which states: “The Legislature finds and
13 declares that a critical dimension of effective schooling is parental
14 involvement. Research indicates that parental involvement in a
15 child’s education improves pupil achievement. The Legislature
16 further finds and declares that school districts and schools, in
17 collaboration with parents, teachers, pupils, and administrators,
18 by establishing and developing proper efforts that enhance parental
19 involvement, are taking a pivotal step in encouraging pupil
20 success.”

21 (4) The Legislature further finds and declares that the role of
22 parents is primary in the development of their children, and that
23 obtaining affirmative parental permission before engaging pupils
24 in sensitive matters bolsters parental involvement and confidence
25 in public schools.

26 (b) It is the intent of the Legislature in enacting this measure
27 to recognize and honor the principle that the role of parents is
28 primary in the development of their children, and to respect that
29 role by requiring affirmative parental permission regarding matters
30 of child development, health, and safety.

31 SEC. 2. Section 46010.1 of the Education Code is repealed.

32 ~~46010.1.— Commencing in the fall of the 1986–87 academic~~
33 ~~year, the governing board of each school district shall, each~~
34 ~~academic year, notify pupils in grades 7 to 12, inclusive, and the~~
35 ~~parents or guardians of all pupils enrolled in the district, that school~~
36 ~~authorities may excuse any pupil from the school for the purpose~~
37 ~~of obtaining confidential medical services without the consent of~~
38 ~~the pupil’s parent or guardian.~~

39 ~~The notice required pursuant to this section may be included~~
40 ~~with any other notice given pursuant to this code.~~

1 *SEC. 3. Section 46010.1 is added to the Education Code, to*
2 *read:*

3 *46010.1. Notwithstanding any other law, a school official shall*
4 *not excuse a pupil who is a minor and enrolled in any of grades*
5 *1 to 12, inclusive, from the school campus before the end of a*
6 *school day without the written consent of his or her parent or legal*
7 *guardian. As used in this section, “school official” includes, but*
8 *is not necessarily limited to, a teacher or a principal, vice*
9 *principal, registrar, or other classification of school administrator.*

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

13

14 *Article 3. Mental or Psychological Screening or Testing*

15

16 *49440. The governing board of each school district maintaining*
17 *kindergarten or any of grades 1 to 12, inclusive, shall not conduct*
18 *any mental or psychological screening or testing of a minor pupil*
19 *unless it has obtained the written consent of the pupil’s parent or*
20 *legal guardian.*

21 *SEC. 5. Section 51513 of the Education Code is amended to*
22 *read:*

23 51513. ~~No~~ ~~A~~ test, questionnaire, survey, or examination
24 containing ~~any~~ questions about the ~~pupil’s~~ personal beliefs or
25 practices ~~in~~ of the pupil related to sex, family life, morality, ~~and~~
26 religion, gender, or sexual orientation, or ~~any~~ questions about the
27 ~~pupil’s~~ ~~parents’~~ or ~~guardians’~~ beliefs and practices ~~in~~ of the parents
28 or legal guardians of the pupils related to sex, family life, morality,
29 ~~and~~ religion, gender, or sexual orientation, shall not be
30 administered to ~~any~~ a pupil in kindergarten or grades 1 to 12,
31 inclusive, unless the parent or legal guardian of the pupil is notified
32 in writing that this test, questionnaire, survey, or examination is
33 to be administered and the parent or legal guardian of the pupil
34 gives written permission for the pupil to take this test,
35 questionnaire, survey, or examination.

36 *SEC. 6. Section 51938 of the Education Code is amended to*
37 *read:*

38 51938. A pupil shall not receive comprehensive sexual health
39 education, HIV/AIDS prevention education, or assessments related
40 to that education without the prior written consent of his or her

1 parent or *legal* guardian of a pupil has the right to excuse their
2 child from all or part of comprehensive. *Comprehensive* sexual
3 health education, HIV/AIDS prevention education, and assessments
4 related to that education; *under this chapter shall be conducted* as
5 follows:

6 (a) At the beginning of each school year, or, for a pupil who
7 enrolls in a school after the beginning of the school year, at the
8 time of that pupil's enrollment, each school district shall notify
9 the parent or *legal* guardian of each pupil about instruction in
10 comprehensive sexual health education and HIV/AIDS prevention
11 education and research on pupil health behaviors and risks planned
12 for the coming year. The notice shall do all of the following:

13 (1) Advise the parent or *legal* guardian that written and
14 audiovisual educational materials used in comprehensive sexual
15 health education and HIV/AIDS prevention education are available
16 for inspection.

17 (2) Advise the parent or *legal* guardian whether the
18 comprehensive sexual health education or HIV/AIDS prevention
19 education will be taught by school district personnel or by outside
20 consultants. A school district may provide comprehensive sexual
21 health education or HIV/AIDS prevention education, to be taught
22 by outside consultants, and may hold an assembly to deliver
23 comprehensive sexual health education or HIV/AIDS prevention
24 education by guest speakers, but if it elects to provide
25 comprehensive sexual health education or HIV/AIDS prevention
26 education in either of these manners, the notice shall include the
27 date of the instruction, the name of the organization or affiliation
28 of each guest speaker, and information stating the right of the
29 parent or *legal* guardian to request a copy of this section, Section
30 51933, and Section 51934. If arrangements for this instruction are
31 made after the beginning of the school year, notice shall be made
32 by mail or another commonly used method of notification, no
33 fewer than 14 days before the instruction is delivered.

34 (3) Include information explaining the parent's or *legal*
35 guardian's right to request a copy of this chapter.

36 (4) Advise the parent or *legal* guardian that ~~the parent or~~
37 ~~guardian may request in writing that~~ his or her child *will* not receive
38 comprehensive sexual health education or HIV/AIDS prevention
39 education *without the prior written consent of a parent or legal*
40 *guardian*.

1 (b) Notwithstanding Section 51513, anonymous, voluntary, and
2 confidential research and evaluation tools to measure pupils' health
3 behaviors and risks, including tests, questionnaires, and surveys
4 containing age-appropriate questions about the pupil's attitudes
5 concerning, or practices relating to, sex may be administered to
6 ~~any~~ a pupil in grades 7 to 12, inclusive, if the parent or *legal*
7 guardian is notified in writing that this test, questionnaire, or survey
8 is to be administered ~~and~~, the pupil's parent or *legal* guardian is
9 given the opportunity to review the test, questionnaire, or survey,
10 and to request in writing that a parent or *legal* guardian has given
11 prior written consent for his or her child ~~not~~ to participate.

12 (c) The use of outside consultants or guest speakers as described
13 in paragraph (2) of subdivision (a) is within the discretion of the
14 school district.

15 *SEC. 7. Section 51939 of the Education Code is amended to*
16 *read:*

17 51939. (a) A pupil ~~may~~ *shall* not attend any class in
18 comprehensive sexual education or HIV/AIDS prevention
19 education, or participate in ~~any~~ an anonymous, voluntary, and
20 confidential test, questionnaire, or survey on pupil health behaviors
21 and risks, ~~if~~ *unless* the school has received a *prior* written request
22 *consent for the pupil's participation* from the pupil's parent or
23 *legal* guardian ~~excusing the pupil from participation~~.

24 (b) A pupil ~~may~~ *shall* not be subject to disciplinary action,
25 academic penalty, or other sanction if the pupil's parent or *legal*
26 guardian declines to permit the pupil to receive comprehensive
27 sexual health education or HIV/AIDS prevention education or to
28 participate in anonymous, voluntary, and confidential tests,
29 questionnaires, or surveys on pupil health behaviors and risks.

30 (c) While comprehensive sexual health education, HIV/AIDS
31 prevention education, or anonymous, voluntary, and confidential
32 test, questionnaire, or survey on pupil health behaviors and risks
33 is being administered, an alternative educational activity shall be
34 made available to pupils whose parents or *legal* guardians have
35 ~~requested that they not~~ *given prior written consent for their*
36 *children to* receive the instruction or participate in the test,
37 questionnaire, or survey.

38 ~~SECTION 1. The Legislature finds and declares all of the~~
39 ~~following:~~

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

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

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

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

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

32 ~~(f) According to Dr. Joseph Glenmullen of the Harvard Medical~~
33 ~~School, the rating scales that are used to screen people for~~
34 ~~conditions such as depression are designed to fit hand-in-glove~~
35 ~~with the effects of drugs, and furthermore, while using a rating~~
36 ~~scale to diagnose depression may appear to be scientific, when~~
37 ~~one examines the questions asked and the scales used, they are~~
38 ~~utterly subjective measures.~~

39 ~~(g) Based on the subjective nature of the mental health~~
40 ~~diagnostic system and mental health screenings, millions of~~

1 children are prescribed antidepressants or stimulants recognized
 2 by leading drug regulatory agencies as causing suicidal behavior,
 3 suicide, violence, hostility, and, in the case of stimulants, the
 4 potential for strokes and heart attacks. In 2004, the United States
 5 Food and Drug Administration (FDA) required that a warning of
 6 suicide risk be placed on all antidepressants prescribed to
 7 individuals under 18 years of age. In 2005, the Commission of
 8 European Communities issued the strongest warning yet against
 9 child antidepressant use, warning of the potential of drugs to cause
 10 suicide, aggression, hostility, and related behavior. In 2006, the
 11 FDA Advisory Committee recommended that a warning of heart
 12 attacks and strokes be placed on stimulants.

13 (h) Therefore, parents must be given sufficient information
 14 about the nature and ramifications of mental health screenings in
 15 educational settings in order to give their informed consent to these
 16 screenings.

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

20
 21 Article 3. Mental Health Screenings

22
 23 49440. This article shall be known and may be cited as the
 24 Mental Health Screening, Child Protection, and Informed Consent
 25 Act.

26 49441. (a) The governing board of each school district
 27 maintaining kindergarten or any of grades 1 to 12, inclusive, shall
 28 not conduct any mental or psychological screening or testing of a
 29 minor pupil unless it has obtained the written consent of the pupil's
 30 parent or guardian on the consent form developed by the
 31 department pursuant to subdivision (c) not less than 45 days before
 32 conducting the planned screen or test.

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

- 37 (1) The nature and purpose of the screening or testing.
- 38 (2) The development of the screening or testing, its scientific
- 39 validity as replicated in scientific studies, and the rationale for and
- 40 reliability of the screening or testing.

- 1 ~~(3) Scientific journal citations demonstrating that the proposed~~
- 2 ~~screening or testing has been proven to be reliable and valid by~~
- 3 ~~replicated scientific studies.~~
- 4 ~~(4) A guarantee that no screening or testing is based on or related~~
- 5 ~~to any mental disorder as covered in the Diagnostic and Statistical~~
- 6 ~~Manual of Mental Disorders.~~
- 7 ~~(5) The intended use of the results or outcomes of screening or~~
- 8 ~~testing.~~
- 9 ~~(6) The right to rescind consent at any time before, during, or~~
- 10 ~~after the screening or testing.~~
- 11 ~~(e) The department shall develop and make available to school~~
- 12 ~~districts a consent form as follows.~~
- 13 ~~(1) The consent form shall be in a clear and legible format,~~
- 14 ~~comply with any applicable provisions of state or federal law~~
- 15 ~~regarding consent to mental health or psychological screening or~~
- 16 ~~testing, and be in the primary language of the parent or guardian.~~
- 17 ~~(2) The consent form shall include all of the following:~~
- 18 ~~(A) The following title centered and in bold type at the top of~~
- 19 ~~the form:~~
- 20 ~~–~~
- 21 ~~“FULLY INFORMED CONSENT FOR MENTAL HEALTH OR~~
- 22 ~~PSYCHOLOGICAL SCREENING OR TESTING.”~~
- 23 ~~–~~
- 24 ~~(B) A designated line in which to print the name of the pupil’s~~
- 25 ~~parent or guardian.~~
- 26 ~~(C) A designated line in which to print the name of the school~~
- 27 ~~or organization conducting the screening or testing.~~
- 28 ~~(D) The name of the screening or testing program, and the~~
- 29 ~~proposed time and location of the screen or test.~~
- 30 ~~(E) All of the following informational statements:~~
- 31 ~~(i) “Mental health or psychological screening or testing methods~~
- 32 ~~for children and adolescents vary from state to state, but may~~
- 33 ~~involve a self-administered computer interview or survey to~~
- 34 ~~determine how a pupil feels emotionally (anxious or worried, sad~~
- 35 ~~or depressed) or to judge his or her behavior at the present time or~~
- 36 ~~in the past. These questions can cover thoughts or feelings your~~
- 37 ~~child has had or thoughts and feelings your child thinks you may~~
- 38 ~~have had or currently have about him or her.”~~
- 39 ~~(ii) “As a result of the screening or testing of your child, you~~
- 40 ~~may be asked to take your child for a followup interview or~~

1 evaluation to determine if he or she has a mental disorder or
2 syndrome. Based on an evaluation of your child's answers to
3 questions posed by a mental health professional, your child may
4 be diagnosed with a mental or psychiatric disorder. These diagnoses
5 have to be made by a psychologist, psychiatrist, or a medical
6 doctor, but the subjectivity of this diagnostic process makes it a
7 risk."

8 (iii) "Questionnaires or tests are frequently based on symptoms
9 outlined in the Diagnostic and Statistical Manual of Mental
10 Disorders (DSM) or the mental disorders section of the
11 International Classification of Diseases (ICD). Psychologists,
12 psychiatrists, and medical doctors often depend upon these
13 diagnoses in order to bill private or government insurance
14 providers."

15 (iv) "The determination of whether the attitudes, beliefs, actions,
16 inactions, or behaviors of a child or adolescent constitute a mental
17 disorder is based only on the opinion of the person making the
18 diagnosis. Unlike methods to determine physical diseases like
19 cancer, diabetes, or tuberculosis, a diagnosis of a mental disorder
20 or syndrome cannot be determined by any physical, medical test,
21 such as a brain scan, chemical imbalance test, X-ray, or blood
22 test."

23 (v) "Mental health or psychological screening or testing may
24 be presented to you as a means of preventing suicide. However,
25 there is no scientific evidence to substantiate this assertion at this
26 time. The United States Preventive Services Task Force (USPSTF)
27 studied this assertion and recommended against screening for
28 suicide in 2004, stating that it "found no evidence that screening
29 for suicide risk reduces suicide attempts or mortality."

30 (vi) "Psychiatric drugs that are commonly prescribed to treat
31 mental disorders can have very serious effects on some children.
32 In 2005, the European Committee for Medicinal Products for
33 Human Use (CHMP), which includes members from 25 European
34 member states, determined that antidepressants should not be
35 prescribed to children who are less than 18 years of age because
36 they can produce suicidal behavior, including suicide attempts and
37 thinking about suicide, and related behavior, including self-harm,
38 hostility, or mood changes."

39 (vii) "The United States Food and Drug Administration (FDA)
40 ordered that a black box, its highest level of drug warning, be

1 ~~placed on antidepressant packaging to warn consumers that the~~
2 ~~drugs can induce suicide in children and teens. The FDA also has~~
3 ~~stated concerns that stimulant drugs prescribed for children may~~
4 ~~cause ‘psychiatric events,’ including ‘visual hallucinations, suicidal~~
5 ~~ideation, psychotic behavior, as well as aggression or violent~~
6 ~~behavior.’”~~

7 ~~(F) A statement of the requirements described in subdivision~~
8 ~~(b) and an acknowledgment by the parent or guardian that the~~
9 ~~school district complied with those requirements.~~

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

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

17 ~~(I) An acknowledgment, if the parent or guardian consents to~~
18 ~~the screen or test, that he or she permits the information obtained~~
19 ~~from the screen or test to be transmitted to any outside agencies~~
20 ~~or individuals, to the extent consistent with state or federal law.~~

21 ~~(J) Separate signature lines for the parent or guardian to consent~~
22 ~~to the screening or testing or to indicate that he or she does not~~
23 ~~consent to the screening or testing.~~

24 ~~SEC. 3.—If the Commission on State Mandates determines that~~
25 ~~this act contains costs mandated by the state, reimbursement to~~
26 ~~local agencies and school districts for those costs shall be made~~
27 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
28 ~~4 of Title 2 of the Government Code.~~