

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

AB 748 (Carrillo)
Version: June 2, 2022
Hearing Date: June 14, 2022
Fiscal: Yes
Urgency: No
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SUBJECT

Pupil mental health: mental health assistance posters

DIGEST

This bill requires schoolsites serving pupils in any of grades 6 to 12 to create a poster that identifies approaches to and shares resources regarding pupil mental health. The bill grants civil immunity to those schools districts, county offices of education, or charter schools.

EXECUTIVE SUMMARY

Research indicates that the “current behavioral health system is not successfully reaching students” and that students are more likely to receive mental health services when schools are involved.¹ Educating and connecting students and their families on mental health resources and best practices is particularly critical given the evidence that the COVID-19 pandemic has exacerbated youth mental health issues. In fact, the findings suggest that in the first year of the pandemic, intentional self-harm among 13- to 18-year-olds increased by 91 percent, overdoses increased by 95 percent, and diagnoses of major depressive disorder increased by 84 percent.

This bill seeks to educate students in grades 6-12 by requiring schoolsites to create a poster identifying approaches and sharing resources regarding pupil mental health. Schoolsites are authorized to work with other governmental entities, their own pupils, and nonprofits to design and develop content for the posters. Relevant to the jurisdiction of this Committee, the bill grants civil immunity to those schools districts, county offices of education, or charter schools from damages caused by or arising from the compliance or failure to comply with these requirements.

¹ Amanda Dickey & Carolyn Gray, *The Efficacy of Implementing a School-Based Approach to Student Wellness* (January 2022) Santa Clara County Office of Education, <https://drive.google.com/file/d/1BV1WZUoqHhimaMPCyQhMlkyQy-g5ao9/view>.

The bill is author sponsored. It is supported by various organizations, including the California State Association of Psychiatrists and the California Association for Health, Physical Education, Recreation, and Dance. There is no known opposition. This 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) Expresses the intent of the Legislature that the governing board of each school district and each county superintendent of schools maintain fundamental school health services at a level that is adequate to accomplish all of the following: preserve pupils' ability to learn, fulfill existing state requirements and policies regarding pupils' health, and contain health care costs through preventive programs and education. (Educ. Code § 49427).
- 3) Establishes the Mental Health Student Services Act (MHSSA) as a competitive grant program for the purpose of establishing mental health partnerships between a county's mental health or behavioral health departments and school districts, charter schools, and the county office of education within a county. (Health & Saf. Code § 5886)
- 4) Requires the California Department of Education (CDE) to establish the Office of School-Based Health Programs to assist LEAs regarding information and participation in health-related programs, as well as to collaborate with the State Department of Health Care Services (DHCS) regarding school-based health services. (Educ. Code § 49419)
- 5) Establishes the School Health Demonstration Project and requires CDE to select Technical Assistance teams to assist 25 pilot LEAs with training and support to expand comprehensive health and mental health services to pupils. (Educ. Code § 49421)

This bill:

- 1) Requires each schoolsite in a school district, county office of education, or charter school serving pupils in any of grades 6 to 12 to create and prominently and conspicuously display a poster that identifies approaches to and shares resources

regarding pupil mental health. This must be accomplished by the start of the 2023–24 school year. The poster must also be digitized and distributed online to pupils through social media, internet websites, portals, and learning platforms.

- 2) Authorizes the schoolsite to partner with local, state, or federal agencies, or nonprofit organizations, for purposes of the design and content of the poster.
- 3) Places various requirements on the general content and size of the poster, including that it be age appropriate and culturally relevant, displayed in English and any primary language spoken by 15 percent or more of the pupils enrolled, and be no smaller than 8.5 by 11 inches and use at least 12-point font.
- 4) Requires the poster to display, at a minimum, specified information, including:
 - a) identification of common behaviors of those struggling with mental health or who are in a mental health crisis;
 - b) a list of and contact information for schoolsite-specific resources, including, but not limited to, counselors, wellness centers, and peer counselors, as well as community resources, including suicide prevention, substance abuse, child crisis, and nonpolice mental health hotlines, and public behavioral health services and community mental health centers; and
 - c) a list of positive coping strategies to use when dealing with mental health and a list of negative coping strategies to avoid.
- 5) Provides the governing board of a school district, governing body of a charter school, and county board of education with discretion to select additional appropriate public areas to display the poster.
- 6) Requires CDE to develop and maintain a model poster, in collaboration with mental health experts, pupils, and administrators, as specified, to serve as a guide.
- 7) Immunizes a school district, county office of education, or charter school, serving pupils in any of grades 6 to 12, from civil liability for any damages alleged to have been caused by, or arisen as a result of, compliance or failure to comply with any of these requirements.

COMMENTS

1. Addressing mental health in California schools

According to the author:

AB 748 would ensure that young people have vital information about mental health resources offered to them readily available. The Biannual California Healthy Kids Survey from the Department of Health Care Services and the Department of Education has noted a steady rise in depression and anxiety among young people in the last several years. Studies also note that common mental health issues first emerge in adolescence, but young people often don't seek help until much later because they don't recognize the symptoms or don't know what resources exist. AB 748 would require California's middle and high schools to display 8x11 posters with information on common symptoms of mental health issues and school site resources that are available.

There is ample evidence, as referenced above, that children are faced with worsening mental health conditions and that education and access to resources is critical to addressing the problem. This bill addresses the issue by requiring schools to develop and post, both physically at schoolsites and digitally on social media and elsewhere, posters that lay out information about recognizing mental health issues, ways to cope, and resources that are available. CDE is required to develop a model notice that can help school officials with developing this content.

2. Granting broad immunity to school districts, county offices of education, and charter schools

The bill also includes a provision that grants broad immunity:

A school district, county office of education, or charter school, serving pupils in any of grades 6 to 12, inclusive, shall not be civilly liable for any damages alleged to have been caused by, or arisen as a result of, compliance or failure to comply with any of the requirements of this section.

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.

Here it is not clear that schoolsites must use the model notice and the precise content of these posters will vary. Given the gravity of the topic, this is an area that arguably calls for extremely careful navigation. Therefore, while an immunity provision may be called for to ensure those involved will comply, one that is too broad can create unintended consequences that no one is held to account for.

In order to better tailor this immunity provision so that it encourages compliance without protecting unreasonable or even reckless conduct, the author has agreed to remove the immunity provision and instead insert language that makes clear that the section created by the bill does not create a basis for civil liability, thereby preserving any existing duties without creating new ones.

Amendment

Replace existing (h) with: “(h) No basis for civil liability is created by this section for any school district, county office of education, or charter school, serving pupils in any of grades 6 to 12, inclusive.”

SUPPORT

Cal Voices

California Association for Health, Physical Education, Recreation and Dance

California Association of Student Councils

California Catholic Conference

California Council of Community Behavioral Health Agencies

California Federation of Teachers

California School Boards Association

California State Association of Psychiatrists

County Behavioral Health Directors Association of California

Mental Health Services Oversight and Accountability Commission

National Association of Social Workers, California Chapter

PRISM

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 58 (Salas, 2022) requires an LEA to review and update its policy on pupil suicide prevention and revise its training materials to incorporate best practices identified by CDE. It encourages LEAs to provide suicide awareness and prevention training. It does not include any immunity provisions. This bill is currently in the Senate Education Committee.

AB 452 (Friedman, 2022) requires local educational agencies to inform parents, through a notice developed by CDE, of California's child access prevention laws and other firearm laws. The bill provides civil immunity for such agencies, schools, and CDE for damages caused by, arising out of, or relating to the notice if the model language is used. This bill is currently in the Senate Appropriations Committee.

Prior Legislation:

AB 309 (Gabriel, Ch. 662, Stats. 2021) required CDE to develop model pupil mental health referral protocols, in consultation with relevant stakeholders, subject to the availability of funding for this purpose.

AB 543 (Davies, Ch. 561, Stats. 2021) required each campus of the California Community Colleges and the Trustees of the California State University to provide, and

requests the Regents of the University of California to provide, educational information about and the student eligibility requirements for CalFresh, to all incoming students. There are no immunity provisions.

AB 543 (Smith, Ch. 428, Stats. 2019) required public schools serving pupils in grades 9-12 to create and display a poster that notifies its pupils of the school's sexual harassment policy, and to provide a written copy of its sexual harassment policy to all students. It does not include any immunity provisions.

PRIOR VOTES:

Senate Education Committee (Ayes 6, Noes 0)

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Education Committee (Ayes 6, Noes 0)
