



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

October 27, 2021

**To:** Superintendents, Member School Districts (K-12)

**From:** Carl D. Corbin *CDC*  
General Counsel

**Subject:** Three New Laws Affecting Student Mental Health Issues: SB 14;  
SB 224; and AB 309  
Memo No. 37-2021

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Three bills were recently enacted into law to address the mental health issues of students: Senate Bill (“SB”) 14<sup>1</sup>; SB 224<sup>2</sup>; and Assembly Bill (“AB”) 309<sup>3</sup>. This Legal Update will summarize these new laws. Please note that SB 14 and SB 224 will require updating of client policies.

### SB 14

Approved by the Governor on October 8, 2021, SB 14 amends Education Code section 48205(a)(1) to allow for an excused student absence for illness: “...including an absence for the benefit of the pupil’s mental or behavioral health.”<sup>4</sup>

The law also directs the State Board of Education to: “update its illness verification regulations, as necessary, to account for including a pupil’s absence for the benefit of the pupil’s mental or behavioral health...”

As an “urgency measure” the bill became effective on October 8, 2021.

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<sup>1</sup> Available at: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB14](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB14).

<sup>2</sup> Available at: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB224](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB224).

<sup>3</sup> Available at: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB309](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB309).

<sup>4</sup> Also, effective January 2, 2022, AB 516 also added to the Education Code § 48205 list of excused student absences, a student’s participation in a “cultural ceremony or event” relating to the “habits, practices, beliefs, and traditions of a certain group of people.” Available at: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB516](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB516).



## SB 224

Approved by the Governor on October 8, 2021, and effective January 1, 2022, SB 224 requires school districts, county offices of education, and charter schools, which offer one or more courses in health education to students in middle school or high school, to provide in the courses instruction in mental health education.<sup>5</sup>

The instruction is required to address all of the following components:<sup>6</sup>

- (a) Reasonably designed instruction on the overarching themes and core principles of mental health.
- (b) Defining signs and symptoms of common mental health challenges.  
Depending on pupil age and developmental level, this may include defining conditions such as depression, suicidal thoughts and behaviors, schizophrenia, bipolar disorder, eating disorders, and anxiety, including post-traumatic stress disorder.
- (c) Elucidating the evidence-based services and supports that effectively help individuals manage mental health challenges.
- (d) Promoting mental health wellness and protective factors, which includes positive development, social and cultural connectedness and supportive relationships, resiliency, problem solving skills, coping skills, self-esteem, and a positive school and home environment in which pupils feel comfortable.
- (e) The ability to identify warning signs of common mental health problems in order to promote awareness and early intervention so that pupils know to take action before a situation turns into a crisis. This shall include instruction on both of the following:
  - (1) How to seek and find assistance from professionals and services within the school district that includes, but is not limited to, school counselors with a pupil personnel services credential, school psychologists, and school social workers, and in the community for themselves or others.
  - (2) Evidence-based and culturally responsive practices that are proven to help overcome mental health challenges.
- (f) The connection and importance of mental health to overall health and academic success and to co-occurring conditions, such as chronic physical conditions, chemical dependence, and substance abuse.

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<sup>5</sup> Education Code § 51925.

<sup>6</sup> *Id.*



- (g) Awareness and appreciation about the prevalence of mental health challenges across all populations, races, ethnicities, and socioeconomic statuses, including the impact of race, ethnicity, and culture on the experience and treatment of mental health challenges.
- (h) Stigma surrounding mental health challenges and what can be done to overcome stigma, increase awareness, and promote acceptance. This shall include, to the extent possible, classroom presentations of narratives by trained peers and other individuals who have experienced mental health challenges and how they coped with their situations, including how they sought help and acceptance.

The instruction is required to also:<sup>7</sup>

- (a) Be appropriate for use with pupils of all races, genders, sexual orientations, and ethnic and cultural backgrounds, pupils with disabilities, and English learners.
- (b) Be accessible to pupils with disabilities, including, but not limited to, providing a modified curriculum, materials and instruction in alternative formats, and auxiliary aids.
- (c) Not reflect or promote bias against any person on the basis of any category protected by Section 220.
- (d) Be coordinated with any existing on-campus mental health providers including, but not limited to, providers with a pupil personnel services credential, who may be immediately called upon by pupils for assistance.

This instruction is supposed to be educational in nature and not counseling such that a student does not have to disclose confidential health or medical information during the class instruction.<sup>8</sup>

SB 244 also requires the California Department of Education (“CDE”) to develop a plan to expand mental health instruction in California public schools.<sup>9</sup>

### AB 309

Approved by the Governor on October 8, 2021, AB 309 directs CDE to develop model referral protocols for addressing the mental health needs of students. The model referral protocols will address the following items:<sup>10</sup>

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<sup>7</sup> Education Code § 51926.

<sup>8</sup> Education Code § 51927.

<sup>9</sup> Education Code § 51929.

<sup>10</sup> Education Code § 49428.1(b).



- (1) Address the appropriate and timely referral by school staff of pupils with mental health concerns.
- (2) Reflect a multitiered system of support processes and positive behavioral interventions and supports.
- (3) Be adaptable to varied local service arrangements for mental health services.
- (4) Reflect evidence-based and culturally appropriate approaches to pupil mental health referral.
- (5) Address the inclusion of parents and guardians in the referral process.
- (6) Be written to ensure clarity and ease of use by certificated and classified school employees.
- (7) Reflect differentiated referral processes for pupils with disabilities and other populations for whom the referral process may be distinct.
- (8) Be written to ensure that school employees act only within the authorization or scope of their credential or license. This section shall not be construed as authorizing or encouraging school employees to diagnose or treat mental illness unless they are specifically licensed and employed to do so.
- (9) Be consistent with state activities conducted by the department in the administration of federally funded mental health programs.

The model referral protocols should be developed within two years<sup>11</sup> and will be posted on the CDE website.<sup>12</sup>

Please note that while CDE will encourage the use of this model referral protocols, there is no mandate in AB 309 for the school districts, county offices of education and charter schools to use or otherwise implement the model referral protocols.<sup>13</sup>

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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<sup>11</sup> Education Code § 49428.1(f).

<sup>12</sup> Education Code § 49428.1(d).

<sup>13</sup> Education Code § 49428.1(b).