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THE HONORABLE OLLIE SPERAW, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following questions:

1. Do public school officials have the authority to excuse a pupil from regularly scheduled classes during the school day to obtain an abortion?

2. If public school officials have such authority, must they notify the pupil's parent or guardian of the pupil's leaving for such purpose?

CONCLUSIONS

1. Public school officials have the authority to excuse a pupil from regularly scheduled classes to obtain medical services, including an abortion.

2. Public school officials are under no legal duty to notify the parents or guardian of a public school pupil who is excused from school early to obtain medical services even if such medical services are the obtaining of an abortion.

ANALYSIS

The questions presented are (1) whether public school officials may excuse a pupil from regularly scheduled classes during the school day to obtain an abortion, and (2) if so, whether the officials are under a duty to notify the pupil's parents or guardian of the student's leaving for such purpose.

We conclude that public school officials may excuse a pupil from school early to obtain medical services, and that an abortion is such a medical service. We further conclude that such officials are under no duty to notify the student's parents or guardian of the student's leaving for such purpose.

In this analysis we will set forth the state of the law with respect to excusing pupils from school early for medical appointments prior to the enactment in 1979 of section 48205 of the Education Code.[1] We will then determine if the addition of section 48205 affected the law. Section 48205 was added to the Compulsory Education Law (§ 48200 et seq.) and provides:

> "Notwithstanding Section 48200, a pupil shall be excused from school for justifiable personal reasons, including but not limited to, an appearance in court, observance of a holiday or ceremony of his or her religion, or an employment conference, *when the pupil's absence has been requested in writing by the parent or guardian* and approved by the principal or a designated representative pursuant to uniform standards established by the governing board. . . ."[2]

Section 48200 requires persons in California between the ages of 6 and 16 years not otherwise exempt (see § 48210 et seq.) to attend "public full-time day school or continuation school or classes for the full-time designated as the length of the school day by the governing board of the district."

Prior to 1980, the Education Code apparently contained no express authority to excuse students from classes for personal reasons, including keeping a medical

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[1] All section references are to the Education Code unless otherwise indicated.

[2] On its face section 48205 potentially supplies the answer to the questions asked *if* medical services, including abortion, is a "justifiable personal reason" within that statute.

appointment.[3] Prior to 1980, however, the Legislature in the provisions of law relating to student attendance for computing apportionments of state funds to local school districts had clearly indicated in section 46010 that certain absences were to be excused. Thus section 46010 provided and provides that specified absences "from school or class shall not be deemed an absence in computing the attendance of a pupil for apportionment purposes, including an absence for "the purpose of having *medical*, dental, optometrical, or chiropractic *services* rendered." (Emphasis added.)[4] Furthermore, as to some of these

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[3] The questions presented were posited in the context of section 303 et seq. of title 5 of the California Administrative Code, without consideration of the potential applicability of section 48205. Section 303 thereof, the most relevant regulation, essentially requires a student to remain on the school premises during school hours and not to leave "except in case of emergency, *or with the approval of the principal of the school*." (Emphasis added.) Accordingly we were asked whether a student could be excused pursuant to these regulations for the purpose of obtaining an abortion.

The questions also presuppose we are discussing minors by virtue of the query concerning parental notification. Accordingly, we need not discuss students who have attained the age of 18 and are accordingly adults and hence emancipated for all purposes.

Furthermore, we do not understand the question to encompass *fully* emancipated minors, that is, those who have been completely freed from parental authority and are *sui juris* and have all the rights of an adult. (See, generally, Civ. Code, § 60 et seq., "Emancipation of Minors Act" and *Jolicoeur* v. *Mihaly* (1971) 5 Cal.3d 565, 580-581, informal emancipation.)

[4] Section 46010 provides in full:

"(a) The total days of attendance of a pupil upon the schools and classes maintained by a school district, or schools or classes maintained by the county superintendent of schools during the fiscal year shall be the number of days school was actually taught for not less than the minimum schooldays during the fiscal year less the sum of his absences.

"(b) The absence of a pupil from school or class shall not be deemed an absence in computing the attendance of a pupil if such absence was:

"(1) Due to his illness, or

"(2) Due to quarantine under the direction of a county of city health officer, or

"(3) For the purpose of having medical, dental, optometrical or chiropractic services rendered, or

"(4) For the purpose of attending the funeral services of a member of his immediate family, so long as such absence is not more than one day if the service is conducted in California and not more than three days if the service is conducted outside California, or

"(5) For the purpose of jury duty in the manner provided for by law.

absences (illness and quarantine) the administrative regulations of the Department of Education specifically provided and still provide for the manner for verifying such absences. The regulations are, however, silent with respect to verifying the rendition of medical and similar services specified in subdivision (b)(3) of section 46010.[5] We are,

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"(6) Due to exclusion from school pursuant to Section 3381 of the Health and Safety Code, so long as such absence is not more than five schooldays pursuant to Section 46010.5.

"'Immediate family,' as used in this subdivision has the same meaning as that set forth in the last sentence of Section 45194 except that references therein to 'employee' shall be deemed to be references to 'pupil.'

"The provisions of this subdivision shall not apply in the case of pupils attending summer school, adult schools, and classes, or regional occupational centers and programs other than pupils concurrently enrolled in a regular high school program and a regional occupational center or program."

[5] Thus, title 5, section 420 of the California Administrative Code contains a reiteration of most of the allowable absences provided in section 46010. However, sections 421-424 then provide solely for the verification and recordation of absences for illness and quarantine. With respect to verification, section 421 of title 5 provides:

"421. Method of Verification. (a) Any of the following persons may verify an absence due to illness or quarantine:

(1) A school or public health nurse.

(2) An attendance supervisor.

(3) A physician.

(4) A principal.

(5) A teacher.

(6) Any other qualified employee of a district or of a county superintendent of schools assigned to make such verification.

(b) The verification shall be made in accordance with any reasonable method which establishes the fact that the pupil was actually ill or under quarantine if the method has been approved:

(1) In the case of a school district, by resolution of the governing board entered in its minutes.

(2) In the case of a school or class maintained by a county superintendent of schools, by resolution of the county board of education entered in its minutes."

In essence, the mode of verification is prescribed by the school district board or the county board of education, as appropriate.

We are advised that as to those absences contained in section 46010 (and section 420 of title 5) not set forth in section 421 of title 5, district or board of education policy is still prescribed as if they were included in section 421. Apparently, this is because section 42010, subdivisions b(3),(4) and (5) were added to the Education Code *after* the regulations were originally adopted, and the

however, informed that as a general rule school district policy has been to permit pupils to leave for medical or dental appointments by merely presenting an appointment card. A request from the pupil's parents has not been required.[6]

1. The Status Of An Abortion As A "Medical Service"

An abortion is a lawful medical service. Any doubt in this regard in California is dispelled by the decision of the California Supreme Court in *Ballard* v. *Anderson* (1971) 4 Cal.3d 873, 879. That case was decided in the context of the California Therapeutic Abortion Act (Health & Saf. Code, § 25950 et seq.). It construed the provisions of section 34.5 of the Civil Code, as originally enacted in 1953,[7] as to a minor who sought to have an abortion. The court stated in part:

> ". . . *It is obvious that legal abortion is a surgical procedure*, and the Therapeutic Abortion Act establishes that a legal abortion is 'care' of the prospective mother 'related to her pregnancy.' *In California, law and medicine recognize that therapeutic abortion is a legitimate medical treatment* which may be necessary for the preservation of a pregnant woman's life and health. Had the Legislature intended to exclude legal abortion from the class of surgical care to which the section refers, it would have limited its terminology to 'maternity care' or to 'prenatal, delivery, and postpartum care.'" (*Id.*, at p. 879, emphasis added.)[8]

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administrative regulations were never updated. However, as a general proposition, we are informed that an "appointment card" suffices to excuse a pupil for a medical or dental appointment.

[6] See Note 5, *supra*.

[7] Section 34.5 of the Civil Code presently provides:

> "Notwithstanding any other provision of the law, an unmarried minor may give consent to the furnishing of hospital, medical and surgical care related to the prevention or treatment of pregnancy, and such consent shall not be subject to disaffirmance because of minority. The consent of the parent or parents of such minor shall not be necessary in order to authorize such hospital, medical and surgical care.
>
> "The provisions of this section shall not be construed to authorize a minor to be sterilized without the consent of his or her parent or guardian."

[8] *Ballard* v. *Anderson*, *supra*, 4 Cal.3d 873, as noted was decided under California's Therapeutic Abortion Act, which does not provide an absolute right to an abortion. However, shortly thereafter the United States Supreme Court decided the cases of *Roe* v. *Wade* (1973) 410 U.S. 113 and *Doe* v. *Bolton* (1971) 110 U.S. 179, which established as a fundamental constitutional right a woman's right, in consultation with her physician, to choose to have an abortion. (See also, generally, *Committee to Defend Reproductive Rights* v. *Myers* (1981) 29 Cal.3d 252, 262-263, state constitutional right.) The fact that such right was recognized as having constitutional

Accordingly, there is no doubt but that a student who leaves school early for the purpose of obtaining an abortion would be leaving to obtain recognized medical services, or in the words of section 46010, subdivision (b)(3) "for the purpose of having medical services rendered."

2. The Effect If Any Of Section 48205

As noted, section 48205 was added to the Compulsory Education Law provisions (§ 48200 et seq.) of the Education Code in 1979. At the same time section 46015 was added to the article of the Education Code relating to attendance for computing school apportionments (§ 46010 et seq.) and reads as follows:

> "*Except as otherwise provided in this article*, the absences allowed under Section 48205 shall be deemed to be absences in computing average daily attendance and shall *not* generate state apportionment payments." (Emphasis added.)

Finally, section 48980, which is contained in the chapter entitled "Pupil Rights and Responsibilities" (§ 48900 et seq.), was amended to include a reference to section 48205, *supra*.[9]

As can be seen, section 46015, which was placed in the article relating to absences for school apportionment purposes, cross-references section 48205, which was placed in the "Compulsory Education Law." From the words of limitation contained in section 46015 ("Except as otherwise provided *in this article*") and such cross-reference, it could be argued that the Legislature intended to include within the scope of section 48205 as absences "for justifiable personal reasons" those absences already set forth in section 46010 (set forth in full at note 4, *ante*). Those are the absences for which school

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proportions in no way, however, changes the language of section 34.5 which the California Supreme Court interpreted to include abortion as a medical and surgical treatment of pregnancy. Accordingly, *Ballard* v. *Johnson* is still good law on this point.

[9] Section 48980 provides:

> "(a) At the beginning of the first semester of the regular school term, the governing board of each school district shall notify the parent or guardian of its minor pupils regarding the right of the parent or guardian under Sections 46014, 48205, 49403, 49423, 49451, 49472, 51240, 51550, and Article 3 (commencing with Section 56030) of Chapter 1 of Part 30.
>
> "(b) Such notification shall also advise the parent or guardian of the availability of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9."

apportionment funds are *not* lost. One such absence is an absence to obtain "medical services." We reject such construction, however, for a number of reasons.

In analyzing the legislative purpose in excusing pupil absences, it is necessary to keep in mind that two reasons are present. The first is to determine whether or not such absences will cause a loss in school apportionment funds. The second is to absolve the pupil and parents from what would otherwise be a violation of the Compulsory Education Law. With this in mind, it is evident that the absences specified in section 46010 are generally of a different nature than those specified in section 48205. With regard to the former, the absences are essentially "compelled" absences for which it is logical to provide that there should be no loss in school apportionment funds (i.e., illness, quarantine, jury duty, etc.). As to those provided in section 48205, these are more in the nature of "discretionary" absences which, although excused, are truly personal in nature to the pupil. As to these absences it would be more logical to provide for loss of school apportionment funds. In short, such distinction militates against an incorporation into section 48205 of the section 46010 absences.

Additionally, and in the same vein, since most of the absences in section 46010 are *truly* compelled absences (illness, quarantine, jury duty), it would be illogical to incorporate those absences into section 48205. This is so, since section 48205 *requires* for excuse a request from a parent or guardian. A note from a parent or guardian in case of a "compelled" absence might be desirable as verification of the necessity for the absence, but in such cases the parent or guardian would not really be "requesting" permission for the absence.

Finally, it is to be noted that the section 48205 absences are to be "approved" by the school authorities pursuant to uniform standards established by the governing board. To incorporate the absences set forth in section 46010 into section 48205 would ignore the fact that, as to the section 46010 absences, the manner in which they are to be verified had *already* been long provided for by state regulations, local regulations and administrative policy and interpretation when section 48205 was enacted.

Therefore, we believe and conclude that the language in section 46015, *supra*, ("Except as otherwise provided in this article") was not intended to change the law with respect to the manner in which the section 46010 absences should be verified, but was intended merely to insure that the law remained the same with regard to such absences, that is, that *those* absences would not result in a loss of school apportionment funds. Consequently, the section 46010 absences are not incorporated into section 48205 as absences for "justifiable personal reasons" as contemplated therein. Accordingly, the law does not require a written request from a parent or guardian for school officials to excuse a pupil from school to obtain medical services, including an abortion.

3. The Question Of Parental Notification

We have established so far (1) that school authorities may excuse a pupil early for the purpose of obtaining "medical services"; (2) that an abortion is a lawful "medical service"; and (3) that section 48205 does not require a request from a parent or guardian for school officials to excuse a pupil for such purpose. We now explore the question whether school officials are obligated to notify a parent or guardian of a student's leaving early for the purpose of obtaining an abortion.

The question as presented to us for resolution herein appears to assume that the student who desires to leave school early has told the school authorities that her purpose is to obtain an abortion. However, since obtaining "medical services" is a legitimate reason for excusing a pupil from school early (see § 46010; § 303 of title 5, Cal.Admin.Code), there would be no need for either the student to inform the principal of the nature of the medical services (abortion) or for the school authorities to inquire as to the nature of such services. The school's concern would be limited to ascertaining that the student did in fact have a medical appointment. This could be done in a number of ways. If the student was a student known to be reliable, the school authorities could rely upon her statement that she had a medical appointment. If they had some doubts concerning the student's veracity, they could request to see the student's appointment card. If they believed that further verification was necessary, they could call the doctor's office or the student's parents, if necessary. The inquiry, however, would still be merely the fact of the medical appointment, not the nature of the medical services. The latter would be of no concern to them.

As we have already noted, it is our understanding that the manner of verification is presently provided for by school *district* policy, and may normally be accomplished through the student showing an "appointment card." Assuming, however, that the school authorities are made aware of the fact that a student has a medical appointment to obtain an abortion, we still conclude that there is no duty on the part of the school officials to notify the parents or guardian of such leaving.

Initially, we note that neither the Education Code nor the California Administrative Code contains such a requirement. As a general proposition, the student's parents would be aware of a medical appointment, since parental consent is normally a prerequisite to medical treatment of a minor. (*Ballard* v. *Anderson*, *supra*, 4 Cal.3d at p. 878; *cf*; Civ. Code § 25.8.) However, a student, even though generally an unemancipated minor, may be "medically emancipated," and thus may receive medical treatment *without* parental consent. One such medical emancipation provision, section 34.5 of the Civil Code

with reference to the treatment of pregnancy, has been discussed, *ante*. Other "medical emancipation" statutes could also come into play.[10]

With respect to section 34.5, the medical emancipation statute specifically related to the treatment of pregnancy, and hence abortion, the Supreme Court voiced the following caveat in *Ballard* v. *Anderson*, *supra*, 4 Cal.3d at p. 883:

> "We are aware that section 34.5, unlike section 34.6, contains no specific age limitation. The age of fertility provides the practical minimum age requirement under section 34.5. *However, there is an additional limitation implicit in each of the medical emancipation statutes:* the minor must be of sufficient maturity to give an *informed consent* to any treatment procedure. (See generally Note, *Restructuring Informed Consent*: *Legal Therapy for the Doctor-Patient Relationship* (1970) 79 Yale L.J. 1533, 1555-1558.) (7) A minor of any age who is unable to convince competent medical authorities that she has the requisite understanding and maturity to give an informed consent for any medical treatment, including a therapeutic abortion, will be denied such treatment without the consent of either a parent or legal guardian." (First emphasis is added.)

Thus, certain minors may consent to medical and surgical treatment without parental consent. Such authority to consent may apply to all medical procedures or only some procedures depending upon the minor's status and the procedure involved. (See Note 10, *ante*.) However, one thing is clear. Where a minor who claims to be "medically emancipated" wants to obtain medical or surgical treatment, *the burden is placed upon the medical practitioner to determine the minor's ability to consent*. (*Ballard* v. *Anderson*, *supra*, 4 Cal.3d at pp. 882-883.)

Accordingly, where a minor student has made an appointment to have medical or surgical services rendered, the physician involved will have already ascertained the student's ability to consent where parental consent is absent. Thus, the student's ability to consent would be of no consequence to the school authorities. If a student legally may consent to "medical services" without parental consent, it logically follows that the parents need not be informed of the rendition of such services. It takes little imagination when

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[10] See, e.g., Civil Code section 34.6 (minors 15 years of age or older living apart from their parents and managing their own financial affairs, medically emancipated); Civil Code section 34.7 (minors 12 years or older may consent to treatment relating to infectious, contagious, or communicable disease, including sexually transmitted disease); Civil Code section 34.8 (minors 12 years of age or older who have been raped may consent to "diagnosis and treatment" of such condition).

examining California's medical emancipation statutes to discern that their purpose in many cases, particularly those where pregnancy or sexual assault has been involved, is to permit the minor to seek medical attention without revealing this to *anyone*, including her parents.

That this is the case is supported by the decision in *Alice* v. *Department of Social Welfare* (1976) 55 Cal.App.3d 1039. That case involved the question whether a rule of the Department of Social Welfare which required parental contact as to minors seeking Medi-Cal treatment in conjunction with AFDC could be applied to a female minor seeking an abortion who was "medically emancipated" for such purposes. In holding that such a regulation should not be applied, the court stated in its decision what we consider the logical extension of the "medical emancipation" statutes, as follows:

> "It is to be noted that a 'child,' such as Alice, who was an unmarried pregnant minor, had previously been authorized by the Legislature in statutes enacted in 1953 and 1968, to consent to medical and surgical care related to her pregnancy. (Civ. Code, §§ 34.5, 34.6.) It is undisputed by any party that a minor may consent to an abortion without parental contact or consent. (See *Ballard* v. *Anderson* (1971) 4 Cal.3d 873, 878 [195 Cal.Rptr. 1, 484 P.2d 1345, 42 A.L.R.3d 1392].)" (*Id*., at p. 1043.)

Thus, in summary we conclude that public school authorities are under no legal duty to notify the parents of a public school pupil who is excused from school to obtain medical services even if such medical services are the obtaining of an abortion.[11]

Significantly, the Court in the *City of Akron* case, at note 31, stated that it would be unconstitutional for a state to require parental notification with respect to a "mature minor." Such conclusion had already been strongly implied in *H.L.* v. *Matheson*, *supra*.

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[11] In reaching the conclusions herein we have also examined the developing federal case law with respect to a minor's right to obtain an abortion without parental knowledge and consent and the ability or not of the state to limit such right by statute. We find nothing in the federal cases contrary to our conclusions, and in fact find them supportive of our conclusions. (See, generally, *City of Akron* v. *Akron Center For Reproductive Health* (June 14, 1983) 51 U.S.L.Week 4767, 4770 (fn.10), 4773-4774 and fn.31; *Planned Parenthood Association of Kansas City, Missouri, Inc.*, v. *John Achcroft, Attorney General of Missouri* (June 14, 1983) 51 U.S.L.Week 4783, 4787; *H.L.* v. *Matheson* (1981) 450 U.S. 398, 407, 413; *Bellotti* v. *Baird* (1979) 443 U.S. 622, 643-644, plurality opinion.)