Resolution 07-11-2015, to require Lifeguard supervision for K-12 swim physical education classes

Catherine L Rucker
DIGEST
California K-12 schools are able to provide swim physical education classes – without lifeguard supervision – because the Health & Safety Code does not require it. This resolution would require a K-12 school to conduct a swim physical education class only when it provides lifeguard supervision.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Education Code section 51222 to read as follows:

§51222
(a) All pupils, except pupils excused or exempted pursuant to Section 51241, shall be required to attend upon the courses of physical education for a total period of time of not less than 400 minutes each 10 schooldays. Any pupil may be excused from physical education classes during one of grades 10, 11, or 12 for not to exceed 24 clock hours in order to participate in automobile driver training. Such pupil who is excused from physical education classes to enroll in driver training shall attend upon a minimum of 7,000 minutes of physical education instruction during such school year.

(b) The governing board of each school district that maintains a high school and that elects to exempt pupils from required attendance in physical education courses pursuant to paragraph (1) or (2) or both of subdivision (b) of Section 51241 shall offer those pupils so exempted a variety of elective physical education courses of not less than 400 minutes each 10 schooldays.

(c) For all aquatics physical education classes taking place at a pool on a K-12 school property, the school district shall provide paid lifeguard supervision. The certified lifeguard shall be a person in addition to the physical education teacher. To qualify, the lifeguard shall possess a current certificate from either the American Red Cross or YMCA of the U.S.A. lifeguard training program.

(Proposed new language underlined; language to be deleted stricken)

PROPOONENT: The Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: School districts have a duty of care to properly supervise students at school and during the school day. California Government Code (GOV) §§ 815.2 (a) & 820 (a). However, California has little or no standard of care for the supervision to be provided during aquatics physical education classes that are held at school swimming pools. This is because Health & Safety Code (HSC) § 116045 only requires lifeguard supervision at a public swimming pool when a “direct fee” is being charged. As a result, several schools have set the “standard” that a physical education teacher, even without special safety training, can supervise an aquatics physical education class during the school day. And as a result, several drownings and near-
drownings have occurred during aquatics physical education classes in California. Requiring the school to provide a paid lifeguard, who can be a student, is ideal for several reasons. First, it allows the student lifeguard to focus on the safety of the students while the physical education teacher focuses on teaching swimming skills. Second, both the lifeguard and the teacher will supervise the students. Third, because the physical education teacher is not required to become a certified lifeguard, then there is no issue with teacher employment contracts – and no issue with the local teachers’ union. Paid certified lifeguards have the duty to rescue and the duty to provide advanced first aid. Paid lifeguards have the duty to rescue because they have received training to rescue victims from the pool without endangering their own lives. Paid lifeguards are also trained to apply: rescue breathing, CPR, and an automated external defibrillator (AED) for sudden cardiac arrest. Lifeguards are also trained to apply a backboard to protect the victim’s head, neck and spine from any further injury. In contrast, untrained physical education teachers have no duty to rescue and they are not able to apply advanced lifesaving techniques. (For the purposes of this resolution, the lifeguard training standards are taken from HSC section 116033.)

The Solution: This resolution will raise the standard of care to require that during every aquatics physical education classes at a pool on a K-12 school campus, the school district shall provide paid lifeguard supervision. As a result, K-12 students will be able to learn to swim and will enjoy the benefits of aquatic exercise in an environment where the risk of drowning deaths, near-drownings, and debilitating head, neck and spine injuries will be greatly reduced. Because a school swimming pool is a more hazardous environment than the rest of the school campus, if a school offers an aquatics physical education class, then the school must provide lifeguard supervision. Further, if the school provides a paid lifeguard, then at least one person supervising the students will have both the duty to rescue and the duty to provide care.

Resolution 08-04-2012 (by this author) was adopted as amended by the CCBA. The 2012 resolution was problematic because it would have required the physical education teacher to become a certified lifeguard. And the teachers’ unions will oppose any requirements to increase teacher safety training.

IMPACT STATEMENT
This resolution does not affect any other statute or case law.

CURRENT OR PRIOR RELATED LEGISLATION
Not known.

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