



## Confidential Medical Care During School Hours: A Minor's Right to Confidential School Release

“As the chief law officer of the state, the California Attorney General provides legal opinions upon request to designated state and local public officials and government agencies on issues arising in the course of their duties. The formal legal opinions of the Attorney General have been accorded "great respect" and "great weight" by the courts.”<sup>1</sup>

The California Attorney General has been asked to address a minor's right to confidential school release for certain health care on two different occasions. Reviewing state and constitutional law, the Attorney General has come to the following three conclusions:

1. Schools *may* excuse minors during the school day for confidential minor consent medical care without prior parent permission.
2. Schools *cannot* adopt a policy that requires parent consent when the minor is excused from school for confidential medical care.
3. Schools *cannot* adopt a policy that requires parent notification when the minor is excused from school for confidential medical care.

The questions presented to the Attorney General and a summary of the Attorney General's opinions and analysis follow.

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### **May schools excuse minors during the school day for confidential minor consent medical care without prior parent permission?**

Yes. In 1983 and again in 2004, the California Attorney General released opinions affirming that school officials “have the authority to” release pupils for minor consent services during school hours without parental permission. 66 Ops. Cal. Atty. Gen. 244 (1983); 87 Ops. Cal. Atty. Gen 168 (2004).

In the 2004 opinion, the Attorney General (AG) noted that under state law, school attendance is compulsory but that attendance may be excused in certain circumstances. Education Code section 48205 lists reasons for excused absences. These reasons include, among others, medical appointments, and personal reasons such as funerals and religious holidays. In the case of absences for personal reasons, the statute requires parental permission and school approval before an absence may be excused.<sup>2</sup> In other cases, including absences to obtain medical services, the law does not require parental permission and school approval. The AG concluded that this “difference in language”

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<sup>1</sup> “Legal Opinions of the Attorney General,” <http://www.ag.ca.gov/opinions/>

<sup>2</sup> For example, schools must excuse absences to attend a funeral or religious ceremony but only “when the pupil's absence has been requested in writing by the parent or guardian and approved by the principal...” Education Code § 48205(a)(7).

was not an oversight on the part of the legislature. Rather, it reflects “a legislative intent *not* to require parental consent in order to excuse a student for the purpose of obtaining medical services.”<sup>3</sup> Therefore, students may be excused from school for medical appointments without their parents’ permission.

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### **May schools adopt a policy that requires parental consent when the minor is excused from school for confidential medical care?**

No. The 1983 AG opinion made it clear that schools need not obtain parent consent when a minor seeks confidential services during school hours;<sup>4</sup> The 2004 Attorney General opinion made clear that school districts *cannot* adopt policies requiring parental consent when children leave campus for confidential medical services.<sup>5</sup>

In the 2004 opinion, the AG considered whether schools may adopt a policy that requires the school to obtain parent permission prior to releasing a minor for confidential services. The AG considered such school policies in the context of minor medical consent laws, stating that “[s]chool districts have broad powers to adopt policies in furtherance of their educational purposes, provided they do not act in a manner ‘in conflict with or inconsistent with, or preempted by, any law.’[citation omitted].” The AG determined that a policy requiring parental consent to excuse a minor for confidential care *would* conflict with other state laws because it “would undermine the purposes and intent of the medical emancipation statutes.” Citing the California Supreme Court,<sup>6</sup> the AG explained that “statutes protecting the privacy of medical information are based on the Legislature’s awareness that the threat of disclosure might deter persons needing treatment from seeking it. [citation omitted].” A policy that requires parental permission when a student seeks such services would be inconsistent with the legislative intent to encourage minors to receive medical treatment by protecting the confidentiality of their medical information.<sup>7</sup> The AG concluded “that a school district may not require that a student

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<sup>3</sup> 87 Ops. Cal. Atty. Gen. 168 (11-29-04); see also 66 Ops. Cal. Atty. Gen. 244 (1983)(opining that school officials “have the authority to” release pupils for minor consent services during school hours).

<sup>4</sup> 66 Ops. Cal. Atty. Gen. 244.

<sup>5</sup> 87 Cal. Ops. Atty. Gen. 168.

<sup>6</sup> The AG Opinion quotes extensively from *American Academy of Pediatrics v. Lungren*, 16 Cal.4<sup>th</sup> 307, decided by the California Supreme Court in 1997. Part of the cited language includes the following: “...[O]ver the past for decades the Legislature has recognized that, in a variety of specific contexts, the protection of the health of minors may best be served by permitting a minor to obtain medical care without parental consent...[E]ach of these statutory provisions embodies a legislative recognition that, particularly in matters concerning sexual conduct, minors frequently are reluctant, either because of embarrassment or fear, to inform their parents of medical conditions relating to such conduct, and consequently that there is a considerable risk that minors will postpone or avoid seeking needed medical care if they are required to obtain parental consent before receiving medical care for such conditions. To protect their health in these particular circumstances, that statutes authorize minors to receive medical care for these designated conditions without parental consent.” [citation omitted]).

<sup>7</sup> 87 Cal. Ops. Atty. Gen. 168.

obtain written parental consent prior to releasing the student from school to receive confidential medical services.”<sup>8</sup>

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**May schools adopt a policy that requires parental notification when the minor is excused from school for confidential medical care?**

In the 2004 opinion, the Attorney General also considered whether schools may adopt a policy allowing for parent notification when children leave campus for confidential care. While the AG acknowledged that notifying parents is not the same as obtaining consent before releasing students, the AG concluded that a minor’s right to obtain confidential medical services would be infringed in either situation. Minors have the right not just to receive sensitive medical services without consent of their parents, but also to keep information about the services confidential. This means that minors also “have the right to keep the existence of such medical services confidential, even from their parents.”<sup>9</sup> Notifying parents of their children’s confidential medical appointments would be inconsistent with the minor medical consent laws, as well as the minor’s right to keep medical information related to sensitive medical services confidential. Thus, the AG stated that “a school district may not adopt a policy pursuant to which the school will notify a parent when a student leaves school to receive confidential medical services.”<sup>10</sup>

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<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.