



## ATTORNEY GENERAL ADDRESSES WHEN SCHOOL COUNSELORS MAY DISCLOSE A STUDENT'S PREGNANCY- OR ABORTION-RELATED INFORMATION

On December 29, 2011, the California Attorney General issued a long-awaited opinion which will guide school counselors in determining when a counselor may disclose personal information about the pregnancy or abortion plans of a student twelve years of age or older. (\_\_\_ Ops.Cal.Atty.Gen. \_\_\_ (Dec. 29, 2011)). In short, the Attorney General opined that a school counselor may, but is not required to, disclose such private health matters when necessary for the protection of the student's health and safety.

The Attorney General stated that Education Code section 49602 mandates that a student's personal information "*shall not* be revealed, released, discussed, or referred to," subject to specified exceptions. One of these exceptions is found in Education Code section 49602 subdivision (c), which states that a student's personal information may be disclosed when "(r)eporting information to the principal or parents of the pupil when the school counselor has reasonable cause to believe that disclosure is necessary to avert a clear and present danger to the health, safety or welfare of the pupil" or other members of the school community. The Attorney General concluded that section 49602 subdivision (c) permits, but does not require, a school counselor to disclose information about a student's pregnancy or abortion to the parent or principal when the counselor has *reasonable cause* to believe that disclosure is *necessary to avert a clear and present danger* to the student's health, safety or welfare.

The Attorney General reiterated that minors have constitutional privacy rights and noted that school districts may not require parental consent before a student is released from school for "confidential" medical services, including pregnancy- or abortion-related care. Balanced against this privacy interest is a concern for the student's health and safety. The Attorney General attempted to strike this balance by recognizing an exception that permits a concerned counselor to make a disclosure where there is a compelling state interest in protecting the health of the minor, such as when the minor intends to self-abort her pregnancy or seek an abortion from an unlicensed provider, or she is refusing medical treatment for serious pregnancy-related complications.

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The Attorney General cautioned that a “perceived danger to a student’s health, safety or welfare should not be interpreted too loosely.” While no bright line test was provided, the Attorney General stressed that the exception allowing disclosure will be narrowly construed. The Attorney General did clearly note that “an individual’s or a community’s moral, ethical or religious values should not be considered in determining whether there is a clear and present danger to the health and safety of the student . . . (and) section 49602 would *not* permit a counselor to reveal a student’s pregnancy-related or abortion-related personal information based solely on the counselor’s personal views on the subject of teen pregnancy or abortion, or on the counselor’s or community’s subjective belief that this is the type of information that every parent should know.”

The second part of the opinion examined whether a counselor’s failure to disclose such personal information to a parent or principal can result in civil liability to the counselor or the district if a student suffers harm that could have been prevented by disclosure. The Attorney General first determined that the California Government Claims Act does not provide discretionary immunity for this type of decision. The Attorney General then rejected the doctrine of negligence per se, which is a special form of negligence liability based on the violation of a statutory duty. The Attorney General stated that neither a counselor nor his or her employer can be found negligent per se for a failure to disclose information under section 49602 because the statute only allows, but does not require, disclosure. The Attorney General acknowledged that other potential bases for liability could exist but are beyond the scope of this opinion.

For assistance in interpreting this and other counseling and privacy issues, please contact one of our [eight offices](#) located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

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