



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

July 18, 2016

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

From: Frank Zotter, Jr. *FZ*
Senior Associate General Counsel

Subject: Addendum to Legislative Changes to Employment in Child Day
Care Facilities
ADDENDUM to Memo No. 21-2016

Our office recently issued Legal Update no. 21-2016 regarding Senate Bill 792, which added Section 1596.7995 to the Health and Safety Code. That Update stated that the new statute applies to “all” child day care facilities that provide non-medical care and supervision of infant to school-age children in a group setting for less than 24 hours a day, such as: infant centers, preschools, extended day care facilities and school age child care centers.

While the statute on its face appears to state that it applies to all child day care facilities, after receiving several inquiries about this statutory amendment from day care centers operated by K-12 districts, we took another look at the overall statutory scheme of which Section 1596.7995 is a part, namely the California Child Day Care Act (“Act”). The Act provides licensing requirements for child care centers. Many child care facilities that operate in tandem with K-12 schools are not required to be licensed under the Act, and therefore would likewise not be covered by the new requirements under Section 1596.7995, either.

Even for those providers that are licensed under the Act, there are a number of exemptions under another statute in the Act, Health and Safety Code § 1596.792. These exemptions include: any “public recreation program” which is operated by “the state, city, county, special district, *school district*, community college district, chartered city or county [emphasis added]” and that meets certain criteria. That criteria includes: that the program is only operated outside the normal school hours (of the district in which the program is located) for grades K-12; or, that it is operated during a break when school is not normally in session (winter break, spring break, or summer vacation).

For the exemption to apply, the program must also operate either for fewer than 20



hours per week or for less than a total of 14 weeks (consecutive or not) in a 12-month period. Section 1596.7995 also exempts “extended day programs” which are defined as “any extended day care program operated by public or private schools,” and “short term care,” which is defined as “any child day care program that operates only one day a week for less than 4 hours that day.”

In sum, districts that operate day care programs that are not already licensed under the Act are not required to comply with the new immunization regime. Even those that are, however, should determine whether they meet one of the exemptions described above under Section 1596.792. These exemptions would likely also exempt other before- and after-school programs that fall within the terms of the Section 1596.792 exemption.

Please contact our office with questions regarding the original Legal Update, this Addendum, 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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