

- SUBJECT:** Defining assault leave for public school employees
- COMMITTEE:** Public Education — favorable, without amendment
- VOTE:** 6 ayes — Sadler, Dutton, Dunnam, Hardcastle, Hochberg, Olivo
0 nays
3 absent — Grusendorf, Oliveira, Smith
- WITNESSES:** For — Larry Shaw, United Educators Association
Against — None
- BACKGROUND:** Education Code, sec. 22.003 entitles a school employee who is physically assaulted during performance of regular duties to the number of days of leave necessary to recuperate from all physical injuries sustained as a result of the assault.
- In 1998, the education commissioner ruled that a teacher assaulted by a student with a mental disability is not entitled to leave (*Maxine Dean v. Pasadena ISD*). The ruling was based on the concept that a student with a mental disability would not “knowingly” or “intentionally” assault someone and thus would not commit assault as defined under Penal Code, sec. 22.01.
- DIGEST:** HB 1188 would specify that a school district employee is “physically assaulted” and thus entitled to leave if the person engaging in the conduct that caused injury either:
- ! could be prosecuted for assault, or
 - ! could not be prosecuted for assault only because the person’s age or mental capacity made that person nonresponsible for purposes of criminal liability.
- The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001. It would apply beginning with the 2001-02 school year.

**SUPPORTERS
SAY:**

Under current law, as interpreted by the education commissioner, a teacher who is injured physically by a student under age 10 or by a mentally handicapped student is not entitled to take assault leave. After the commissioner's decision, many school districts began denying leave to special education teachers who were harmed by mentally handicapped students. HB 1188 simply would clarify that these teachers, who most need assault leave, could take it as intended. While assault by a student without the necessary mental state may not fit the definition for prosecution under the Penal Code, if it causes injury to a school employee, it should be covered under the leave policy.

**OPPONENTS
SAY:**

No apparent opposition.