



MEDICAL ISSUES FACING LOUISIANA'S PUBLIC SCHOOLS: WHAT ARE SCHOOL NURSES, TEACHERS, AND ADMINISTRATORS TO DO?

BY

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DISCLAIMER: This handout is intended for educational use only. It does not constitute legal advice. If you have specific questions or concerns about any of the issues discussed herein, please seek the advice of legal counsel.

"School nursing is a specialized practice of professional nursing that advances the well being, academic success, and life-long achievement of students. To that end, school nurses facilitate positive student responses to normal development; promote health and safety; intervene with actual and potential health problems; provide case management services; and actively collaborate with others to build student and family capacity for adaptation, self management, self advocacy, and learning." Louisiana Department of Education, Adopted from NASN Board of Directors meeting in Providence, Rhode Island, in June 1999.

Who is the "School Nurse"?

The school nurse program in Louisiana was established in 1979 by Louisiana RS 17:28. School nurses are required to meet the certification in Bulletin 741, Louisiana Standards for State Certification of School Personnel. Applicants must hold a current license as a registered professional nurse in the state of Louisiana.

In Louisiana, there are registered nurses (RNs) and licensed practical nurses (LPNs). There is also the certified nursing assistant ("CNA"). Louisiana state law requires each city and parish school system to employ at least one "school nurse" certified by the State Board of Elementary and Secondary Education (BESE) at a ratio not to exceed 1,500:1. La. R.S. 17:28(A)

KEY POINT

Recognizing and understanding the difference between the RN, the LPN and the CNA is important for the prudent school administrator and school board member because of the complexity that exists with respect to the provision of health care to students in the school setting.

In Louisiana, there are different ancillary certification levels for a "school nurse." However, all three certifications require that the school nurse be a "registered professional nurse" or "RN."

Type C -- RN with a minimum of 2 years of experience as an RN (valid 3 years)

Type B -- RN with 5 years of experience PLUS 3 year's experience as a Type C School Nurse. (valid 5 years)

Type A -- RN with a baccalaureate degree in nursing or a health related field from a regionally accredited college or university plus 3 year's experience as a Type C School Nurse. (5 years)

Title 28, Louisiana Administrative Code § 411 (Bulletin 746) (March 2012)

The fact that the 1,500:1 ratio of students:"school nurse" exists does not mean that the school district has met all of its legal obligations by maintaining a 1,500:1 ratio. It simply means that the district is complying with La. R.S. 17:28(A). There are other state and federal laws that might require a district to employ more school nurses to serve the students. Additionally, after the initial 1,500:1 ratio has been met, a district is within its rights to employ other health care personnel to meet the needs of its students requiring the services of a health care professional during the school day. There is no legal prohibition against hiring individuals who are not certified "school nurses" to work in the school setting. Most likely because these other individuals are nurses and they are working in the school setting, these individuals are often incorrectly referred to as the "school nurse" when, in fact, they are not a "school nurse" for purposes of Louisiana state certification rules and state law.

RNs who can perform many health care services are bound by the Nursing Practice Act.

When the school district hires an RN, the fact that the individual is an "RN" does not mean that the individual is certified with the Louisiana Department of Education as a "school nurse." In fact, an RN must be licensed as an RN for at least 2 years to even qualify for a Type C School Nurse certificate. All RNs are bound by the Nursing Practice Act.

NOTE:

La. R.S. 17:436.1 (F) "Nothing contained in this Section shall be interpreted in such a manner as to relieve a city or parish school board of its duty and obligation **to staff all schools with certified nurses.**" **Emphasis added.**

Also, there is no prohibition against the school district employing the licensed practical nurses ("LPN") in the school setting. However, the LPN is limited in his or her ability to perform certain tasks unless delegated by the RN.

“LPNs have less education. LPNs typically go through a two year certification program. RNs must go through a four year college degree program. LPNs are the worker bees. They are responsible for the delivery of basic nursing services for patients who experience common, well-defined health problems. RNs, on the other hand, are trained in assessment of more complex health conditions. Any situation that requires an in-depth assessment or nursing judgment is likely to require an RN. RNs are also trained to supervise other unlicensed personnel and to evaluate the care that the unlicensed individuals carry out. Only RNs can delegate certain health task to unlicensed personnel.”

Anonymous

A Certified Nurse's Aide ("CNA") is an individual who is certified by an Approved Nurse Aide Training Program. These programs require a minimum of 40 classroom hours and 40 field hours in order for an individual to become certified. The abilities of the CNA are limited by the particular program and what they are competent to have delegated.

IMPORTANT TO NOTE: There is no prohibition against a CNA working in a school setting; however, the CNA must retain certification by working in a setting other than a school in accordance with state regulations:

LAC48 Ch. 100 § 10025 A nurse aide must perform at least eight hours of nursing or nursing-related services in an approved setting during every consecutive 24-month period for pay after completion of a training and competency evaluation program to maintain certification.

Effective January 1, 2005, only work history from approved settings such as: nursing homes, hospitals, home health agencies, personal care attendant agencies, assisted living programs, hospice agencies, respite agencies, supervised independent living agencies, adult day health care programs and intermediate care facilities for the developmentally disabled (ICF/DD) programs is accepted. Duties performed in supervised independent living agencies, adult day health care programs and intermediate care facilities for the developmentally disabled (ICF/DD) programs require a description of the duties performed to determine whether those duties meet the criteria of "nursing or nurse related". www.dhh.louisiana.gov/index/cfn/faq

Responsibilities of the School Nurse

"Each certified school nurse shall be responsible for performing such health care services as may be required by state law, guidelines established by the Department of Education, or both, provided these services comply with the rules and regulations as established by the Louisiana State Board of Nursing." La. R.S. 17:28(A)

All RNs must operate under the Louisiana Nursing Practice Act and the Board of Nursing rules and regulations, as well as all federal, state, and local laws affecting the nurse's current area of nursing.

- a. The Louisiana Nurse Practice Act (NPA) is found in the La. Revised Statute 37:911 et seq.
- b. The Louisiana Board of Nursing Rules and Regulations may be found in the Louisiana Administrative Code, Title 46

The state definition of "registered nursing" includes twelve articulated activities within the scope of nursing that are appropriate to the individual's educational level, knowledge, skills, and abilities including:

- (a) Assessing the health status of an individual or group of individuals.
- (b) Establishing a nursing diagnosis and identifying health care needs or both.
- (c) Establishing goals to meet identified health care needs.
- (d) Planning nursing care measures.
- (e) Implementing nursing care through such services as case finding, health instruction, health counseling, providing care supportive to or restorative to life and well-being, and executing health care regimens as prescribed by licensed physicians, dentists, optometrists, or other authorized prescribers.
- (f) Delegating nursing interventions to qualified nursing personnel in accordance with criteria established by the board.
- (g) Maintaining nursing care rendered directly or indirectly.
- (h) Evaluating human responses to interventions.
- (i) Teaching the theory and practice of nursing.
- (j) Managing and supervising the practice of nursing.
- (k) Collaborating with licensed physicians, dentists and other health care providers in the management of health care.
- (l) Performing additional acts which are recognized within standards of nursing practice and which are authorized by the board.

La. R.S. 37:913(14)

RNs employed in the public school system are authorized to execute health care regimens prescribed by physicians licensed in adjacent states, pursuant to R.S. 17:436(B)(3)(a) and 17.436.1(B)(1)(a).

Executing health care regimens is defined as carrying out the medical orders of a physician, dentist or other authorized prescriber licensed in Louisiana. RNs can use individual judgment and accept verbal orders initiated by an authorized prescriber and transmitted through a licensed or certified health care practitioner, provided that the order is related to the prescriber's scope of practice. They can also execute standing orders of an authorized prescriber provided the said prescriber initiates the standing orders and the orders do not require the nurse to make a medical diagnosis or to engage in prescriptive activity or to administer anesthetic agents other than those set forth in law. LAC 46:XLVII.3703

Delegation and Hiring Decisions in the Public School Setting

An RN is allowed to delegate to "other competent nursing personnel" in selected situations, but retains accountability for the total nursing care of the individual and is accountable for the quality of the care regardless of whether the care is provided solely by the RN or in conjunction with other licensed or unlicensed assistive personnel. LAC 46:XLVII.3703

See Appendix A for Delegation Responsibilities to Licensed and Unlicensed Professionals from the Louisiana Board of Nurses ("BON")

Louisiana Board of Nursing ("BON") Position Statement, January 24, 1990

"...wherein a licensed practical nurse is employed as a nurse aide in a school nursing situation, the rules for delegation to unlicensed persons apply."

Who are "qualified nursing personnel"?

"Licensed Practical Nurses" ("LPN") -- LAC 46:XLVII.101 and La. R.S. 37:9619(2)

Certified Nursing Aide ("CNA") -- LAC48, §10001 et al., Ch. 100

"Unlicensed Assistive Personnel" -- an unlicensed individual who is trained to function in an assistive role to the licensed nurse in the provision of patient activities as delegated by the nurse.
LAC 46:XLVII.3703

"Other competent nursing personnel" and "licensed or unlicensed assistive personnel"-- terms found within the definition of "Delegating Nursing Interventions." LAC 46:XLVII.3703

When tasks are delegated, the RN is required to ensure that the following criteria are met:

- (1) The person has been adequately trained
- (2) The person has demonstrated that the task has been learned
- (3) The person can perform the task safely in the given nursing situation
- (4) The patient's status is safe for the person to carry out the task
- (5) Appropriate supervision is available during the task implementation
- (6) Task is in an established policy of the nurse practice setting and the policy is written, recorded and available to all.

LAC 46:XLVII.3703

Delegation to LPNs can occur with regard to the major part of the nursing care needed by individuals in stable nursing situations when all three of the following conditions are met:

- (1) Nursing care ordered and directed by an RN/MD requires abilities based on a relatively fixed and limited body of scientific fact and can be performed by following a defined nursing procedure with minimal alteration, and responses of the individual to the nursing care are predictable.
- (2) Change in the patient's clinical conditions are predictable AND
- (3) Medical and nursing orders are not subject to continuous change or complex modification.

LAC 46:XLVII.3703

Complex conditions are considered unstable conditions and specific nursing functions cannot be delegated to the LPN in an unstable or complex condition situation. These specifically involve the administration of intravenous medications and fluids; however, when RN supervision is limited or unavailable, the administration of intravenous medications and fluids cannot be delegated at all. LAC 46:XLVII.3703

Nevertheless, the regulations do state that the RN may utilize the expertise of the LPN by delegating selected tasks in complex (unstable) situations. LAC 46:XLVII.3703

Louisiana Board of Nursing ("BON") Position Statement, November 18, 1999

"...it is within the scope of practice of RNs to instill rectal Diastat opinions to read that it is within the scope of practice for an RN to instill rectal Diastat in a school setting based on the RN's assessment and in collaboration with the student's parents and physician to determine the necessary plan of care, inclusive of emergency equipment, to be provided by the school system, to ensure the student's safety."

"...the RN may delegate to the LPN the installation of rectal Diastat, but may not delegate the instillation of rectal Diastat to an unlicensed school employee."

But see: Board of Nursing March 2005 Guidance approving a Declaratory Statement Regarding the Registered School Nurse Delegating to Trained Unlicensed School Employees the Administration of Rectal Diastat in certain emergency situations. This guidance requires protocols; however, to date there have been no such statewide protocols developed.

But See *Bd. of Educ. of the Toledo City Sch. Dist. v. Horen, 2010 U.S. Dist. LEXIS 98231* (N.D. Ohio 2010) Severely disabled and medically fragile student suffered, among other things, from a blood disorder, and seizures caused by her genetic condition. Her seizures affect her entire body — including her brain — and require immediate administration of oxygen, careful suction of excess saliva, rectal administration of Diastat (an anticonvulsive), and a second Diastat administration fifteen minutes after the first. According to the opinion, "non-medical personnel [in Ohio] may administer Diastat with adequate training." The case relates to the placement of the student and that placement primarily centered around the availability of a capable individual to administer the anti-seizure suppository Diastat in the event that an unpredictable seizure should arise. The 2 day/week school nurse on staff at the District's selected placement was unacceptable under the circumstances and the other placement option allowing for the availability of a nurse in the event that the student had a seizure was determined to be the appropriate placement.

Delegation to Unlicensed Nursing Personnel Depends on the Type of Task Being Delegated:

Non-complex Task -- One that can safely be performed according to exact directions, with no need to alter the standard procedure, and the results are predictable.

The term "non-complex health procedure" is also found in La. R.S. 17:436 where it is defined as "a task which is safely performed according to exact directions, with no need to alter the standard procedure, and which yields predictable results. It shall include:

- (1) Modified activities of daily living which require special instruction such as toileting/diapering, bowel/bladder training, toilet training, oral/dental hygiene, lifting/positioning, and oral feeding
- (2) Health maintenance procedures such as postural drainage, percussion, tracheostomy suctioning, and gastrostomy feeding and monitoring of these procedures.
- (3) Screenings such as growth, vital signs, hearing, vision and scoliosis

State statute prohibits a school board from requiring the performance of a "noncomplex health procedure" until specifically listed conditions have been met:

* Assessment of the health status of the specific child in his specific educational setting by an RN, physician or another licensed health professional who has determined that, according to the professional legal standards of the individual performing the procedure, it can be safely performed, the results are predictable, and the procedure can be delegated to someone other than a licensed health professional following documented training.¹

* At least 4 hours of child-specific training for at least 2 employees to perform the noncomplex health procedures in the child's educational setting has been provided by the RN, physician or another licensed health professional. Chosen "employees," defined as any appropriate member of the education staff, have a right to request a witness to the noncomplex health care procedure.

* Written prescription by a physician licensed in Louisiana, Texas, Mississippi, or Arkansas following the training has been received (exceptions: screenings, activities of daily living such as toileting, diapering, toilet training, oral/dental hygiene, oral feeding, lifting, and positioning)

* At least 3 satisfactory demonstrations by the selected employee under the direct supervision of the RN, physician or another licensed health professional who then signs a Prescribed Level of Competency form which is kept on file by the school system.

* The trained individuals are then required to perform the tasks for which they are trained unless exempted for reasons documented and certified by the RN or physician (another licensed health professional not mentioned here) within 72 hours.

¹ La R.S. 17:436 (F) defines "appropriate licensed health professional" as including a licensed practical nurse ("LPN").

BUT WAIT! No employee other than an RN, licensed medical physician, appropriate licensed health professional, or hired and trained unlicensed nursing personnel or unlicensed assistive personnel as defined by the Louisiana State Board of Nursing shall be required to perform a tracheostomy suctioning on a child in an educational setting, but nothing prohibits an employee who volunteers and receives training from being allowed to do so. La. R.S. 17:436(E)

NOTE: Most school board policies on this subject are found in the J series (JCG), but there remains a discrepancy in some policy manuals with regard to tracheostomy suctioning. The law reads that even though tracheostomy suctioning is considered a noncomplex health procedure, no employee who does not fall into one of the designated categories of healthcare professionals listed in the statute can be required to perform a tracheostomy suctioning in the school setting even if they receive the required training.

Common Issue: Physician orders state that only a RN can perform the designated task which is XYZ; however, nursing staff knows that state law and district policy allow the task to be delegated and believes that the task can be delegated with this particular student.

Collier County Sch. Dist. (Florida State Educational Agency 2009) A child's prescription called for medication to be administered by an RN; however, the District sought the advice of a Board certified neurologist who testified that trained, non-medical personnel could administer the medication safely in premeasured doses. The District then demonstrated that the principal and assistant principal received adequate training from the RN as to how to administer the medication.

Louisiana Board of Nursing ("BON") Position Statement, September 15, 2003

"...it is within the scope of practice of RNs to delegate to trained, unlicensed school personnel the administration of medication via a gastrostomy tube in a school setting."

Louisiana Board of Nursing ("BON") Position Statement, April 12, 2012

It is within the scope of practice for a school registered nurse to delegate to trained, unlicensed school personnel (in the school setting) the administration of nutrition and medication via a gastrojejunostomy tube connected to an infusion pump contingent on the school registered nurse's evaluation of the student's condition and evaluation of the unlicensed school personnel's competency."

The RN retains responsibility for assuring that the procedure is followed in accordance with: established standards of practice, product manufacturer's recommendations, agency policies and procedures; laws governing the practice of RNs in Louisiana (La R.S. 37:911 et seq); Louisiana Rules and Regulations (Title 46, Part XLVII); laws governing school nurses in Louisiana (La. R.S. 17); La. Handbook for School Administrators (Title 28, Part CXV); and physician's orders.

Importance of Emergency Planning

Ortega v. Bibb County, 397 F.3d 1321 (11th Cir. 2005) Case out of Georgia involving a Antione Ortega, a medically fragile PreK student who enrolled in the Bibb County School District in November and did not have a tracheostomy tube at that time. Before the holidays, he stopped attending school. However, he returned the following August with a tracheostomy tube. His classroom teacher asked his mother about the tracheostomy tube and told her that she would consult the school nurse regarding the required care. On his second day back at school, Antione's tracheostomy tube dislodged and Antione collapsed. The school's physical therapist began mouth-to-mouth resuscitation until instructed by the 911 operator how to perform mouth-to-stoma resuscitation. Antione died of asphyxiation. Tort like case was filed in federal court under IDEA and court held that tort-like damages are not available in IDEA cases.

Note: A tracheotomy is a surgical procedure that is usually done in the operating room under general anesthesia. A tracheotomy is an incision into the trachea (windpipe) that forms a temporary or permanent opening which is called a tracheostomy. Sometimes the terms "tracheotomy" and "tracheostomy" are used interchangeably. The opening, or hole, is called a stoma.

Deshotel v. West Baton Rouge Parish, 2011 U.S. District. LEXIS 125969 (M.D. La. 2011) Students receiving special education services who are subject to alleged physical and mental abuse or who have other claims that are tort or constitutional in nature do not have to exhaust their administrative remedies through IDEA in order to assert claims under § 1983, state constitutional, or tort claims. Restraint and abuse claims are not violations of the IDEA. A key concept of the District Court analysis in this case is that "[a]ny child not covered by the IDEA, who was allegedly treated in the same or similar manner as [the student] alleges by representatives at his school, would be allowed to assert these claims without having to first exhaust remedies under the IDEA. A student who also happens to have claims under the IDEA should not be deprived of the rights non-IDEA students have." Constitutional and tort claims cannot be remedied by the IDEA which only provides prospective educational benefits and not monetary relief. "IDEA is not a catch-all for any and every dispute which might arise between an IDEA-covered child and a school and school official."

Administration of Medication is considered a Complex Task according to Louisiana state law because it requires the consideration of a number of factors and the formulation of judgments according to those factors. LAC 46:XLVII § 3703 (Delegating Nursing Interventions(d)(iii))

Then How Does A Student Legally Receive Medication During the School Day When an RN or Medical Doctor is Not Available?

There are exceptions for administration of medication to built into Louisiana state law that allow:

(1) Employees of a local city or parish school board other than an RN or licensed medical physician to administer the medication to a student. La. R.S. 17:436.1 Most school districts use this option, but specific procedures must be followed in accordance with the law.

(2) A student with asthma or a student at risk of anaphylaxis must be allowed to self-administer medications or auto-injectable epinephrine under specific circumstances. La. R.S. 17:436.1 (J)

NOTE: LAC 28: CXV.1129 requires each local educational agency to establish guidelines for the administration of medication to students. These are typically found in Policy reference codes beginning with "J."

"Medication" includes prescription and nonprescription drugs La. R.S. 17:436.1

The principal must designate at least two employees to receive training and administer medications in each school. (LAC 28: CXV.1129(D))

Neither of these designated employees can be the classroom teacher unless that is part of her contract with the District, but the classroom teacher can request in writing to volunteer to administer medications to his or her own students. LAC 28: CXV.1129(E)

Before these employees can be required to administer medication, the following conditions must be met these employees must receive no less than 6 hours of training in the administration of medication, including general and child specific training from an RN, a licensed medical physician, or both. (La. R.S. 17:436.1(B)(1)(c)(2)

BESE regulations further state: The school nurse, in collaboration with the principal, shall supervise the implementation of the school policies for the administration of medications in schools to insure the safety, health and welfare of the students. LAC 28: CXV.1129(F)(1)

The school nurse shall be responsible for the training of non-medical personnel who have been designated by each principal to administer medications in each school and that the training must include (but not be limited to): proper procedures for administering medications including controlled substances; storage and disposal of medications; appropriate and correct record keeping; appropriate actions when unusual circumstances or medication reactions occur; and appropriate use of resources. LAC 28: CXV.1129(F)(2)

The RN or licensed physician employed by the city or parish school board must have made two distinct assessments as well as a determination: (1) assessed the order and the request that the medication be administered as well as (2) assessed the health status of the specific child in his specific educational setting and has (3) determined that the administration can be safely performed and delegated to someone who has received documented training. La. R.S. 17:436.1

What if the student's prescribed dosage from his personal physician is in excess of what the drug manufacturer or Physician's Desk Reference recommends?

Mary Davis v. Francis Howell Sch. Dist., 138 F.3d 754 (8th Cir. 1998) Shane Davis was diagnosed with ADHD, and his doctor prescribed 360 milligrams of Ritalin SR a day in pill form to control his condition. The nurse at his elementary school administered Shane's school time dose for over two years. On April 2, 1996, however, she notified Shane's mother that she was concerned about the amount of the prescribed dose because it exceeded the recommended maximum daily dosage in the Physician's Desk Reference (maximum dosage of Ritalin in the Physician's Desk Reference (PDR) was 60 milligrams). She asked Mrs. Davis to get a second doctor's opinion concerning the safety of the dose. Even though Mrs. Davis obtained the second opinion, the school nurse said she would stop administering the medication to Shane on April 15. The district told Shane's parents they could designate someone to come onto the school grounds to administer his medication, and Mrs. Davis changed her work schedule and child care arrangements in order to give Shane his school time dose. Depending on her work schedule and the time when Shane receives his first daily dose of Ritalin, she either administers one or two doses of Ritalin to him at school. Parent's suit for injunctive relief was denied. The court ultimately held that the district's policy of refusing to administer dosages of medicines that were above the PDR recommended amounts was not discriminatory. Additionally, the alternative opportunity provided to the parents to administer the medication to the student themselves was determined to be a reasonable accommodation.

Louisiana Board of Nursing ("BON") Position Statement, February 20, 1995

"...it is within the realm of the practice of a registered nurse to refrain from administering Ritalin when the combined daily doses exceed the manufacturer's recommended daily maximum dose, provided there is no documentation available to establish the medical soundness of the order."

General Provisions for Administration of Medications

- (1) Person should be relieved of all other duties while administering medication.
- (2) No injectable medications by a "trained unlicensed school employee" unless emergency situation exists. BESE Guidelines found in LAC Title 28CXV § 1129(C)(2) use the term "life-threatening" situation. Only oral medications, inhalants, topical ointments for diaper rash, and emergency medications can be administered by unlicensed personnel.
- (3) Medications are all to be stored in a secured locked area or locked drawer with limited access, except by authorized personnel.
- (4) Must limit medication administration to medications which cannot be administered before or after school hours.

Observation Requirement: Each student receiving medication during school must be observed by a school employee for 45 minutes following the administration of the medication. This can be during instructional time and the individual conducting the observation does not need to be relieved of all other duties.

The guidelines must include the following requirements:

(1) Prescription -- Must be accompanied by an order (prescription) from a licensed physician or dentist in Louisiana or adjacent state (Texas, Mississippi, or Arkansas) that must include: student's name; name & signature of physician or dentist as well as their business address; office phone number; and emergency phone numbers; frequency and time of the medication; route and dosage of the medication; and a written statement of the desired effects and the child specific potential of adverse effects.

(2) Container -- Medication must be provided by parent or guardian in the container that meets pharmaceutical standards and shall include name, address and telephone number of pharmacy, prescription number, date dispensed, name of student, clear directions for use including route, frequency and other as indicated, drug name and strength, last name and initial of pharmacist, cautionary auxiliary labels, if applicable, and physicians or dentist's name.

(3) Label of Prepackaged Medicines -- Regular pharmacy label (from above) plus drug name, dosage form, strength, quantity, name of manufacturer or distributor, and manufacturer or distributor's lot or batch number.

The guidelines must be based upon the joint policy of BESE and the Louisiana State Board of Nursing that are found in LAC 28CXV§1129 and include additional instructions.

La. R.S. 17.436.1(B)(1)(a) also requires a letter or request and authorization from the student's parent or guardian. LAC Title 28CXV § 1129(G) requires:

- * a letter and authorization from the parent/guardian that contains: name of student; clear instructions; prescription number (if any); current date; name, degree, frequency, and route of medication; name of physician or dentist; printed name and signature and emergency phone number of parent or guardian; statement granting or withholding release of medical information.

- * written orders for all medications to be given at school, including annual renewals at the beginning of the school year.

- * a prescription for all medications to be administered at school, including medications that might ordinarily be available over the counter.

- * a list of all medications that the student is currently receiving at home and school, if that listing is not a violation of confidentiality or contrary to the request of the parent/guardian or student.

- * a list of names and telephone numbers of persons to be notified in case of medication emergency in addition to the parent or guardian and licensed prescriber.

What Else?

* Arrangements for the safe delivery of the medication to and from school in the original labeled container as dispensed by the pharmacist; the medication shall be delivered by a responsible adult.

* Unit dose packaging shall be used whenever possible.

* All aerosol medications must be delivered to the school in premeasured dosages

Louisiana Board of Nursing ("BON") Position Statement, March 18, 2003

"...it is within the scope of practice for school nurses, based on their assessment and in collaboration with the child's physician and parents, when a characteristic set of symptoms occur for a specific student that the school nurse may delegate to trained unlicensed school personnel the prescribed PRN metered dose inhalant for students with asthma."

* No more than a 35 school day supply of medication shall be kept at school.

* Initial dose of a medication shall be administered by the parent/guardian outside the school jurisdiction with sufficient time for observation for adverse reactions.

* Parent/guardian is required to work with personnel designated to administer medication by:

- cooperating in counting medication with the designated school personnel who receives it and sign a drug receipt form;
- cooperating with school staff to provide for safe, appropriate administration of medications to students, such as positioning, and suggestions for liquids or foods to be given with the medications;
- assisting in the development of the emergency plan for each student;
- complying with written and verbal communication regarding school policies;
- grant permission for school nurse/physician consultation; and
- remove or give permission to destroy unused, contaminated, discontinued, or out-of-date medications according to school policies. emphasis added.

What are each school's policies regarding the removal or destruction of obsolete medications?

SE. v. Grant County Bd. Of Educ., 2008 U.S. App. LEXIS 21198 (6th Cir. 2008) 7th grade student who was bipolar and ADHD received medication at school (Adderall) from the nurse who returned the remaining pills (4) to the student on the last day of the school year and said not to give them to anyone else. After the student was pressured into giving one of the pills to another student and following a botched school investigation and arrest, the student filed a §

1893 claim and other federal claims against the school. Although the case was ultimately settled in favor of the defendants, issues of administrative exhaustion and qualified immunity caused the favorable opinion and these aspects of the case might not exist in Louisiana. Lesson to be learned: Develop school specific procedures regarding medication administration, train staff accordingly, and ensure that procedures are actually being followed!

Student Self Administration of Medication

Louisiana state law (requires written authorization for a student requesting to self-administer asthma medication or an epipen for the student to carry and self-administer the medication if the student has asthma or is at risk of anaphylaxis. La. R.S. 17:436.1 (J) and LAC 28 CXV§1129 (I) This written authorization must include:

- * Written certification from a licensed medical physician or other authorized prescriber that the student has asthma or is at risk of anaphylaxis and has received instruction in the propose method of self-administration of the student's prescribed medication or treat asthma or anaphylaxis.
- * A written treatment plan from the student's licensed medical physician or other authorized prescriber for managing asthma or anaphylactic episodes that is signed by the student, his or her parent or other legal guardian, and the student's licensed medical physician or other authorized prescriber. The written treatment plan should include the name, purpose and prescribed dosage of medications to be self-administered; the time or times the medications are to be regularly administered and under what circumstances the medications are to be administered; and he length of time for which the medications are to be prescribed.
- * Any other documentation required by the governing authority of the public elementary or secondary school.
- * Student shall then be allowed to carry and store with the school nurse or other designated school official an inhaler or auto-injectable epinephrine, or both, at all times.
- * Student shall be permitted to possess and self-administer such prescribed medication at any time while on school property or while attending a school sponsored activity.
- * Permission is valid for one school year at a time.
- * Student using medication in a manner other than prescribed shall be subject to disciplinary action; however, the discipline will not limit or restrict student's immediate access to the prescribed medication.

<p>Statutory Immunity: The school is required by law to provide a statement to the parent(s) or other legal guardian of the student that the school and its employees shall incur no liability as a result of any injury sustained by the student from the self-administration of medications used to treat asthma or anaphylaxis. The parent or legal guardian must sign a statement acknowledging this immunity and agreeing to indemnify and hold harmless the school and its employees against any claims that may arise relating to the self-administration of the medications.</p>

Definitions:

Auto-injectable epinephrine - medical device for the immediate self-administration of epinephrine by a person at risk of anaphylaxis

Inhaler - medical device that delivers a metered dose of medications to alleviate the symptoms of asthma.

NOTE: Local policies can allow students to self-administer other medications.

State law uses the terms "legal guardian" and "guardian" interchangeably. Louisiana Children's Code Art. 603 defines "caretaker" means any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster home parent, an employee of a public or private day care center, an operator or employee of a registered family child day care home, or other person providing a residence for the child and makes no reference to "legal guardian."

What the Courts Have Said:

Taylor v. Altoona Area Sch. Dist., 513 F. Supp. 2d 540 (W.D. Pa. 2007) Second grader Devin had a Service Plan that included an Asthmatic Reaction Procedure that required: (1) that Devin be given medication (i.e., use of an inhaler) as prescribed by his physician before exercising and when symptoms began to manifest themselves; (2) that Devin be able to utilize a nebulizer with the assistance of a school nurse; (3) that the school nurse, the appropriate medical provider or Taylor be notified promptly of any related incidents, and the actions taken in response thereto; and (4) that resuscitative efforts be administered in the event that Devin's medical condition were to warrant such action. Facts demonstrated that Devin's mother provided a second inhaler as well as a second nebulizer for the school and arrangements had also been made for Devin's physician to communicate directly with the relevant school officials. Facts also demonstrated that Devin's inhaler was not regularly given to him prior to exercise and that he usually had to go ask to have it administered. On the day in question, after exercising, Devin told his teacher that he was having difficulty breathing and instead of following the plan, the teacher told Devin to put his head on his desk. Essentially what followed is that steps (1)-(4) were not followed resulting in Devin's death. Tort claims for negligence theories such as failure to train and failure to supervise are prohibited by state immunity laws for governmental entities that are present in Pennsylvania. therefore, this case was in federal court using § 1983, ADA and other claims that are not necessary in Louisiana where the cause of action could be a tort claim in state court.

Closer to Home... *Garcia v. Northside ISD*, 2007 US Dist. LEXIS 103 (W.D. San Antonio 2007)
And Even Closer to Home.... *Declouet v. Orleans Parish Sch. Bd.*, 715 So.2d 69 (Ct.App. La. 1998, reh'ng refused 1998) Student died of an asthma attack at school. Senior Catrina Lewis began experiencing an asthma attack in the school auditorium during a teacher's talent show. School Board's medical treatment policy stated that the principal was responsible for ensuring that a sick or injured student received medical attention in an emergency and that calling 911 was a requirement.

Lessons learned from this caselaw is to know and follow your policies. Additionally, make sure that "the plan" makes sense in context and involve students who are capable in their own health care planning.

Who qualifies for a Section 504 Plan?

Disabled individual = Individual with a physical or mental impairment that substantially limits a major life activity.

Prior to 2009: the definition of “major life activities” for purposes of Section 504 eligibility was defined as functions such as caring for oneself, performing manual tasks, seeing, hearing, walking, speaking, breathing, learning and working. *former 29 CFR 1630.2(g)–(l)*

Effects of Americans with Disabilities Amendment Act of 2008 (ADAA)

With the recent enactment of the Americans with Disabilities Amendment Act of 2008 (ADAA), and corresponding changes to Section 504 of the Rehabilitation Act, the number of students who will be considered disabled for purposes of Section 504 has increased. When analyzing whether a student qualifies for Section 504 services, the district should still ask the same question: *Does the student have a disability that substantially limits a major life activity?*

However, the analysis of this question has significantly changed. Not only is the term “disability” now to be construed broadly, but the list of “major life activities” has been expanded to specifically include, but not limited to:

“...caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. It also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

Furthermore, an analysis of whether a major life activity is substantially limiting (now defined as materially restricting) must no longer take into account the ameliorative effects of any mitigating measures (with the exception of eyeglasses and contact lenses) as well as considering the effects of the disabling condition that is in remission or episodic while in its active state.

Therefore, while many students with special health needs will already be receiving Section 504 services, expect to see an increase in the number of students with allergies and asthma in particular who qualify for Section 504 services. In making an eligibility determination regarding an individual who rarely has an asthma attack, the decision-maker must now consider the limitation of the major life activity of breathing while the student is actually experiencing the asthma attack.. Additionally, the student who might otherwise have his asthma under control through the use of an inhaler will now qualify for Section 504 services because the ameliorative effects of the mitigating measure (inhaler) can no longer be taken into consideration. Additionally, students with such disorders as irritable bowel syndrome and ADHD may also qualify for Section 504 services. This is an individualized decision to be made by the Section 504 Committee.

The student whose diabetes is such that he or she requires an insulin pump will meet the definition of having a physical impairment that substantially limits the major life activity of the functions of the endocrine system. Other students with medical conditions will qualify for

Section 504 services now. Generally, food allergy or intolerance does not rise to the level of a disability and the school food service may, but is not required to make a particular accommodation. However, when a child's allergy or intolerance is life-threatening and results in severe anaphylactic reactions, then a Section 504 Plan is warranted.

Garcia v. Northside ISD, 2007 US Dist. LEXIS 103 (W. Dist. Tex. San Antonio, 2007) The student at issue, a 14 year old diagnosed with severe asthma at an early age, participated in karate, bicycling, skateboarding, motorcycling, and swimming, and his asthma was controlled with the use of a nebulizer and an inhaler. However, the student had a Daily Treatment Plan and an Asthma Action Plan that stated that he was to carry his inhaler at all times. During a routine physical education class, he stopped breathing, collapsed, and later died. The court found that the student was not a qualified individual with a disability because the use of the inhaler prevented him from being substantially limited in a major life activity. *Note: This successful argument is not likely to prevail using the standards set forth in the recently enacted Americans With Disabilities Amendment Act of 2008. The ADAA is clear that the ameliorative effects of mitigating measures, such as the use of an inhaler, can no longer be considered when making a determination as to whether an individual has a disability. The consideration of the accommodations provided to an individual with a disability will; therefore, become key to a defense in a Section 504 claim.*

Relationship Between the Individual Health Plan (IHP) and the Section 504 Plan

The major component of the Section 504 Plan can be the Individual Health Plan, but School Officials should not overlook the fact that the Office of Civil Rights ("OCR") has held that an IHP will not suffice for a Section 504 for a student with a disability. If the IHP does not suffice for the Section 504 Plan then what types of things should the Section 504 Plan address that are not already covered by the IHP?

Section 504 planning should include an educator and the parents as well as the school nurse and the older student, particularly if the student will be self-managing the administration of his or her medication. Planning should involve daily routines as well as home to school communication. The nurse is a crucial member of a Section 504 Plan that involves a student with a medical condition and, obviously, the IHP will be a major component of the Section 504 Plan. However, Section 504 also has a nondiscrimination component that should be addressed through Section 504 planning.

General Guidelines for Creation of IHPs

In developing IHPs, the school nurse must determine what, if any, care can be delegated to an unlicensed assistant, as well as the training and supervision required by the unlicensed assistant.

The IHP should include or consider the following issues:

- A review date, based on the student's health status.
- Training required for unlicensed care providers
- Equipment needed
- Specific direct and indirect nursing services to be provided
- Problems that may arise

- Persons to contact in an emergency
- Care during transportation
- Care during field trips or work experiences
- Care during pep-rallies or class parties
- A Back Up Plan

Students with more complex health care needs and those with health conditions that are unstable may require a more frequent review of the IHP. One often overlooked feature of the IHP is a 'back up plan' which should take effect in the event the regular health care provider(s) at the school is absent or unavailable.



HOT TOPIC!!

Management of Diabetes at School

According to the National Association of School Nurses, the management of diabetes at school involves monitoring blood glucose levels several times per day, calculating carbohydrate content of meals, and dosing insulin via syringe, pen and pump to achieve a blood glucose within target range. (Diabetes Management in the School Setting, Position Statement of NASN citing Bobo, Kaup, McCarty & Carlson 2011)

The hot debate at the National Level involves who can and cannot administer insulin to students.

American Nurses Ass'n v. O'Connell -- California Supreme Court will hear argument regarding whether nonmedical school staff should be permitted to administer insulin shots to students whose Section 504 Plans required them. Amicus briefs were filed by: American Diabetes Association, American Association of Diabetes Educators, Disability Rights Advocates, California School Boards Association

No argument regarding whether the student who can safely administer his or her own insulin can do so has been made. Also this case does not involve arguments regarding whether parents and family members or designated friends can do so.

Sole Issue Being Litigated: Can school employees who are not nurses or other licensed health care professionals be allowed to safely administer insulin to a student with diabetes at school?

How is this Issue Being Handled in Louisiana?

As an injectable, insulin cannot be administered by a designated employee unless it is an emergency situation. A family member or designated individual can be allowed to administer insulin to student at school.

Louisiana Board of Nursing ("BON") Position Statement, January 11, 2008

"It is within the scope of practice for an RN to delegate to an LPN the counting of carbohydrates and the administration of insulin via the insulin pump."

But See Spine Diagnostics Ctr. of Baton Rouge, Inc. v. La. State Bd of Nursing, 4 So. 3d. 854 (La.Ct.App. 1st Cir. 2008), writ. denied 5 So. 3d. 163 (La. 2009) In *Spine Diagnostics*, the court held that the Louisiana Board of Nursing could not circumvent the rule making process

through the use of position statements. *Spine Diagnostics* differs significantly in that it is related to the practice of medicine by nurse anesthetists and not to the delegation authority of the school nurse to an LPN on particular medication administration issues, but legal counsel relying on the BON Position Statement should be aware of the *Spine Diagnostics* opinion in the event of a legal challenge.

Relationship between the Diabetes Medical Management Plan (DMMP) and the Individual Health Plan (IHP) -

The DMMP are the medical orders received by the school nurse. The IHP is the school based health plan that is developed using the DMMP as well as using information acquired from the child's family, obtaining additional assessment findings, and outlining the diabetes management strategies and personnel needed to meet the student's health goals in the school. (Diabetes Management in the School Setting, Position Statement of NASN citing NDEP 2010)



NEW Louisiana Law! Care of Students With Diabetes Act -- Law passed during 2012 Regular Session by Senator Nevers; La. R.S. 40:1300.351 - 1300.361 (ACT 858)

Starting with the 2012-13 school year, a student in a Louisiana public or nonpublic school seeking care for his or her diabetes while at school or while participating in a school-related activity shall submit a diabetes management and treatment plan that has been developed by a physician or other licensed health care provider. The plan must be submitted to the school and be kept on file at the school and updated annually. It must contain specific information that is set forth in the new law which also allows school principals to designate willing employees to serve as unlicensed diabetes care assistants.

Office of Civil Rights ("OCR") on Diabetes Management:

Wells (ME) Public Schools, 36 IDELR 244 (OCR 2002) The issue in this complaint dealt with the disagreement between the parent and the District regarding whether the student could test her own blood glucose levels at school. Parent complained that the daughter successfully did this at home, but was not allowed to do so at school. The District demonstrated that it had sound reasons for its decision to insist that a person with expertise in the matter, like the school nurse, perform this function and that the student did not miss significant educational opportunities waiting to have the testing. The complaint was dismissed.

Prince George's (MD) County Schools, 39 IDELR 103 (OCR 2003) District policy prohibited health Services staff (CNAs, nurses, etc.) from giving injections to diabetic students, even if needed and even in an emergency. This policy was held to have the effect of denying needed services to students with disabilities.

Lee County Sch. Dist. (FL), 47 IDELR 18 (OCR 2006) OCR found the environment in an Florida elementary school to be hostile after a parent complained regarding the treatment of their 7 year old child who had diabetes by school staff. The District failed to train personnel on diabetes and failed to properly respond to the parents' concerns resulting in a violation of § 504 and the ADA. An analysis of the totality of the circumstances resulted in OCR's requirement that the District respond to complaints and train personnel to be more sensitive.

What the Courts Have Said:

B.M. v. Bd. of Educ., 51 IDELR 5 (E.D. Ky 2008) District had no obligation to hire a full-time nurse so that a student with diabetes could remain in her neighborhood school. The District's proposal to transfer the student to another elementary school was held to not be discriminatory. Although the District had an obligation to make reasonable accommodations, it did not have to make substantial or fundamental modifications to its own programs in order to accommodate the student. The District's offer to transfer the student to a school with a full-time nurse was reasonable in light of the parent's request to hire a full-time nurse to administer the student's insulin injections.

A.P. v. Anoka-Hennepin Indep. Sch. Dist. No. 11, 538 F. Supp. 2d 1125 (Dist. Ct. Minn. 2008) This case related to after-school care of a student with diabetes. The parents had requested that personnel be made available to assist the student with glucagon-injection, blood-glucose-testing and operation of the insulin pump. As to the glucagon-injection accommodation, the court granted summary judgment to the district because it found that there was not a sufficient showing that the district acted with culpable intent as to this issue given state guidelines discouraging the administration of glucagon injections by school personnel who were not supervised by school nurses. However, the court could not make the same determination with respect to the claims based on blood-glucose testing and operation of the insulin pump. The court noted that the District's response to parent "was slow, clumsy, unresponsive, and, at times, incompetent"

Jenkins v. Rock Hill Local School District, 513 F.3d 580 (6th Cir. 2008), cert denied. A misunderstanding between the parent of a second grade student with diabetes and the school district led to a federal lawsuit regarding First Amendment free speech and other constitutionally protected rights. The disagreement began with the parent's belief that the school nurse would not be able to administer injectable insulin to her daughter at school. her communication with the superintendent led to her being told that the school was not responsible for medical care and that the parent should look for a different school. The parents contacted OCR, state legislators and everyone else she could think of leading to the superintendent's call to the state child welfare authorities. During a conversation with the mother, he allegedly stated, "you contacted the Office of Civil Rights and got an investigation started, so I figured I'd start one of my own."

B.M. v. Bd. Of Educ. Of Scott County, Kentucky, 2008 U.S. Dist. LEXIS 66645 (Dist. Ct. Kentucky 2008) A second grader newly diagnosed with diabetes needed an insulin shot during the school day. School wanted to transfer student to another campus where school nurse was on staff and offered transportation, but student would have to arrive late and leave early in order to use District transportation. Mother disagreed. District's other suggestions: offered to take

student from District to a local doctor's office during the school day; have emergency medical technicians from the nearby fire station come administer shots; allow the student to administer her own shots; having the mother. come to school after student's lunch to administer injections; and having a local nurse, a local physician, and the mother all share the responsibility of coming to school to administer the injections. Each of these ideas were rejected by the mother as being unsatisfactory for a variety of reasons. The mother again suggested that the school district employ a nurse or train an existing staff member to administer the student's insulin shots. The school declined to hire another nurse to be resident at SGES and rejected the idea of a staff member administering the insulin because of concerns about violating state law regarding having a non-nurse administer injections. District's successful defense rested in large part on ability to demonstrate that real dialogue and consideration of requested accommodations had occurred.

R.K. v. Bd. of Education of Scott County Kentucky, 56 IDELR 259 (E.D. KY 2011) This case drives home the point that each decision regarding how to handle an insulin dependent student should be individualized. The parent of a kindergartener with diabetes was unhappy with a district decision to transfer the student to a campus with a full time nurse. Evidence showed that the District did not have a policy requiring such a placement and that at least one other elementary aged student remained at his home campus with a non-nurse employee who was trained to monitor insulin and that the student received assistance counting his own carbs via telephone by a nurse. Rather than support the aggrieved parent's position that her child should; therefore, be allowed to remain at her home campus, this evidence supported the fact that the District addressed each situation on a case-by-case basis and students were not automatically and discriminatorily placed at one particular campus by virtue of their need for diabetes management.



HOT TOPIC!

When Health Issues Hit the Cafeteria.....Information for Food Service Personnel

When a student is considered disabled under 7 CFR 15b3(i)² and the disability restricts the student's diet, food substitutions are mandatory in the Child Nutrition Program. If a child is not considered disabled, but they are unable to consume regular program meals because of medical or other special dietary needs, then substitutions are permitted, but not required.

Severe anaphylactic reactions that occur because of food allergies substantially limit the major life activity of breathing when the impairment is active. The Americans With Disabilities Amendment Act of 2008 ("ADAA" effective January 1, 2009) specifically directs courts to now consider the effects of impairments when they are in their active state. Therefore, when a student has allergies or asthma that is severe enough to have the potential for an anaphylaxis, that student will likely be considered "disabled" under federal law and eligible for Section 504 protections that include food substitutions in the cafeteria.

The difference between the mandatory food substitution and the permissive food substitution lies in the distinction between the student's potential physical reactions. Mandatory substitutions require that a licensed physician provide a signed statement identifying the food service participant's (the student's) disability and an explanation of why the disability restricts the student's diet; the major life activity affected by the disability; and the food(s) to be omitted from the student's diet and the food or choice of foods that must be substituted. *Accommodating Children with Special Dietary Needs in the School Nutrition Programs - Guidance for School Food Service Staff*, United States Department of Agriculture and Food and Nutrition Services ("USDA"), Fall 2001 Even though *Smith v. Tangipohoa*, 2006 U.S. Dist. LEXIS 85377 (E.D. La. 2006) is a pre-ADAA case, it provides an excellent example of a legal analysis regarding the threshold of when asthma or allergies qualify as a disability.

The USDA Guidelines offer a sample form may be used, but this form is not required and either a physician's statement or a diet prescription that includes the same information is at least required and must be kept on file in the school.

² This reference is actually to "handicapped individual" which mirrors the definition of "disabled individual" found in the Americans With Disabilities Act. That definition of "disabled individual" is "a person who has a physical or mental impairment that substantially limits a major life activity. The Americans With Disabilities Amendment Act, effective January 1, 2009, significantly expanded the definition

Important to Note:

Diet orders do not need to be renewed on a yearly basis; however, schools are encouraged to ensure that the diet orders reflect the current dietary needs of the child. Any changes to regular school meals for medical or dietary reasons or changes to existing dietary orders must be "appropriately documented." §727(B)

Use of school food service funds for the purpose of hiring a licensed or registered dietician to provide information on foods to meet a specific diet order or to provide training to food service employees is allowed. §727(C)

Substitute meals for students with disabilities must be at no extra charge §727(C)(1)

How Else Are Food Allergies Addressed?

Mystic Valley Regional Charter, 40 IDELR 275 (OCR 2004) The parents of a first grade student at a charter school prevailed in their Section 504 claim against a district that had an allergy plan with a significant number of accommodations. However, the District stopped short of banning all peanut/tree nut products in the classroom arguing that it was unreasonable and unnecessary.

Saluda Sch. Dist. One, 47 IDELR 22 (OCR 2006) The allergic student was a sixth grader which changes the nature of what the allergy plan needs to look like. However, emergency planning was conspicuously absent from the plan.

Ridley Sch. Dist. v. M.R., 2011 U.S. Dist. LEXIS 14188 (E.D. Pennsylvania 2011) This case involved a second grader with severe food allergies, asthma, and eczema in addition to other disabilities. She had an Allergy Treatment Plan that alerted school staff regarding her food allergies to eggs, milk and epoxy (?). The plan explained signs of an allergic reaction as well as who to call and medical treatment. the Independent Hearing Officer held that the teachers "passive aggressive behavior in having to change the way she planned to conduct several classroom projects." amounts to § 504 discrimination.

S.M. ex rel. G.M. v. Sch. Dist. of Upper Dublin, 2011 U.S. Dist. LEXIS 93109 Another young elementary student with a severe allergy to tree nuts and peanuts whose parents complained that the District refused to require the PTO to implement the portions of the student's § 504 Plan related to the food allergies. The IHO ordered the school district to "inform the PTO that it was obligated to implement the §504 Plan." "The District must also ensure that Student is not denied access to non-academic programs/activities offered as a school activity by a provider other than the District" because "the PTO program in question is equivalent to a recreational extracurricular school activity."

Proposed Louisiana Laws:

HB 540 introduced by Representative Arnold in the 2012 Regular Session as introduced would mandate that a supply of epinephrine be available for cases of emergency treatment at each school and at least one employee at each school would be trained by an RN or licensed physician in how to use it. Referred to Education Committee on March 12, 2012.

SB 119 introduced by Senator Morrell in 2012 regular Session moved through the Senate and was referred to the House Education Committee on April 11, 2012. It requires the school board to adopt a policy allowing the school nurse to administer an epi-pen to a student who the school nurse, in good faith, professionally believes is having an anaphylactic reaction, whether or not the student has a prescription for epinephrine. Provides immunity for the nurse whether he or she administers the medication or not except in the case of willful or wanton misconduct. Allows the school to maintain a supply of epinephrine that must be prescribed by a licensed physician. Notice provisions are also included.

Texture Modifications

Some students can eat the same food as other students, but the texture of the food must be modified to allow the student to safely consume the food. These are referred to by the USDA as "texture modifications." Page 9, Accommodating Children with Special Dietary Needs in the School Nutrition Programs - Guidance for School Food Service Staff, United States Department of Agriculture and Food and Nutrition Services ("USDA"), Fall 2001

If the only required modification is a texture modification (chopped, ground, or pureed food), a licensed physician's written instructions indicating the appropriate food texture is recommended but not required unless the state agency or school food authority applies stricter guidelines that require a physician's statement to be kept on file. School food service staff must then follow the physician's instructions.

NOTE: If a student has an IEP or IHP, it should contain the texture modifications required. However, Louisiana's regulations, found in LAC Title 28XLIX.727 (Bulletin 1196), do not require written instructions from a licensed physician for texture modifications and oral feeding is specifically exempted from the statutory mandate that a prescription is required. See La. R.S. 17:436(B)(3)(a)

NOTEWORTHY -- The actual time that a nurse spends feeding a student with a disability who requires this assistance can be billed to the food service account. Key components of this issues are "nutrition related activity" and "non-food service personnel." Page 31 of the USDA Guidance. Nevertheless, there is nothing in the law that prohibits other trained employees from performing oral feeding services.

Related Health Services:

Related school health services are those health services designed for a student with an exceptionality that has a special health need and who is unable to participate in his or her educational program without the use of such health services. Health services include, but are not limited to health treatments, health technology, and health management.

The ability of a student to benefit from an educational program is related to the health, safety and welfare of the student. Children in the educational setting present a variety of health needs, such as first aid, communicable diseases, acute and chronic illness requiring medications, health procedures, case management, health counseling, and referral. In order for the school to meet the education needs of the student, health services are needed to promote health and prevent disease while reducing the liability of the school. A successful school health program will enhance the ability of the student to become independent in the management of his own health.

Louisiana Department of Education (website)

The term "related services" stems from federal special education law. Congress enacted the Individuals with Disabilities Education Act ("IDEA") to ensure that children with disabilities will have access to public education, including special education and related services. 20 U.S.C.S. § 1400(d)(1)(A). From a legal perspective, "related services" is a term defined in federal and state law special education law and includes a myriad of developmental, corrective, or supportive services designed to assist a student with a disability from benefiting from special education. 34 CFR § 300.34 All related services are not medical in nature, but they include "medical services for diagnostic and evaluation purposes" as well as "school health services and school nurse services" "Medical services" is defined as services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education services. 34 CFR § 300.34(c)(5) The term "school health services and school nurse services" is defined as health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are defined as services provided by a qualified school nurse and school health services may be provided by a qualified school nurse or other qualified person.

"School nurses have long been a part of the educational system, and the Secretary could therefore reasonably conclude that school nursing services are not the sort of burden that Congress intended to exclude as a "medical service." By limiting the "medical services" exclusion to the services of a physician or hospital, both far more expensive, the Secretary has given a permissible construction to the provision." *Irving Independent School Dist. v. Tatro*, 468 U.S. 883 (1984)

What we learned from *Tatro* almost thirty years ago is that clean intermittent catheterization ("CIC") is a supportive service and not a medical service.

Cedar Rapids Cmty. Sch. Dist. v. Garret F. by Charlene F., 526 U.S. 66 (1999) Garrett F. required CIC as well as being ventilator dependant. The court decided that clean intermittent catheterization for a student where the student's necessary in-school care (a) did not demand the training, knowledge, and judgment of a licensed physician, and (b) was no more medical than

was the care sought in *Tatro*; (3) a rule limiting the medical services exclusion to physician services was unquestionably reasonable and generally workable; and (4) the IDEA required schools to hire specially trained personnel to meet disabled student needs.

Private Duty Nurses and Home Health Aides

In accordance with the United States Supreme Court Decision in *Cedar Rapids Community Sch. Dist. v. Garret F.* 526 U.S. 66 (1999) school districts are required to provide full-time, one-to-one nursing services for an eligible special education or 504 student who requires that level of nursing care during the school day. As medical technology continues to advance, more and more children are surviving with medical challenges and entering public school with a need for full or part-time nursing services. Often, the parents of these children would prefer to utilize the services of a nurse (or home health provider) who has already cared for the child at home or who is familiar with the child's health condition. Since the use of private duty personnel will decrease the cost involved for the school district, many school districts are agreeing to the arrangement.

Relevant issues:

- * School district's responsibility to supervise a private duty nurse or health care provider;
- * What procedures should be followed in the event of a medical emergency
- * What procedures regarding the supervision of private duty personnel who provide inadequate or inappropriate care in the school setting.
- * Issues involving how the private 1:1 provider situation is handled in the IEP.

Caselaw:

Indep. Sch. Dist. No 728, Elk River District, 30 IDELR 467 (Minnesota SEA 1999) Specific nursing provider desired by the students' parents decided on by the IEP Team to provide services to a medically fragile student during the school day. Documented in student's IHP. Issues arose regarding the provider's compliance with the IHP as well as school policies that included: failure to properly meet student's healthcare needs, unprofessional conduct including making personal telephone calls while on duty and other school rule violations. After replacing provider with its own staff, parent file a due process hearing. District ultimately succeeded, but lesson learned.

City of Chicago Public Sch. Dist. 299, 52 IDELR 28 (Illinois SEA 2008) IEP acknowledged agreement to allow private provider nurse to accompany student during school day as the 1:1 aide. Hearing officer held that this was not just a documentation of aide's presence, but an acknowledgement of her as a part of the student's educational plan.

Slama v. Indep. Sch. Dist. No. 2580, 259 F. Supp. 2d 880 (D. Minn. 2003) IEP stated that the student was to receive a 1:1 child specific aide, but did not provide that the aide had to be particular individual or the student's private aide.

Belkin v. Sioux City Community Sch. Dist., 46 IDELR 224 (N.D. Iowa 2006) Student's mother served as the student's 1:1 until a communication breakdown occurred between the mother and the classroom teacher and the mother was replaced...resulting in a due process hearing.

Word of Caution...Don't include the name of the school nurse or other health care provider into the IEP or IHP!

New Britain Bd. Of Education, 47 IDELR 86 (March 28, 2006) Even if a plan requires that a student receive 1:1 nursing care during the school day, the law only requires that a certain person attend to a student if the IEP or IHP says so. Using phrases such as "qualified healthcare provider" is recommended.

What Else Have Courts Had to Say About Medical Services and School Nursing Services?

M.K. v. Sergi, 554 F. Supp. 2d 201, 231 (D. Conn. 2008) Psychiatric supervision by a licensed clinical psychiatrist to appropriately manage a student's medication regime is a medical service and thus not a related service under IDEA. The hearing officer in the underlying administrative hearing erred as a matter of law in concluding that the school district must fund medication management by a physician.

John A. v. Bd. of Educ., 400 Md. 363, 386 (Ct. App. MD 2007) The administration medication is a related service if such administration does not require the services of a medical doctor and regardless of whether the service is mentioned in the student's IEP. The child at issue required the medication to "have a chance to function more normally in the classroom setting and attain the benefits of her special education, thus meeting the definition of 'supportive services'." Additionally, the medication could easily be administered by someone other than a trained physician, such as a school nurse. The school district's argument that because the medication administration was not noted on the IEP, it was not a related service, was expressly rejected.

(Noteworthy is that the real issue in *John A. v. Bd. of Educ.* was essentially whether school nurses who administer medications to a bipolar student should have the ability to communicate directly with the prescribing physician or whether the student's parents have the power to restrict access to the physician until they are contacted and approve of any specific contact with that physician. The school district ceased medication administration after contact with the doctor was prohibited, but allowed the parents to come to the school and administer the medication. The hearing officer in the special education due process hearing dismissed the case for lack of subject matter jurisdiction finding the controversy to not relate to the special education concerns as much as medical and ethical issues that were outside of the hearing officer's jurisdiction. The Court of Appeals agreed.) See BESE Regulation LAC 28: CXV.1129(G)(5)(e) requiring the parent/guardian of a student to grant permission for school nurse/physician consultation for administration of medication at school to occur.

In re: Student With a Disability, 40 IDELR 245 (Wisconsin SEA 2003) The parent of a 14 year old student with multiple medical problems took issue with the school nurse's competency in handling the student's fragile skin around her Mic-key button site (device implanted in student's stomach to allow her to receive nutrition). The parents also complained that the nurse failed to properly use ointment and cornstarch. The issues were among others brought before a special education hearing officer who refused to address them explaining that the competency of the school nurse was more appropriate for the state nursing board. The fact that she was a registered nurse licensed by the state made her a qualified person to provide school health services under federal special education law.



HOT TOPIC!!

Medical Assessments in the School Setting: Beyond the State-Required Health Screenings

Pregnancy Testing

Villanueva vs. San Marcos CISD 2007 U.S. App. LEXIS 17208 (5th Cir. 2007) 15 year old student M.V. was called into the school nurse's office after her boyfriend informed the nurse that M.V. believed she was pregnant and that he might be the father. Although M.V. denied the pregnancy as well as any sexual relationship with the male student. She accepted the nurse's recommended pregnancy test. The parents of M.V. later filed suit claiming federal constitutional violations under 42 USC § 1983 and state tort claims of assault and battery and invasion of privacy. Motion for Summary Judgment granted as to School District and ultimately granted in favor of the school nurse. (Not so sure how this might have turned out in a Louisiana state court.) However, words of Wisdom from the 5th Circuit Court were offered (in a footnote) – "Notwithstanding that [the nurse] is entitled to qualified immunity, it is also plain that this controversy might have been averted had [the nurse or principal] convened a meeting with [the student's parent] at the outset, rather than allowing them to learn after the fact about the pregnancy test and [the nurse's] encouraging [the student] to go on birth control pills at the age of fifteen."

Gruenke v. Michael Seip, 225 F 3d. 290 (3rd Cir. PA 2000) Seventeen year old student and member of the swim team filed suit against the school swim coach who allegedly required the student to take a pregnancy test. According to the caselaw, the defendant Coach had suspicions that the student was pregnant because she was nauseated at practice on several occasions and repeatedly went to the bathroom during a two hour work out. Additionally, the student was complaining profusely about her energy levels being down. Section USC § 1983 claims and numerous other constitutional violations were brought against the district. A school official's alleged administration of a forced pregnancy test to a student athlete constitutes an unreasonable search under the 4th Amendment. "School-sponsored counseling and psychological counseling that pry into private family activities can overstep the boundaries of school authority and impermissibly usurp the fundamental rights of parent to bring up their children, as they are guaranteed by the Constitution. [...] Public schools must not forget that "in loco parentis" does not mean "displace parents."

Very few districts have policies which provide guidance for employees when a teen pregnancy is discovered by school staff. At least one court in New York has determined that it is not a constitutional violation for school districts to adopt a policy which advises but does not require school staff to notify parents of a minor student's pregnancy.

Port Washington Teachers' Association vs. Board of Education 2006 US. Dist. LEXIS 1904 (E.D. NY, 2006): Superintendent of Schools issued a memorandum setting forth the responsibilities of school staff, including school nurses, to inform a student's parents that she is pregnant. The memorandum required staff members who become aware of a student's pregnancy to report it immediately to a school social worker. The social worker, in turn, would 'encourage' voluntary disclosure of the pregnancy to the student's parents, and if the student represented that a disclosure had been made, then the social worker would confirm that such a disclosure was made. In the event a student refused to voluntarily inform her parents, the social worker would then be expected to offer a meeting with the parents and the student to help the student inform her parents and/or to offer to inform the student's parents without the student being present. If the student continued to insist on non-disclosure, the social worker would inform the student that she/he would inform the parents. Plaintiffs filed a lawsuit claiming the District's violated students' due process rights, rights of privacy and right of equal protection. Motion To Dismiss for failure to state a claim granted. The court held that the District's policy was not unconstitutional. It advised nothing more than parent notification of a student's pregnancy.

Louisiana Youth Concussion Act - ACT 314 by the 2011 Louisiana Legislature signed into law June 28, 2011

http://lhsaa.org/uploads/forms/pdf/2011_Concussion_Packet.pdf

The new law requires schools, clubs and other organizations that sponsor youth athletics to provide the athletes and their parents information about concussions and the potential long-term effects of playing after a head injury. Coaches and other officials are now required to undergo annual training to identify concussion symptoms. Perhaps most importantly, coaches must remove any athlete from practice or a game if a concussion is suspected. The player will not be allowed to return without written clearance from a health-care provider or licensed trainer.

Employee Health Assessments

Increasingly, school nurses are reporting incidences in which district employees are stopping by the nurse's clinic at a school campus and requesting non-emergency health services from the school nurse. Nurses report that blood pressure monitoring and administration of allergy shots are common requests by employees, especially in rural areas where medical care might be located at some distance away from the campuses. District-Level Administrators need to be made aware of this phenomenon so that appropriate policies can be implemented by the District. Some districts have already included employee health care as part of the school nurse's job description; however, school nurses should be aware of whether or not employee health care is part of the nurse's job duties so that the immunities offered by state law can arguably apply.

Threat Assessments

Previously, the Family Educational Rights and Privacy Act (“FERPA”) allowed personally identifiable information from a student’s education record to be released in the event of a health and safety emergency. However, this provision was to be strictly construed thereby preventing the release of information when a potential threat existed unless the threat involved imminence. FERPA regulations, effective January 1, 2009 removed the strict construction language from the regulations. In its place, language allowing district officials to take into account the totality of the circumstances has been added. If an “articulable and significant” health or safety threat exists, personally identifiable information from a student’s records may be released without consent. This new language requires school officials to be prepared to make, and record, their rational reasons for determining that a health or safety emergency existed creating the need for the disclosure without consent or making what is known as “a threat assessment.”

The Department of Education (“DOE”) has stated that it will not be substituting its judgment for the judgment of school officials. Therefore, threat assessments should be made in writing and should be as comprehensive as possible to provide an explanation as to why a particular situation was determined to be significant enough to have fallen within the confines of the health and safety exception allowing the release of personally identifiable information from a student record without consent.

DOCUMENT!

An educational agency or institution must record the following information when it discloses personally identifiable information from educational records under the health and safety emergency exception:

- (i) The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
- (ii) The parties to whom the agency or institution disclosed the information.

FERPA 34 CFR 99.32 (5)

First Aid Training

Torri Palms-Moore Act - La. R.S. 17:440.1 (Enacted in 2010) Each local school board shall adopt a policy requiring each school employee who participates in any required in-service training program to receive first aid orientation and training. No special immunities built into this law.

Other Issues Regarding School Safety

Automated External Defibrillators

Presentation before the Louisiana School Nurses Association, April 2012 by Sharon Boudreaux RN, BSN

- ☞ “sudden cessation of cardiac activity so the victim becomes unresponsive, with no normal breathing, and no signs of circulation”
 - ☞ Occurs in 4.4:100,000 high school athletes/yr
 - ☞ Survival rate decreases by 7-10% each minute the SCD victim is in ventricular fibrillation
 - ☞ AED initiated within first 1-2 minutes results in 80-90 % survival rate
- ☞ computerized defibrillators designed to be used by lay rescuers in the treatment of ventricular fibrillation or pulse less ventricular tachycardia, which are two lethal arrhythmias that can occur during SCD.
- ☞ “The single greatest factor affecting survival after out-of-hospital cardiac arrest is the time interval from arrest to defibrillation” (Drezner, et al., 2007, p. 147).

American Heart Association Guidelines

- ☞ *AHA 2000 guidelines highly recommended public access defibrillator use by lay rescuers on adults and adolescents, but discouraged AED use on children and infants because of lack of evidence and safety.*
- ☞ *AHA 2005 guidelines recommended AED public use on adults, adolescents & children, but not on infants.*
- ☞ *AHA 2010 guidelines recommend AED public use on all ages, including infants and children.*

The Estate of Deshaun Newton v. Grandstaff, 2011 U.S. Dist. Ct. LEXIS 73897 (N.D. Dallas 2011) Motion to dismiss plaintiff's claims were denied in a lawsuit resulting from the death of a participant in a basketball tournament at the YMCA. Deceased had been playing well and was sitting on a bench when he went into sudden cardiac arrest, ostensibly because of a congenital respiratory condition and heart defect. He stopped breathing. Coach tried to administer CPR. 911 called, but had difficulty getting into the gym. Allegations that safety measures including having an automated external defibrillator available would have prevented death.

Suicide Prevention

Jason Flatt Act - La. R.S. 17:437 (Enacted in 2008) Rule to be adopted by BESE that all public school teachers, school counselors and principals and, as determined by the board, other school administrators for whom such training is deemed beneficial participate annually in at least two hours of in-service training in suicide prevention no later than the 2008-09 school year. Self-review is allowed. No cause of action for any loss or damage for any act or omission resulting from the implementation of these provisions, or resulting from any training or lack thereof unless such loss or damage was caused by willful or wanton misconduct.