



MEMBER UPDATE

EMERGENCY MEDICAL SITUATIONS (Including Epinephrine, Insulin & Diazepam/Diastat)

In 2013, California Supreme Court upheld the right of school personnel without nursing licenses to administer medication pursuant to authorizing statute and regulations. The CDE has issued additional regulations. This provides updated guidance on several of the most common issues that can arise. Note that while a student's IEP or Section 504 plan may provide for administration of necessary medication, these laws have not been interpreted to require the hiring of licensed nurses or other medical professionals at each location attended by such a student. Instead, the school can address the need in a variety of ways. Note that the relevant regulations, described below, state that a "regular school day," during which medication may need be administered, may include before and after school programs.

I. EMERGENCY CARDS/EMERGENCY CARE OPT-OUT

Education Code § 49407 insulates school districts from liability for providing reasonable emergency care without parental consent to a student who needs medical treatment during regular school hours and the parent cannot be reached. (All references to "parents" should also be understood to include guardians.) This immunity does not apply as to students whose parents previously filed with the district a written objection to medical treatment other than first aid. Accordingly, each year Members should require parents to complete and submit new "emergency medical contact" information cards/forms as provided for by § 49408, and at that time offer them the opportunity to object to the District providing or authorizing emergency medical care when the parent cannot be contacted. For parents wishing to object, Members may use the "Objection to the Providing of Emergency Medical Care" form provided on SIA's website.

Where a Student's parents have filed the Objection to the Providing of Emergency Medical Care form, the Student can be denied participation in activities requiring a Field Trip, Athletic Participation, and Activity Participation form, unless the objection is based on a religious belief. These forms expressly extend and confirm the Member's right to direct emergency medical care while the Student is participating in these activities. If a religious Objection is filed, however, the Student should be allowed to participate in such activities, and to "cross out" the medical authorization sections of these forms. Supervising employees and/or volunteers should be advised of the religious exemption.

II. MEDICATION ASSISTANCE AUTHORIZATION

SIA has a recommended Medication Assistance Authorization form that is intended to comply with all governing laws and regulations. Required to be signed by a parent and by a physician, the form also complies with informational and procedural obligations in a manner intended to protect the District, while also ensuring that parents and students fully understand their obligations and responsibilities.

III. EPINEPHRINE

Pursuant to Education Code § 49414, schools have the option to make emergency epinephrine auto-injectors and trained personnel available to students facing an anaphylactic event based on an evaluation of the emergency medical response time to the school and whether relying on emergency medical services constitutes an acceptable alternative. If a school chooses to make epi-pens and trained personnel available, it should have a written plan, train its volunteers, and otherwise comply with CDE's standards for the administration of epinephrine at <http://www.cde.ca.gov/ls/he/hn/epiadmin.asp>. The Member should also maintain duly signed Medication Authorization Forms and a log showing the use and administration of such

medications. Regulations governing administration of medications at school may be found at 5 CCR §§ 600 to 611.

IV. INSULIN ADMINISTRATION

For several years, Education Code § 49414.5 had allowed volunteers to administer emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia in the absence of a credentialed school nurse or other licensed nurse onsite at the school. Unfortunately, authority for such administration of insulin was thrown into doubt in 2009 by litigation instituted by professional nurse organizations.

The California Supreme Court described the background of the dispute in *American Nurses Association v. Torlakson* (2013) 57 Cal.4th 570, 575, as follows: “Public school students with diabetes who cannot self-administer insulin are normally entitled under federal law to have it administered to them during the school day. This case presents a dispute over whom state law permits to administer that insulin. The dispute arises against the background of a long-standing shortage of school nurses and a class action in federal court alleging the state’s schools have failed to ensure diabetic students actually receive legally required health care services. Pursuant to an agreement settling that litigation, the State Department of Education (Department) in 2007 advised local education agencies that trained school personnel who are not licensed health care providers may, when no nurse is available, administer insulin pursuant to the medical orders of students’ treating physicians. (State Dept. of Ed., Legal Advisory on Rights of Students with Diabetes in California’s K–12 Public Schools (2007) pt. IV.C <<http://www.cde.ca.gov/ls/he/hn/legaladvisory.asp>> [as of Aug. 12, 2013] (2007 Legal Advisory).)”

Ultimately, the California Supreme Court held that the laws against the unlicensed practice of medical professions did not prohibit school personnel without such licenses from administering insulin, eliminating questions regarding the authority of volunteers to administer such medications when they comply with § 49414.5. Among other things, the volunteers must provide such emergency care in accordance with standards established pursuant to subdivision (b) of section 49414.5, and in conformity with the instructions set forth by the pupil’s licensed health care provider. Section 49414.5 specifically provides that a school employee who does not volunteer or who has not been trained pursuant to the statute’s requirements may not be required to provide emergency medical assistance pursuant to that section.

The regulations at 5 CCR §§ 600 to 611 govern the administration of insulin and other medications. In addition, the guidance given in the link listed in the portion of the court’s opinion quoted above remains effective, and was updated in November 2013. It may be consulted for additional information on this issue.

V. DIAZEPAM/DIASTAT ADMINISTRATION

Effective the beginning of 2012, Education Code § 49414.7 expressly allows school districts, COEs or charter schools to elect whether to allow to allow nonmedical employees, in the absence of a credentialed or other licensed nurse, to volunteer to provide medical assistance to pupils with epilepsy suffering from seizures, upon request by a parent or guardian. The California Department of Education was required to post a clearinghouse for “best practices” in training nonmedical personnel to administer emergency antiseizure medication to pupils, which is at: <http://www.cde.ca.gov/ls/he/hn/epilepsymedadmin.asp>.

If no volunteer is available, the school must advise the parents of “the option to be assessed for services and accommodations guaranteed under Section 504 of the federal Rehabilitation Act of 1973 and the federal Individuals with Disabilities Education Act.” Volunteer employees can only be solicited by electronic notice issued internally up to twice a year, and a school employee who does not volunteer or who has not been trained pursuant to the statutes “shall not be required to provide emergency medical assistance pursuant to this section.”

The volunteer needs to receive medical instruction in the proper identification of an epileptic event and the proper administration of the Diazepam/Diastat, with the volunteer and District both required to maintain copies of the training materials (manufacturer's instructions, health care training provider's instructions, and any other training materials). Also, the volunteer must comply with identified notice obligations to school medical and administrative personnel after a need to administer the medication. The District needs to maintain a copy of the training certifications, a copy of a duly signed "medication assistance authorization form" (the Form recommended above meets the requirements, and the CDE provides a sample form on its website), and a copy of a log showing the use/administration of such medications. California regulations implemented in 2012 specify the qualification of the trainers and the content of training to be given to volunteers. (See the regulations at 5 CCR §§ 620 to 627, which are specific to the administration of antiseizure medication.)

The statute and regulations allow a trained employee three days after completion of training to revoke his or her offer to administer such medications. After that, the volunteer must give two weeks' notice, or wait until a new IEP or Section 504 plan have been developed for the affected pupil, whichever is less, which arguably implies that in the absence of such revocation the employee has undertaken an additional duty and may be subject to disciplinary action for failure to carry out such duties.