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California's protection and advocacy system

MEMORANDUM

TO: Interested Parties

FROM: Lauren Giardina

RE: When can a student receive medication at school?

DATE January 5, 2009

As the school nurse to student ratio in California is currently up to 1 nurse per 2500 students, many schools have become increasingly hesitant to administer prescribed medication to students when a school nurse is not on campus. Unfortunately, in many cases a refusal to administer medication when needed can put the student in danger.

Regardless of whether a school nurse is on campus, schools are required to administer medication when needed by a student. The legal requirements regarding medication are discussed below.

- 1. My child has a prescription for medication that needs to be administered during the school day. Can my child be administered his medication at school?**

Yes! The California Education Code allows a school district to assist with the administration of medication to any child required to take medication during the school day if that medication has been prescribed by a doctor or surgeon. *Cal. Ed. Code §49423(a)*. The education code also allows students to carry and self-administer auto-injectable epinephrine if the student has a prescription from his doctor. *Cal. Ed. Code §49423(a)*.

For the school district to administer such medication, the parent must provide both a written prescription from the physician detailing the name of the medication along with the amount, method, schedule, and a written statement from the parent or guardian expressing their intent for the school to administer the medication. *Cal. Ed. Code §49423(b)*. These notes should be updated annually. *Id.*

2. What medication can be administered at school?

The law is silent on which medications should be administered at school. The Education Code provides that any medication prescribed by a doctor can be administered at school. The Code also specifically discusses inhaled asthma medication (“inhalers”) and auto-injectable epinephrine (“EpiPens”).

A student may carry and self-administer an inhaler, or be assisted with the administration of an inhaler, if the school district receives a written statement from the student’s doctor providing the amount, method, and schedule of the administration, a written statement from the parent requesting such administration, a release from the parent allowing the school nurse or other designated personnel to discuss the medication with the student’s health care provider, and signed statement from the parent releasing the school from civil liability if the self-administering student suffers a reaction from the self-administered medication. *Cal. Ed. Code §49423.1*.

Similar to an inhaler, a student may carry and self-administer an EpiPen if there is a written statement from the student’s doctor providing the amount, method, and schedule of the administration, a written statement from the parent requesting such administration, a release from the parent allowing the school nurse or other designated personnel to discuss the medication with the student’s health care provider, and signed statement from the parent releasing the school from civil liability if the self-administering student suffers a reaction from the self-administered medication. *Cal. Ed. Code §49423(b)(2)*.

3. My child takes Diastat and the school is saying that it won’t administer Diastat, but will instead call the paramedics in

case of a seizure. Is that okay?

No! The same medication rules apply to Diastat. Students who have been prescribed Diastat should receive it administered at their school of residence as part of their IEPs. If the school requires that the medication be provided by a nurse, the school should provide nursing services as a related service at the school of residence. These requirements are discussed below.

4. The school wants me to sign a release to talk to my child's doctor, what should I do?

As discussed above, in some cases school districts are required to have a signed release from the student's parents allowing the school to communicate with the health care provider. These may be limited releases, however. Rather than signing a full medical release, the parent may sign a release that limits the conversation that the school may have with the health care provider. For example, a parent may sign a release that says "XYZ school district may communicate with Dr. ABC solely about Student's DEF medication. XYZ school district may not communicate with Dr. ABC about anything else. This release expires on (specify date)"

If the school provides a blank release, the parent may add the above language on the school's form. A parent's handwritten note limiting the release should sufficiently limit the school district's contact about the child's medical needs. However, the parent should clarify this with the school district before adding such language. If the parent has any questions, he should consult an attorney or contact Disability Rights California prior to signing the waiver.

5. The school wants me to sign a release of civil liability, what should I do?

As with medical releases, in some cases a school district may be required to receive a waiver of civil liability. By signing this waiver, parents are agreeing not to hold the school district accountable if the student has an adverse reaction to medication that has been administered per the health care instructions.

Because this may be required by law, parents may have to sign such

a waiver in order to ensure that the student receives medication at school. However, as above, the waiver can be limited to a waiver that only pertains to properly administered medication in accordance with health care professional and parents' requests. For example, a waiver may say "I agree not to hold the school district or school district personnel liable for adverse reactions that occur during the proper administration of XYZ drug." If the school provides a blank waiver, the parent should check with the school to ensure that adding such language will sufficiently limit the waiver. If the parent has any questions, he should consult with an attorney or contact Disability Rights California before signing.

6. What if there is no school nurse?

Many schools do not have a full time school nurse on staff. However, this does not mean that your child cannot receive medication! The California Education Code allows a person who requires specialized physical health care services to be assisted by either a qualified individual who possesses an appropriate credential, or a qualified designated school personnel trained in the administration of specialized health care so long as they provide services under the supervision of a credentialed school nurse, physician or surgeon. *Cal. Ed. Code §49423.5*. Those services must also be routine for the student, pose little potential harm for the student, performed with predictable outcomes, and cannot require nursing assessments, interpretation, or decision making by the personnel. *Id.* This includes gastric tube feeding, suctioning, catheterization, or other services requiring medically related training. *Id.*

Under this provision, so long as a person has received the appropriate training, school personnel besides a school nurse should administer medication.

7. The school is saying that my child's medication and other services can only be provided by a nurse. What should I do?

If the school claims that your child's medication or services can only be provided by trained medical personnel, or if your child's health care professional has advised you that his services can only be provided by trained medical personnel, the district must provide a nurse to assist your

child at school!

If your child is enrolled in special education and has an individualized education program (IEP), both State and Federal law provide that special education includes specially designed instruction and related services needed to assist individuals to benefit from specially designed instruction. *20 U.S.C. §1401(a)(26)*, *Cal. Ed. Code §56031*. Related services include medical services and school nursing services that are required to assist a child with a disability to benefit from special education. *34 C.F.R. 300.34(a)*, *5 C.C.R. §3001(z)*.

The United States Supreme Court has defined nursing services as a related service. In *Irving Independent School District v. Tatro*, the Court decided that related services are services that can be provided by a school nurse, or other trained personnel, and that if a particular medication is necessary throughout the day, the school must provide a nurse to administer it. *468 U.S. 883*.

In *Cedar Rapids Community School District v. Garret*, the Court affirmed its decision in *Tatro* and rejected the school district's argument that lack of existing staff or financial resources were valid reasons for failure to provide a necessary related service. *526 U.S. 66*.

Therefore, if your child requires nursing services, your child should have a school nurse as a related service **at his school of residence!**

8. My child needs nursing services but does not have an IEP, can he still receive them?

Yes! Section 504 of the Rehabilitation Act prevents programs receiving federal assistance, including school districts, from discriminating against people based on a disability. Therefore, if a student must be accompanied by a nurse in order to access a campus, a school's refusal to provide the nurse could amount to unlawful discrimination under section 504.

Section 504 also requires that a school provide non-academic services, including health services, which are necessary to prevent discrimination. *34 C.F.R. §104.37(a)(2)*. If your child does not have an IEP and requires nursing services to access his educational placement, he

should receive those under Section 504.

Also, because any student who has a disability may be eligible for special education if that disability impacts the student's ability to access or benefit from his education, if your child requires nursing services due to his disability, you may request that your student be evaluated for special education and have an IEP!

9. The district wants to transfer my child to a different school that has a school nurse, can they do that?

Many schools have addressed medication administration by assigning a full time school nurse at one school site in the district, then transferring all of the students who require medication to that school. This is not an acceptable practice and can result in the segregation of students who require medication.

If a student has an IEP, the law requires that all students must be educated in an environment that is as close as possible to the child's home, unless the IEP requires "some other arrangement." *34 C.F.R. §300.552*. Thus, a child cannot be transferred to another school without a demonstration that such transfer is the only option.

If the student does not have an IEP, he is still protected by the American's With Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act of 1973, California's non-discrimination statute, and the Unruh Civil Rights Act. Each act prohibits discrimination against persons with disabilities by entities that have been construed to include school districts. *42 U.S.C. §12132, 29 U.S.C. §794-794(a), Cal Gov. Code §§11135-11139, Cal. Civ. Code §51*. Failure to allow a child to attend his neighborhood school, which he would attend if he did not have a disability, likely constitutes discrimination based on disability and violates these laws.

The need for medication and lack of a school nurse on site is not sufficient reason to transfer a child to a different school. If a child merely requires a related service in order to attend his home school, the student's IEP should include that service at the child's school of residence.

10. The school is telling me that non-medical personnel cannot

make medical decisions. Does this mean that my child cannot receive medication at school?

No! Some schools have been refusing to administer medication claiming that the medication requires “medical decision making” by non-medical personnel. In cases where a prescribed dosage has been determined and provided by a doctor, including cases involving Diastat where the medication is provided in a pre-filled syringe and administered during a seizure, the person administering the medication should not have to make any decisions. If the medication does require decision making, the school should assign a nurse as a related service.

11. The district has agreed to provide my child with a person to administer his medication, but said that the person would only be available during school hours. Is that okay?

No. Section 504 prohibits schools from discriminating against children with disabilities. Therefore, if the student requires a person to administer medication in order to participate in a school sponsored event, including field trips, sporting events, clubs, and dances, the school should ensure that a person who can administer the medication is available at those events. *34 C.F.R. 104.37*. Failure to provide a person to administer the medication may also be a violation of Title II of the Americans with Disabilities Act.

12. What happens if the person who administers my child’s medication is not present at school?

Because the presence of a person who can administer medication may be necessary for your student to attend school safely, that person must be on campus at all times that your child is on campus. To avoid gaps in service, you should include a sentence on your child’s IEP or Section 504 plan that guarantees that the staff will be present on campus at all times, including during their breaks and lunches. The IEP or 504 plan should also include a contingency plan in cases where the trained personnel is absent, including notification timelines and a back up location from which the district may find another trained personnel to substitute for the regular employee.
