

HK School Law Monthly Newsletter



Greetings!

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IN THE NEWS



[Two Important Student Privacy Laws Passed in 2014](#)

[AB 1584](#) An act to add Section 49073.1 to the Education Code, relating to pupil records.

This bill would allow LEAs to enter into 3rd party vendor contracts for the digital storage, management and retrieval of student records under certain terms. The bill could also void such contracts for failure to satisfy these terms.

[SB 1177](#) An act to add Chapter 22.2 (commencing with Section 22584) to Division 8 of the Business and Professions Code, relating to privacy

This bill would prohibit an operator of an Internet Web site, online service, online application, or mobile application from knowingly engaging in targeted advertising to students or their parents or legal guardians, using covered information to amass a profile about a K–12 student, selling a student’s information, or disclosing covered information, as provided.

SB 1266: CHARTERS MUST STOCK EPIPENS AND PROVIDE TRAINING TO SCHOOL NURSES AND/OR VOLUNTARY PERSONNEL TO ADMINISTER THEM

Signed into law by Governor Jerry Brown on September 15, 2014 and effective January 1, 2015, Senator Bob Huff's Senate Bill 1266 ("SB 1266") amends Education Code Section 49414, requiring all school districts, county offices of education and charter schools, to stock epinephrine auto-injectors ("epiPens") and provide those epiPens to school nurses or to trained personnel who have volunteered to administer them to a student who is suffering, or reasonably believed to be suffering from, an anaphylactic reaction.

Anaphylaxis is a severe, whole-body allergic reaction to a chemical a person has been exposed to, which can be brought on by food, drugs or insect bites or stings. Symptoms include tightness or closing of the throat, difficulty breathing, swelling or body parts, itching, dizziness and a change of color. Death can result from anaphylaxis if it goes untreated. Senator Huff argued, "(Senate Bill) 1266 will help save lives by ensuring emergency medication is available at schools, especially helping students who don't know they have an allergy."

WHAT THE LAW SAYS: AMENDMENTS TO THE EDUCATION CODE AND BUSINESS AND PROFESSIONS CODE

The law not only amends the Education Code, but also the Business and Professions Code.

Section 4119.2 of the Business and Professions Code is amended to read:

(a) Notwithstanding any other law, a pharmacy may furnish epinephrine auto-injectors to a school district, county office of education, or charter school pursuant to Section 49414 of the Education Code if all of the following are met:

(1) The epinephrine auto-injectors are furnished exclusively for use at a school district site, county office of education, or charter school.

(2) A physician and surgeon provides a written order that specifies the quantity of epinephrine auto-injectors to be furnished.

(b) Records regarding the acquisition and disposition of epinephrine auto-injectors furnished pursuant to subdivision (a) shall be maintained by the school district, county office of education, or charter school for a period of three years from the date the records were created. The school district, county office of education, or charter school shall be

responsible for monitoring the supply of epinephrine auto-injectors and ensuring the destruction of expired epinephrine auto-injectors.

The law amends section 49414 of the Education Code regarding stocking requirements, volunteers and training.

STOCKING REQUIREMENTS

Under the law, a qualified supervisor of health at a school district, county office of education, or charter school can obtain from an authorizing physician and surgeon a prescription for each school for epiPens that, at a minimum, includes:

For elementary schools: one regular epiPen and one junior epiPen;

For junior high schools, middle schools, and high schools: if there are no pupils who require a junior epiPen, one regular epiPen.

The supervisor is responsible for stocking the epiPens and restocking them if they are used. If an epiPen is used, it must be restocked “as soon as reasonably possible, but no later than two weeks after it is used.” EpiPens also must be restocked before their expiration date. The prescription may be filled by local or mail order pharmacies or by epiPen manufacturers.

Previously only school nurses could administer the shot. With this amendment, Education Code Section 49414 provides that voluntary personnel may administer the shot, and such individuals shall be trained to do so properly.

Under the provisions of the law, charter schools are also responsible for distributing a notice at least once per school year to all staff requesting volunteers to be trained to administer epiPens.

VOLUNTEERS AND TRAINING

Under SB 1266, each district, county office of education and charter school must distribute a notice at least once per year to all staff that contains the following information:

Description of the volunteer request, stating that the request is for volunteers to be trained to administer an epiPen to a person if the person is suffering, or reasonably believed to be suffering, from anaphylaxis; and

Description of the training that the volunteer will receive.

As under the current law, components of training include: techniques for recognizing symptoms of anaphylaxis; standards and procedures for the storage, restocking, and emergency use of epiPens; emergency follow-up procedures; recommendations on the

necessity of instruction and certification in cardiopulmonary resuscitation; and instruction on how to determine whether to use an adult epiPen or a junior epiPen.

Each school must provide the trainee with written materials covering the training components. SB 1266 also requires that schools provide each employee who volunteers with defense and indemnification for any civil liability that may arise under the law.

Also important to note, the law requires that charters schools shall ensure that each employee who volunteers be provided defense and indemnification for any and all civil liability, in accordance with, but not limited to, that provided in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. Such information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file..

WHAT YOU SHOULD DO

We would stress that you review the amended section 49414 of the Education Code in its entirety. Adopting a revised medication administration policy is a necessary next step. Education of staff on the requirements of the new law is imperative. At a minimum, staff and volunteers should be versed in where epiPens are stored, and which students may have allergies requiring administration thereof. Finally, ensuring nursing staff and/or volunteers are properly trained in the administration and storage of epiPens, as well as reminders put in place so notification is sent annually in compliance with the law.

As always, we encourage that you consult with legal counsel to ensure that any revisions to existing policies or the drafting of new policies are SB1266 compliant.

QUESTIONS?

As always, if you have questions about this newsletter or any other matter, please call us at any time for guidance.

Hansberger & Klein, LLP is a law firm representing public charter schools. This newsletter is not intended to be legal advice. If you are seeking legal advice, please contact us or your attorney for guidance. We look forward to working with you!

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