



HK SCHOOL LAW CLIENT NEWSLETTER

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SERVING INLAND EMPIRE CHARTER SCHOOLS

Administering Insulin and Medications: An Overview

On August 12, 2013, the California Supreme Court, in a unanimous decision, ruled lay school personnel may administer insulin to students with diabetes under the proper circumstances. Such decision has immediate implications for students with special education or treatment plans under federal disabilities laws.

OVERVIEW

Large numbers of students with chronic and acute illnesses, the huge array of available medications, new treatment regimens and advanced technologies for administering medication have significantly affected our schools. Many students with special needs are able to participate in the educational system because of the effectiveness of the medication they take.

The California high court held that State law in effect leaves to each student's physician, with parental consent, the question whether insulin may safely and appropriately be administered by unlicensed school personnel, and reflects the practical reality that most insulin administered outside of

hospitals and other clinical settings is in fact administered by laypersons. Such personnel who carry out doctors' orders in that way are exempt from state laws prohibiting the unauthorized practice of nursing.

CURRENT LAW CONCERNING THE ADMINISTRATION OF MEDICATIONS

The Individuals with Disabilities Act, Americans with Disabilities Act and the Rehabilitation Act of 1973 all provide students the right to receive medication at school.

Education Code §49423 provides statutory authority for providing assistance in administering medication in California schools. *Education Code §49423* states: Notwithstanding the provisions of §49422, any student who is required to take, during the regular school day, medication prescribed for him by a physician, *may* be assisted by the school nurse or other designated school personnel *if* the school district receives (1) a written statement from such physician detailing the method, amount, and time schedules by which such medication is to be taken and (2) a written statement from the parent or guardian of the student indicating the desire that the school district assist the student in the matters set forth in the physician's statement. (Emphasis supplied.)

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California Code of Regulations, Title 5, Article 4.1, provides clarification for implementing *Education Code §49423*. Specifically, the regulations clarify who may administer medications to students requiring medication during the regular school day, under what conditions such administration of medication may occur, and the requirements for the delivery, administration, documentation, and disposal of medication.

Education Code §49414.5, states that in the absence of a credentialed school nurse or other licensed nurse onsite at the school, each school district may provide school personnel with voluntary emergency medical training so as to provide medical assistance to pupils with diabetes. Volunteer personnel shall provide this emergency care pursuant to the performance instructions set forth by the licensed health care provider of the pupil. A school employee who does not volunteer or who has not been trained may not be required to provide emergency medical assistance pursuant to this subdivision.

However, any school district or county office of education choosing to exercise the authority provided under this subdivision shall not receive state funds specifically for the purposes of this subdivision.

504 PLANS

A parent “designee” can administer insulin at school pursuant to a 504 plan or IEP. The parent designee **MUST** be a friend or family member and **CANNOT** be an employee of the school. While the district nurse can “oversee” the injections, it is not a requirement that they do so, and the parent can elect to have the designee actually perform the injection.

Educational services cannot be conditioned on the parent administering the insulin. However, school district staff may discuss the option of parents/guardians to administer insulin during the school day and for school related activities, including field trips, so long as the parents/guardians fully understand that their participation or involvement is not mandatory.

WHO MAY ADMINISTER MEDICATION?

- The student may self-administer with authorization from the student’s licensed health care provider and the student’s parent/guardian;
- A school nurse or school physician employed by LEA;
- An appropriately licensed school employee (i.e., a registered nurse or vocational nurse) who is supervised by a school physician, school nurse or other appropriate individual;
- A registered nurse or licensed vocational nurse contracted from a private entity or a local county health department
- The student’s parent/guardian;
- A parent/guardian designee (family or friends exception) who is not an employee of the LEA; and
- An unlicensed voluntary school employee with appropriate training but only in the case of an emergency (B & P Code §2727(d).



RELEVANT LAWS/CODES/REGS

Persons Authorized to Administer Medication at School

EC sections 44871, 44873, 44874, 44875, 44876, 44877, 44878, 49400, 49422(a), and 49423; CCR, Title 5, sections 600, 601(e)(f)(h), and 604

Authorization From Authorized Health Care Providers

Education Code (EC) sections 49400 and 49423; Business and Professions Code (BPC) sections 1625, 2051, 2052, 2472, 2746.51, 2836.1, 3041, and 3502.1; California Code of Regulations (CCR), Title 5, sections 600, 601(a), and 602

Medication Provided Pursuant to an Individualized Education Program or Section 504 Plan

EC sections 49400, 49422(a), and 49423; Individuals with Disabilities Education Act Amendments of 1997 (IDEA): PL 105-17; Title II of the Americans with Disabilities Act of 1990 (ADA Title II): PL 101-336; Rehabilitation Act of 1973 (Section 504): PL 93-112; CCR, Title 5, sections 600, 601, and 610(d)

Written Statement from the Parent or Guardian

EC sections 44871, 44873, 44874, 44875, 44876, 44877, 44878, 49400, 49422(a), 49423, and 49480; Government Code (GC) Section 815.2(a); CCR, Title 5, sections 600, 601(f), 602, and 60

Review of Authorized Health Care Provider’s and the Parent or Guardian’s Written Statements by a School Nurse or Other Duly Qualified Supervisor of Health

EC sections 44871, 44873, 44874, 44875, 44876, 44877, 44878, 49400, 49422(a), 49423, and 49480; CCR, Title 5, Section 600, and Title 16, Section 1443.5(6)

QUESTIONS?

As always, if you have questions about the implementation of this law, please call us at 626-533-1891 or email us at rhansberger@hkschoollaw.com or eklein@hkschoollaw.com any time for guidance.