

THE BOARD REPORT

ADMINISTRATION OF MEDICATIONS IN SCHOOLS

The Department of Health's "Guidelines for the Administration of Medications in Schools" have far-reaching impact.

On March 30, 2010, the Pennsylvania Department of Health issued its "Guidelines for Pennsylvania Schools for the Administration of Medications and Emergency Care." These Guidelines contain the Department's interpretation of the laws that govern schools. While the Guidelines themselves have no binding legal effect, Courts have held that a general statement of policy is like a press release—announcing either upcoming rulemaking or the course that the Department intends to follow in future adjudications. According to the Courts, statements of policy permit Commonwealth agencies to publicly and formally express their views so that affected entities are aware of the Department's position on an issue prior to future adjudications or rulemaking.

Although not stated explicitly, the Guidelines support the concept of a nurse in every school building even though there is no language in the statutes or regulations to support this position. Although the Guidelines do not have the force and effect of law, their very existence causes concern. For example, assume a student suffers an injury because medication is administered without following the suggested procedures contained in the Guidelines. The parent and/or student can then argue that the Guidelines establish a "best practice" scenario, notwithstanding they are not "legally" binding. The crux of the argument is that once the school district was made aware of the suggested procedures developed by the Department, the District's failure to follow the Guidelines demonstrates a willful disregard for the safety of the students because the Department has officially stated what the safe practice is for the administration of medication in a school setting.

The Guidelines explicitly do not permit nurses to delegate the task of medication administration. The Guidelines state that "a certified school nurse or other licensed professional (RN, LPN) cannot lawfully delegate the nursing function of medication administration to the principal, teacher or administrative personnel." The Guidelines also state that while the School Code does give teachers, vice principals and principals the authority to act in loco parentis regarding the conduct and behavior of the child, the Department does not believe that the in loco parentis authority extends to the administration of medication. It is critical to note that the Guidelines fail to acknowledge a parent's right to authorize a third party to administer medication to his or her child. It is this omission that may be a determining factor in whether in loco parentis authority exists.

The Guidelines explain that, in addition to legal constraints, there are a myriad of other reasons why the school district would not want to delegate the administration of medication to persons with no proper medical training and licensing. Thus, the clear statement of the Guidelines is that only a nurse can administer medications in schools to students. However, the Guidelines do not include students who have prescribed asthma inhalers or Epi Pens since the School Code specifically permits students to possess and self-administer asthma inhalers and Epi Pens.

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Alfred C. Maiello and David Raves have been named Pennsylvania Super Lawyer as one of the top attorneys in Pennsylvania for 2010. Only five percent of lawyers in the Pennsylvania are named Super Lawyers



Donald A. Walsh

Donald A. Walsh, Jr. has been named a Pennsylvania Rising Star for 2010. Rising Stars is a listing of the best attorneys who are 40 or under, or who have been practicing for 10 years or less. No more than 2.5 percent of lawyers in Pennsylvania are named Rising Stars.

The Acting Chief of the Department's Bureau of Community Health Systems, Division of School Health, has announced that schools will have the 2010-2011 school year to bring their policies into compliance. Beginning with the 2011-2012 school year, the Department will begin randomly requesting that schools submit their policies for review. Aside from hiring additional nurses in sufficient numbers to adhere to the Guidelines, Districts can also consider the following:

1. Use LPNs when possible to supplement the certified school nurse. This could be more cost effective and would give the school districts greater flexibility in meeting the expectations established in the Guidelines.
2. Create and utilize a medication "Request Form" (rather than a "consent" form) in which the parent is the one initiating a request that the School district undertake the authorized task of giving medication to the student. The request form should acknowledge the school district's medication policies as controlling, and should contain language in which the parents agree to defend and indemnify the school district in the event of injury, and in particular if the student brings an action on his or her own behalf upon reaching the age of majority. The request form should also contain language in which the parents specifically state that they delegate their parental authority to give their child medication as they would to any other child care provider.
3. School districts should consider permitting the dispensing of medication during school hours and school activities only when in receipt of a written order of a physician stating that the dosage and administration of medication cannot be accomplished outside of the school setting (during the school day) due to the nature of the medical condition and the treatment. In that vein, the school district should clearly state in its policy that physicians must make every attempt to provide a treatment regimen that does not have to occur in school or during school hours.



Although implementation of the above suggestions may limit the school district's liability, school districts must weigh the benefits of compliance with the Guidelines against the risk of non-compliance in the future administration of medications.

SUPERINTENDENT'S CORNER

PDE Expands Misconduct Reporting Requirements

On April 9, 2010, the Pennsylvania Department of Education (PDE) issued a new Basic Education Circular (BEC) which expands the mandatory reporting procedures for educator misconduct. Under the new BEC, the administration of public school districts, intermediate units, vo-tech schools, career and technology centers, and charter schools are required to report to PDE the following:

- Within 30 days: The dismissal of a certified employee or charter school staff member resulting from official school board action or an arbitrator's decision;
- Within 30 days: If the administration has notice of a criminal indictment or a criminal conviction for a crime listed in section 111(e)(1)-(3) of the Public School Code or any other crime involving the moral turpitude of a certified employee or charter school staff member; and
- Within 60 days: If the administration receives information creating a reasonable basis to believe that a certified employee or charter school staff member caused physical injury through negligence or malice or has committed sexual abuse or exploitation of a student or any other child.

Failure to comply with these mandatory reporting requirements may result in professional discipline against the chief school administrator. In addition to the above mandatory reporting requirements, PDE strongly encourages the school administration to report an employee who resigns in lieu of discipline or dismissal.

The previous BEC only required that the school entity "promptly" report: 1) the dismissal of a certified employee for cause; and 2) a certified employee who was formally charged or convicted of a crime involving moral turpitude or any other offense requiring mandatory suspension or revocation of certification. The previous BEC also required school entities to report the dismissal of any professional employee for cause within 10 days.

The new BEC is currently in effect and requires immediate compliance.