

SCHOOL NURSES

Coverage & Legal Duties

School Nurse Summer Institute

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Caveat

This training is provided for informational purposes only and is not to be construed as legal advice. You are urged to consult with your school's attorney concerning your respective duties and responsibilities.

Overview

- Governmental immunities
- State Risk Fund coverage
- Nurse Practice Act implications
- Administration of medication generally
- Asthma medication
- Glucagon
- Diabetes medication
- Epinephrine and auto-injector
- Seizure rescue medication
- Suicide prevention
- Bullying and hazing prevention
- Other relevant state laws
- FERPA snapshot

Governmental Immunity Act of Utah (GIAU)

GIAU Definitions

- “Employee” includes:
 - A governmental entity’s officers, employees, servants, trustees, or commissioners;
 - Members of a government entity board;
 - Educational aides;
 - Students engaged in providing services to members of the public in the course of an approved medical, nursing, or other professional health care clinical training program;
 - “Approved” volunteers.
- “Employee” does not include an independent contractor.

Immunities

- Public schools/employees are immune from suit resulting from failures to:
 - Control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health;
 - Investigate and control suspected bioterrorism and disease;
 - Respond to a national, state, or local emergency, and a public health emergency; and
 - Adopt methods or measures for health care providers, public health entities, and health care insurers to coordinate/identify the individuals the serve.

Immunities – 2

- Public schools/employees are immune from suit for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises out of :
 - Providing emergency medical assistance;
 - Transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service.

Immunity Exceptions

- Public employees, acting in course and scope, cannot be sued personally, except for:
 - Fraud or willful misconduct;
 - Injuries/damages caused by employee who was under the influence while driving a vehicle; or
 - Injuries/damages caused by employee who was physically or mentally impaired due to alcohol and/or the non-prescribed use of a controlled substance.

Immunity Caps

- Personal Injury Limitations
 - \$717,100 per person in any one occurrence
 - \$2,455,900 aggregate of individual awards in relation to a single occurrence
- SB 192 - Study on Claims Exceeding Statutory Limit
 - Board of Examiners
 - Cap Increases/Elimination
 - Catastrophic Fund

State Risk Fund

Coverage

- School nurses of participating LEAs are generally covered by the State Risk Fund for claims arising in the course and scope of their employment.
- Exclusions:
 - Fraud
 - Assault
 - Intentional harm
 - Under the influence of drugs/alcohol

Coverage Limits

- Excess Liability Program
 - \$1MM SIR/Deductible
 - \$10MM Limits
- Public Sector Market Changes
 - Transit
 - Police Professional

Nurse Practice Act Implications

Delegation in School Setting

- Before delegating a task that is required to be performed in a school setting, the registered nurse shall:
 - Develop an IHP with the student, parents/guardians, educators, and health care providers; and
 - Ensure the IHP is available to school personnel.
- Any delegated tasks must be identified in the IHP.

Nurse Training Required

A registered nurse shall personally and annually train any unlicensed person who will be delegated the task of administering “routine medication”.

Routine Medications Defined

Established medications administered to a medically stable individual as determined by a licensed health care practitioner or in consultation with a licensed medical practitioner; and

Routine Medications Defined

Limited to medications administered by the following routes: oral; sublingual; buccal; eye; ear; nasal; rectal; vaginal; skin ointments—topical including patches and transdermal; premeasured medication delivered by aerosol/nebulizer; and medications delivered by metered hand-held inhalers.

Prohibited Delegations

- The administration of any medication:
 - with known, frequent side effects that can be life threatening;
 - that requires the student's SATS to be monitored before, during or after administration;
 - administered as a first dose or a new medication or after a dosage change; or
 - that requires nursing assessment or judgment prior to or immediately after administration.

Permissible Delegations

RN may delegate to an unlicensed person who has been properly trained regarding a diabetic student's IHP:

- Administration of a scheduled dose of insulin; and
- Administration of glucagon in an emergency situation as prescribed by the practitioner's order or specified in the IHP.

General Administration of Medication

Administration of Medication

A public or private school that holds classes in grades kindergarten through 12 **may provide** for the administration of medication to any student during periods when the student is under the control of the school, subject to the following conditions:

Mandatory Policies

Local school boards, charter school governing boards, or the private equivalents, after consultation with the Department of Health and school nurses **shall adopt** policies that provide for:

- designation of volunteer employees who may administer medication;
- proper identification and safekeeping of medication;
- training of designated volunteer employees by the school nurse;
- maintenance of records of administration; and
- notification to the school nurse of medication that will be administered to students; and

Mandatory Documentation

Medication may only be administered to a student if:

- the student's parent or legal guardian has provided a current written and signed request that be administered during regular school hours to the student; and
- the student's licensed health care provider has prescribed the medication and provides documentation as to the method, amount, and time schedule for administration, and a statement that administration of medication by school employees during periods when the student is under the control of the school is medically necessary.

Withdrawal of Authorization

Authorization for administration of medication by school personnel may be withdrawn at any time by the school at any time following actual notice to the student's parent or guardian.

Civil/Criminal Immunity

School personnel and their employers, who provide assistance in substantial compliance with the license health care provider's written prescription, are not liable, civilly or criminally, for:

- ⦿ any adverse reaction suffered by the student as a result of taking the medication; and
- ⦿ discontinuing the administration of the medication.

Asthma Medication

Asthma Medication Defined

As used in this section, “asthma medication” means prescription or nonprescription, inhaled asthma medication.

Parent/Guardian Statement

A public school shall permit a student to possess and self-administer asthma medication if:

- the student's parent or guardian signs a statement:
 - authorizing the student to self-administer asthma medication; and
 - acknowledging that the student is responsible for, and capable of, self-administering the asthma medication; and

Health Care Statement

A public school shall permit a student to possess and self-administer asthma medication if:

- the student's health care provider provides a written statement that states:
 - it is medically appropriate for the student to self-administer asthma medication and be in possession of asthma medication at all times; and
 - the name of the asthma medication prescribed or authorized for the student's use.

Glucagon

Glucagon Authorization

“Glucagon authorization” means a signed statement from a parent/guardian of a student with diabetes:

- certifying that glucagon has been prescribed for the student;
- requesting that the student’s public school identify and train school personnel who volunteer to be trained in the administration of glucagon in accordance with this section; and
- authorizing the administration of glucagon in an emergency to the student in accordance with this section.

Glucagon Training Mandate

A public school shall, within a reasonable time after receiving a glucagon authorization, train two or more school personnel who volunteer to be trained in the administration of glucagon, with training provided by the school nurse or another qualified, licensed medical professional

Glucagon Training Content

Training in the administration of glucagon shall include:

- techniques for recognizing the symptoms that warrant the administration of glucagon;
- standards and procedures for the storage and use of glucagon;
- other emergency procedures, including calling the emergency 911 number and contacting, if possible, the student's parent or guardian; and
- written materials covering the information required under this Subsection.

Training Content Retention

A school shall retain for reference the written training materials it has prepared.

Identifying Volunteers

A public school shall allow all willing volunteers to receive training in the administration of glucagon, and the school shall assist and may not obstruct the identification or training of volunteers.

Glucagon Storage

A public school shall permit a student or school personnel to possess or store prescribed glucagon so that it will be available for administration in an emergency.

Glucagon Administration

A person who has received training in accordance with this section may administer glucagon at a school or school activity to a student with a glucagon authorization if:

- (i) the student is exhibiting the symptoms that warrant the administration of glucagon; and
- (ii) a licensed health care professional is not immediately available.

Glucagon Administration

A person who administers glucagon in accordance shall direct a responsible person to call 911 and take other appropriate actions in accordance with the training materials retained under Subsection (3)(b).

Civil/Criminal Immunity

School personnel who provide or receive training under this section and act in good faith are not liable in any civil or criminal action for any act taken or not taken under the authority of this section with respect to the administration of glucagon.

Nurse Safe Harbor

The unlawful or unprofessional conduct provisions of the Nurse Practice Act do not apply to a nurse who, in good faith, trains non-licensed volunteers to administer glucagon in accordance with the statute.

Diabetes

Diabetes Medication Defined

“Diabetes medication” means prescription or nonprescription medication used to treat diabetes, including related medical devices, supplies, and equipment used to treat diabetes.

Parent/Guardian Authorization

A public school shall permit a student to possess or possess and self-administer diabetes medication if:

- the student's parent or guardian signs a statement:
 - authorizing the student to possess or possess and self-administer diabetes medication; and
 - acknowledging that the student is responsible for, and capable of, possessing or possessing and self-administering the diabetes medication; and

Health Provider Authorization

A public school shall permit a student to possess or possess and self-administer diabetes medication if:

- the student's health care provider provides a written statement that states:
 - it is medically appropriate for the student to possess or possess and self-administer diabetes medication and the student should be in possession of diabetes medication at all times; and
 - the name of the diabetes medication prescribed or authorized for the student's use.

Anaphylaxis

Anaphylaxis Defined

Anaphylaxis means a potentially life-threatening hypersensitivity to a substance.

- Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.
- Causes of anaphylaxis may include insect sting, food allergy, drug reaction, and exercise.

Qualified Adult Defined

“Qualified adult” means a person who:

- Is 18 years of old or older; and
- Has successfully completed training in use and storage of epinephrine auto-injector.

Qualified Entity Defined

“Qualified entity”

- Includes recreation camps; **an education facility, school, or university**; a day care facility; youth sports leagues; amusement parks; food establishments; places of employment; and recreation areas.

Mandatory Training

Each primary and secondary school in the state, both public and private, shall make initial and annual refresher training, regarding the storage and emergency use of an epinephrine auto-injector, available to any teacher or other school employee who volunteers to become a qualified adult.

Authorized Trainers

The training may be provided by the school nurse, or other person qualified to provide such training, designated by the school district physician, the medical director of the local health department, or the local emergency medical services director.

Required Training Content

- Techniques for recognizing symptoms of anaphylaxis;
- Standards and procedures for the storage and emergency use of epinephrine auto-injectors;
- Emergency follow-up procedures, including call the emergency 911 number and contacting, if possible, the student's parent and physician; and
- Written materials covering the required training information.

Record Retention

A qualified adult shall retain for reference the required, prepared training materials for reference.

Possession/Self-Administration

- Students must be permitted to possess, or possess and self-administer, an auto-injector, if the following are provided:
 - Statement from parent/guardian authorizing and acknowledging the student is responsible for and capable of possession/self-administration; and
 - Statement from health care provider affirming medical appropriateness of student possession/self-administration asserting the student should be in possession of auto-injector at all times.

Rescue Medication

SB 232

Seizure Rescue Medication

- A medication, prescribed by a prescribing health care professional, to be administered as described in a student's seizure rescue authorization, while a student experiences a seizure activity;
- Does not include medication administered intravenously or intramuscularly.

School Employee Volunteer

- Employee of a public school where at least one student has a seizure rescue medication
- At least 18 years old
- Must complete training
- Must demonstrate competency on an assessment
- Must complete annual refresher training

Required Training Components

- Techniques to recognize symptoms that warrant administration
- Standards and procedures for storage
- Administration and notification procedures (911/parents)
- Competency assessment
- Annual refresher component
- Written materials

Authorized Trainers

- School nurse
- Licensed health care professional

Permitted Administration

- Trained school employee volunteer
 - If student exhibiting described symptom
 - If licensed health care professional is not immediately available
 - Must direct 911 call and take other appropriate actions in accordance with training

Immunity

Trained school employee volunteers who administer a seizure rescue medication in compliance with statute in good faith are immune in a civil or criminal action for that administration.

DOPL Safe Harbor

Unlawful or unprofessional conduct provisions do not apply to a nurse who provides training or who delegates, in good faith, to non-licensed school employee volunteers.

Head Injuries

Definitions

- “Amateur sports organization” means a public or private school.
- “Child” means an individual under the age of 18.
- “Qualified health care provider” means a health care provider who is licensed and may evaluate and manage a concussion within the provider’s scope of practice.

More Definitions

- ⦿ “Sporting event” means a game, practice, sports camp, physical education class, competition, or tryout that is organized, managed, or sponsored by an organization.
- ⦿ “Sporting event” does not mean free play or recess taking place during school hours.

Even More Definitions

- “Traumatic head injury” means an injury to the head arising from blunt trauma, an acceleration force, with one of the following observed or self-reported conditions attributable to the injury:
 - Transient confusion, disorientation, or impaired consciousness;
 - Dysfunction of memory;
 - Loss of consciousness; or
 - Signs of other neurological or neuropsychological dysfunction, including seizures, irritability, lethargy, vomiting, headache, dizziness, or fatigue.

Child Removal/Release

- If a child is suspected of sustaining a concussion or traumatic head injury, schools must:
 - Immediately remove the child from participating in a sporting event; and
 - Prohibit the child from participating in a sporting event until the child is evaluated by a qualified health care provider who documents his concussion evaluation/management training within 3 years prior thereto and releases the child to participate in sporting events.
- This provision does not create a new cause of action.

Evaluating Head Injuries

- A school nurse may assess a child who is suspected of sustaining a concussion or a traumatic head injury during school hours on school property regardless of whether the nurse has received specialized training in the evaluation and management of a concussion.
- School nurses shall undergo training in the evaluation and management of a concussion, as **funding allows**.

Referral/Release

- A school nurse who assesses a child suspected of sustaining a concussion or traumatic head injury, but who has not successfully completed a continuing education course in the evaluation and management of a concussion:
 - Shall refer the child to a qualified, trained health care provider; and
 - May not issue a statement releasing the child to resume participation in free play or physical education class.

Medical Recommendations

Definitions

- “Health care professional” includes a nurse.
- “School personnel” means a school district or charter school employee, including a licensed, part-time, contract, or non-licensed employee.

Permissive Reports

- School personnel may:
 - Provide information and observations to a student's parent or guardian about that student, including observations and concerns about progress; health and wellness; social interactions; behavior; or situations which present a serious threat to the well-being of a student.
 - Consult or use appropriate health care professionals in the event of an emergency while the student is at school, consistent with student emergency information provided at enrollment.
 - Complete a behavioral health evaluation form if requested by a student's parent or guardian for the benefit of a licensed physician.

Mandatory Reports

○ School personnel shall:

- Report suspected child abuse (nurses must report suspected abuse or neglect per 62A-4a-403) to law enforcement or DCFS;
- Comply with applicable state and local health department laws, rules, and policies; and
- Conduct evaluations and assessments consistent with the IDEA.

Prohibited Reports

- School personnel (excluding school counselors or mental health professionals) may not:
 - Recommend to a parent/guardian that a child take or continue to take a psychotropic medication;
 - Require that a student take or continue to take a psychotropic medication as a condition for attending school;
 - Recommend that a parent/guardian seek or use a type of psychiatric or psychological treatment for a child; or

Prohibited Reports (cont'd)

- School personnel (excluding school counselors or mental health professionals) may not:
 - Conduct a psychiatric, behavioral, or mental health evaluation, unless the failure to conduct such an evaluation would conflict with the IDEA;
 - Make a child abuse or neglect report to authorities, solely or primarily on the basis that the parent or guardian refuses to consent to a psychiatric, psychological, or behavioral treatment for a child, including the administration of psychotropic medication to a child, or refuses to consent to a psychiatric or behavioral health evaluation of a child.

Permissive Reports

- School personnel may nonetheless make a report if the failure to do so would present a serious, imminent risk to a child's safety or the safety of others.

Bullying and Hazing

Definitions

- “School means” any public elementary or secondary or charter school.
- “School employee” means school teachers, staff, administrators, and all others employed directly or indirectly by the school, school board, or school district.

Bullying

- ◉ “Bullying” means intentionally or knowingly committing an act that:
 - Endangers the physical health or safety of an employee or student;
 - Involves any brutality of a physical nature, including whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements; or

Bullying - 2

- ◉ “Bullying” means intentionally or knowingly committing an act that:
 - Involves consumption of any food, liquor, drug, or other substance;
 - Involves other physical activity that endangers the physical health and safety of an employee or student; or
 - Involves physically obstructing an employee’s or student’s freedom to move; AND

Bullying - 3

- ◉ “Bullying” means intentionally or knowingly committing an act that:
 - Is done for the purpose of placing an employee or student in fear of:
 - Physical harm to the employee or student;
or
 - Harm to property of the employee or student.

Bullying - 4

It is immaterial whether the person against whom the bullying is committed directed, consented to, or acquiesced in, the conduct.

Hazing

- “Hazing” means intentionally or knowingly committing an act that:
 - Endangers the physical health or safety of an employee or student;
 - Involves any brutality of a physical nature, including whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements; or

Hazing - 2

- “Hazing” means intentionally or knowingly committing an act that:
 - Involves consumption of any food, liquor, drug, or other substance;
 - Involves other physical activity that endangers the physical health and safety of a school employee or student; or
 - Involves physically obstructing a school employee’s or student’s freedom to move; AND

Hazing - 3

- “Hazing” means intentionally or knowingly committing an act that:
 - Is done for the purpose of initiation or admission into, affiliation with, holding office in, or as a condition of membership/acceptance in any school sponsored team, organization, program or event; or
 - If the person committing the act against an employee or student knew that the employee or student is a member of/candidate for membership with a school, school sponsored team, organization, program, or event to which the person committing the act belongs to or participates in.

Hazing - 4

It is immaterial whether the person against whom the hazing is committed directed, consented to, or acquiesced in, the conduct.

Cyber-bullying

“Cyber-bullying” means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.

Harassment

“Harassment” means repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual.

Prohibitions

- No employee or student may engage in **bullying or harassing** a school employee or student on school property; at a school-related/sponsored event; on a school bus; at a school bus stop; or while the student or employee is traveling to or from any of the foregoing locations/events.
- No employee or student may engage in **hazing or cyber-bullying** an employee or student at any place or time.

Parental Notification

⦿ A school shall:

- Notify a parent if the parent's student threatens to commit suicide; or
- Notify the parents of each student involved in an incident of bullying, cyber-bullying, harassment, hazing, or retaliation, of the incident involving each parent's student.
- Document notification to parents.
- Maintain records of notification consistent with Utah FERPA and federal FERPA.

Utah FERPA

Students At-Risk

- If a school employee or agent believes a student is at-risk of attempting suicide, physical self-harm, or harming others, the employee or agent may intervene and ask the student questions regarding the student's suicidal thoughts, physically self-harming behavior, or thoughts of harming others for the purposes of:
 - Referring the student to appropriate prevention services; and
 - Informing the student's parent/legal guardian.

Other Pertinent Statutes

We're Almost Finished!

53A-11-201

- Local boards **shall** implement Health Department rules about vision, dental, scoliosis, hearing screening for students.
- Local boards may use teachers **OR** licensed registered nurses to conduct required exams.

53A-11-204(2)

- School districts are encouraged to provide nursing services equivalent to the services of one registered nurse for every 5,000 students, or, in small districts, the level recommended by the Department of Health.

53A-11-205

- School **shall notify** custodial parent if child is injured or becomes ill at school during the school day if:
 - Injury/illness requires hospital or doctor's office treatment which is not on school property **AND**
 - School has a current phone number of parent
 - May require notification of non-custodial parent

Questions?

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