

## WORKING WITH MEDICALLY FRAGILE STUDENTS

Joanne L. Huston  
Legal Counsel  
Teaching and Learning Consultant

### **I. Federal Law Requires that Public Schools Provide Medical Services Necessary for Students to Receive Educational Services.**

Federal law requires that medically fragile students be allowed to attend public schools and that the medical services they need in order to access education must be provided by local school districts. The Individuals with Disabilities Education Act (IDEA) requires that schools provide “related aids and services” so that children with disabilities can be educated to the maximum extent appropriate with their non-disabled peers. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against students with disabilities and requires school districts to provide accommodations for students with disabilities.

Both of these federal statutes provide a legal entitlement to educational services for students with disabilities and their parents, along with the medical services necessary to provide access to those educational services. It is the IDEA that provides entitlement to a specific level of educational services for students who qualify for special education under its criteria. Under the case law defining that entitlement, the U.S. Supreme Court has held that medical services can be required as a part of the educational services school districts must provide.

In *Cedar Rapids Community School District v. Garret F.*, the U.S. Supreme Court held in 1999 that schools must provide urinary bladder catheterization, suctioning of tracheotomies, ventilator setting checks, ambu-bag administrations as back up to ventilators, blood pressure monitoring and other services. Garret F. needed continuous full-time skilled nursing care to ensure that he would continue breathing, among other vital needs. The Cedar

Rapids district argued that it would welcome him to participate with his nondisabled peers, but that his medical needs were unrelated to his educational needs and that therefore, the family's health insurer should bear the high cost of the medical services required. The Court disagreed, and held that the medical services were not incidental to Garret's receiving educational services, but were necessary in order for him to have any access to public education. It ordered the school district to pay for the high-cost medical services required.

*Cedar Rapids* established that, under the IDEA, school districts can be held responsible for ensuring that students with very complex medical needs are able to attend school by funding costly medical services.

Because of our school funding formula and revenue controls the *Cedar Rapids* case creates the potential for extremely challenging funding situations in Wisconsin. While DPI provides districts with funding for "high needs, high cost" students, that funding is available only after a high dollar threshold of spending on a particular student has been met by the local district. Under *Cedar Rapids*, school districts can be caught between the high cost of additional expensive medical services and state restrictions on raising revenue to pay for federally mandated services. In an effort to save money, it is often paraprofessionals, secretaries, aides and other relatively low-paid employees who are asked to provide required medical services to special education students.

All employees should be aware of their rights and responsibilities when working with medically fragile students. The following sections will help clarify some of the state laws governing administration of medication by school employees and the delegation of nursing services to non-health-care trained personnel.

## II. Wisconsin Law Sets Forth the Rights and Responsibilities of School Personnel in Working with Medically Fragile Students

Wisconsin Statute § 118.29 governs the provision of medical services in public schools by public school employees. Under this state law, public school employees cannot be **required** to administer any medication other than oral medication. Does that mean an employee may refuse to administer non-oral medication even if assigned to do so by a supervisor? Unfortunately, the best answer to that question is, “It depends.”

Wis. Stat. § 118.29 provides:

- Public school employees **may** administer **non-prescription drugs** under the following conditions:
  - where the employee has received written authorization from a school administrator, and
  - where the school district has received written authorization from the student’s parents.
  
- Public school employees **may** administer **prescription drugs** under the following conditions:
  - where the employee has received written authorization from a school administrator, and
  - where the district has received written authorization
    - from the student’s parents, and
    - from a medical care provider.
  
- Public school employees **may** use epinephrine auto injectors to administer epinephrine to any pupil who appears to be

experiencing a severe allergic reaction so long as the employee calls 911 as soon as possible.

- Public school employees are immune from civil liability for acts or omissions in administering a drug or prescription drug to a student, unless the act or omission constitutes a high degree of negligence.
- Public school districts must have written policies in place governing administration of medical services and medication.
- Public school employees can be **required** to administer only oral medication. Oral medication is that which is ingested through the mouth.
- While public school employees cannot be required to give injections, they are encouraged to give epi-pen injections even if they aren't sure if the student is having an allergic reaction. The side effects of the medicine are not harmful if the medicine was not needed, while the failure to administer the injection if needed can result in death. Therefore, it is better to err on the side of giving the epi-pen injection if unsure.

### **III. Issues Related to the Performance of Medical Procedures by Public School Employees Who Are Not Health-Care Professionals.**

Because public school districts must provide medical services to students under federal law, in most cases, employees in the district will be asked to perform the services. Medical practice recognizes that there are some types of medical services that require such a high level of skill that they cannot be delegated to non-health-care-trained individuals. However, the types of services that schools are most often required to provide have been determined not to require that high level of skill, and are most often considered “nursing services,” those that a Licensed

Practical Nurse may perform, and that a Registered Nurse (RN) may delegate to non-health-care-trained personnel.

Over the past couple of decades, nursing services deemed delegable have expanded to include many that were previously thought to require a health-care-trained individual to perform. Those services include catheterizations, services involving tracheotomies, use of feeding tubes and others. As a result, school employees, often those who are paid least, have been asked to take on these nursing procedures for students. Because of the more frequent delegation of what used to be deemed high-skill services, the Wisconsin Board of Nursing has promulgated rules governing the delegation of nursing services.

Under the Board of Nursing Rules, whenever a nursing service will be delegated, it is the delegating RN, not a school administrator, who makes the decision as to who will receive that delegation. If the RN fails to follow those rules, and the service is not properly carried out, his/her license to practice nursing is at stake.

### **Rules Governing Delegation of Nursing Services**

Delegation of nursing services must be done by an RN who is responsible for ensuring that the services are administered properly. To that end, the RN should do the following:

- Delegate the service to a **willing volunteer**. If the person receiving the delegation is not willing to perform the service, they are not likely to do well at it. Therefore, to ensure that the service is done well, it is best to find someone who is willing to do it.
- Provide the volunteer with **“adequate training.”** To be adequate, the training must be hands on and delivered in person by the RN.

- Ensure that the training is thorough and frequent enough so that the **volunteer reports feeling confident** in performing the task.
- Ensure that the volunteer will perform the task frequently enough to **maintain a high level of competence**.

The requirements of federal law and the state limitations protecting employees create some tension, since the lack of “volunteers” is not an excuse for a district not performing the required service. Thus, while a school district can not require an employee to volunteer to perform more difficult nursing procedures, it has the right to take employment actions that ensure that the district has sufficient employees competent and willing to provide all required services as long as its actions are consistent with the collective bargaining agreement and state law.

As a result, it is typically in the interests of employees, particularly less senior ones, to be willing and able to perform medical services.

### **III. Frequently Asked Questions**

#### **1. What kinds of medical services for special education students can a school district require employees to perform?**

Public school employees **may** perform “**delegated nursing procedures,**” but are not required to do so.

- If you refuse to do a procedure, you may risk charges of insubordination.
- Always **work then grieve** unless you believe you are not competent to carry out a procedure, or that carrying out an assignment places you at risk of serious injury.

**2. Once I have agreed to administer medication/ perform delegable nursing procedures what are my responsibilities?**

- Request training.
- Ask questions about the instructions.
- Report concerns.
- Document all medical services provided.

**3. Can I be required to administer anal medications, such as suppositories?**

The answer depends on your job description at the time you were hired and on whether you are willing and able to perform the service such that an RN could properly delegate it to you. If you were told or given a job description that you would be required to perform medical services for students before you were hired, your acceptance of employment is considered to constitute your consent to perform those services. Your employer can then require you to do medical services.

However, it is up to the RN to delegate any medical services, and if you are not willing or confident in your ability to perform this particular service, the delegation should not be made.

Whether your unwillingness/inability to perform a particular medical service means that your employer can terminate your employment is a difficult question that depends on all the facts and circumstances in the situation.

If you were not hired with the understanding that you would be required to do medical services, the employer would not be able to make delivery of anal medication a condition of continued employment. However, because the district must provide this medical service under federal law, you may be transferred to another position or otherwise assigned to make room for someone who accepts the assignment.

Always work then grieve, unless performing the assigned task would place you or the student at substantial risk of harm.

**4. Can I be required to administer medication delivered through a feeding tube?**

Not according to 118.29. Administering medication through a feeding tube is not “oral” medication. Therefore, public school employees cannot be required to administer this medication. However, the analysis of alternatives discussed in answer to Question 3 above would apply here as well.

**5. Can I be required to provide personal care services to students such as diapering, toileting, feeding, etc.?**

Yes. Personal care services are not “medical services” that must be delegated by an RN. Therefore, because school districts also must provide these services under federal law, employees can be assigned to perform these services. If for some reason an employee cannot perform a personal care service due to the employee’s disability, then the employee needs to contact their union representative and seek help in determining whether to ask for an accommodation.

**6. What if the parents come to me and ask me to give the student some oral medication they bring from home?**

The parents must place their request with the principal and they must provide a doctor’s instructions if it is prescription medication. If the medication is not prescription, the principal must provide you with written authorization before you dispense the oral medication.

**7. I am a teaching assistant and was not trained to do medical services. Can the District require me to perform medical services as a substitute or while a substitute teacher is in the room?**

No. The District must provide a person who was delegated and trained to do the services by an RN. If you were not trained by the RN and have never done the service, you should not do the

service given the potential risk of harm to the student and/or yourself. It is the District's responsibility to anticipate the need for a back-up if the main person delegated to do the medical service by the RN is absent.