

Welcome!!!

Legal Impact on School Nursing Practice for Treatment

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Disclosure

Presenter has no disclosures to report.

Your Safety First!!!!

- Look around where are the following items:
 - 1 Exit Signs
 - 2 Fire Evacuation Route
 - 3 Shelter in Place
- If you feel ill (nausea, light headed, etc.) please let us know for appropriate medical attention/assistance.
- If you need any special accommodation please do not hesitate to let me know.





Objectives

After completing this session participant will be able to:

- identify their immunity versus liability roles in addressing school-age children needs in a school setting
- recognize the legal importance of <u>adhering to adopted</u> <u>school policies and protocols</u> to comply with administering medications in schools
- identify other districts that have adopted policies that **helps school nurses** identify protocols, provide training, and adhere to NASN guidelines.



Immunity

- The Texas Tort Claims Act as codified in the Texas Civil Practices and Remedies Code first gives school districts a broad grant of immunity from tort claims then sets forth certain limited exceptions to that immunity. Section 101.021 of the Civil Practices and Remedies Code provides that a governmental unit may be held liable for personal injuries or wrongful death if the injuries resulted from the negligent operation of a motor vehicle by an employee of a governmental unit acting in the course and scope of their employment. Section 101.001(3)(B) provides that a school district is a governmental unit within the meaning of the statute.
- Section 101.023 of the Texas Civil Practice and Remedies Code sets damages caps for different types of governmental units. Claims against the state government are subject to a limitation of liability of \$250,000 for each person and \$500,000 for each single occurrence. The liability of a unit of local government is limited to \$100,000 per person and \$300,000 per occurrence. A school district is a unit of local government.

Legal Permission

- Legal permission to administer medication is granted to employees of the school district, when authorized by school principals or superintendents.
- These employees do not need to be health care professionals.
- The law grants immunity to all school district employees.
- The responsibility of administering medications to students is considered an administrative task <u>assigned by the principal</u>, rather than a health-related service delivered or delegated by a health care professional.

(Chairperson, 1998)

Federal Mandates and the Role of School Nurses

- IDEA is one federal program that guarantees public school students with disabilities that affect their ability to learn the right to a free and appropriate public education at public expense.
- On a national level, IDEA serves approximately 6.8 million children and youth with disabilities (U.S. Office of Special Education, 2010).



IDEA

• Children who do not meet criteria for special education under IDEA, but who have a physical or mental impairment that substantially limits one or more major life activities, have a right to receive academic accommodations under this law

(Schwab and Gelfman, 2005; U.S. Department of Education, 2010).

Delegation

- Delegation is defined by the ANA (2005, p. 4) as "the transfer of responsibility for the performance of an activity to another, with the former retaining accountability for the outcome."
- The delegation of medications by registered nurses is a critical competency (Hudspeth, 2007) guided most comprehensively by principles jointly articulated by the American Nurses Association and the National Council of State Boards of Nursing (ANA, 2010).



Q & A

• There is no statutory requirement for Texas schools to employ a nurse except as indicated in Federal Individuals with Disabilities Education Act, but if the school DOES, it must comply with this section of the Texas Education Code:

§ 21.003. CERTIFICATION REQUIRED.

(a) A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or

permit issued as provided by Subchapter B.

(b) Except as otherwise provided by this subsection, a person may not be employed by a school district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, licensed professional counselor, marriage and family therapist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession and may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate state agency.



Q & A

What is the ratio of school nurses to students in Texas?

The Texas Department of State Health Services utilizes data from the Texas Board of Nursing, in which RNs (and LVNs) self-report as being employed in either school or college health services. Compared to the number of public school children in the state for the 2014 school year (5,135,880), the ratio would appear to be 784 students per school nurse (RN). However, remember that the RNs include "college" health and the student count used above includes only public schools. Hence this ratio is not accurate, but is an estimate. The Texas Higher Education Coordinating Board has data on the number of students enrolled in higher education institutions. They can be reached via telephone at: 512-427-6101 or through their Web site at www.thecb.state.tx.us.

Shrinking Budgets

• School districts have started re-examining their medication policies in the face of shrinking budgets and increased abuse of over-the-counter drugs. For direction, they turn to ambiguous laws and outdated guidelines that leave some schools stocking a pharmacy and others refusing to distribute pills at all.



District Policy

• Right now, it's not clear whether there's even a policy outlining the distribution of over-the-counter medicine in schools, or who determines it.

• Does your district have adopted clear policies and protocols?

• If so, is there fidelity in complying with these policies and protocols?

Limitations

• The Texas Education Code allows school district employees or licensed nurses to administer medicine if they receive written consent from parents and if the drugs arrive in the original container. The rules get a bit more jumbled when it comes to who provides medication.



Oversight

- The Texas School Nurses Association points to a 1989 handbook from the Texas Education Agency that tells school districts not to provide any medication for students or personnel.
- But the provision predates the state law, and the TEA no longer oversees school nurses.

Nonprescription

- Almost 200 districts have implemented policy that forbids employees from purchasing or providing nonprescription medicine to students.
- Others will stop making over-the-counter medicine like Benadryl and Advil available to students this year.
- Parents must leave these drugs with the school nurse or show up at school with pills when called.

Policy Revisions

- McKinney ISD has revised its medication form this year to ensure that only one month's supply remains at the clinic. Students must have a physician's signature if they take over-the-counter medicine for more than five consecutive school days.
- Richardson ISD permits parents to leave nonprescription medicine at school clinics for 10 consecutive school days. Students must get a doctor's order if they want the drugs left for the year. The Garland and Dallas school districts require a doctor's note for even cough drops.



Caution

• School employees don't know the child's history or what medications they have had.

• If you have a uniform policy and individualize, it's better than having no policy at all.



Who Dispenses?

• The Texas Education Code allows school district employees or licensed nurses to administer medicine if they receive written consent from parents and if the drugs arrive in the original container.

• The rules get a bit more jumbled when it comes to who provides medication.

http://www.dshs.texas.gov/Schoolhealth/TGSHS/

Legal Issues

- School health services staff need to know school health—related laws, rules, and regulations to assure the health and safety of students.
- Other areas includes information on student health records, HIPAA and FERPA laws, and out of hospital do-not resuscitate orders

http://www.dshs.texas.gov/Schoolhealth/TGSHS/

Addressing Students' Special Health Care Needs

- Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA) are laws that protect children with special healthcare and educational needs.
- More information about these laws, rules, and recommended practices for the management of children's special healthcare and educational needs are included in this section.

http://www.dshs.texas.gov/Schoolhealth/TGSHS/





- Children come to school with a variety of health conditions.
- Some are acute and some are chronic in nature.
- School health service staff are responsible for the prevention and management of these conditions in the school setting.
- This section includes information on allergies, anaphylaxis, asthma, diabetes, epilepsy, healthcare plans, mental health issues, traumatic brain injuries, and seizures.



Medication Administration

- The school administration must have the permission of the parent or guardian to administer each medication.
- Ideally, a parent or health care professional will administer the medication.
- Schools must be prepared to administer medication for some of their students. Who is authorized?



Medication Administration (Cont'd)

- The Texas Education Code requires that school health services be provided by appropriately licensed or credentialed personnel.
- The administration of medications, along with providing minor first aid, is an exception to this requirement.

Education Code

• Section 22.052(a), Education Code, states:

On the adoption of policies concerning the administration of medication to students by school district employees, the school district, its board of trustees, and its employees are immune from civil liability from damages or injuries resulting from the administration of medication to a student if:

• The school district has received a written request to administer the medication from the parent, legal guardian, or other person having legal control of the student; and when administering prescription medication, the medication appears to be in the original container and to be properly labeled.

• Legal permission to administer medication is granted to employees of the school district, when authorized by school principals or superintendents. These employees do not need to be health care professionals. The law grants immunity to all school district employees. The responsibility of administering medications to students is considered an administrative task assigned by the principal, rather than a health-related service delivered or delegated by a health care professional.

(Stewart, March, 1998).

Liability

- There are two types of liability exposure related to school health services.
- The first is civil liability, monetary damages for harm caused by some act or omission.
- The other is professional licensure liability, disciplinary action taken against a license granted by the state or other governmental entity.
- Because of the broad immunity granted to governmental entities, school districts and their employees have little civil liability exposure.
- Licensed health care professionals employed by school districts are protected from civil liability, but they do have licensure liability exposure, i.e., disciplinary action against their license.

Immunity vs. Liability

- When administering medications in the public school, those who comply with Section 22.052(a), Education Code, enjoy broad immunity from civil liability.
- This includes nurses (RNs and LVNs) as well as unlicensed assistive personnel (UAPs). This immunity does not apply if the person administering the medication is out of compliance with Section 22.052, Education Code (i.e., does not have the permission of the parent).

Gross Negligence

 Acts of gross negligence are not protected from either civil or licensure liability. Nurses who are uncertain as to what constitutes gross negligence in the administration of medication and/or what types of licensure liability to which they may be vulnerable are advised to consult the Texas Nursing Practice Act.

Board of Nurse Examiners for the State of Texas. (July 2001). Nurse Practice Act, Rule 218.8 [On-line]. Available: http://www.bne.state.tx.us/

Medications from Mexico

- It is up to the school and/or district to decide whether they will allow school personnel to administer medications that were prescribed and/or purchased in Mexico or elsewhere outside of the U.S.
- Some districts have adopted a policy that excludes administration of prescription medications from outside the U.S.
- Other districts offer a very strict interpretation of the medication requirements set forth in Section 22.052, Education Code, and will not allow medication from Mexico on the basis of this interpretation

Medications from Mexico (Cont'd)

Medication prescribed and/or purchased in Mexico presents several problems:

- 1. The medication label is in Spanish;
- 2. Drugs that require a prescription in the U.S. may be purchased over the counter in Mexico; and
- 3. In Mexico, a person is not required to be a licensed pharmacist in order to fill a prescription.

- The Education Code does not specify the country in which a physician must be licensed or the country in which the prescription must be filled.
- Therefore, it is up to the local district to decide how they wish to handle these requests from families and guardians of students.
- The Texas Department of Health does not recommend that schools allow the administration of medications that were not prescribed by a physician licensed in the U.S.

(Ferguson, 2000; McComb, 2001).



Procedure for Medication Administration

 Follow School District Policy for Administering Medications to Students



Non-Nursing Staff

- Non-nursing personnel who are expected to assist students receiving medication at school should have inservice training regarding district policy and procedures for administering medication.
- Where is the Agenda and Sign-In sheets?

Over the Counter (OTC) Medications in Schools • School district personnel should comply with Section 22.052, Education Code, when administering OTC medication (a written request from the parent providing consent) and refrain from administering medication that is not in its original and properly labeled container.

Special Topic: Medication Administration off of School Grounds (Field Trip/Event)

- It is not necessary for a nurse to accompany students off school grounds to administer medication. Texas law allows principals to authorize other school employees to administer medication as long as they are in compliance with Section 22.052, Education Code.
- School nurses, however, may wish to consult the Nurse Practice Act, Rule 218.8, which discusses the "[d]elegation of tasks for the client in independent living environments with stable and predictable health care needs."
- This rule applies to schools, and includes metered dose inhalers and pill box containers, and can be accessed online at: www.bne.state.tx.us/rr218.htm#218.8.

Self-Administration of Medication

- "Self-administration" is defined as the student consuming or applying medication in the manner directed by the licensed prescriber without additional assistance or direction.
- Although several types of medications may fall into this category (e.g., emergency epinephrine, insulin), only the self-administration of asthma medication (inhalers) is allowed by the Education Code, effective September 1, 2001

(Texas Legislature, 2001)

Psychotropic Medications in Schools

- School nurses and other personnel administering medication may need to administer prescribed psychotropic drugs to students in Texas schools.
- The majority of disorders for which a student may be treated with psychotropic or psychoactive medications are disorders for which behavioral or psychotherapy is an integral part of the treatment.

(American Academy of Child & Adolescent Psychiatry, 2000)

Psychotropic Medications in Schools (Cont'd)

- The most common disorders for which nurses might encounter a prescribed psychotropic medication are: depression, attention deficit-hyperactivity disorder (ADHD), anxiety, bipolar disorder (manic-depression), and phobias.
- It is vital that school nurses and other personnel be familiar with these disorders and their treatment because, like other medical conditions, treatment of psychiatric and psychological disorders "is essential ... so that [students] can be free to develop necessary academic and social skills".

(Malone and Hoagwood, 1999)

Access to Epipen

- Have emergency epinephrine kits available.
- Kits should be available on school grounds and in unlocked areas in order to increase access by staff to the medicine in an emergency situation.
- All school personnel should be aware of their location and trained in how to use them.



Procedure for Medication Administration

 Follow School District Policy for Administering Medications to Students



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