



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

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**TO:** District Superintendents  
Presidents of Boards of Education  
Superintendents of Public Schools  
Superintendents of State-Operated and State-Supported Schools  
Nonpublic School Administrators and Educators  
State and Local Teacher Associations  
New York City Board of Education  
Executive Directors of Approved Private Schools  
Principals of Public Schools  
Directors of Special Education  
Chairpersons of Committees on Special Education  
Chairpersons of Committees on Preschool Special Education  
Directors of Pupil Personnel Services  
Directors of Approved Preschool Programs and Preschool Educators  
Early Childhood Direction Centers  
School Nurses/School Nurse Teachers/School Nurse Practitioners  
School Physicians  
Commissioner's Advisory Panel for Special Education Services  
Preschool Special Education Advisory Committee  
Impartial Hearing Officers  
SETRC Project Directors and Training Specialists  
Student and Parent Advocacy Networks  
Head Start Directors  
Team Leaders

**FROM:** Lawrence Gloeckler, Deputy Commissioner, Vocational and Educational Services for Individuals with Disabilities  
Daniel Szetela, Deputy Commissioner, Office of the Professions

**SUBJECT:** The Provision of Nursing Tasks and Health-Related Activities in the School Setting for Students with Special Health Care Needs

Advances in health care and technology continue to offer greater opportunities for children with special health care needs to attend school. In response to the increased

number of students with health care needs, schools are seeking guidance regarding their obligation to meet these needs in a safe, legal and effective manner. To address these concerns, the New York State Education Department, in consultation with the State Board for Nursing, has conducted a review of nursing and health-related activities that students with special health care needs may require to enable them to attend school.

Although there are many routine health-related activities which may be performed in the schools by unlicensed staff, other services are professional nursing activities which may only be performed by registered professional nurses (RN)<sup>1</sup> or in some cases, licensed practical nurses (LPNs) under the direction of a school nurse or school physician. Some of these activities are also within the scope of practice of other health professionals such as the physical therapist, occupational therapist, and speech language pathologist. The policies of this memorandum do not apply to the services of these professionals.

This memorandum establishes procedures to ensure that qualified individuals provide the health-related services that schools are expected to perform and identifies the minimum credentials necessary for individuals to provide them. In addition, it provides guidance to public schools regarding those health-related services which they are legally required to provide to students with special health care needs. Finally, the memorandum outlines the critical components of a school board policy which is being recommended to assure that these services are provided in a manner consistent with law.

It is recommended that boards of education have policies and procedures in place to assure full compliance with law. To develop school board policies governing the provision of health-related services to students, we recommend that boards of education convene a group including school nurses, teachers, administrators, parents and paraprofessionals.

### THE LEGAL OBLIGATION TO PROVIDE HEALTH-RELATED SERVICES TO STUDENTS WITH SPECIAL HEALTH CARE NEEDS

Both the Individuals with Disabilities Education Act (IDEA) and §504 of the Rehabilitation Act require public schools to provide "related services" or "accommodations" necessary to enable students with disabilities to attend school.<sup>2</sup> Such services might include,

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<sup>1</sup>The title of school nurse is reserved for a registered professional nurse pursuant to Section 902 of the Education Law.

<sup>2</sup>Children protected by §504 are not necessarily classified disabled under the IDEA or Article 89 of the Education Law. For example, children with asthma, environmental stress syndrome, a broken leg or attention deficit disorder, may be entitled to accommodations to the extent they are necessary to provide the children full access to a school's programs and activities. For a full discussion of §504, we refer you to SED's memorandum entitled "Guidelines for School Districts Regarding the Rights of Students Under §504 of the

for example, the provision of physical access to the schools' programs and activities, the provision of routine nursing services, such as school health services, or simply a means to assure that a child takes his/her medication on time. (A copy of the State Education Department's guidelines on "The Administration of Medication in Schools", revised November 1994, is included as attachment E).

Although the public schools' responsibility to provide such services is broad, it is not without limits. For example, according to a decision issued by the United States Court of Appeals for the Second Circuit, the public schools are required neither to arrange for complex medical services to children that call for the constant involvement of trained health professionals nor to provide the services of a physician for purposes other than diagnosis or evaluation (Detsel v. BOE, 820 F.2d 587 [2nd Cir. 1987]).<sup>3</sup> In the Detsel case, the Second Circuit declined to order a school district to provide a child with a severe disability constant professional health care, as opposed to the intermittent care necessary to provide "clean intermittent catheterization" ordered by the United States Supreme Court in its decision in Irving Independent School District v. Tatro, 468 US 883.

In summary, a school district is required to provide a student with nursing care or health-related services when:

- (1) the service is necessary to enable the student to attend school; and
- (2) the service can be provided by a layperson with minimal training and direction; or
- (3) the service involves a routine health service which can be provided by a school nurse (RN) or licensed practical nurse (LPN) as part of his/her routine duties (i.e., intermittent care).

Based on current case law, a school district is not obligated to offer health services which require constant monitoring by an LPN or RN (see Detsel).

In situations where the medical needs of the child are so extensive that they require private nursing arrangements, the district's obligation is simply to confirm that the RN or LPN assigned to the child is from an authorized nurses registry or other legally authorized entity. In those cases where a school nurse is assigned to the local school, the school nurse is responsible for all nursing tasks performed within the school, including those provided by an RN or LPN who works for an outside agency. To avoid a duplication of services, the

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Rehabilitation Act of 1973, November 1993.

<sup>3</sup> See also Application of a Child with a Handicapping Condition, 29 ED Dept Rep 464. Where a student's respiratory needs require constant monitoring which must be provided by an LPN or RN, with forty to eighty hours of additional training, neither State or Federal law require that the services be provided by a school district.

school nurse should contact the nursing agency directly to coordinate the assignment of the on-site RN and direction of the on-site LPN.

### THE NURSE PRACTICE ACT

The professional practice of nursing is governed by the Nurse Practice Act (Education Law §6900 et seq.) The Act defines the practice of registered professional nursing to include the diagnosis and treatment of:

"human responses to actual or potential health problems through such services as casefinding, health teaching, health counseling, and provision of care supportive to or restorative of life and well-being, and executing medical regimens prescribed by a licensed physician, dentist or other licensed health care provider legally authorized and in accordance with the commissioner's regulations. A nursing regimen shall be consistent with and shall not vary any existing medical regimen." (Education Law §6902[1]).

In accordance with the Act, a licensed practical nurse is one who performs tasks within the framework of casefinding, health teaching or counseling or who provides supportive or restorative care "under the direction of a registered professional nurse or licensed physician, dentist or other licensed health care provider legally authorized and in accordance with the commissioner's regulations." (Education Law §6902[2]).

To assist school districts in establishing procedures governing the provision of health related services in a manner consistent with law, we have attached three lists of health related services commonly performed in the schools and identified the individuals qualified to perform them. Although these lists are not exhaustive, they provide examples of health services which fall into each of the categories listed below.

#### Nursing Functions and Activities That May be Performed Only by Registered Professional Nurses:

- Nursing assessments and any subsequent assessment or intervention that requires professional nursing knowledge, judgment and skill;
- The determination of nursing diagnoses, establishment of nursing care goals, development of the nursing care plan, implementation of the plan of care, and evaluation of the student's progress.

Nursing Activities That May Be Performed By Registered Professional Nurses or Licensed Practical Nurses Under the Direction of a Registered Professional Nurse and May Not be Performed by Unlicensed Persons

A registered professional nurse may delegate to a licensed practical nurse those nursing tasks listed in Attachment A.<sup>4</sup> However, an LPN, as a dependent practitioner, may only be hired to perform nursing tasks under the direction of a school nurse or school physician. The school nurse must be a registered professional nurse pursuant to Section 902 of the Education Law.

When, after an assessment, the registered nurse deems that a nursing task is one that may be delegated to another licensed person (LPN), the RN is required to:

- Develop an individualized plan of care, including a procedure to evaluate, revise and discontinue the plan, as appropriate.
- Develop procedures to assure that the nursing tasks are performed in a safe manner by individuals who are qualified and properly trained.

For instance, a registered professional nurse may determine that a child who has diabetes may be cared for by an LPN under the direction of the RN. LPN's may either assist the child in testing blood glucose and administering injectable insulin or managing an insulin pump or perform those tasks themselves. However, if there is potential for frequent changes in the child's condition and/or treatments that might place the child at risk, the RN may decide not to delegate these activities to an LPN. Another example is the child who requires a gastrostomy feeding. A registered professional nurse evaluates the child, determines that the gastrostomy is well-established and the procedure can appropriately be delegated to an LPN. The LPN makes decisions regarding the initiation of the feeding in order to collect data about the condition of the child, assures the adequacy of the functioning of the equipment, the recommended rate of flow and the proper formula.

To determine whether delegation is proper, the registered professional nurse must first determine the ability of the LPN to perform the necessary tasks. In the event the registered professional nurse concludes that the LPN requires additional training, the registered nurse may provide the training directly or recommend that the board of education secure the necessary training. Once the RN delegates a nursing task to an LPN, the LPN is responsible for providing and completing the task under the direction of the RN.

Although a registered nurse must oversee the work of the LPN, one RN may be able to oversee the work of several LPNs who are serving children with special health care needs in various school settings. The registered professional nurse need not be physically located on the site where the service is provided nor be involved in the day-to-day provision of the

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<sup>4</sup> School districts may employ licensed practical nurses to perform these tasks.

student's care. However, decisions regarding the number of LPNs assigned to an RN and the proximity of the RN to the site of the provision of services by the LPN should be based on the type and complexity of the services and the needs of the students.

Health Related Activities Which May Be Performed By Appropriately Trained Unlicensed Persons Following An Assessment and Approval By A Registered Professional Nurse

Health related activities include specific tasks that may be performed by appropriately trained unlicensed individuals following an assessment by an RN, and after the development of an individualized plan of care.

Attachment B lists categories of health related activities which, given the child's medical condition, require a registered nurse to first conduct a health assessment to determine in each case whether certain tasks within the health related activity must be performed by a registered professional nurse or licensed practical nurse, or may be assigned to unlicensed individuals.

For example, after the assessment of a student with special health care needs, a school nurse may decide that an unlicensed person can observe the gastrostomy feeding that was initiated by the nurse to ensure a continuous flow during the feeding process. The unlicensed person may also reposition the child or adjust the equipment as required. At the end of the feeding process the unlicensed person can disconnect the feeding tube and plug the gastrostomy opening according to standardized procedures. However, if, during the feeding, the student shows signs of extreme discomfort or agitation or there are any breaks in the equipment, the nurse must be called in to intervene to correct the situation.

To determine whether a task within a health-related activity can be performed by an unlicensed person, the RN, at the minimum, should establish that the particular task in each case:

- does not require nursing skill or judgment,
- is one that involves predictable results, and
- is a task that can be performed according to standard procedures.

In those cases where the RN concludes after an assessment that a task within a health-related activity can be performed by an unlicensed person, the RN should define or describe the task and recommend to the school administration the type and extent of non-nursing training which the unlicensed person should receive. The registered professional nurse is responsible for determining on a periodic basis that the health-related activity continues to be appropriate and is being delivered in accordance with the established plan of care.

In every case, the school board maintains the ultimate responsibility for the provision

of all nursing tasks and health-related activities they are required to provide to students. As such, the board of education is responsible for providing adequate staff, training and direction as well as the equipment and supplies necessary for implementing the recommended plan of care in cases in which there is a legal obligation to do so.

#### Health Related Activities Which May Be Performed by Unlicensed Persons Without the Involvement of the Registered Professional Nurse

Attachment C provides a list of health-related activities that may be routinely performed by unlicensed individuals without an RN's involvement. In such cases, a school nurse would become involved only where a referral is made on the basis of some special health care concern.

For example, generally, an unlicensed person can assist a child who has special health care needs with dressing and undressing. However, in rare cases where a student runs the risk of bone fractures when moved, an unlicensed person may not be assigned to assisting the student with dressing. As another example, an unlicensed person can usually assist a child who needs assistance by feeding the student. However, if the student has constant feeding problems, such as choking and vomiting, an unlicensed person may not be assigned to assist the student with oral feeding.

#### ASSIGNMENT OF HEALTH-RELATED ACTIVITIES TO UNLICENSED PERSONS

The assignment of a health related activity listed in Attachments B and C to a school district employee should be made by the school administrator in consultation with the school nurse, the classroom teacher and other affected staff members. As required by the Taylor Law, all assignments must be consistent with the essential character of the job of the person assigned.<sup>5</sup> Further, the assignment may not interfere with the staff member's ability to perform other assigned duties and functions and may not run counter to the terms of the applicable collective bargaining agreement. Except in unusual circumstances, the classroom teacher should not be assigned to perform health-related activities since such assignments may interfere with the instructional program provided to the other students in the classroom. Consistent with good practice, the school district employee's willingness to perform the task should be considered in making the assignment. Among those school district employees available, volunteers should be assigned first.

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<sup>5</sup>[ See Lefkowitz, Public Sector Labor and Employment Law, (NYSBA 1988), Chapter 7 for a discussion of a public employer's duty to negotiate terms and conditions of employment and Chapter 7 Appendix at p. 407 for a listing of PERB cases dealing with a public employer's duty to negotiate job duties.]

## ENFORCEMENT OF THE NURSE PRACTICE ACT

In accordance with law and regulation, licensed professionals are not only responsible for their own professional conduct, but are subject to penalties for delegating professional responsibilities to unqualified individuals. Any individual who authorizes an unlicensed individual to perform a nursing task is subject to criminal prosecution.

Part 29 of the Rules of the Board of Regents defines unprofessional conduct in the practice of any profession licensed pursuant to Education Law as follows:

...practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;

...delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience or by licensure, to perform them;...

[Emphasis added]

In accordance with Education Law §6512, the unauthorized practice of nursing is a Class E felony. In addition, any individual who assists or authorizes an unlicensed individual to perform nursing tasks may be guilty of a Class E felony as well. Moreover, a licensed professional who delegates professional responsibilities to a person who the professional knows (or has reason to know) is unqualified, by training, experience, or licensure, is subject to penalties that range from censure and reprimand to revocation or annulment of his/her license and/or a fine not exceeding \$10,000. (See Education Law §6511).

## DEVELOPING A MODEL POLICY GOVERNING THE PROVISION OF NURSING TASKS AND HEALTH-RELATED ACTIVITIES

To develop school board policies governing the provision of health-related services to students, we recommend that every school board convene a group including school nurses, teachers, administrators, parents and paraprofessionals. To assure that services are provided in a manner which is consistent with law and standards of professional practice, we recommend that school districts include in their policies:

- 1) guidelines to determine whether the service needed is one which the district is required to provide (e.g., intermittent nursing services, services that can be provided by a layperson with minimal training and direction or a routine health service which a school nurse can provide as part of his/her routine duties). In cases that involve the constant care of a health professional, other sources for funding the service needed to enable the child to attend school should be fully explored (e.g., Medicaid or private insurance (See Detsel v. Sullivan, 895 F.2d 58 [2nd Cir. 1990])).
- 2) procedures to assure that nursing tasks and health-related activities, performed in all school-related settings, are provided only by qualified and properly trained individuals, including those provided on school transportation vehicles;
- 3) procedures to provide for the appropriate training and direction for any individual asked to provide health-related services;
- 4) delineation of the duties of a school nurse (RN) including:
  - responsibility for determining whether the health-related activity needed by a child is within the scope of nursing practice and may only be performed by a licensed person or is a health-related activity that may be performed by an unlicensed individual;
  - responsibility for oversight and monitoring of all legally required nursing tasks;
  - responsibility for determining prior to delegation the training required to enable the LPN to safely provide any assigned nursing tasks; and
  - periodic determination that health-related activities continue to be appropriate and are being delivered in accordance with the plan of care.

#### ADDITIONAL INFORMATION

- For information regarding the programmatic aspects of the provision of health-related services to students with special health care needs, please contact:
  - Office for Special Education Services - (518) 474-5548
  - Comprehensive School Health and Pupil Services Team - (518) 474-0933
  - Judith Harrigan - Statewide School Health Services Consultant - (716) 352-2490
- For information concerning qualifications required for performance of health-related activities and the Nurse Practice Act, please contact the State Board of Nursing - (518) 474-3845.
- For other information on this topic please refer to New York State School Boards Association publication entitled Law and Management Policies for Schools (LAMPS), "Student Health Services" (Section 5420).

## ATTACHMENT A

### NURSING ACTIVITIES THAT MAY BE PERFORMED BY REGISTERED PROFESSIONAL NURSES OR LICENSED PRACTICAL NURSES UNDER THE DIRECTION OF A REGISTERED NURSE AND MAY NOT BE PERFORMED BY UNLICENSED PERSONS\*

- Observations and data collection
- Administration of subcutaneous, intramuscular, intravenous, or rectal medications
- Administering oral, topical and inhalant medication to nonself-directed students according to State Education Department guidelines
- Problem assessment/intervention - insulin pump
- Gastrostomy feeding (bolus method or with medication)
- Initiation of gastrostomy feeding by drip method (monitoring of the drip feeding can be assigned after initiation by the licensed nurse)
- Nasogastric tube feedings
- Oxygen administration (prn/intermittent) or initiation of continuous oxygen
- Nebulizer with oxygen or medication
- Oropharyngeal suctioning
- Tracheostomy suctioning
- Tracheostomy care
- Respirator/ventilator care
- Respiratory care (postural drainage and cupping, etc.)
- Urinary catheterization
- Reinsertion of an indwelling urinary catheter

Ostomy care (care of stoma and changing the appliance)

Cast care

Warm applications

Sterile dressings

Decubitus ulcer care

Blood glucose monitoring

**NOTE:** Please refer to the New York State Executive Bulletin - January 2001. It has been determined that blood glucose monitoring may now be performed by anyone in the school setting.

Intake and output measurements of gastric and parenteral fluids

Monitoring of shunt function.

\* These activities are illustrative only. This list is not all-inclusive.

## ATTACHMENT B

### HEALTH-RELATED ACTIVITIES THAT MAY BE PERFORMED BY APPROPRIATELY TRAINED UNLICENSED PERSONS FOLLOWING ASSESSMENT AND APPROVAL BY A REGISTERED PROFESSIONAL NURSE\*

- Measurement and recording of vital signs that can be performed according to standard procedures
- Application of clean dressings when no assessment is necessary
- Ostomy care (emptying bag and observing the integrity of the bag for possible replacement by a licensed nurse)
- Observation to ensure continuous flow of an established drip method gastrostomy feeding that has been initiated by the nurse
- Termination of a drip method gastrostomy feeding after completion of the feeding if flushing is not involved
- Intake and output measurement and recording (except gastric and parenteral fluids)
- Assisting self-directed students with own oral, topical and inhalant medication according to State Education Department guidelines
- Observing that equipment used to administer continuous flow oxygen is working and that all tubes are in place
- Oral suctioning (mouth only, not pharynx)
- External catheter care
- External care of indwelling catheter
- Nebulizer treatment, if routine and without medication or oxygen
- Transfers
- Aspects of a prescribed exercise and/or range of motion program
- Assistance with braces and prostheses
- Assisted ambulation (crutches, walker, cane)
- Positioning.

**NOTE:** Please refer to the New York State Executive Bulletin - January 2001. It has been determined that blood glucose monitoring may now be performed by anyone in the school setting

\* These activities are illustrative only. This list is not all-inclusive.

## ATTACHMENT C

HEALTH-RELATED ACTIVITIES THAT MAY, UNDER MOST CIRCUMSTANCES, BE PERFORMED BY UNLICENSED PERSONS WITHOUT THE INVOLVEMENT OF A REGISTERED PROFESSIONAL NURSE\*

- Oral hygiene or nail, hair and skin care;
- Preparing nourishment;
- Feeding student orally as long as there are no feeding problems;
- Care of an incontinent student;
- Assistance with bedpan and urinal;
- Non-medical aspects of bowel and bladder training;
- Assistance with clothing;

\* These activities are illustrative only. This list is not all-inclusive.

## ATTACHMENT D

### GLOSSARY OF TERMS

**Registered Professional Nurse** - An individual who has received a diploma or degree as a registered nurse and is currently registered with the State Education Department.

**Licensed Practical Nurse** - An individual who has received an education including completion of high school or its equivalent and completed a program in practical nursing, and is currently registered with the State Education Department.

**Nurse Practitioner** - An individual who has satisfactorily completed educational preparation for provision of nurse practitioner services and is currently registered as a nurse and certified as a nurse practitioner. The practice of registered professional nursing as a nurse practitioner includes the diagnosis of illness and physical conditions and the performance of therapeutic and corrective measures within a specialty area of practice in collaboration with a licensed physician, and the prescription of drugs, devices and immunizing agents.

**School Nurse** - An individual who is a registered professional nurse who performs the functions necessary for the general health and well-being of the children, teachers and other personnel in the school setting.

**School Nurse Teacher** - An individual who is permanently certified, under Section 80.3 of Commissioner's Regulations with the basic credentials of a registered nurse, two years of school experience and a master's degree in the field of pupil personnel service including six semester hours of study in professional education. Provisional certification, effective for a period of five years, may be granted to a registered professional nurse who has a baccalaureate degree including six semester hours of study in professional education.

**Self-directed** - An individual who is capable and competent to understand a personal care procedure, can correctly administer it to him/herself each time it is required, has the ability to make choices about the activity, understand the impact of these choices, and assume responsibility for the results of the choices. A self-directed individual may also include an individual who knows the correct procedure or method of administration, but is unable to physically self-administer the medication.

**Under the Direction** - means that a registered nurse should be present on the premises or immediately available by telephone when professional services are rendered by a licensed practical nurse. The degree of supervision shall be appropriate to the circumstances. This term implies an active process of directing, guiding and influencing the outcome of an individual's performance of an activity. Generally categorized as on-site (the nurse being physically present or immediately available while the activity is being performed) or off-site (the nurse has the ability to provide direction through various means of written and verbal communications). The degree of direction is appropriate to the circumstance.