



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; Impartial Hearing Officers; SETRC Project Directors and Training Specialists; Organizations, Parents and Individuals Concerned with Special Education; Head Start Directors; Team Leaders

FROM: **Lawrence Gloeckler**, Deputy Commissioner, Office of Vocational and Educational Services for Individuals with Disabilities
James A. Kadamus, Deputy Commissioner, Office of Elementary, Middle, Secondary and Continuing Education
Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions

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

In March 1995, the Department disseminated a memorandum entitled, *The Provision of Nursing Tasks and Health-Related Activities in the School Setting for Students with Special Health Care Needs*, which provided information on nursing tasks and health-related activities associated with children with special health care needs in school settings. The memorandum also provided guidance and clarification on implementing existing laws and regulations concerning the provision of health services to all children in schools and assisted boards of education in developing policies on nursing and health-related care to any children with special health needs. Sample lists of functions that must be performed by nurses were provided, as well as those that may be assigned to appropriately trained school personnel. This memorandum, provided in a question-and-answer format, clarifies issues that have arisen related to the March 1995 memorandum.

If you have questions about this document, you may call:

- Comprehensive Health and Pupil Services Team (518) 486-6090
- Office of the State Board for Nursing (518) 474-3845
- Office for Special Education Policy and Quality Assurance (518) 473-2878
- Statewide Advocacy for School Health Services (716) 349-7630

Frequently Asked Questions About Roles and Responsibilities In Relation To Nursing Procedures And Health-Related Activities For All Children In The School Setting

- 1. What is the citation in law that indicates that only nurses can perform nursing tasks/administer medications to non-self-directed students.**

Section 6902.1 of Article 139 of the Education Law (The Nurse Practice Act) states that only registered professional nurses may execute medical regimens. Section 6902.2 defines that licensed practical nurses may perform tasks and responsibilities only when under the direction of a registered professional nurse or other authorized health care provider. The State Education Department has determined that the administration of medication is a protected task under the Nurse Practice Act. The only exceptions to that rule are exemptions in the Nurse Practice Act, Section 6908.1, related to the care of individuals in the home by family members or their designees, and other licensed professions, e.g., medicine, etc.

- 2. May a school district apply for a variance from the requirements of the Nurse Practice Act?**

No. School districts should examine existing policies, procedures and practices to ensure compliance with the Nurse Practice Act. Questions regarding compliance with the Act can be directed to the New York State Board for Nursing.

- 3. Does the Nurse Practice Act apply to preschool programs, day care centers, summer programs, residential programs, and camp programs?**

Yes. The Nurse Practice Act applies to any setting where a nurse practices and in situations in which preschool and school-age students require nursing care except for exemptions granted for certain residential settings. The March 1995 memorandum specifically applies to all educational settings that provide services to preschool and school-age students. In other settings, such as day care programs, residential centers, and summer recreational programs, personnel should check with administrators of the program to determine how compliance with the Nurse Practice Act is implemented.

- 4. What provision in law prohibits Licensed Practical Nurses (LPNs) from being employed as school nurses?**

Section 902 of Education Law allows boards of education to employ one or more school nurses, who shall be registered professional nurses (RNs) legally qualified to practice nursing in this State.

5. **Can a Licensed Practical Nurse (LPN) who has completed requirements to become a registered professional nurse (RN), but is awaiting licensure, practice as a school nurse?**

No. Such an individual must continue to practice as a LPN until the RN license has been issued.

6. **Can a LPN provide school health services as long as supervision is provided?**

Yes. LPNs may be hired to perform nursing tasks permitted in the LPN scope of practice under the direction of a school nurse, physician or dentist. The tasks must be part of an individual nursing care plan that is developed, maintained and evaluated by a school nurse. Direction does not necessarily need to be onsite, but evidence of adequate supervision (which must include, at a minimum, availability of the school nurse, physician or dentist by telephone) is essential.

7. **Can a LPN be hired as a health aide in a district which does not employ school nurses?**

Yes, a LPN can be hired as a health aide in a district which does not employ school nurses.

However, this individual may perform only those duties within the job description of a health aide consistent with the appendices of the March 1995 memo. It is further recommended that health aides function under the supervision of licensed health services personnel.

8. **What is the minimum criteria for considering a student to be self-directed?**

Determination as to whether a student should be considered self-directed should be based on the student's cognitive and/or emotional development rather than age or grade. Factors such as age of reason and mental/emotional disability are some additional considerations to be looked at in determining a child's ability to be self-directed. Usually a student may be considered to be self-directed if he/she is consistently able to do all of the following:

- identify the correct medication (e.g., color, shape)
- identify the purpose of the medication (e.g., to improve attention)
- determine that the correct dosage is being administered (e.g., one pill)
- identify the time the medication is needed during the school day (e.g., lunch time, before/after lunch)

- describe what will happen if medication is not taken (e.g., unable to complete school work)
- refuse to take medication, if student has any concerns about its appropriateness.

Student individualized health care plans should always address ways to make the student more independent in the management of their health needs. Goals should be established that will enable children to become self-directed regardless of age or grade.

9. How should school districts handle the issue of medications when students go on field trips or participate in after-school activities?

Most students are or can be taught to be self-directed in administering their own medications. To the extent appropriate, the school nurse should assist students to attain the goal of becoming self-directed in the administration of their own medication. For procedures addressing the administration of medication, refer to the State Education Department's guidelines, *Administration of Medications in Schools*. For field trips or after-school activities, teachers or other school staff should carry the self-directed student's medication so the student can take his/her own medication at the appropriate time.

For students who are not self-directed:

- the parent or guardian may attend the activity and administer the medication; or
- the parent can personally request another adult who is not employed by the school to voluntarily administer the medication on the field trip and inform the school district in writing of such request; or
- the student's health care provider can be consulted and may order the medication time to be adjusted or the dose eliminated.

If no other alternative can be found, the medication must be administered by a licensed professional (i.e., school nurse, LPN, substitute school nurse, physician) employed by the district. A child may not be prevented from participating in an educational activity, such as a field trip, solely on the basis of a special health need.

10. How should school districts handle the need for nursing procedures when students go on field trips or participate in after-school activities?

When a student is unable to perform a necessary health-related task independently and the task is a nursing procedure as defined in Attachment A of the March 1995 memorandum, the parent, guardian, or volunteer acting at the request of the parent or an appropriately licensed person provided by the district must perform the health-related task. If the student is considered to be self-directed, but is unable to perform the treatment because of physical limitations, a person, assessed by the school nurse as appropriately skilled in the

performance of that particular treatment, may assist the student who directs the procedure in any or all of the steps required to complete the procedure.

11. What if nurses are not available to substitute for a school nurse where there are students with special health needs who are not self-directed?

A district must provide appropriately licensed personnel to provide necessary nursing services. This can be accomplished by reassigning nursing staff from other sites within the district, contracting with neighboring school districts or BOCES, contracting with nurses employed by outside agencies, or by actively recruiting an adequate nursing staff to serve as substitutes. If students who are not self-directed require nursing services and attend nonpublic schools, arrangements may need to be made by the public school for a nurse to be available to provide those services. Nonpublic school students must receive services comparable to those provided to public school students. A formal agreement between the public school district and the nonpublic school should address the issue of a substitute nurse to cover for a school nurse who is absent.

12. Must all children with special health needs have an individualized health care plan (IHP)?

An IHP, a plan of medical care for a child with health needs, is not required by law, but is customarily used in nursing practice and is recommended for all students with special health needs. Schools are eligible to receive Medicaid reimbursement for skilled nursing services for Medicaid eligible students only if an IHP is a part of a student's cumulative health record and such services are included in the student's individualized education plan (IEP - an educational plan for students who have been identified by the Committee on Special Education as having a disability). More detailed information about the requirements for Medicaid reimbursement are included in question 30 of this memo and in the August 1995 Department field memo, *Updates and Clarification on the Current Medicaid Payment Process and Implementation of Procedures for Medicaid Reimbursement for School Supportive Health Services*, available from the Office for Vocational and Educational Services for Individuals with Disabilities (VESID).

13. When a preschool program is located in a public school building, is the school nurse responsible for providing health services to the preschool children enrolled in such program?

If a preschool program is operated by the public school district, the school nurse is responsible for providing health services unless other coverage has been arranged. When private agencies are renting space in a public school building, the school nurse is not responsible for providing health services.

- 14. How does a district determine the appropriate nursing services that should be provided to students enrolled in a nonpublic school?**

If the school district in which the nonpublic school is located provides school health services in the public school, equitable services, based on school population and health needs of the children attending the school, must be provided if the nonpublic school requests these services. This would include the provision of health-related tasks for students. Guidelines for a public school providing health services to students enrolled in a nonpublic school are addressed in the *Handbook on Services to Pupils Attending Nonpublic Schools*. This document is available from the State Education Department's Nonpublic School Services Team, Albany, New York 12234.

- 15. Are school districts authorized to employ Emergency Medical Technicians (EMTs) to provide health care to children with special health needs?**

No. The definition of services that may be provided by EMTs allows these individuals to function as EMTs only when they are working as members of ambulance crews where they are provided with supervision by a physician or mid-level practitioner through on-line radio or telephone contact. An EMT may not be hired to provide nursing procedures to children with special health needs. An EMT who has been hired as a health aide, if appropriately trained and supervised, may perform health-related activities as defined in Attachments B and C of the March 1995 memorandum.

- 16. Why is the provision of certain nursing procedures, such as catheterization, gastrostomy feedings, etc., delegated to non-nurses in some states, but not in New York State?**

The practice of nursing is defined by each state's laws and regulations. In New York State, the Nurse Practice Act prohibits the delegation of nursing tasks to any unlicensed person in any setting. Procedures such as catheterization have been defined as nursing tasks in New York State.

- 17. If a non-licensed individual takes a course that certifies him/her to give medications in the home, can that person give medications in the school setting?**

No. The exemption does not apply to educational settings.

- 18. Can a non-licensed person, who receives appropriate training, assist students with medications?**

Only if the student has been assessed to be self-directed. An appropriately qualified individual may assist that child in any or all of the steps required to complete the procedure.

- 19. Can the school nurse provide training to non-licensed persons to administer injectable medications (i.e., epinephrine, glucagon) in anticipation of an emergency?**

A non-licensed person may be trained by a registered professional nurse to administer injectable medications only in anticipation of dealing with emergency or life-threatening situations which may occur.

- 20. If parents and family representatives are trained to do nursing procedures at home, can non-nurses be trained to do them in the school setting?**

Laws governing the practice of nursing have been written to protect the public. Procedures that are defined as nursing tasks (Attachment A of the March 1995 memorandum), although performed routinely, are not innocuous, and require nursing knowledge, judgment and skill. In New York State, under Section 6908.1(f) of Education Law, family members may provide home nursing care to other family members and home health aides may be trained to perform nursing tasks for a self-directed individual. This exemption under Section 6908.1(i) of Education Law does not, however, empower families to extend that right to individuals who are employed in educational settings. Schools, as public institutions, may only perform functions authorized by law and regulation.

- 21. What is the district's responsibility for ensuring that a school nurse has received appropriate training if he/she does not know how to perform certain procedures that a child will need? What is the nurse's responsibility?**

It is the board of education's responsibility to ensure that staff, including nursing staff, is adequately trained and has updated skills. It is the registered nurse's responsibility to recognize that additional training is needed to perform a particular procedure and to help determine where the appropriate training can be obtained. Procedures to provide for the appropriate training and direction for any individual who provides health-related services should be included in the school district policies and procedures.

- 22. Who is responsible for supplying special equipment/supplies for students with special health needs?**

In most circumstances, the family is responsible for providing any special supplies and/or equipment for students that have special health needs. If equipment and/or supplies are included in a student's IEP or accommodation plan, pursuant to Part 200 of the Regulations of the Commissioner of Education or Section 504 of the Rehabilitation Act of 1973, respectively, it may be appropriate for the district to provide the necessary equipment/supplies so that a student can benefit from his/her educational program. Such a decision would be made by the Committee on Special Education or the multidisciplinary team pursuant to Section 504.

23. Do all children with tracheostomies, ventilators or other medical technology need a 1:1 nurse?

No. The health needs of such children must be assessed by the school nurse or other appropriate school medical personnel. The level of nursing care required and the amount of nursing time necessary to ensure the health and safety of such children in the school setting would be determined by the school district's multidisciplinary team or the Committee on Special Education with medical and/or nursing input as appropriate. If it is determined that a child's health needs can be appropriately met by the district's school nurse, a 1:1 nurse may not be necessary.

24. What procedures should be followed when a nurse working in a school building is employed by another agency (i.e., private duty nurse for a child with special health needs, a BOCES employed nurse who may have responsibility for a single class or group of classes)?

Procedures that govern health care for students, including care provided by nurses from outside agencies, should be established by school district policy. Procedures should address situations where: 1) there is a school nurse in the building; 2) there is a school nurse in the district; and 3) there is no school nurse. Provision of the following information/documents related to such arrangements would include:

For the Nurse Assigned:

- copies from the agency of the nurse's current New York State license, the name and limitation of liability and workers' compensation insurance and New York State Medicaid provider number if appropriate.

For the Student:

- copy of pertinent medical records, including health history and complete emergency data with relevant emergency phone numbers;
- private health care provider's orders and medical management protocol for the child;
- individualized health care plan for the student; and
- consent form signed by parent/guardian that will allow the agency nurse and the school nurse to share information reciprocally.

These documents should be reviewed by the school physician or designee and be updated by the agency periodically.

The agency nurse and the school nurse should work together to develop a plan to assure that the student's health needs will be met (i.e., an emergency). However, the school

nurse should never be expected to substitute for the agency nurse in providing constant care of the student or to supervise a nurse who is not employed by the district.

Agency nurses should be expected to abide by the health and administrative policies of the district (i.e., notification to the school nurse or administrator when in the building, evacuation and emergency procedures, etc). Procedures should be established for the school nurse to follow if the school nurse determines that an agency nurse is performing a procedure in an unsafe way. Agency nurses assigned to care for a specific student should not be expected to substitute for the school nurse.

What is a school district's responsibility to provide school health services for students with disabilities who participate in nonacademic and extracurricular activities?

Section 504 of the Rehabilitation Act of 1993 and the Individuals with Disabilities Education Act require school districts to ensure that students with disabilities have an equal opportunity to participate in nonacademic and extracurricular activities which are available to other students enrolled in the public schools of the district. To ensure the participation of students with special health needs in these activities, school districts must make available appropriate health services to these students. Procedures included in the March 1995 memorandum apply to the provision of health services in these situations.

What if an unlicensed person is not willing to perform a health-related task to which he/she has been assigned?

Assignment of health-related tasks should be consistent with the job description of the person assigned to perform them, should not interfere with the person's ability to perform other assigned duties and should not be in conflict with the terms of applicable collective bargaining agreements. An employee's willingness to perform a health-related task should be considered. Employees who volunteer should be assigned in the first instance, since an individual who is voluntarily performing a task is more likely to accept and execute the responsibility in a way that is safe and beneficial for a child. Effort should be made to determine why an individual is unwilling to perform a task. There may be instances where it will be necessary for an administrator to insist that an unwilling person who is otherwise qualified must perform a health-related task which they are legally permitted to perform.

- 27. Where can districts access training information and resources to assist in the implementation of the requirements of the March 1995 memorandum?**

The statewide network of Special Education and Training Resource Centers (SETRC), BOCES LPN preparation programs and Schools of Nursing may be able to sponsor training programs for those who are being asked to perform health-related tasks. The Statewide Advocacy for School Health Services (SASHS) Office and the Comprehensive Health & Pupil Services (CHAPS) Team at the New York State Education Department can provide information about school health services and resources. BOCES School Library Systems can access intra-library loans so that appropriate training materials, which are not available in a particular locale, can be accessed.

- 28. Is additional funding available to schools for the provision of health services for students with disabilities?**

As cited in the August 1995 Department memo, *Updates and Clarification on the Current Medicaid Payment Process and Implementation of Procedures for Medicaid Reimbursement for School Supportive Services*, schools may access Medicaid funds for skilled nursing services provided to Medicaid eligible students with disabilities. Reimbursable nursing services are health care activities provided pursuant to a child's IEP and include medical treatments and procedures and health assessments. Medical treatments and procedures include, but are not limited to, activities related to feeding, care of ostomies, respiratory treatments, catheterization, administration of medications, medical support to a child, collection of specimens and other nursing procedures. Health assessment includes collection, documentation and analysis of data, development and implementation of individualized health care plans and periodic evaluation of the plans. The memo provides more detail about the activities and how to access Medicaid funding and is available from VESID.