



Special Education Law Update

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UPDATE ON ADMINISTRATION OF ANTI-SEIZURE MEDICATION TO STUDENTS

This year, on June 29, 2011, Governor Brown signed Senate Bill 161 which adds section 49414.7 to the Education Code. Section 49414.7 authorizes unlicensed school employees to administer Diastat and other anti-seizure medications to students who suffer seizures at school.

The legislative intent of Education Code section 49414.7(a) states that it is the intent of the Legislature that, whenever possible, an emergency anti-seizure medication shall be able to be administered by a school nurse or licensed vocational nurse who has been trained in its administration. However, section 49414.7(b) states that in the absence of a credentialed school nurse or other licensed nurse on site at the Local Education Agency ("LEA"), the school, charter school, school district or County Office of Education *may elect* to participate in a program to allow non-medical employees to volunteer to provide medical assistance to students with epilepsy suffering from seizures. The student may only participate in the program if so requested by a parent or guardian. If the LEA elects to participate in the program, the LEA must provide school employees who volunteer with voluntary emergency medical training that is consistent with the training guidelines established to provide emergency medical assistance to pupils with epilepsy suffering from seizures. A school employee who has obtained voluntary emergency medical training shall provide emergency medical assistance to students in a manner consistent with the training guidelines approved on the California Department of Education's Internet Website and with the performance instructions set forth by the licensed health care provider of the pupil. School employees who do not volunteer or who have not been trained shall not be required to provide emergency medical assistance.

Education Code section 49414.7(c) states that if a pupil with epilepsy has been prescribed an emergency anti-seizure medication by his or her health care provider, the pupil's parent or guardian may request the pupil's school to have one or more of its employee receive training in the administration of an emergency anti-seizure medication in the event that the pupil suffers a seizure when a nurse is not available.

UPDATE ON ADMINISTRATION OF ANTI-SEIZURE MEDICATION TO STUDENTS

Education Law Update

November 15, 2011

Page 2

Education Code section 49414.7(d) states that the school or charter school shall notify the parent or guardian that his or her child may qualify for services or accommodations under Section 504 of the Rehabilitation Act or under the Individuals with Disabilities Education Act (“IDEA”). The LEA must assist the parent or guardian with the exploration of the option for a Section 504 Plan or an individualized education program (“IEP”) and encourage the parent or guardian to adopt that option if it is determined that the child is eligible for a Section 504 Plan or an IEP.

Education Code section 49414.7(e) states that an LEA may ask the parent or guardian to sign a notice verifying that the parent or guardian was given information about Section 504 of the Rehabilitation Act of 1973 and the IDEA and that the parent or guardian understands that it is his or her right to request a Section 504 Plan or an IEP at any time.

Education Code section 49414.7(f) states that if a parent or guardian does not choose to have a pupil assessed for a Section 504 Plan or an IEP, the LEA may create an individualized health plan, seizure action plan, or other appropriate health plan designed to acknowledge and prepare for the child’s health care needs in school. Those plans may include the involvement of a trained volunteer school employee or a licensed vocational nurse.

TRAINING OF EMPLOYEES

Education Code section 49414.7(g) states that in training employees, the LEA shall ensure the following:

1. A volunteer receives training from a licensed health care professional regarding the administration of an emergency anti-seizure medication. A staff member who has completed training shall, if he or she has not administered an emergency anti-seizure medication within the prior two years and there is a pupil enrolled in the school who may need the administration of anti-seizure medication, attend new training programs to retain the ability to administer an emergency anti-seizure medication.
2. Any agreement by an employee to administer an emergency anti-seizure medication is voluntary, and an employee of the LEA shall not directly or indirectly use or attempt to use his or her authority of influence for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce any staff member who does not choose to volunteer, including, but not limited to, direct contact with the employee.

UPDATE ON ADMINISTRATION OF
ANTI-SEIZURE MEDICATION TO STUDENTS

Education Law Update

November 15, 2011

Page 3

3. Any employee who volunteers may rescind his or her offer to administer an emergency anti-seizure medication up to three days after the completion of the training. After that time, a volunteer may rescind his or her offer to administer an emergency anti-seizure medication with a two-week notice, or until a new individual health plan or Section 504 Plan has been developed for an affected employee, whichever takes a lesser time period.
4. The school or charter school shall distribute an electronic notice no more than twice per school year per child to all staff that states the following information in bold print:
 - A. A description of the volunteer request, stating that the request is for volunteers to administer an emergency anti-seizure medication to a pupil experiencing a severe epileptic seizure, in the absence of a school nurse, and that this emergency anti-seizure medication is an FDA approved, predosed, rectally administered gel that reduces the severity of epileptic seizures.
 - B. A description of the training that the volunteer will receive pursuant to Paragraph 1.
 - C. A description of the voluntary nature of the volunteer program, which includes the information described in paragraph (2).
 - D. The volunteer rescission timelines described in paragraph 3.
5. The electronic notice shall be the only means by which an LEA solicits volunteers to administer the anti-seizure medication to students.

Education Code section 49414.7(h) states that an employee who volunteers shall not be required to administer an emergency anti-seizure medication until completion of the training program adopted by the LEA and documentation of completion is recorded in the employee's personnel file.

Education Code section 49414.7(i) states that if an LEA elects to participate, the LEA shall ensure that each employee who volunteers will be provided defense and indemnification by the LEA for any and all civil liability, in accordance with, but not limited to, that provided under the Tort Claims Act.¹ This information shall be reduced to writing, provided to the volunteer and retained in the volunteer's personnel file.

¹ Government Code section 810, et seq.

UPDATE ON ADMINISTRATION OF
ANTI-SEIZURE MEDICATION TO STUDENTS

Education Law Update

November 15, 2011

Page 4

LOCAL EDUCATIONAL AGENCY PLAN

Education Code section 49414.7(j) states that if there are no volunteers, then the LEA shall re-notify the pupil's parent or guardian of the option to be assessed for services and accommodations guaranteed under Section 504 and the IDEA.

Education Code section 49414.7(k) states that a LEA that elects to participate shall have in place a LEA plan that shall include, but not be limited to, all of the following:

1. Identification of existing licensed staff within the district or region who could be trained in the administration of an emergency anti-seizure medication and could be available to respond to an emergency need to administer an emergency anti-seizure medication. The LEA shall consult with the County Office of Education to obtain this information.
2. Identification of pupils who may require the administration of an emergency anti-seizure medication.
3. Written authorization from the parent or guardian for a non-medical school employee to administer an emergency anti-seizure medication.
4. The requirement that the parent or guardian notify the LEA if the pupil has had an emergency anti-seizure medication administered within the past four hours on a school day.
5. Notification of the parent or guardian, by the LEA administrator, or, if the administrator is not available, by another school staff member, that an emergency anti-seizure medication has been administered.
6. A written statement from the pupil's health care practitioner that shall include, but not be limited to, all of the following:
 - A. The pupil's name.
 - B. The name and purpose of the medication.
 - C. The prescribed dosage.

UPDATE ON ADMINISTRATION OF
ANTI-SEIZURE MEDICATION TO STUDENTS

Education Law Update

November 15, 2011

Page 5

- D. Detailed seizure symptoms, including frequency, type or length of seizures that identify when the administration of an emergency anti-seizure medication becomes necessary.
- E. The method of administration.
- F. The frequency with which the medication may be administered.
- G. The circumstances under which the medication may be administered.
- H. Any potential adverse responses by the pupil and recommended mitigation actions, including when to call emergency services.
- I. A protocol for observing the pupil after a seizure, including, but not limited to, whether the pupil should rest in the school office, whether the pupil may return to class, and the length of the time the pupil should be under direct observation.
- J. Following a seizure, the pupil's parent or guardian and the school nurse shall be contacted by the LEA administrator or, if the administrator is not available, by another school staff member to continue the observation plan as established in paragraph 1.

COMPENSATION OF EMPLOYEES AND STATE GUIDELINE

Education Code section 49414.7(l) states that an LEA that elects to allow volunteers to administer an emergency anti-seizure medication shall compensate a volunteer, in accordance with that employee volunteer's pay scale when the administration of an emergency anti-seizure medication and the subsequent monitoring of a pupil requires a volunteer to work beyond his or her normally scheduled hours.

Education Code section 49414.7(m) states that the California Department of Education in consultation with the State Department of Public Health shall develop guidelines for the training and supervision of school and charter school employees in providing emergency medical assistance to pupils with epilepsy suffering from seizures and shall post this information on the California Department of Education's Internet Website by July 1, 2012. (The guidelines may be developed in cooperation with interested organizations.) Upon development of the guidelines, the Department shall approve the guidelines for distribution and shall make those guidelines available upon request. The California Department of Education shall include on its Internet Website, a clearinghouse for best practices in training non-medical personnel to administer an emergency anti-seizure medication to pupils. Training established pursuant to this subdivision shall include, but not be limited to, all of the following:

UPDATE ON ADMINISTRATION OF
ANTI-SEIZURE MEDICATION TO STUDENTS

Education Law Update

November 15, 2011

Page 6

1. Recognition and treatment of different types of seizures.
2. Administration of an emergency anti-seizure medication.
3. Basic emergency follow-up procedures including, but not limited to, a requirement for the LEA administrator or, if the administrator is not available, another staff member to call the emergency 911 telephone number and to contact the pupil's parent or guardian. The requirement for the LEA administrator or other staff member to call the emergency 911 telephone number shall not require a pupil to be transported to an emergency room.
4. Techniques and procedures to ensure pupil privacy.

RETENTION OF TRAININGS MATERIALS

Education Code section 49414.7(m) further states that any written materials used in the training shall be retained by the LEA.

Training established pursuant to section 49414.7(m) shall be conducted by one or more of the following:

1. A physician and surgeon.
2. A physician assistant.
3. A credentialed school nurse.
4. A registered nurse.
5. A certificated public health nurse.

Training provided in accordance with the manufacturer's instructions, the pupil's health care provider's instructions, and guidelines established pursuant to section 49414.7 shall be deemed adequate training.

UPDATE ON ADMINISTRATION OF
ANTI-SEIZURE MEDICATION TO STUDENTS

Education Law Update

November 15, 2011

Page 7

NOTIFICATION OF ADMINISTRATION OF MEDICATION

Education Code section 49414.7(n) states that the LEA administrator or, if the administrator is not available, another school staff member shall notify the credentialed school nurse assigned to the LEA if an employee at the schoolsite administers an emergency anti-seizure medication pursuant to section 49414.7. If a credentialed school nurse is not assigned to the LEA, the LEA administrator or, if the administrator is not available, another school staff member, shall notify the Superintendent of the school or his or her designee, the County Superintendent of Schools, or his or her designee, or the charter school administrator, or his or her designee, as appropriate, if an employee at the school site administers an emergency anti-seizure medication. A school or charter school shall retain all records relating to the administration of an emergency anti-seizure medication while a pupil is under the supervision of school staff. The pupil's parent or guardian shall provide all materials necessary to administer an emergency anti-seizure medication. An LEA shall not be responsible for providing any of the necessary materials.

DEFINITION OF MEDICATION

Education Code section 49414.7(p) defines an "emergency anti-seizure medication" as diazepam rectal gel (Diastat) and emergency medications approved by the Federal Food and Drug Administration for patients with epilepsy for the management of seizures by persons without medical credentials. "Emergency medical assistance" means the administration of an emergency anti-seizure medication to a pupil suffering from an epileptic seizure.

Education Code section 49414.7(q) states that the section shall remain in effect until January 1 2017, and, as of that date, is repealed unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

If you have any questions regarding this new statute, please feel free to contact me.

– STACY L. INMAN

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.