

Permissible Drug Use: The Administration of Medication in the School Setting

The phrase "drug use in school" typically conjures a sinister image. However, in order to remain in school, students increasingly require medication during the school day to stay safe as well as, manage or maintain their health.



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Boards of Education have responded by developing and adopting policies regulating the administration of all drugs, including both prescription and over-the-counter drugs. In addition, schools are developing approaches for the safe administration of medication in emergency situations, including allergy medication such as EpiPens, to address anaphylactic shock or glucagon to treat hypoglycemia, and most recently, emergency opioid related overdose drugs such as Narcan.

Ground Rules

Except in very rare circumstances, students may not carry or possess medication, prescribed or not, while on school property or while attending school functions.¹ Students, however, may have a health care professional administer medication while in the school setting, typically a registered professional nurse.² School districts must hire an RN, the appointment of whom may be shared or jointly employed by neighboring school districts.³ RNs may perform health assessments; diagnose and treat a patient's unique responses to diagnosed health problems; teach and counsel patients about their health; execute medical regimens and implement health plans as prescribed or developed by medical professionals; and contribute as members of interdisciplinary health care teams and health related committees to plan and implement health care.⁴

The Education Law recognizes three categories of students when considering medication management: nurse dependent (or those who cannot self-administer); supervised (a student who has difficulty opening medication containers due to dexterity issues or who requires assistance in calculating dosage and therefore must direct a staff member to assist in the administration of the medication); and independent (those requiring no assistance whatsoever).⁵ Only nurse dependent students require the assistance of an RN, although supervised students may require an RN's assistance should the student become unable to direct an unlicensed person in assisting the student in the administration of medication. Notwithstanding the student's status, medication must still be stored with the RN.

All medications must be delivered to the school nurse's health office in the original packaging with the student's name. Additionally, prescription medication must be properly labeled with the name and number of the pharmacy, the licensed provider's name, the date and number of refills, frequency of administration, dosage, and contain delivery directions: such as orally or by injection. All medications, including OTC, require explicit parental consent in order to be administered.

While on school property, a student may carry certain medications such as EpiPens or Glucagon. Under Education Law §921 and Commissioner's Regulation §136.6, school districts have the option of maintaining stock epinephrine auto-injectors on site. An epinephrine auto-injector is an automated delivery device that is approved by the U.S. Food and Drug Administration for injecting a measured dose of epinephrine in emergencies.

School districts may also allow trained staff members to administer an EpiPen in the event of an emergency to any student or staff member with anaphylactic symptoms, regardless of whether there is a previous history of severe allergic reaction. School nurses may administer anaphylactic treatment agents to either students or school staff under a "patient specific" or "non-patient specific" order from the school medical director. A non-patient specific order is a prescription that can be used for any unnamed individual experiencing an anaphylactic episode.

The State Education Department strongly encourages RN's to request that the school medical director issue such an order directing the administration of non-patient specific prescriptions to follow in the event someone demonstrates signs of an anaphylactic episode while in school.⁶ Districts that choose to do so must first comply with Public Health Law §3000-c requirements.

For example, Section 3000-c requires the school district to have a "collaborative agreement" with an "emergency health care provider." A "collaborative agreement" is an agreement that incorporates written practice protocols, policies and procedures that comply with the Public Health Law.⁷ An "emergency health care provider" can be either a physician with knowledge and experience in emergency care, or a licensed hospital that provides emergency care. Any member of the school staff who may administer an epinephrine auto-injector in an emergency must complete training that is approved by Department of Health. In accordance with State regulations, a school district must immediately report every use of an epinephrine auto-injector device to its emergency health care provider.

Student-Specific Health Plans

A student with medication management needs should have a health plan, reviewed at least annually. Students whose health issues or medication management needs which substantially interfere with a major life activity may also qualify for reasonable supports

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Justice Covello brings 30 years of experience private practice of law and service as a judge. Prior to his appointment to the Appellate Division as a trial judge in the Supreme Court, Nassau County, the Ninth and Tenth Judicial Districts; and Nassau County. He was known as a very successful trial lawyer. His diverse career background as a trial lawyer and appellate judge serves well to help litigants.

Since leaving the bench in 2011, Covello has been successful neutrals in New York. He was voted "Best Lawyer" in the *New York Law Journal* 2013-14. His ADR practice on the resolution of substantive labor law, insurance coverage, professional malpractice, commercial matters. His broad experience in injury, trial and appellate matters instills confidence as Justice Covello helps the lawyers and their clients.

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under Section 504 of the Rehabilitation Act.⁸

Generally, where a student qualifies under Section 504, a team comprised of school professionals develops a health plan to be included in the student's 504 plan. A health plan is a medication management regimen developed by the student's physician which can address any type of health related issues, from a student's diet to the time by which to check a diabetic student's glucose levels, insulin requirements, and how to respond to emergency situations. A health plan is *not* a substitute for a 504 plan, but rather a component.⁹

Certainly, successful medication management may ameliorate any adverse educational effect within the school setting. The 504 team is tasked with assessing educational impact without considering such adverse effect, meaning how the student presents when not supported by medication. To do otherwise amounts to a failure to properly assess whether the student's impairment substantially limits a major life activity, the very standard for determining whether the student qualifies for Section 504 supports.¹⁰

For students with diabetes, periodic checking of blood glucose levels as well as the administration of Glucagon in cases of hypoglycemia is necessary. Section 504 plans for these students should indicate the frequency that a child needs to check his or her blood glucose levels throughout the school day. In these instances, convening a 504 team, with participation by the school nurse, will allow the school district to develop an appropriate plan to address the student's monitoring and testing needs. The 504 plan should be kept in the nurse's office and the classroom.

The team should also consider specifically addressing issues such as the frequency, time, and location in which blood glucose levels will be monitored throughout the day, the provision of snacks, water, and bathroom breaks, the training necessary for staff to recognize signs of hypoglycemia and the manner in which missed class time and missed school work will be made up. Staff can be trained by a school nurse to monitor a student's blood glucose levels, and must be so in order to administer Glucagon.¹¹

Opioid Abuse and Student Medication

Of recent importance is the prevalence of opioid overdose on Long Island

and in our school communities. Schools have the authority to choose to provide and maintain opioid antagonists, such as Narcan, on-site to ensure emergency access to students or staff exhibiting opioid overdose symptoms, whether known or suspected.¹² Narcan is the brand name for naloxone, an antagonist delivered intranasally or intramuscularly.

Schools may participate in one of three ways: school medical directors may register with the Department of Health to participate in the Opioid Overdose Prevention Program and receive a certificate of approval; the school medical director may issue non-patient specific orders for the administration of Narcan by the school nurse; or school districts may permit volunteers to be trained to administer opioid antagonists. In the latter instance, school staff may volunteer to be trained to administer an opioid antagonist on-site during the school day by completing a NYSDOH-approved training program.¹³ Similar to EpiPens, a non-patient specific order may be written for Narcan by the school physician.¹⁴

Conclusion

Medication management on school grounds touches on many areas, from the school nurse to the special education team to district-wide determinations as to whether to participate in opioid overdose prevention programs. It is advisable for Boards of Education to periodically review their medication management policies to ensure school districts are responsibly addressing their students' health needs.

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1. Educ. Law § 6902.1. See also State Education Department, Guidelines for Administration of Medication in Schools (April 2002).

2. *Id.*

3. *Id.* See also 8 NYCRR § 136.2.

4. <http://www.op.nysed.gov/profnurse/>.

5. EDN § 902.

6. <http://www.p12.nysed.gov/sss/documents/EpiGuidanceDoc.pdf>.

7. Sample agreement: www.p12.nysed.gov/sss/schoolhealth/schoolhealthservices/epinephrinecollaborativeagreementfinal.docm.

8. 29 U.S.C. § 701 *et seq.*

9. *Tyler (TX) Indep. Sch. Dist.*, 56 IDELR 23 (OCR 2010) (Reliance on a health plan in lieu of developing a 504 plan circumvents the procedural protections of Section 504 of the Rehabilitation Act).

10. *North Royalton (OH) City Sch. Dist.*, 109 LRP 32541 (OCR 2009).

11. 8 NYCRR § 136.7(f)(2).

12. EDN § 922.

13. Pub. Health Law § 3309.

14. *Id.* See also 10 NYCRR § 80.138.

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Joseph Spinola is a former Justice of the New York Supreme Court. Since leaving the court, he has become a full time mediator. He has been voted the #1 Mediator in New York Law Journal survey the (2011-2015), and has developed a reputation for resolving difficult cases.

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