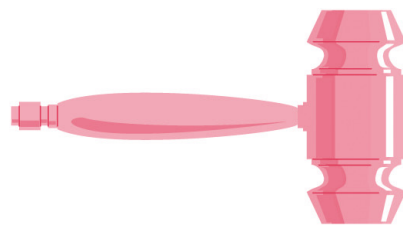


# Legal Corner



*By Michael I. Levin, Esq., PA Principals Association General Counsel*

## ***Student Medication – Ensuring That There Are Proper Controls***



School districts are required by law to have policies addressing when and under what circumstances medication can be administered to students. It is useful, from time to time, to review the laws that require such policies to ensure school districts are following the appropriate statutes and regulations.

### **Definitions of Important Terms**

I would first like to identify and define terms which are integral to any school district policy addressing medication. As attendance at school is not limited to the student's presence in the classroom, "school" should be defined to include the time coming to or going from school, school activities and programs, the school bus and school trips. Indeed, school districts are expressly given the power and authority to control the conduct of students not only "during such time as they are under the supervision of the board of school directors and teachers," but during "the time necessarily spent in coming to and returning from school." 24 P.S. § 5-510.

Although the term "medication" is not defined in law, the definition of this term in policy should be broad, and include medicines prescribed by a licensed prescriber, as well as any over-the-counter medication and look-alike pills.

"Licensed prescribers," likewise undefined, should include any healthcare professional who is licensed to prescribe medicine, such as physicians (M.D. and D.O.), podiatrists, dentists, optometrists, certified registered nurse practitioners and physician's assistants.

### **(A) Policies and Practices Governing the Administration of Medication**

Generally, the law prohibits unlicensed individuals from performing tasks that are reserved to licensed individuals. For example, only licensed doctors can practice medicine and only licensed nurses can practice nursing. These things seem obvious. However, there are sometimes disputes as to whether a particular act comes within the act of nursing and one of the disputes involves the administration of medication. There are some who

have argued that only a licensed nurse can dispense medication to students. However, there is nothing in law that supports that view.

The Professional Nursing Law does not specifically address the administration of medication. The definition of the phrase "Practice of Professional Nursing," which also does not explicitly reference "administration of medication," is as follows:

**"(1)** The "Practice of Professional Nursing" means diagnosing and treating human responses to actual or potential health problems through such services as case finding, health teaching, health counseling and provision of care supportive to or restorative of life and well-being and executing medical regimens as prescribed by a licensed physician or dentist. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of medical therapeutic or corrective measures, except as performed by a certified registered nurse practitioner acting in accordance with rules and regulations promulgated by the Board." 63 P.S. §212.

The applicable regulations define the practice or functions of professional nursing as follows: "§ 21.11. General functions.

- (a)** The registered nurse assesses human responses and plans, implements and evaluates nursing care for individuals or families for whom the nurse is responsible. In carrying out this responsibility, the nurse performs all of the following functions:
- (1)** Collects complete and ongoing data to determine nursing care needs.
  - (2)** Analyzes the health status of the individuals and families and compares the data with the norm when possible in determining nursing care needs.
  - (3)** Identifies goals and plans for nursing care.
  - (4)** Carries out nursing care actions which promote, maintain and restore the well-being of individuals.
  - (5)** Involves individuals and their families in their health promotion, maintenance and restoration.
  - (6)** Evaluates the effectiveness of the quality of nursing care provided." 49 Pa.Code §21.11.

## “Whether an individual may ‘administer’ the medication to a child who cannot self-administer the medication will depend on the circumstances.”

The applicable regulations also provide:  
“§21.14. Administration of drugs.

- (a) A licensed registered nurse may administer a drug ordered for a patient in the dosage and manner prescribed.
- (b) A licensed registered nurse, responsible for administering a drug, may supervise a graduate nurse or a nursing student in an approved nursing education program in the administration of the drug. In this section, “supervise” means the licensed registered nurse is physically present in the area or unit where the student or unlicensed graduate is practicing. This definition is not intended to limit in any way the practice of practical nursing as defined in the Practical Nurse Law (63 P. S. § 651-667).” 49 Pa.Code §21.14.

Interestingly, there is nothing that defines “the administration of medication.” I have researched the Pennsylvania case law and statutes, and was unable to find a single case that defines what constitutes the administration of medication or what is contemplated by the phrase “administering a drug.” It is suggested that in such a situation, common sense must be considered. Indeed, the General Assembly has set forth the rules which it has directed be used in interpreting statutes in the Statutory Construction Act, 1 Pa.C.S.A. §1901. Although the Act does not use the term “common sense,” it is suggested the General Assembly intended common sense be used in interpreting the law. See, 1 Pa.C.S.A. §1903(b) (“Words and phrases shall be construed according to rules of grammar and according to their common and approved usage.”)

I suggest that best practices mandate the school nurse dispense prescription and over-the-counter medications in school buildings during normal school hours. However, using “common sense,” it would be an unreasonable interpretation of the legal and regulatory definitions of nursing to conclude that the act of giving aspirin, Tylenol, Motrin, Aleve or any other over-the-counter pain medication as the “practice of nursing.” Consequently, nurses are not required to be assigned to all field trips or student activities if a student needs to take over-the-counter medication during the activity.

This self-evident observation is consistent with relevant statutory provisions. For example, there is nothing in any law that requires school districts to have nurses in all buildings and all locations at all times. It is common knowledge that throughout this nation, secretaries in the principal’s office hand out aspirin, Tylenol, etc., to students and co-workers. When the General Assembly established the

standard for the number of school nurses required to be employed, it set the standard of 1,500 students per nurse. 24 P.S. §14-1402(a.1). If the General Assembly intended to limit the distribution of aspirin and Tylenol to school nurses only, it certainly would have required nurses to be at all public schools on all occasions, but it did not.

School nurses also need not attend trips if a student must take a prescribed medication provided the proper policies are in place and parental consent secured. There is nothing that prohibits requiring parents/guardians from providing medication in the proper dosage to be provided for a school trip or at a school event in a properly labeled container and having a teacher or other responsible adult hold the container and provide the container to the child at the proper time. The safekeeping of medications is not a nursing function. The provision of a properly labeled medical container to a student is not a nursing function. The carrying of medication in a proper container that is properly labeled is not a nursing function. The handing of the container to the student for self-administration is not a nursing function. If it were, then the delivery person who delivers my medication to my home would be in violation of the Nurse Practice Act. Consequently, at the elementary level, teachers can be designated by the principal to carry students’ medication on field trips (Ritalin, inhalers and EpiPens) and give these medication to students, provided reasonable and proper rules and protocols are in place. Furthermore, teachers may also provide over-the-counter medications such as Tylenol, Ibuprofen, Maalox and Benadryl to students on field trips with written parent permission. Whether an individual may “administer” the medication to a child who cannot self-administer the medication will depend on the circumstances.

### **General Policy Considerations**

As stated above, proper protocols and controls must be established to ensure that medication – prescription and over-the-counter – is handled properly and in accordance with law. It is necessary that reasonable rules be developed to ensure that illegal drugs are not brought to school and that lawful prescriptions are used and handled properly. Moreover, issues associated with the handling of medication may be addressed through an effective 504 Service Agreement issued in accordance with Chapter 15 of the State Board regulations or an effective individualized education plan (“IEP”) issued in accordance with the Individuals with Disabilities Education Act (“IDEA”).

Children with disabilities may be entitled to accommodations that enable them to have access to school and school activities. A large proportion of the students who need

*Continued on next page*

medication have disabilities as those terms are defined in applicable law and are entitled to a Service Agreement or an IEP that should contain the procedures, protocols and controls regarding medication. Consequently, medications should be brought to or possessed at school only under the terms and conditions of policies set by the school district or in accordance with applicable state or federal law, or, as set forth previously, an IEP or 504 Service Agreement.

In the case of a student with a temporary need for medication due to a temporary medical condition which does not fall within the definition of a disability under Section 504, the Americans with Disabilities Act (ADA) or the IDEA, the school district can handle that with either general protocols and controls or with individually written protocols and rules. Any school district policy should allow for the possibility that it may not be practical to follow the policy if it is necessary to administer first aid in response to an emergency.

The general policy should be that medications should *not* be brought to school, possessed in school, stored at or by the school, provided to any student at school for self-administration or administered to any student at school except as allowed: (a) in accordance with applicable law; (b) in accordance with the terms, conditions and limitations of other school policies; or (c) in accordance with an effective 504 Service Agreement or an effective IEP. Subject to these conditions, it is recommended that a school policy require (1) a valid order of a licensed prescriber that will be kept on file that was issued within 30 days of when first brought to school and at least once every year thereafter; (2) written consent by the parents/guardians that will be kept on file; and (3) only when the failure to take such medication during school hours would jeopardize the health or the student or prevent the student from attending school. The school district should not be in the position of administering medication to a student that can or should be given to the student by the parent/guardian at home.

If prescription medication must be administered during a field trip, the medication is to be brought by a parent/guardian in a pharmacy-labelled container with only the dose(s) needed for the duration of the trip. The medication is to be given to the classroom teacher or other school employee in charge of the field trip (hereinafter referred to as "the teacher"), and the teacher is the only person to give medication to the student for self-administration. Proper consent and authorizations forms should be secured for the administration of prescription and over-the-counter medication during field trips.

### **Storage of Medications**

The school district should store medication only: (a) when required by applicable law; (b) in accordance with the terms, conditions and limitations of other policies; (c) in accordance with an effective 504 Service Agreement or an effective IEP; or (d) when the failure to take such medication during school hours would jeopardize the health of the student or prevent the student from attending school. Subject to (a) through (c), above, medication brought to school for storage and use in school shall be brought by the parents/guardians.

With respect to prescription medication, the school policy should provide that all prescription medication shall be brought to school by a parent/guardian and stored in the original pharmacy-labelled container and kept in a

locked cabinet designated for the storage of medication. Medications that require refrigeration shall be stored and locked in a refrigerator designated only for medication. Any policy addressing the storage of medications should provide that no more than a 30-day supply of an individual student's medication may be accepted and stored at school. Medication stored at the school should be placed in a package with a label containing, at a minimum: (1) the name, address, telephone number and federal DEA number of the pharmacy; (2) the student's name; (3) directions of use (i.e., dosage, frequency and time of administration, route, special instructions); (4) Name and registration number of the licensed prescriber; (5) prescription serial number; (6) date originally filled; (7) name of medication; and (8) controlled substance statement, if applicable.

With respect to non-prescription medication, the school policy should require that all non-prescription medication shall be brought to school by a parent/guardian and stored at school in its original packaging and labelled with the student's name, student ID number, home address and home telephone number.

Any school policy should require prescription and non-prescription medications be logged in and the pertinent information recorded. To ensure confidentiality, the log should be in a secure place, available to only the proper person(s) on a need-to-know basis. The recorded information should include, at a minimum, the date, name of student, name of medication, dosage, name of person who delivered the medication, amount of medication received, the school personnel who received the medication and the signatures of the person(s) delivering the medication and the person receiving the medication.

### **Medication Administration Consent Forms**

All medication shall be accompanied by a completed school district approved form, or other suitable written communication from the licensed prescriber and a signed authorization from the parent/guardian. Generally, this form





should include the date, name of student, name of medication, dosage and the name and signature of the licensed prescriber, as well as the signature(s) of the parents/guardians authorizing when and under what circumstances the medication should be administered.

### ***Policies for the Possession and Use of Asthma Inhalers and Epinephrine Auto-Injectors***

The Pennsylvania Code, 24 P.S. § 14-1414.1, requires the school district promulgate a written policy that addresses the possession and self-administration of medicine through asthma inhalers and epinephrine auto-injectors by children of school age. The policy must be in accordance with (a) applicable law; (b) the terms, conditions and limitations of other school policies; and (c) an effective 504 Service Agreement or an effective IEP. 24 P.S. § 14-1414.1(a).

The regulations, 24 P.S. § 14-1414.1(b), identify the required contents of the policy. The policy shall require a child in a school setting to demonstrate the capability for self-administration and for responsible behavior in the use of the asthma inhaler or epinephrine auto-injector and to notify the school nurse immediately following each use. The school district shall develop a system whereby the child may demonstrate his or her competency to use the asthma inhaler or epinephrine auto-injector and that he or she has permission for carrying and taking the medication. Determination of competency for self-administration shall be based on age, cognitive function, maturity and demonstration of responsible behavior. The school district shall also restrict the availability of the asthma inhaler or epinephrine auto-injector and the prescribed medication contained therein from other children of school age. The policy shall specify conditions under which a student may lose the privilege to self-carry the asthma inhaler or epinephrine auto-injector and the medication if the school policies are abused or ignored. If the school district prevents a student from self-carrying asthma inhaler or epinephrine auto-injector and the prescribed medication, it shall ensure that they are appropriately stored at locations close to the student and notify the student's classroom teachers of the places where the devices are to be stored and the means to access them.

With respect to the possession and use of an asthma inhaler or epinephrine auto-injector, the regulations, per 24 P.S. § 14-1414.1(c), suggest, but do not require, the school district include in any policy: (1) a statement from the licensed prescriber of the potential of any serious reaction that may occur to the medication, as well as any necessary emergency response; (2) a statement from the licensed prescriber as to whether the child is qualified and able to



self-administer the medication; (3) the requirement of a written request from the parents that the school district comply with the order of the licensed prescriber, including a statement relieving the school or any employee of any responsibility for the benefits or consequences of the prescribed medication when it is parent-authorized and acknowledging that the school bears no responsibility for ensuring that the medication is taken; (4) the ability of the school to reserve the right to require a statement from the licensed prescriber for the continued use of any medication beyond a specified time period; and (5) to require updated prescriptions and parental approvals on an annual basis from the pupil.

### ***The Use of Sunscreens***

The General Assembly recently passed HB 1228, 24 P.S. §14-1414.10, which provides, subject to certain conditions, that a student may possess, apply and/or use a non-aerosol topical sunscreen product ("sunscreen") without a physician's note or prescription if the sunscreen product is approved by the Food and Drug Administration for over-the-counter use for the purpose of limiting ultraviolet light-induced skin damage. The parent/guardian of the student must submit a form provided by the school district which attests the school district is not responsible for ensuring that the sunscreen is applied by the student and the student has demonstrated to the parent or guardian that the student is capable of self-applying the sunscreen. The student must also sign a form, a sample to be developed by the Department of Education, attesting that the student knows the proper method of self-applying the sunscreen and the proper safety precautions for the handling and disposal of the sunscreen. A school district may revoke or restrict the possession, application of sunscreen by a student if the student fails to comply with school rules concerning the same or an unwillingness or inability to safeguard the sunscreen from access by other students but must provide written notice of the revocation or restriction to the student's parent/guardian. The new law also allows the outdoor use by a student of sun-protective clothing, including, but not limited to, a hat, but the school district may prohibit certain clothing or hats based on the inappropriateness of the graphics, color or message.

### ***Conclusion***

School districts have the responsibility to ensure that students receive the medication they require to fully and actively participate in school and school-related activities. The burden of that responsibility can be eased greatly by adopting the proper protocols and controls.

# WOW! That's Why I Became a Principal

## Elementary School “Celebrates Learning” Through I'MPACT



Each marking period, the Rupert Elementary School I'MPACT team visits homes of students. **I'MPACT** is an acronym for **I'm Pottstown Action Community Team**, and our mission is to “celebrate learning” with positive communication of activities happening at school through the building of relationships with our community members.

Our team visits students from each grade level to congratulate them and their families, and to acknowledge student successes during the marking period. We make door-to-door visits to surprise students and their families with certificates of achievement, balloons, signs and I'MPACT winner shirts. During these visits, students are congratulated for their hard work, citizenship and positive

behavior. The I'MPACT team consists of myself, teachers and support staff from Rupert Elementary School. It is truly a rewarding opportunity for all of us. A visit takes about an hour, and it is absolutely the best hour we spend together as a team. We see the joy on the faces of our students, and the pride their families have in their children!

A few years ago, we visited a student who had a number of younger siblings. His three-year-old brother was drinking an orange “hug” juice and when we arrived, he became so excited that he was smiling, laughing and jumping up and down, spraying juice everywhere and all over me. His joy and excitement gave us all a good laugh, and a great story that we have told for years about the time we were showered with orange juice.

- **Matthew Moyer, Principal**  
**Rupert Elementary School**  
**Pottstown School District**

**Facebook: Rupert Elementary School, Pottstown**

**Twitter: @Rupertelem**

**Instagram: Rupertelem**

## The Opportunity to Bring a Vision to Life

If you had asked at the start of my career whether I wanted to be a principal, the answer was a definitive, “No.” I went into education to work with students as a teacher in the classroom and as a coach outside of the classroom. I could not imagine anything other than that for myself. It was through happenstance and opportunity that my career took a different turn. With each step beyond the classroom, I realized that creating a shared vision and empowering others brought me great joy.

After observing an eighth-grade Veterans Day assembly while working as a curriculum specialist, I made a promise to myself that when I became a principal, I would establish a program to honor veterans if there is nothing in place. In addition to helping others remember our past, I believe it is important for students to appreciate that men and women serve to protect us and our freedoms. Regardless of the politics and the debates about various military engagements, our service members are willing to sacrifice on our behalf.

Working with a small group of dedicated staff, I recently organized our fifth event in November 2018. The planning begins



**Westtown-Thornbury 5th Annual Veterans Day Celebration, honoring 44 veterans from the Army, Navy, Air Force and Marines on November 9, 2018.**

shortly after the start of the year and involves advance lessons in the classroom, participation of every student in a project to display (e.g., making a poppy to hang) and a different grade level breakout experience the day of the event (e.g., Skype with soldiers). The response to our annual half-day program from students, staff and veterans has been amazing. The opportunity to bring my vision to life as a principal is very gratifying and motivates me to want to do more.

- **Dr. Nora Wheeler, Principal**  
**Westtown-Thornbury Elementary School**  
**West Chester Area School District**  
**Twitter: @WTE750**