

## 6.6 School Health and School Nurse Services

### I. The Scope of School Health Services and School Nurse Services

Definition. School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. [34 CFR 300.34(c)(13)].

It is important that IEP committees be familiar with the scope of a school district's obligation to provide health care-related services as school health services. School health services are defined in the federal regulations as "services provided by a qualified school nurse or other qualified person". Medical services that are covered related services under IDEA are defined as "services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services". The services of licensed physicians for purposes other than diagnosis and evaluation are not generally considered covered related services.

The U.S. Supreme Court's 1999 ruling in *Cedar Rapids* makes it clear that *any medical procedures which can be administered by non-physician personnel must be provided to students as a related school health service under the IDEA*.

▫ Medical services that are "covered related services" are limited to "services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and other services." 34 CFR 300.34(c)(5). Thus, medical services are required under IDEA to the extent that they are necessary for *diagnostic* purposes. The services of licensed physicians for other purposes, specifically for treatment, are not related services under the IDEA. *See Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 29 IDELR 966 (U.S. 1999) and *Mary Courtney T. v. School Dist. of Philadelphia*, 52 IDELR 211 (3d Cir. 2009).

▫ Districts are "responsible for providing services necessary to maintain the health and safety of a child while the child is in school, with breathing, nutrition, and other bodily functions (e.g., nursing services, suctioning a tracheotomy, urinary catheterization) if these services can be provided by someone who has been trained to provide the service and are not the type of services that can only be provided by a licensed physician." *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 29 IDELR 966 (U.S. 1999) and 71 Fed. Reg. 46,571 (2006).

IEP teams may be faced with incomplete and conflicting information when developing a plan to meet the needs of a medically fragile student. *Shelby S.* addressed this issue:

In order to meet the needs of medically fragile students, districts may seek an independent medical reevaluation of the student at public expense to resolve conflicting and incomplete information about the student's condition. *See Shelby S. v. Conroe Indep. Sch. Dist.*, 45 IDELR 269 (5th Cir. 2006), *cert. denied*, 549 U.S. 1111, 109 LRP 47876 (2007).

## II. Medication

If a student must take medication during the school day to effectively participate in his or her educational program, then administration of such medication may be a related service under the IDEA or Section 504 of the Rehabilitation Act of 1973. An IEP committee may not condition the receipt of special education and related services on administration of any medication. When a parent and the school district disagree over whether a student with ADD, for example, should be medicated, an IEP should be prepared based on the individual needs and circumstances of the student *given the lack of medication*. Such a placement, although likely to be more restrictive, may be the Least Restrictive Environment (LRE) for the student under those conditions.

▫OCR has criticized policies that require medications to be administered by individuals with certain qualifications if the district does not have someone who meets those qualifications on its staff. See, e.g., *Prince George's (MD) County Schs.*, [39 IDELR 103](#) (OCR 2003) (finding that a policy requiring insulin to be administered by a certified nurse "prohibit[ed] health services staff ... from giving injectables to diabetic students, even if needed and even in emergency situations").

▫OSERS has indicated that the IDEA's prohibition on mandatory medication applies to all students, regardless of their eligibility for special education and related services. *Letter to Inhofe*, [49 IDELR 286](#) (OSERS 2007).

▫School districts have no right to compel parents to administer medication to their children, as parents have a right under state and federal constitutional law to choose not to medicate their children. *However*, if parents discontinue a student's medication *without informing the district* and district employees are injured as a result, the employees may be able to sue the parents for their injuries. See, e.g., *Niewendorp v. American Family Home Ins. Co.*, [22 IDELR 551](#) (Wis. 1995) (noting that a Wisconsin district could have developed a plan to manage the student's behaviors if it had been informed that the parents discontinued the student's ADHD medication).

## III. The School Nurse Role

### A. Provision of Information to The IEP Team

When there is evidence that a student with a disability may require school health services and/or school nurse services as a related service, the school nurse shall always be invited to attend the IEP team meeting. The school nurse, upon the IEP team's determination that a student is in need of school health or school nurse services as a related service, will work with the committee to ensure the development of an appropriate individualized health plan (IHP).

### B. Other Responsibilities

The school nurse will assist the IEP team in identifying any health-related modifications that must be implemented by special or general education staff during the school day on behalf of a student with disabilities. The school nurse is

responsible for ensuring that campus-based procedures are developed and school staff are trained, as necessary and appropriate, to implement school health-related services specified in the IEP. In the event the school nurse believes that required campus-based procedures are not being implemented and/or adequately trained staff are not in place, the school nurse shall immediately notify the campus administrator who will determine the steps necessary to ensure the appropriate delivery of school health services to the student.

#### **IV. IHPs Versus Section 504 Plans**

OCR has determined, that, even if a non-special education student's health needs can be accommodated with an IHP, it does not mean the district is relieved of its obligation to create a 504 plan for the student. The key is whether the IHP, regardless of its title, was developed in accordance with procedures that satisfy the requirements of the Section 504 implementing regulations. OCR has cited districts (*e.g., Tyler (TX) Indep. Sch. Dist.*, 56 IDELR 24 – OCR 2010) that have a policy or practice of providing IHPs to students with a particular health issue, such as diabetes, instead of determining their eligibility for a 504 plan.

#### **V. Medically Fragile**

In general, "medically fragile" means a student requiring intensive and prolonged health care as a result of a catastrophic medical event or congenital condition. The term, when used in connection with special education, can refer to one having extreme medical needs that require specific procedures to be provided or available during the day in order for the student to attend school, thus complicating provision of a program designed to meet educational needs; sometimes also referred to as "technologically dependent."

- A child who is medically fragile and needs school health services or school nurse services in order to receive FAPE must be provided such services, as indicated in the child's IEP. See 71 Fed. Reg. 46,574 (2006). See *East Maine Sch. Dist.* 33, 9 ECLPR 55 (SEA IL 2011) (Because under state regulations the services a student required to address his medical needs were ones only a nurse could render, the district should have provided nursing services on a full-time basis, rather than using an aide for part of the day). In order to meet these needs, districts may seek an independent medical reevaluation of the student to resolve conflicting and incomplete information about the student's condition. See *Shelby S. v. Conroe Indep. Sch. Dist.*, 45 IDELR 269 (5th Cir. 2006), *cert. denied*, 549 U.S. 1111, 109 LRP 47876 (2007).
- When a student suffers from a disability that makes him medically fragile, districts have an obligation not only to accommodate him in the classroom, but also during transportation to and from school as the Supreme Court explained in *Cedar Rapids Community School District v. Garret F.*, 29 IDELR 966 (1999). The administrative decision in *Cedar Rapids Community School District*, 22 IDELR 278 (SEA IA 1994), concerned a 12-year-old student who was paralyzed from the neck down and depended on use of a ventilator for life support. For the student to attend school during the day, he needed catheterization, suctioning of his tracheotomy tube, monitoring of his ventilator, Ambu bagging, and assistance with eating, drinking and positioning.

## VI. “Do Not Resuscitate” (DNR)

Definition. “Do not resuscitate” (DNR) means a parent’s or physician’s written request to withhold life-saving techniques or resuscitative measures in the event of a respiratory or cardiac arrest suffered by a severely impaired or terminally ill student.

GISD School Board Policy JLC: Student Health Services and Requirements. There is no requirement in the law that a school or school personnel comply with a Do Not Resuscitate (DNR) order. In addition, the uncertainties and risks associated with

compliance with DNR orders makes such compliance inappropriate for the schools.

Accordingly, it is the policy of the Board that DNR orders shall not be accepted, honored, or followed by any employee of the School District. School District employees who are health care providers, as part of their duties and in lieu of compliance with a DNR order, shall:

- Immediately inform a parent or guardian of a student who presents a DNR order on behalf of the student, of their refusal to comply with the DNR order pursuant to this policy;
- Provide care for the student until transfer of the student can be made; and
- Make all reasonable efforts to assist the transfer of the student to another facility that is willing to comply with the health care decisions of the student or the students' parent or guardian. Nothing in this policy shall be construed as a denial of rights under section 504 of the Rehabilitation Act of 1973 or the Individuals With Disabilities Education Act (IDEA).

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