

LEGAL ISSUES IN SCHOOL NURSING

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NORTHEASTERN
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EXTRACURRICULAR ACTIVITIES AND FIELD TRIPS

SCENARIO

- Suzie, a high school nurse, gets an email from the Spanish Club advisor at 1:00 p.m. on a Friday. In the email, the advisor notifies the nurse (for the first time) that the Spanish Club is going on a field trip to a neighboring state the following Tuesday. The students will visit museums and eat lunch at a restaurant serving authentic Spanish cuisine. The trip runs from 7:00 a.m. to 5:00 p.m. and the advisor just wanted to make sure Suzie would be attending. There are two insulin-dependent diabetic students on the trip.
 - What are Suzie's obligations?
 - What should Suzie do next?

LAWS THAT ADDRESS FIELD TRIPS

- Under the IDEA, field trips are construed as a nonacademic service, and districts are required to “take steps, including the provision of supplementary aids and services determined appropriate and necessary . . . to provide nonacademic and extracurricular services . . . in a manner necessary to afford children with disabilities an equal opportunity.”
- Section 504 applies to school-sponsored field trips, as the law states that districts “shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.”
- The law does not distinguish small group field trips (ex. Spanish Club) from large group field trips (ex. the whole fourth grade). Rather, the focus is on ensuring that students’ rights under IDEA and 504 are protected.

OUT-OF-STATE/INTERNATIONAL FIELD TRIPS

- NASN Guidance:
 - For school-sponsored trips . . . in a different state. . . review licensing laws, regulations, and scope of practice in the destination state well in advance of travel (Krol & Penny, 2024; Brous, 2019).
 - U.S. states and territories participating in the Nurse Licensure Compact (NLC) allow nurses to practice in all compact states/territories under one multistate license (National Council of State Boards of Nursing [NCSBN], 2023a).
 - The school nurse is responsible for abiding by the destination state's nurse practice act and licensing regulations, including NLC states (NCSBN, 2023a).
 - U.S. state nursing licenses are not recognized in most other countries.
 - For trips occurring outside of the U.S. that may require the provision of nursing care, it is necessary part of trip planning to determine the destination country's nursing license requirements and scope of practice (National Council of State Boards of Nursing, 2023b).
- Remember that the principle of qualified immunity extends to school nurses.

FIELD TRIPS BEFORE AND AFTER THE CONTRACTUAL DAY

- Regarding nursing obligations under the law, there is no distinction. IDEA and/or 504 will apply to activities within the contractual day and outside the contractual day, if the activity/event is school sponsored
- However, if a nurse's employment contract does not require a nurse to work outside of the contractual day involuntarily, plans must be made to ensure that coverage is available:
 - Asking for volunteers who are nurses in other buildings within the District
 - Use of substitute nurses, if there is a substitute nurse pool
 - Contract with a nursing agency

IF A NURSE SCHEDULED TO ATTEND A FIELD TRIP IS UNAVAILABLE...

- At times, a school nurse from within the District commits to attending a field trip and has a last-minute emergency on the morning of the field trip. The next step for the District is based on the reason the nurse was attending:
 - If the nurse was attending in response to a medical need from an IHCP, 504, or IEP, a substitute nurse must attend the trip. It could be another district nurse or a nurse from a contracted agency.
 - If the nurse was attending to be an extra support and support the whole group generally, a substitute nurse is not required (but it is recommended as good practice, particularly if it is a large-group trip).

EXTRACURRICULAR AND NONACADEMIC ACTIVITIES

- Districts are required to provide nonacademic and extracurricular services in a manner that provides students with disabilities an equal opportunity to participate in such activities
- Under Section 504, Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment. (34 C.F.R. 104.37(a)(2))

ROLE OF SCHOOL NURSE IN SCHOOL-SPONSORED ACTIVITIES

- School sponsored activities are activities that are organized, scheduled, and directly supervised by the District. School sponsored activities may occur on school grounds (ex. sports, clubs, band) or off school grounds (ex. field trips, off-site competitions)
- School Sponsored Activity = School
 - Consider the *Substantial Assistance* Standard (34 C.F.R. Section 104.4(b)(1)(v))
- Schools nurses are responsible for developing and managing medication administration in alignment with District policies and procedures (105 CMR 210.005(B))
- Additionally, school nurses (with school physicians) have final decision-making authority regarding delegation (105 CMR 210.005(C))

GENERAL TIPS RELATED TO EXTRACURRICULARS AND FIELD TRIPS

- School nurses should be notified of field trips and extracurricular activities in their buildings as soon as the field trips/activities are established.
- Consider a collaboration with the lead nurse and administration to develop a protocol for handling medical issues in activities that are not school sponsored
- Work as a nursing team to create reference sheets for the more popular extracurriculars.
- Once you have field trip information, make notes about the medical needs of all students going on the trip. Pay particular attention to students with medical needs who also have 504s or IEPs
- If a student has transitioned up to your building, contact the nurse at the previous school and find out how the parents handled field trips the year before
- Talk to your nursing colleagues in neighboring districts! They may have field trip procedures and/or resources for obtaining nursing coverage on field trips



CHILD FIND, IEPs AND 504s

SCENARIO

- Tommy is a school nurse at an elementary school. One of his students has recently been diagnosed with a seizure disorder and has an upcoming IEP meeting (annual review) in a few weeks. Tommy receives the meeting invitation to attend the Student's team meeting with a sticky note from the Team chair that he should be prepared to provide the Team with a summary of the Student's seizure disorder and how it impacts the student's ability to access his education. Tommy has never been to an IEP meeting before and seeks out his mentor asking whether he does need to attend the meeting.
 - What are Tommy's obligations?
 - What should Tommy do next?

DISTRICT OBLIGATIONS UNDER IDEA AND 504

- Under the IDEA, **students with disabilities should participate in the same programs as nondisabled peers when appropriate** (34 CFR 300.108(b)). This mandate applies to all subjects (including Physical Education and Health).
- Under Section 504, **students must have an equal opportunity to participate in nonacademic and extracurricular services and activities**, including P.E. and athletics (34 CFR 104.37(c)).
- It is the District's responsibility to provide accommodations, modifications, and/or specialized instruction based on what students require. Nurses need to be familiar with the accommodations that students need, so the accommodations can be applied in the context of the nurse's office.

CHILD FIND UNDER IDEA

- Under the IDEA, districts have a child find obligation. The IDEA requires the state to have policies and procedures in effect to ensure that:
 - All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; **and**
 - A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(34 CFR § 300.111(a))

CHILD FIND UNDER SECTION 504

- As with the IDEA, districts have a child find obligation under Section 504. Section 504 requires districts to annually “undertake to identify and locate every qualified [person with a disability] residing in [the district’s] jurisdiction who is not receiving a public education.” 34 CFR 104.32
 - In addition to publicly enrolled children, districts must locate and identify private school students, students who are homeschooled or hospitalized, and homeless children who MAY be eligible under Section 504.

IHCPS vs. 504s

IHCP (Individual Health Care Plan)

- Plan of care written by the registered nurse for students with or at risk for physical or mental health needs. (NASN)
- May include medical accommodations, but is primarily designed to describe the condition, symptoms, treatment and possible side effects to look for
- Responsibility of the school nurse to annually evaluate the plan, as well as to update the plan if deemed appropriate, to reflect changes in the student's healthcare needs (NASN)
- May prompt the development of student Emergency Evacuation Plans (EEP) and/or Emergency Care Plans (ECP), developed by the school nurse (NASN)
- Designed to support the health components of education plans for students (NASN)
- **There are no laws that outline a student's right to an IHCP**

Section 504 Accommodation Plan

- Student has been evaluated and it has been determined that the student has a physical or mental impairment that substantially limits one or more major life activities (29 USC 705(20)(B))
- Plan may include accommodations, general education services, and/or special education services
- Responsibility of a 504 Team to find a student eligible for a 504 Plan and develop the plan
- May include eligibility for an IEP under the IDEA, if criteria are met. Students eligible for an IEP have a 504 plan embedded into the IEP document, so there isn't two different plans for the student
- Designed to ensure that students with disabilities are protected from discrimination in educational services or school-based activities
- **504 Plans are governed by federal law (34 CFR Part 104)**

GENERAL TIPS RELATED TO IEPs and 504s

- Collaborate with teachers and the Student (if appropriate) to find out how the Student's medical condition impacts classroom performance
- If the Student has accommodations on an existing IHCP and they could apply to the classroom, share those accommodations with the 504 or IEP Team
- Remember that you are the expert on the Student's medical condition! Team members will look to you to understand the impact of the student's condition on his or her access to services
- Don't be afraid to ask questions during a 504 Meeting or IEP meeting!



FERPA AND HIPAA

SCENARIO

- Sally is a school nurse in a middle school. She works collaboratively with a second nurse in the building, who is a 20-year veteran. Sally receives a medical evaluation from Boston Children's Hospital, which lists various accommodations that a Student requires in school. Sally tells her colleague that she feels the evaluation will be necessary to share with the 504 Coordinator, so the Student's 504 Team can meet to discuss the evaluation. The veteran nurse tells Sally that she is not to share the document, as is a medical record, and subject to the rules of HIPAA.
 - What are Sally's obligations?
 - What should Sally do next?

HIPAA BASICS

- HIPAA (Health Insurance Portability and Accountability Act) includes a set of rules intended to establish a national standard for protecting individuals' medical records. The Privacy Rule sets limits on the conditions and use of disclosures of protected health information. Generally, an organization is a HIPAA Covered Entity when it is:
 - A healthcare provider that conducts electronic transactions.
 - A health plan
 - A healthcare clearinghouse

45 CFR Parts 160 and 164

FERPA BASICS

- FERPA (Family Educational Rights and Privacy Act) protects the privacy of students' education records, which are "records that are: (1) [d]irectly related to a student; and (2) [m]aintained by an educational agency or institution or by a party acting for the agency or institution." 34 CFR Part 99
- U.S. DOE issued Guidance for School Officials on Student Health Records on April 12, 2023. Purpose was to clarify common questions related to student health records maintained by schools.
 - The status of Students' health records maintained by the school varies based on the student's age:
 - If the student is less than 18 years old, health records qualify as education records under FERPA.
 - If the student is over 18 years old, health records that qualify as "treatment records" are excluded from FERPA's educational record definition.
- Health records that are education records under FERPA may only be disclosed to a third party if there is written consent by parent or student (18+) OR one of FERPA's permissive exceptions to general consent applies.

FERPA EXCEPTIONS TO GENERAL CONSENT

- Districts may disclose personally identifiable information from an education record of a student without the consent if the disclosure is:
 - to other school officials within the agency whom the agency has determined to have legitimate educational interests.
 - subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if for purposes related to the student's enrollment or transfer.
 - To a contractor/consultant/volunteer/other party to whom an agency has outsourced institutional services or functions, provided that the outside party—
 - Performs an institutional service or function for which the agency or institution would otherwise use employees;
 - Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and
 - Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

HIPAA vs. FERPA

- Determining whether a health record falls under FERPA or HIPAA:
 - Was the health record completed by a school nurse or school physician? – **FERPA**
 - Was the health record for a student UNDER the age of 18 and created by an outside medical provider and then received by a school nurse (or any other school staff member)? – **FERPA**
 - Was the health record for a student OVER the age of 18 and a “treatment record” in that it was: (1) made or maintained by a physician or other recognized professional acting in that capacity; (2) made, maintained, or used only in connection with treatment of the student; and (3) disclosed only to individuals providing the treatment? – **HIPAA**
 - Was the health record for a student OVER the age of 18 and created by an outside medical provider and then received by a staff member, and the record is NOT a “treatment record”? – **FERPA**

GENERAL TIPS RELATED TO FERPA

- Keep your paper records secure
- If you have electronic records open, close them before you walk away from your computer
- Be careful about your emails!
- When considering disclosure of information, ask “Who needs to know this?”
- Remember the two forms of PII (Personally Identifiable Information)
 - Direct
 - Indirect



GENDER IDENTITY

SCENARIO

- Tammy is a high school nurse. She receives an email from the parent of an eleventh grader. Tammy is very familiar with the student, as the student is in Tammy's office once a day for administration of medication. In her email, the parent indicates that her child, assigned male at birth, has stated an intent to transition to a female and would like to be called Victoria (chosen name) moving forward. The Parent states in her email that she does not support the transition and requests that Tammy only refer to the student as Aidan (birth name).
 - What are Tammy's obligations?
 - What should Tammy do next?

RELEVANT LAWS AND REGULATIONS RELATED TO GENDER IDENTITY

- M.G.L. ch. 76 Section 5: No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, **gender identity**, religion, national origin or sexual orientation.
- 603 CMR 26.01 (3): Gender identity shall mean a person's **gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.** Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held as part of a person's core identity; provided, however, that gender-related identity shall not be asserted for any improper purpose.

RELEVANT GUIDANCE RELATED TO GENDER IDENTITY

- DESE Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment (last updated October 28, 2021):
 - Responsibility for determining a student's gender identity rests with the student or, in the case of young students not yet able to advocate for themselves, with the parent
 - Information about a student's assigned birth sex . . . is part of the individual's student record . . . is confidential, and must be kept private and secure
 - Principal should be clear with the student (and parent) that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity . . . Transgender students who are uncomfortable using a sex-segregated restroom should be provided with safe and adequate alternative
 - Transgender and gender nonconforming students may decide to discuss and express their gender identity openly and may decide when, with whom, and how much to share private information. A student who is 14 years of age or older, or who has entered the ninth grade, may consent to disclosure of information from his or her student record. If a student is under 14 and is not yet in the ninth grade, the student's parent (alone) has the authority to decide on disclosures and other student record matters

FOOTE V. TOWN OF LUDLOW (DEC. 2022)

- Parents of middle school students sued the District/Town claiming that the District violated their rights when discussing gender identity with their children and using students' preferred pronouns in school without notifying the parents. District/Town filed Motion to Dismiss
 - Parents claims related to their rights as parents to make decisions for their children without state interference.
 - District frames their actions in the context of obligations under the law to provide a nondiscriminatory environment
- Court GRANTED Motion to Dismiss:
 - To survive dismissal, Parents must establish both conscience-shocking behavior by District and "that a protected right was offended" by the District's conduct.
 - In the absence of supporting facts, court disregards Parents' conclusory statements describing the use of preferred names and pronouns as mental health treatment.
 - Court cannot conclude the decision to withhold information about students from their Parents was "so extreme, egregious, or outrageously offensive as to shock the contemporary conscience," given the difficulties this issue presents and the competing interests involved.

MEDICAL RECORDS AND ORDERS FOR TRANSGENDER STUDENTS

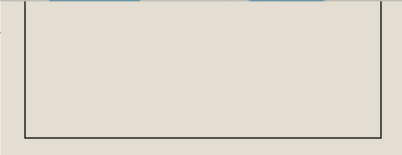
- From DESE's Guidance:
 - When determining which, if any, staff or students should be informed that a student's gender identity is different from the assigned birth sex, decisions should be made in consultation with the student, or in the case of a young student, the student's parent or guardian. The key question is whether and how sharing the information will benefit the student.
- From NASN:
 - Barring an explicit legal obligation, school nurses should respect confidentiality and not disclose a student's sexual orientation or gender identity to others, including parents or guardians, without permission from the student (Human Rights Campaign, 2019).
- Remember that when it comes to medication administration, state law requires a school nurse to ensure that there is a proper medication order from a licensed prescriber. The regulations state that the order shall contain the student's name. (See 105 CMR 210.005(D)).
 - Nurses should therefore be asking Parents for a revised medication order after learning that a student has a different preferred name.

GENERAL TIPS RELATED TO GENDER IDENTITY

- If you learn of a student's transition from a Parent who clearly supports the transition (regardless of the student's age), you need to immediately honor the student's/parents request to use alternate names/pronouns
- Remember that the student chooses whether he/she/they wants to use a space that is labeled "male" or "female"
- Remember that LGBTQIA+ students may experience more physical violence and/or drug/alcohol use. Assess students carefully for signs and symptoms
- Provide LGBTQIA+ students with education on depression prevention strategies, due to the substantial risk of depression due to rejection and stigma



QUESTIONS?



THANK YOU!
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