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2

3

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)



4

HIPAA Covered Entities

- Health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with covered transactions.
 - See 45 C.F.R. § 160.103.
- "Health care providers" include institutional providers of health or medical services, such as hospitals, as well as non-institutional providers, such as physicians, dentists, and other practitioners, along with any other person or organization that furnishes, bills, or is paid for health care in the normal course of business.



5

Where HIPAA and FERPA Intersect

- The school may be a "covered entity" under HIPAA if it conducts any covered transactions electronically in connection with health care.
 - If a school is a covered entity, it must comply with the HIPAA Administrative Simplification Rules for Transactions and Code Sets and Identifiers with respect to its transactions.
 - However, the school is not required to comply with the HIPAA Privacy Rule if the only health records maintained by the school are "education records" of students under FERPA since "education records" are excluded from coverage under the HIPAA Privacy Rule.

See DOH and USDE Joint Guidance Document (December 2019).



6

FERPA v. HIPAA

- Does the HIPAA Privacy Rule apply to a public elementary or secondary school?
 - Generally, no.
 - In most cases, the HIPAA Privacy Rule does not apply to an elementary or secondary school because the school either:
 - (1) is not a HIPAA covered entity; or
 - (2) is a HIPAA covered entity but maintains health information only on students in records that are by definition "education records" under FERPA and, therefore, is not subject to the HIPAA Privacy Rule.



7

FERPA v. HIPAA

- How does FERPA apply to health records on students maintained by elementary or secondary schools?
 - At the elementary or secondary school level, students' immunization and other health records that are maintained by a school district or individual school... that receives funds under any program administered by the U.S. Department of Education are "education records" subject to FERPA, including health and medical records maintained by a school nurse who is employed by or under contract with a school or school district.



8

WHAT CONSTITUTES AN EDUCATION RECORD?



9

What Does FERPA Have to Say?

- ❑ The term "education record" means those records that are:
 1. Directly related to a student; and
 2. Maintained by an educational agency or institution or by a party acting for the agency or institution. 34 C.F.R. §99.3.
- ❑ FERPA protects "personally identifiable information" about students that is contained in an education record, including:
 - ❑ Student or parent/family member names;
 - ❑ Address of student or student's family;
 - ❑ Personal identifiers (SSN, ID number, etc.);
 - ❑ "Other indirect identifiers" (birthday, place of birth, mother's maiden name);
 - ❑ Other information that is linked or linkable to a student; and
 - ❑ Information requested by a person who knows the identity of the student to whom the record relates.



10

What Does FERPA Have to Say? (cont.)

- ❑ The term [education record] does not include:
 - (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
 - (2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of §99.8. ...
 - (5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
 - (6) Grades on peer-graded papers before they are collected and recorded by a teacher. 34 C.F.R. §99.3.



11

PARENT AND STUDENT RIGHTS TO ACCESS RECORDS



12

Parent Right of Access Under FERPA

- ❑ FERPA does more than protect the confidentiality of student records; it also guarantees parents a right to access their child's student records.
- ❑ Chapter 26 of the Texas Education Code grants parents similar access to "all written records of a school district concerning the parent's child," including:
 - ❑ Attendance records
 - ❑ Test scores
 - ❑ Grades
 - ❑ Disciplinary records
 - ❑ Counseling records
 - ❑ Psychological records
 - ❑ Applications for admission
 - ❑ Health/immunization info
 - ❑ Teacher and school counselor evaluations
 - ❑ Reports of behavioral patterns
 - ❑ Records relating to assistance provided for learning difficulties



13

Exceptions to Parents' Rights Under FERPA

- ❑ A parent may not have a right to access education records if the parent is under investigation for child abuse or neglect
 - ❑ Requires a final decision from the Texas Attorney General
- ❑ Sole possession notes which are:
 - ❑ Kept only as a memory aid;
 - ❑ Kept in the sole possession of the writer;
 - ❑ Not shared with anyone except a temporary substitute; and
 - ❑ Not used to replace or avoid normal documentation.



14

Parent Right of Access Under IDEA

- ❑ "Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing ..., or resolution session ..., and in no case more than 45 days after the request has been made." 34 C.F.R. §300.613(a).
- ❑ "The right to inspect and review education records under this section includes...[t]he right to have a representative of the parent inspect and review the records." 34 C.F.R. §300.613(b)(3).



15

Who Is The Parent?

- ❑ FERPA definition: "Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." 34 C.F.R. § 99.3.
- ❑ IDEA definition: Parent means —
 - ❑ A biological or adoptive parent of a child;
 - ❑ A foster parent, unless the state prohibits;
 - ❑ A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the state if the child is a ward of the state);
 - ❑ An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - ❑ A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act.



16

SCHOOL OFFICIAL WITH LEGITIMATE EDUCATIONAL INTEREST



17

School Personnel Access to Records

- ❑ Just because a record is classified as a "student record" for purposes of FERPA and Chapter 26, that record is not automatically available to any District employee who wants to see it.
- ❑ District officials (including teachers) have a right to access a student's records *if they have a legitimate educational interest in doing so.*
- ❑ The District is not required to maintain all of any given student's records in one location.
- ❑ If there are records which are particularly sensitive, consider keeping those records in a different location than the mere administrative records to ensure that nobody accidentally stumbles upon something they didn't have a legitimate educational interest in seeing.



18

Who is a school official?

Access by School Officials

A school official shall be allowed access to student records if he or she has a legitimate educational interest in the records.

For the purposes of this policy, "school officials" shall include:

1. An employee, Board member, or agent of the District, including an attorney, a consultant, a contractor, a volunteer, a school resource officer, and any outside service provider used by the District to perform institutional services.
2. An employee of a cooperative of which the District is a member or of a facility with which the District contracts for placement of students with disabilities.
3. A contractor retained by a cooperative of which the District is a member or by a facility with which the District contracts for placement of students with disabilities.
4. A parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.



19

Legitimate Educational Interest

A school official has a "legitimate educational interest" in a student's records when he or she is:

1. Working with the student;
2. Considering disciplinary or academic actions, the student's case, or an individualized education program for a student with disabilities;
3. Compiling statistical data;
4. Reviewing an education record to fulfill the official's professional responsibility; or
5. Investigating or evaluating programs.



20

Legitimate Educational Interest

Examples of a legitimate educational interest would include:

- Administrators, instructional staff, and ancillary service providers if needed to plan appropriate programs, ensure a safe environment, and provide adequate staff training.
- Staff who need to implement a health care plan: cafeteria, administrators, teachers, EAs
- 504 Committee
- IEP Team
- Social Worker who needs to counsel the student regarding a health issue



21

What is *Not* a Disclosure?

- ❑ Revealing information observed firsthand that is not contained in a student's education record.
- ❑ Verifying information that is provided by a physician with the physician who created the documentation.



22

Distribution Of Healthcare Plan To Teachers

- ❑ "Each public agency must ensure that—
 - ❑ The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
 - ❑ Each teacher and provider described in paragraph (d)(1) of this section is informed of—
 - ❑ His or her specific responsibilities related to implementing the child's IEP; and
 - ❑ The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." 34 C.F.R. §300.323(d).



23

WHEN CONSENT IS NOT REQUIRED: Health or Safety Emergency



24

What Does FERPA Have to Say?

- ❑ FERPA contains an emergency exception for the disclosure of student records to **appropriate parties** in connection with an emergency *if knowledge of the information is necessary to protect the health or safety of the student or other individuals.*
 - ❑ Must be an actual, impending, or imminent emergency (i.e., natural disaster, terrorist attack, campus shooting, outbreak of epidemic disease)
 - ❑ The District should only notify parents or others listed as emergency contacts in the event of a crisis involving a student, unless the crisis rises to the level of "an actual, impending, or imminent emergency."
 - ❑ This exception is primarily intended to allow the District to share information with first responders.



25

Is it an emergency?

- ❑ Can the school official explain why, based on all the information then available, the official reasonably believes that a student poses a significant threat, such as a threat of substantial bodily harm, to any person (including the student)?
- ❑ If yes → the official may disclose education records to any person whose knowledge of information from those records will assist in protecting a person from that threat.



26

Documenting an Emergency Disclosure

- ❑ If a school official releases a student's education records under the emergency exception, the school must—within a reasonable time after the disclosure—record in the student's education records:
 - ❑ (1) the articulable and significant threat to the health or safety of the student or other individual(s) that formed the basis for the disclosure; and
 - ❑ (2) the parties to whom the information was disclosed.



27

**WHEN CONSENT IS NOT REQUIRED:
To Child Welfare Agencies If A Student
Is A Suspected Victim Of Child Abuse**



28

Duty to Report

- All school employees are required to report, when they have a reasonable cause to believe, that a child's physical or mental health/welfare has been affected by abuse or neglect by any person, including:
 - suspicion that a child has been abused/neglected in the past
 - a suspicion that a child is presently subject to abuse/neglect
 - may be abused/neglected at some point in the future
- You must report within **48 hours** to:
 - Either law enforcement *or* CPS, except that a report must be made to CPS if the suspected abuser is a person responsible for a child's care, custody, or welfare (parent/guardian, family or household member, parent's household member, school personnel/volunteers, school contractors/agents, childcare personnel/volunteers)



29

Duty to Report, continued

- It is a crime to knowingly fail to make a required report of abuse or neglect.
 - Class A misdemeanor punishable by fine and potential jail time
 - Intentional = state fail felony
- It is a crime to make a false report of abuse or neglect with the intent to deceive (i.e., in bad faith)
 - State fail felony punishable by fine and potential jail time
- You are not required to tell your supervisor or administrator before making a required report; however, you should share your concerns with an administrator so that every step can be taken to protect the child.
- You are immune from civil/criminal liability for making a good faith report to CPS/law enforcement, and your identity as an informant is confidential by law.
- You may not delegate your reporting requirement.



30


**WHEN CONSENT IS NOT REQUIRED:
Subpoena**



31


What Should I Do If I Receive A Subpoena?

- First notify the district's attorney!
- Personally identifiable information may be released if there is a judicial order or lawfully issued subpoena requesting it as long as the parents are notified.
 - The parent does not have to be notified when the parent is a party to a court proceeding involving child abuse or neglect. 20 U.S.C. § 1232g(b)(2)(B) *(contact the district's lawyer in these situations)*
- Education records (including records that contain personally identifiable information) may be disclosed because of a (i) Federal grand jury subpoena; and (ii) any other subpoena issued for a law enforcement purpose. 20 U.S.C. § 1232g(b)(1)(I)
 - The court may order that the contents of the subpoena or any information furnished not be disclosed. *Id.*



32

DOCUMENTATION



33

Documentation Dos And Don'ts

- Each student health record should contain the following:
 - health history
 - health screening results
 - chronic conditions/diagnoses/problem list
 - emergency information/contact/health care provider list
 - progress notes
 - appropriate Individual Health Plan/Individual Emergency Management Plan



34

What To Include or Avoid

- Remember that the parent/guardian has a right to review the record when you are documenting it
 - "Parent is extremely difficult" probably wouldn't be a good note to make
- Abbreviations approved by recognized body of nursing may be used
- Even if the child appears not to be ill or injured, his or her actions should be documented
- Document your observations of the student
- Notes should be non-judgmental
- Don't quote if you are paraphrasing
- Anticipate anything you document being read in a court of law
- Don't diagnose



35

Emails

- Emails may be student records under FERPA
- Limit emails to the following:
 - Request for a meeting or phone conference
 - Scheduling for Student, 504, IEP
 - The facts, just the facts



36

Q&A

- ❑ *Can I send information via e-mail if the e-mail is not encrypted?*
- ❑ What type of information are you sending?
- ❑ Do you have consent from the client/the client's parent?

Mail (regular or certified) is the safest way to send sensitive information, unless you have obtained consent from the client/the client's parent to communicate sensitive information electronically. Electronic communication is proper for commonplace communications that do not contain particularly sensitive data.



37

EMPLOYMENT ISSUES



38

Governing Rules

- ❑ As an employee of the District, you are subject to state law and District policies that govern employees and employment situations.
- ❑ You are also subject to state law that governs nurses.
- ❑ The primary topic on which there may be a conflict between the two is in the area of confidentiality.
 - ❑ Remember that information gathered during the performance of your duties is considered a "student record," which may be shared with District officials on a need-to-know basis.
- ❑ Ultimately, the District may take disciplinary action against any employee who fails to follow District policy. If you feel your nurse licensure requirements pose a conflict in the performance of your duties as a District employee, you should notify your supervisor immediately, who can seek guidance from the District's legal counsel.



39

Employee Standards of Conduct

- ❑ Each employee shall comply with the District standards of conduct and with any other policies, regulations, and guidelines that impose duties, requirements, or standards attendant to his or her status as a District employee.
- ❑ Violation of any policy, regulation, or guideline may result in disciplinary action, including termination of employment.
- ❑ ECE 3.2 – The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.
- ❑ ECE 3.3 – The educator shall not intentionally, knowingly, or recklessly misrepresent facts regarding a student.



40

LEGAL LIABILITY FOR SCHOOL NURSES



41

Standard of Care

- ❑ Nurses, like all District employees, are required to comply with the Educators' Code of Ethics.
- ❑ Nurses are also held to a separate standard of care, specific to their license or certification.
- ❑ Standards of care are typically set forth by the licensing or certifying organization.
- ❑ Generally, the standard of care for professionals is:
 - ❑ The degree of knowledge, skill, and care used by similarly trained professionals with similar education and work experience in the same or similar geographic location, and the same or similar circumstances.
- ❑ An act that does not conform to the standard of care may form the basis for a negligence or malpractice claim.
- ❑ Nursing obligations override a physician's order if compliance with the order would result in unsafe care for the patient.



42

Individual Immunity Under Federal Law

- ❑ Under federal law, qualified immunity shields school officials from civil liability for damages based on the performance of discretionary functions if the official's acts were objectively reasonable in light of clearly established law.
- ❑ Individual employees are entitled to qualified immunity unless:
 - ❑ the employee's actions violated a constitutional or statutory right; and
 - ❑ "the right was so clearly established that a reasonable person would have known that [the] conduct violated that right. *Harris v. Robinson*, 273 F.3d 927, 931 (10th Cir. 2001).



43

Individual Immunity Under State Law

- ❑ The **Texas Tort Claims Act** provides for waiver of governmental immunity for property damage, injuries and death, under certain circumstances.
 - ❑ Civ. PRAC. & REM. CODE § 101.021.
- ❑ However, with respect to the liability of an independent school district, the Legislature provided for a more limited waiver of immunity.
- ❑ The Act states that a school district's liability is limited to causes of action arising from the use of motor vehicles.
 - ❑ Civ. PRAC. & REM. CODE § 101.051; *Luna v. Harlingen Consol. ISD*, 821 S.W.2d 442, 444 (Tex. App. – Corpus Christi 1991, writ denied) ("School districts are excluded from exposure to liability for personal injuries suffered by third parties caused by the torts of the district, its officials, agents, servants and employees by the [TTCA], except as to operation and use of motor vehicles.")



44

Individual Immunity Under State Law

- ❑ In Texas, educators are granted immunity to ensure the continued availability of quality public education.
 - ❑ *Stout v. Grand Prairie ISD*, 733 S.W.2d 290, 294 (Tex. Civ. App. – Dallas, 1987 writ ref'd n.r.e.).
 - ❑ A "professional employee" is not personally liable for acts done within the scope of their employment, and which involve the exercise of judgment or discretion, except in circumstances where, in disciplining a student, the employee uses excessive force or the employee's negligence results bodily injury of the student.
 - ❑ TEX. EDUC. CODE § 22.051(a)
 - ❑ "Professional employee" includes a "superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, counselor, **nurse**, and teacher's aide."
 - ❑ TEX. EDUC. CODE § 22.0511(a)



45

Individual Immunity Under State Law

- Immunity under the Texas Tort Claims Act does not apply to **the operation, use, or maintenance of any motor vehicle.**
 - TEX. EDUC. CODE § 22.0511(b)



46

Q&A

□ **What kind of coverage does the District provide if there is a legal situation?**

- Does the situation involve the performance of your duties as a District employee?
- If there is a lawsuit, is the District a party?

You should immediately notify the District of any legal situations involving the performance of your duties as a District employee.

Because the District could ultimately be responsible for the actions of all of its employees, the District's insurance may cover costly litigation arising out of the performance of your duties as a District employee.



47

Q&A

□ **Should I have malpractice insurance?**

- Does your profession provide for malpractice insurance?
- Do you engage in nursing in any capacity other than as a District employee?

If you engage in nursing duties outside of your job with the District, those activities are not protected by the District's governmental immunity.

You may consider malpractice insurance for work done outside the school context, including volunteer work.



48

Q&A

Should we join a teacher organization?

- Are there organizations dedicated to school nurses?
- Are you eligible to join?

Employee organizations can provide resources, support, legal guidance, and sometimes even exclusive discounts on products or services to members.

You are entitled to join an employee organization and take advantage of the organization's benefits.



49

SECTION 504 OF THE REHABILITATION ACT ("SECTION 504")



50

What is Section 504?

- Section 504 of the Rehabilitation Act of 1973 is the federal law established to protect against discrimination on the basis of a handicap (disability).
- Section 504 is enforced by the Office of Civil Rights (OCR).
- Section 504 is designed to ensure that students with disabilities receive appropriate educational services to meet their individual needs to the same extent as students without disabilities.



51

Appropriate Education

- "Appropriate education is defined as the provision of regular or special education and related aids and services designed to meet the student's individual needs as adequately as the needs of non-disabled persons are met."



52

Eligible Students

- If the student is "eligible" then an accommodation plan (504 Plan) is written to eliminate barriers to accessing public school facilities, programs and services.
- The definition of disability in 504 is broader than in IDEA because it extends beyond learning to other more health related functions under criterion of "major life activities."
 - Examples: walking, eating and breathing.
- Many students who are served under individual health care plans (IHCP) may now be eligible for Section 504 plans.
- Therefore, school nurses even more likely to be involved with 504 plans than IEP's.



53

Eligible Students

- A qualified student with a disability is protected (from discrimination) regardless of whether or not the student disability is related to learning/academics.
- For example, a student with diabetes who does not need supports in the academic area may qualify and be protected because he/she has a physical impairment that substantially limits a major life activity (Endocrine Function).



54

“Disability” Under Section 504

- ❑ “The term ‘disability’ means, with respect to an individual:
 - ❑ a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - ❑ a record of such an impairment; or
 - ❑ being regarded as having such an impairment.”

42 U.S.C. § 12102(3)



55

“Disability” Under Section 504

- ❑ A *physical impairment* is defined as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory (including speech organs); cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; endocrine.
- ❑ A *mental impairment* is “any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”



56

What is a “major life activity”?

- ❑ Includes caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
 - ❑ New law added – eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communication.
- ❑ Major life activity also includes the operation of major bodily functions
 - ❑ Immune system functions
 - ❑ Normal cell growth
 - ❑ Digestive
 - ❑ Bowel
 - ❑ Bladder
 - ❑ Neurological
 - ❑ Brain
 - ❑ Respiratory
 - ❑ Circulatory
 - ❑ Endocrine
 - ❑ Reproductive



57

What does "substantially limit" mean?

An individual is "substantially limited" by a disability if:

- He/she is unable to perform a major life activity that the average person in the general population can perform, or
- He/she is significantly restricted as to the *condition, manner, or duration* under which the average person in the general population can perform the same major life activity.

In the school context, the student in question would be compared to an average student of the same age or grade level in the general (national not local) population.



58

Section 504 Eligibility

- Medical diagnosis of an illness does NOT automatically mean a student qualifies for services under Section 504.
- A student who has a physical or mental impairment would not be considered eligible for 504 services if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitations.
- The impairment must substantially limit one or more major life activity.



59

Common Chronic Health Issues

- Diabetes
- Allergy and Chemical Sensitivities
 - "Peanut free" zones?
 - "Peanut free" tables?
 - Chemical sensitivity training?
 - Latex allergies?
 - Other?
- Asthma
- Epilepsy/seizure disorders



60

Accommodating Chronic Health Issues

- Step 1: Identify barriers to access
- Step 2: Communicate and evaluate
- Step 3: Develop a 504 Plan which may include:
 - Individual Health Plan (IHP)
 - Emergency Action Plan (EAP)
 - Individual Education Plan (IEP)



61

The 504 Process

- Each school district has to develop their own process.
 - A district may use same process to evaluate as under IDEA.
- Team members must be knowledgeable and draw from a variety of sources.
 - Information from sources should be documented.
- Recommended that a plan be written.
 - There is no required format.
- Student stays eligible until team decides is no longer eligible.
 - Need a process for annual review of 504 Plan and for reevaluation.



62

Section 504: How it Works

- Referral by parent, teacher, **school nurse**, counselor, psychologist, social worker, or principal
- Parent notice of evaluation
- Assessment
- 504 Team meeting to determine eligibility
- Develop 504 accommodation plan
- Implement plan
- Determine case manager
- Monitor and modify plan as needed to meet student's ongoing needs



63

Health Plans vs. 504 Plans

- ❑ Many schools use individual health plans (IHPs) or similar documents to address the health-related needs of students with health impairments, without considering a Section 504 referral.
- ❑ OCR's position is that IHPs are a form of mitigating measure under the ADA, and its beneficial effects *must not* be considered in determining 504 eligibility.
- ❑ OCR also believes that the implementation of IHPs created outside of the 504 process *may not suffice* to meet the school's 504 child-find and FAPE obligations.
 - ❑ *Rationale:* non-504 IHPs can deprive parents and students of Section 504 status, which contains nondiscrimination protections and procedural safeguards.



64

Role of the School Nurse in 504

- ❑ School nurse is the "go to" person in explaining the medical information that is in the parent request and aids the 504 committee in determining how best to accommodate the student by:
 - ❑ Reviewing the student's health record
 - ❑ Conducting in-depth health history if necessary
 - ❑ Obtaining medical reports if necessary
- ❑ Interpreting the student's health status and explaining the impairment to the committee (including the major life activity affected, whether the limitation is mild/moderate/severe and why, and the known or anticipated duration of limitation)



65


Role of the School Nurse in 504

- ❑ The nurse explains the impact of health conditions on the student's school participation and informs the team of how the disability interferes with the student's life functions and how the disability affects the student's functioning.
- ❑ As evaluation proceeds, the school will be responsible for demonstrating an understanding of the impact of the health condition and the needs for care during the school day.
- ❑ The School Nurse plays a vital role in the 504 Plan process:
 - ❑ As health professional consultant
 - ❑ In developing the individualized health care plan
 - ❑ In direct care as per IHP
 - ❑ In coordinating the IHP
 - ❑ In making delegation decisions
 - ❑ In training
 - ❑ In determining competency of unlicensed personnel to provide care



66

**THE INDIVIDUALS WITH
DISABILITIES EDUCATION ACT (IDEA)**




67

Free Appropriate Public Education (FAPE)

- "Free appropriate public education or FAPE means special education and related services that—
- Are provided at public expense, under public supervision and direction, and without charge;
- Meet the standards of the SEA, including the requirements of this part;
- Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324."

34 C.F.R. § 300.17.




68

FAPE Standard Under the IDEA

- First, has the school district complied with the procedures set forth in the IDEA?
- Second, is the IEP developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?

Board of Educ. v. Rowley, 102 S.Ct. 3034 (1982).



69

Related Services Standard

- "Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education...."

34 C.F.R. §300.34(a).



70

Is The Administration Of Medicine At School A Related Service?

- Yes, if the student must take the medication during the school day to access his/her education.



71

Must Health Services And Nursing Services Be Included In The Student's IEP If Necessary For FAPE?

- Yes. When determining the appropriate health services and/or nursing services for a student in an IEP meeting, be sure to document the frequency and duration of any necessary health services and/or nursing services on the schedule of services page.
- Also, include in the IEP the position of the district staff member to provide the health services and/or nursing services, and any necessary training.



72


NURSE'S ROLES AND RESPONSIBILITIES



73

Roles and Responsibilities


- A school nurse is responsible for:
 - The management and provision of nursing care provided to students;
 - All management decisions, policy making, and practices related to delegation of nursing care; and
 - Assuring that each delegated task is performed in accordance with established standards of practice.



74

Delegation of Duties

- Delegation** is the authorization of an unlicensed person to provide nursing services outside the presence of the RN while retaining accountability for how the unlicensed person performs the task
- State law and standard nursing practices guide whether and when a nurse may delegate tasks. The decision to delegate a task is based upon:
 - The needs of the patient and the patient's stability
 - The nurse's assessment of the potential for patient harm
 - The complexity of the task
 - The predictability of the outcomes
 - The abilities of the unlicensed assistive personnel staff to whom the work is delegated
 - The context of other patient needs to achieve the most benefit from nursing care
- Refer to Texas Board of Nursing rules and guidelines on delegation of tasks for more information at https://www.bon.texas.gov/faq_delegation.asp#10
- Refer to Policy FFAC for information on unlicensed individuals performing certain medical tasks.



75

The Five Rights

- ❑ The Five Rights of Delegation should be followed when making decisions regarding safe delegation
 - ❑ Right Task
 - ❑ Right Circumstances
 - ❑ Right Person
 - ❑ Right Direction/Communication
 - ❑ Right Supervision/Evaluation

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76

Right Task

- ❑ An appropriate task to delegate is one that can be delegated to a specific person for a specific client
 - ❑ Administration of oral, spray, or topical medications (such as inhalers)
 - ❑ Administration of insulin
 - ❑ Collecting, reporting, and documenting patient data
 - ❑ Transporting students within the school setting
 - ❑ Non-invasive and non-sterile procedures (taking temperature, cleaning/dressing wounds)
 - ❑ Assisting with feeding
- ❑ The task should be predictable and the potential risk should be minimal
- ❑ This will typically include tasks that reoccur daily in the care of a specific student, utilize standard and unchanging procedure, and do not require the exercise of nursing judgment.

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77

Wrong Task

- ❑ Certain nursing duties CANNOT be delegated under state law:
 - ❑ Assessments which require professional nursing judgment, intervention, referral, or follow-up
 - ❑ Formulation of an IHP or other nursing care plan and evaluation of the response to care provided
 - ❑ Any implementation of the IHP that requires professional nursing judgment or intervention
 - ❑ Calculation of medication doses, except for measuring a prescribed amount of liquid medication nor breaking a tablet for administration, as long as the RN has calculated the dose
 - ❑ Administration of injectable medications, except for injectable insulin or other injectable diabetes medication (except in emergency situations)
 - ❑ Administration of medications involving a tube inserted in a body cavity
 - ❑ Responsibility for receiving or requesting verbal orders from a physician/provider
 - ❑ Administration of the initial dose of a medication that has not been previously administered, unless the RN documents in the record the rationale for authorizing an unauthorized person to administer the initial dose

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78

Right Circumstances

- Consider the appropriate setting for a task and resources available to you.
- Establish clear lines of authority and ensure adequate supervision.
- Complexity of task should be consistent with competency of the person that it is delegated to.
 - Also consider level of supervision that may be required.
- You must be available to the person the task is delegated to by phone at all times.



79

Right Person

- Organization standards should specify the training and competency requirements for both the nurse and the person the task is delegated to.
- Verification of competency to perform a task should be documented on an individual and client specific basis.



80

Right Direction/Communication

- Communication is essential!
- The nurse must provide a clear and concise description of the task
 - This should include the objective, limits, and expectations of the nurse delegating the task.
- Individualized student health care plans should include tasks to be performed, data to be collected required documentation, expected results, potential complications, and criteria for when to report to the nurse.



81

Right Supervision/Evaluation

- The nurse must properly monitor the person being given the task, ensure consistent evaluation and feedback, and intervene when/if necessary.
- Data may be collected by the person assigned the task, but the student's care remains the responsibility of the nurse.



82



83

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84

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