

Working Draft 7-9-03

**Legal Issues Affecting School Nurse Practice
Michigan Association of School Nurses
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Federal Law

- 1) IDEA-Individuals with Disabilities Act. Children with chronic health conditions are protected to receive these related services under “otherwise health impaired.” Definitions of CF 300.16 for “school health services” means services provided by a qualified nurse or other qualified person.
- 2) Section 504 of the Rehabilitation Act of 1973 as amended provides individuals with basic civil rights protection against discrimination. It provides related services, including health services (e.g. medication administration) to those not eligible for special education. Accommodation plans (including individual health care plans) are developed to provide needed health services in the school for children requiring medication or other health services. Each district must designate a 504 coordinator. 34 CFR 104.3(j)(2)(i) defines impairments, and 34 CFR 104.3(j)(2)(ii) defines major life activities.
- 3) ADA-Americans with Disabilities Act.
- 4) HIPAA-Health Insurance Portability and Accountability Act of 1996. This law was passed by congress to provide consumers with greater access to health care insurance, to protect the privacy of health care data, and to promote more standardization and efficiency in the health care industry.
- 5) FERPA-Family Education Rights and Privacy Act. School health records are covered under this act. In school FERPA takes precedence over HIPAA
- 6) HEAD START PROGRAMS - Head Start Program requirements include a physical exam based on EPSDT guidelines; dental exam; immunizations; vision; hearing and developmental screening and a nutritional snack and lunch. Head Start Programs do not have to have nurse on staff, yet 10% of the enrolled HS children must have a disability, some of these are related to health needing medication or treatments during their time in school.

State Law

Health Services

1) Public Health Code (Excerpt) Act 368 of 1978, Part 9101. The department shall establish a plan for health services for pupils in elementary and secondary schools of this state. Plan shall include a definition of school health services and standards for implementation.

Comment:

Michigan Association of School Nurses' (MASN) position is that medical treatments and medications administration in the school is a health service and should be done by a qualified person supervised under the Public Health /Code.

Occupational Safety

1) MIOSHA – R325.47201, Part 472 - Guidelines indicate employer must adequately have a trained first aid certified person on site. [BSR/CET-5951 (11/01)]

Comment:

MASNS' position is that Michigan students deserve at least as much as Michigan employees.

2) MIOSHA

Employer responsibilities to employee regarding training and response to exposure to bloodborne pathogens.

Child Protection

1) Child Protection Law-Act 238 of 1975. MCL 722.623 Persons required to report child abuse or neglect; written report; transmitting report and results of investigation to prosecuting attorney or county family independence agency; pregnancy of or venereal disease in child less than 12 years of age.

a) 6869 Op. Att'y Gen. 92 (1995)-A child protective services worker may interview a child in the school setting without parental consent or school personnel involvement.

b) MCLA 333.5131(5)(f)-Child Protection Law that states records and reports related to HIV/AIDS are not confidential if information is required under the Child Protection Law.

Nursing

1) MCL 333.17201- Nursing Practice Act.

Public Health Code, under Article 7, Health Occupations, governs the scope and practice and regulation of licenses and registrants, including medicine, nursing, and osteopathy.

2) Public Health Code, 1978 PA 368, as amended, recognizes registered nurses as fully licensed health professionals.

3) Administrative Rule R340.1163. Pertains to function of school nurse. Assess and evaluate health status; interpret medical evaluations; plan course of action to minimize or prevent health problems; intermediary to family, physician, and social agencies; initiate supplemental testing; develop in-services and school policies. (School Code)

3) MCLA 600.2165. School teachers and employees; disclosure of students' records or communications. Communications between teacher, guidance officer, school executive, or "other professional person" are confidential.

4) MCLA 380.1252-The board of a school district may employ registered nurses necessary to provide professional nursing services. (BD)

Communicable Disease

1) MCLA 333.5131- A parent or legal guardian can expressly authorize in writing the release of HIV/AIDS related information.(BD)

2) MCLA 333.5131(5)(c)-Michigan Department of Community Health or local health officer may release information pertaining to an individual who has HIV/AIDS to a school employee if the information is necessary to prevent a reasonable foreseeable risk of transmission of HIV to pupils in the school district. The school employee is bound by the confidentiality requirements of the statute.(BD)

3) MCLA 333.51111-Rules. Public Health Code (Excerpt). Act 368 Of 1978. Requirements for reporting communicable diseases.

Minors

1) MCLA 330.1707(1)-A minor 14 years of age or older may request and receive mental health services on an outpatient basis without the consent or knowledge of a parent or guardian. Consent to inform the parent or guardian must be obtained from the minor

unless there is a compelling need for disclosure and the minor is informed of the health professional's intent to notify the party. (BD)

2) MCLA 333.5127- A minor who professes to be infected (venereal disease or HIV) may seek medical or surgical treatment, or services by a hospital, clinic or physician without the consent of a parent, guardian, or person in loco parentis. For medical reasons the treating physician or another health professional (on the advice of the treating physician) may withhold or provide the information regarding the minor to the parent, guardian or person "in loco parentis" even if the minor refused to have the information released. (BD)

3) MCLA.9132-If a minor consents to the provision of prenatal and pregnancy related health care by a health facility or agency or a health professional licensed under article 15, the consent shall be valid and binding. For medical reasons the treating physician or another health professional (on the advice of the treating physician) may withhold or provide information regarding the minor to the parent, guardian, or person in loco parentis even if the minor refused to have the information released. (BD)

Immunization

1) MCLA 333.9201 et seq-information contained in the childhood immunization registry is confidential and shall be maintained until the person is 20 years of age (BD)

2) MCLA 380.1177 Revised School Code (Excerpt) Immunization statements; vision test; immunization status and vision report. The parent/guardian of a child enrolling in school for the first time must submit a certificate showing required immunizations have been given; or a physician-signed waiver that required immunizations could not be given because of medical contraindications or a parent/guardian signed waiver that for religious or other reasons the immunization has not been given.

Hearing and Vision

1) MCLA 333.9301 et seq.-Local health departments are required to conduct periodic hearing and vision testing for children. The records of testing and screening administered and conducted shall be available to health agencies and other persons to assist in obtaining proper and necessary health and educational care, attention and treatment as permitted by the Michigan Department of Community Health, and the records maintained are confidential.(BD)

To enter kindergarten, all children are required to have a vision screen

Medications

1) MCLA 380.1178- (School Code) Sets forth legal provisions for the immunity of school employees against an allegation of “simple” negligence if the employee administers the medication under certain requirements, including being in the presence of another adult. (BD)

2) MCLA 380.1178 – The Revised School Code (EXCERPT), Act 451 Of 1976. Popular Name: Act 451. Am. 2000, Act 9, Imd.Eff.Mar.7, 2000. Administration of medication to pupil; liability; school employee as licensed registered professional nurse. If a school employee is a licensed registered professional nurse, subsection (1) applies to that school employee regardless of whether the medication is administered in the presence of another adult. (DC)

3) MLCA 380.1178 of 1976, Am 2000. The revised school code. Public Act 10. Pupil has written approval to possess and use an inhaler. MLCA 380.1179 of school code Add 2000

4) MCLA 380.1178a of school code – PA 51 of 2002. Enrolled HB# 4672 of 2002. This legislation directed the Department of Education to review all existing guidelines, policies, and documents, and develop a model policy concerning the administration of medications at school. Direct links to Law -

<http://www.michiganlegislature.org/documents/2001-2002/publicact/htm/2002-PA-0051.htm>

Model policy -

http://www.michigan.gov/documents/Medication_Policy_Nov_25_2002_51010_7.pdf

5) Michigan Law PA 51 of 2002 previously known as HB # 4672 of 2002. States intermediate and local school districts must review their medication policy with MDE model policy at an open board meeting by March 15, 2003.

Attorney General Opinion, No. 5679, April 11, 1980. A physician must delegate and supervise the act of medication administration if the school district does not employ a school nurse.

Delegation and Supervision

1) Michigan Public Health Code 1978 PA 368, as amended, Part 161 General provisions. 333.16104 “Delegation” means an authorization granted by a licensee to a licensed or unlicensed individual to perform selected acts, tasks, or functions which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee and which, in the absence of authorization, would constitute illegal practice of a licensed profession.

2) MCLA 333.16109(2)(c)-Public Health Code regarding supervision, requires that the licensed supervising health professional provide predetermined procedures and drug protocol for the use of an individual whose work is overseen by the professional.(BD)
The licensee who delegates an act, task, or function must supervise the delegatee

Preschool

1) Public Health Code (Excerpt) Act 368 of 1978. Preschool aged children registered in program of group residence, care or camps require certificates of immunization.

CPR/FIRST AID

CPR/First Aid Certification for newly hired teachers – Enrolled HB 4038 of 2003.
Requires newly hired teachers to be certified. Nothing is stated about continued certification.

Before or After School Programs

Enrolled HB 5583 of 2002 – Requires MDE in consultation with C&I to develop model standards that address human relationships, indoor environment, activities, safety, health and nutrition. Local School Districts, Intermediate School Districts, etc, shall develop, adopt and annually review a policy addressing at minimum, safety procedures including first aid, food safety, discipline, dispensing and storage of medication and access to emergency information & telephone numbers.

Pending Legislation

Psychotropic drugs

HB 4024 of 2002-03 Recommend wording like passed HB 5083 of 2001

HB 4025 Model Policy for Psychotropic Drugs in Schools

Sports Safety

Senate Bill 179 Hammerstorm. Requires during practices, scrimmages, and games that someone is certified in Sport Safety Training.

Epi-Pen/Adrenaline

HB 4518 of 2003 – Substitute as passed by House allows EMS to administer & carry adrenaline if trained for severe allergic reactions.

Guidelines and Standards for Schools:

Michigan High School Athletic Association

No student is eligible to represent a high school unless there is on file in the superintendent, athletic director, or principal's office a statement that in the current school year the student has passes a physical exam and is physically able to compete. If not, this would be use of an ineligible player.

Medications

Model policy and guidelines for administering medications to pupils at school.

Model policy -

http://www.michigan.gov/documents/Medication_Policy_Nov_25,_2002_51010_7.pdf

Asthma

Model policy available from the Michigan Department of Education.

Model policy -

http://www.michigan.gov/documents/Medication_Policy_Nov_25,_2002_51010_7.pdf

Diabetes

Model policy available from the Michigan Department of Education.

Model policy -

http://www.michigan.gov/documents/Medication_Policy_Nov_25,_2002_51010_7.pdf

Preschool Children

Head Start Program (federal) requirements include a physical exam based on EPSDT guidelines; dental exam; immunizations; vision; hearing and developmental screening and a nutritional snack and lunch.

MSRP (state) requires a physical exam, immunizations, and a nutritional snack.

Issues for Schools:

Public Act 368 of 1978 (Public Health Code) , Part 9101. Mandates that the department (MDCH) shall establish a plan for health services for pupils in elementary and secondary schools of this state. Plan shall include a definition of school health services and standards for implementation. This plan has not been updated since the original early 1980 plan. It is imperative that this plan be updated for the safety of students and liability of school districts & personnel.

There is not a **funded** coordinated school health program for the state of Michigan causing gaps in care for children. MASN is supportive of a coordinated school health programs, but there are many specific health and safety areas that are best addressed with school nurse participation. The health service component of the coordinated school health program is very **underdeveloped**.

School districts within the state of Michigan address the health and safety needs of children attending school differently. Districts choose whether to employ school nurses to meet these needs resulting in unequal access to school nursing services for children.

Children with chronic illness, such as, asthma, severe allergies, diabetes, seizures are at risk for death and/or disability because there are not emergency plans in place. Furthermore, school staffs are not being trained and supervised by a licensed professional to provide medications and treatments at school. Few primary care providers are initiating health plans for students with chronic illness which leaves parents left trying to manage their child's illness at school without professional nursing support and coordination of care.

Conflicting and/or unclear laws, rules, and guidelines from the state and federal government cause confusion when delivering school health services, e.g., delegation and supervision (PHC), HIPAA, FERPA, IDEA, and Section 504.

Safety concerns for all children because of a lack of policies regarding first aid/disaster training for school employees.

The focus of current medication laws removes liability from individuals in the school district and do not advocate for the safety of the students. Medication laws that advocate

for the safety of children would provide for training for school staff to administer medications.

There may be poor access to health care due to no health insurance or inability to access health insurance when it is available.

Long-term health for our children's future is compromised because current health needs are not being met, e.g., poor oral health, obesity, poor nutrition, and lack of physical exercise

Children come to school in many ways unprepared to learn to the best of their ability because of poor health status (lack of sleep, insufficient nutrition, limited exercise, no glasses, inadequate health care).

How a School Nurse Can Meet the Objectives:

Participate in the development of a comprehensive school health plan for the state of Michigan with other governmental structures and agencies (state level).

Develop and implement standards of care for school health related services, such as, minimum standards for school health services, medications, management of chronic illnesses, confidentiality, delegation, health promotion, communicable diseases, school based health clinics, first aid/disaster response (state level).

Provide direct school nursing services within a school/school district, which would include:

Development of policies and procedures/guidelines to provide a minimum standard of care for school health services

Advocacy

Development, implementation and evaluation of care plans for students with known health conditions (required by IDEA and 504)

Referrals for primary care, dental care, vision and hearing, community services

Case management for chronic illnesses, such as, asthma, diabetes, seizures, severe allergies

Appropriate delegation and supervision of health services for children with special health care needs

Identification and referral of children who are being abused and neglected

Home visits to reach unreachable families

Health promotion for students and families regarding nutrition, physical activity, safety

Illness/injury assessments and care, including appropriate referrals

Staff training regarding medication administration, first aid/disaster care, bloodborne infectious diseases

Safe medication administration

Safe medical/health treatments for students needing them during the school day

Immunization monitoring and follow-up

Communicable disease detection, reporting, and response

Coordinate immediate access to health services at school, such as, school based health clinics, mobile dental services

Quality measurement of the safety of health services provided in school.

Assisting families with uninsured children to obtain health insurance coverage.

Facilitate School Health Councils

Partners

Michigan Nurses Association

Michigan Department of Community Health

Michigan Department of Education

Michigan Council for Maternal Child Health

Michigan Chapter American Academy of Pediatrics—School Health Committee

Children's Advocacy Network

Michigan Association of School Boards

Michigan Parent Teachers Association

NOTES:

MCLA-Michigan Compiled Laws Annotated

HB – House Bill

BD – Beth Derwin, J.D., M.S., R.N., C.N.A.A. Presenter for Michigan Association of School Nurses. “Legal Issues Affecting School Nurses”

DC – Donna Craig, RN, JD. Presenter. Legal Issues for Nurses Working in Schools, December 4, 2002

PHC – Public Health Code

MDE – Michigan Department of Education

MDCH - Michigan Department of Community Health