

1) Please type the answer to PT-A below. (Essay)

Columbia Department of Education
300 King Street
Springfield, Columbia

February 21, 2017

Marilyn Cones, Esq.
Associate General Counsel
Columbia Nurses Association
2000 Franklin Street
Mapleton, Columbia

Re: Legal Advisory

Dear Ms. Cones,

Thank you for your letter expressing your concerns regarding the Legal Advisory by the Columbia Department of Education (Department). After internal review and research, the Department declines to withdraw the Legal Advisory and we stand firm on our position that: (1) the Columbia School Medication Act authorizes school personnel who are not school nurses - unlicensed school personnel - to administer insulin to students with diabetes, including by injection; and (2) the Columbia Nursing Practice Act does not prohibit them from doing so. Please see below for our responses to each concern you brought up.

First in your letter, you assert that "the School Medication Act does *not* authorize unlicensed school personnel to administer insulin to students with diabetes, [... the act] authorizes unlicensed school personnel only to assist students with medication, that is, only to *help* students administer medication to

administering the insulin for him or her. However, while we do agree that there's a certain ambiguity to the statute on its face, it is quickly made clear by the legislative history that the legislature meant the first definition.

In your letter, you also cited the legislative history of the School Medication Act as additional support for your position, saying that in 2002 the Governor vetoed the Legislature's attempt at amending the School Medication Act to authorize unlicensed school personnel to administer insulin to students with diabetes. While it is true that the Governor vetoed that amendment, the reasons for doing so are contrary to those that you claim. In fact, the historical and statutory notes record that in the Governor's veto message, the Governor stated that "Section 3 'already provides that any student who is required to take ... medication ... may be assisted by unlicensed school personnel,' and hence already authorizes such personnel to administer insulin to students with diabetes." Governor's Veto Message to Assem. on Assem Bill No. 481 (2002 Reg. Sess.) (Sept. 26, 2002) (emphasis added). Regarding medicine, the plain meaning of the word 'administer' is defined as "to give remedially by placing into or onto the body." *21st Century American Dictionary*. (Third Edition, 2016). It is made clear by the legislature that they used 'assist' and 'administer' interchangeably while referring to giving insulin to diabetic students.

In addition, additional support of the original Legislative intent can be found in Section 1(c) of the School Medication Act, where the text states that "[t]he Legislature finds there is a severe shortage of school nurses in this state and declares that it enacts this statute to address that shortage."

Therefore, the text of the School Medication Act shall be construed to include that unlicensed school personnel have the backing of the law to administer insulin and other medication to students with the physician's orders and the consent of the student's parent or guardian. The statute shall be read this way to avoid reading the statute in a manner that will obstruct the accomplishment of

Congressional objectives.

Second, you claim unlicensed school personnel are prohibited from administering insulin to students with diabetes under the Nursing Practice Act for the act provides that, unless he or she possesses a license, no person may engage in the practice of nursing, which includes the administration of medication. Additionally, you claim that none of the exceptions allows unlicensed school personnel to administer insulin to students with diabetes. The Nursing Practice Act provides that it does not prohibit "the performance by any person of such duties as required in the physical care of a patient in accordance with orders issued by a physician."

We disagree. We assert that unlicensed school personnel does fall under an exception under Section 4(e), since it states that "this statute does not prohibit... the performance by any person of such duties are required in the physical care of a patient in accordance with orders issued by a physician, as long as such a person does not hold him-or herself out as a nurse." The School Medication Act would comply with such an exception since unlicensed school personnel are only required to administer insulin in accordance with orders issued by a physician under Section 3(a) and that school personnel would not identify themselves as being a nurse to students.

While it would be ideal for nurses to administer insulin to students, this is simply not possible at the moment. You are probably well aware that Columbia is experiencing a severe nursing shortage, ranking 50th in the nation in number of nurses per 100,000 population. State of Columbia, Board of Nursing. *The Nursing Shortage in Columbia: Policy Advisory* (January 15, 2017). This has hit public schools in Columbia especially hard since it faces an ever-increasing school nursing shortage. *Id.* There are more than 6 million students in Columbia public schools, and among them, 600,000 have some sort of disability, including 14,000 with diabetes. *Id.* There are only 2,800 school nurses to care for all of

these 6 million students, constituting only 1 school nurse for every 2,200 students; only 5 percent of schools have a school nurse full-time; 69 percent have a school nurse part time; and 26 percent have no school nurse at all. *Id.*

This is especially problematic since as you know, diabetes must be managed 24 hours a day, 7 days a week. See, U.S. Dept of Health and Human Services, *Helping the Student with Diabetes Succeed: A Guide for School Personnel* (Sept. 1, 2016). Insulin must be administered at unpredictable, as well as predictable times in the course of the school day, at unpredictable as well as predictable places on and off campus, including in the classroom and on field trips and during extracurricular activities. *Id.* Yet with the current nursing shortage in our schools, there will definitely be a situation where a student is in need of an insulin injection to control his blood glucose levels, yet no school nurse is available to administer it since he is enrolled at one of the 26 percent of schools without a school nurse, or because he needed an injection when the nurse was not available. Fortunately, administering insulin is within the skill level of unlicensed school personnel, for the same guide does on to say that "...administering insulin [is] well within the competence of practically all adults and many young people as well." *Id.*

When one takes into account the current School Nurse shortage (which is written into the Legislative intent and text of the School Medication Act), the text of the Nursing Practice Act "shall be construed broadly in order to give effect to the intent of the Legislature, which is to promote the health and safety of the people of this state." Section 35. Meaning that unlicensed school personnel administering insulin to students should fall under the exception written out in Section 4(e).

Third, while you agree with the Legal Advisory that students with diabetes have a disability and need medication and access to insulin under the Individuals with Disabilities Education Act (IDEA), it does not displace state statutes.

We agree with you that it does not displace state statutes. In fact, in our situation, both statutes support our position that (1) the Columbia School Medication Act authorizes school personnel who are not school nurses - unlicensed school personnel - to administer insulin to students with diabetes, including by injection; and (2) the Columbia Nursing Practice Act does not prohibit them from doing so. Please see above for our analysis.

Additionally, you cited *Davis v. Francis Howell School District* (U.S. Dist. Ct., N.D. Columbia, 2015), claiming that under IDEA, it does not grant students with disabilities any right to medication except as needed. Congress stated the IDEA's purpose as to include "ensure[ng that] all children with disabilities have available to them a free appropriate public education that emphasizes special education and related health care and other services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. Section 1400(d)(1)(A). The health care services to which students with disabilities have a right include the administration of needed medication. 34 C.F.R. Section 300.34(c)(13). If there is any prohibition in state law that stands as an obstacle to the accomplishment of IDEA's objectives, the state statutes are preempted under the Supremacy Clause of the US Constitution. *Hines v. Davidowitz* (US Supreme Ct. 1941).

We disagree with your interpretation of the *Davis* case. The facts in *Davis* state that the parents claimed that the Francis Howell School District violated the IDEA by refusing to administer their son, Shane, his prescribed dose of Ritalin to treat his ADHD. Shane's physician prescribed a daily dosage of 360 milligrams of Ritalin to control his ADHD symptoms. However, the school nurse refused to give the medication because it far exceed the recommended maximum dosage of 60 milligrams stated in the Physician's Desk Reference, which she was entitled to do so under the Columbia Medication Review Act. The court ruled that "[n]ot a word of the IDEA's language supports the existence of any right to receive

medication in a potentially dangerous dosage, [nor is there any] extrinsic material supporting a reading that the IDEA granted any student with any disability a right to receive even needed medication in a potentially dangerous dosage." *Davis*. (emphasis cited from original).

Therefore, the ruling in *Davis* shall be narrowly construed that the IDEA does not support the existence of any right to receive medication in a potentially dangerous dosage. This does not apply to our situation here since insulin administered to students with diabetes shall be restricted to safe amounts as prescribed by the students' physicians. In addition, even if your arguments do hold weight in the eyes of the court, they are preempted by the IDEA through the Supremacy Clause of the U.S. Constitution.

Finally, you mention that the administration of insulin should be taken seriously as it has been identified as a "high-alert" medication by the United States Department of Health and Human Services, and therefore too dangerous for unlicensed school personnel to administer.

We disagree. Upon reviewing the cited bulletin, nothing in it states that administration of said medications should be limited to licensed personnel, but that numerous strategies should be used, such as: "improving access to information about these substances; limiting access; using auxiliary labels and automated alerts; standardizing ordering, storage, preparation, and administration; and employing redundancies such as automated or independent double-checks when necessary." U.S. dept. of Health and Human Services, *High-Alert Medications* (Jan. 1, 2017).

The Department assures the CNA that all such relevant strategies will be used when unlicensed school personnel are asked to assist in administering insulin to students, including limiting access to school personnel only, and educating staff as to the dangers that insulin can pose to students when administered

incorrectly.

In conclusion, the Department urges the CNA to not initiate an action to declare the Legal Advisory invalid as contrary to law. The Department is confident that it would prevail in such action with the full backing of the law behind it. Likewise, the Department urges the CNA to not waste its limited resources in litigation, but to use such resources wisely for the benefit of all of Columbia to assist the Board of Nursing in solving the statewide nursing shortage here in Columbia. If you have any additional questions about the Legal Advisory or about the points raised in this letter, please feel free to contact me.

Sincerely,

James Wood

James Wood
General Counsel

Question #1 Final Word Count = 2235

END OF EXAM