

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

Columbia Department of Education
300 King St
Springfield, Columbia

Columbia Nurses Association
2000 Franklin Street
Mapleton, Columbia

February 21, 2017

RE: Demand Letter concerning Department Legal Advisory

Marilyn Cones,

The Department received your demand letter dated February 16, 2017. The Department does not agree with your demand letter and unsound arguments and declines to withdraw the Legal Advisory for the following reasons. The Department urges the CNA to drop this issue and do what is best for diabetic students.

The SMA authorizes school personnel to administer insulin to students

As you are aware, when construing a statute, the court effectuates the intent of the legislative body. Smith v District Court 15th Cir 2006. First, the court looks to the language of the statute and gives the words their usual and ordinary meaning. Cummins, Inc. v. District Court (15th Cir 2005). If the words are unambiguous, the plain meaning will be assigned. If the words are ambiguous then the court will look to extrinsic materials including legislative history and

background facts. Smith, Supra. When resolving ambiguity, the court will adopt a reading that yields reasonable results. Further, the court avoids reading statutes in a way that would set up an obstacle to Congressional objectives, which would render the statute preempted under the Supremacy Clause. Santa Clara County Local Transportation Authority v. Guardino (15th Cir. 1995).

Section 1 of the SMA states that the, "statute shall be construed broadly in order to give effect to the intent of the Legislature, which is to promote health and safety of students in the public schools of this state." SMA §1. Further, Section 1 also states that the Legislature finds that the SMA is enacted to address the shortage of school nurses. As I'm sure you are well aware, Columbia is facing a public health crisis because of the shortage of nurses. The Nursing Shortage in Columbia: Policy Advisory (Policy Advisory) (State of Columbia Board of Nursing) January 15, 2017. This shortage means that the number of school nurses is also very low. In fact, there are only 2,800 school nurses to care for more than 6 million students. This means that there is 1 school nurse for every 2,200 students. *Id.* Further, only 5 percent of schools have nurses full time. Diabetes is a full time disease and when a child is in need of their medication, they often need someone to administer it.

Section 2 of the SMA is relied on by the CNA because it states "no person shall administer medication to any student in any public school in this state." However, Section 3 provides an exception to this broad rule. Section 3 provides that a student who is required to take medication prescribed to them, "may be assisted by a school nurse or by other school personnel, *whether or not such personnel are licensed as health care professionals*, if the school district receives the appropriate written statements identified in subsection (b)" (emphasis added) SMA § 3(a). Subsection (b) provides that in order for the student to be assisted pursuant to subsection (a), the school shall obtain written verification and description of the medication to be administered to students and written consent by the student's parent or guardian providing that the school district may provide

assistance to the student in complying with instructions given by the doctor. id.

Using the statutory canons of construction, the plain language expressly means that an unlicensed school personnel may assist a student with their medication. The word assist in Section 3 is arguably ambiguous. Assist means, "to give support or aid another by doing something for the other... or helping the other do something him or herself." Similarly as an intransitive verb it means "to give support or aid." 21st Century American Dictionary Third Edition, 2016.

Section 4 provides the protocol necessary to enable a student to "administer" their own insulin. The School must receive written orders from the student's doctor and consent from their parent/guardian to administer their own insulin. Administer means "to manage or supervise the execution, use, or conduct." 21st Century American Dictionary Third Edition, 2016. It can also be construed to mean "dispense." Id. Thus, administer is also an ambiguous term.

Since the words "administer" and "assist" are ambiguous terms. The court will look to the legislative history and intent to resolve the ambiguity. Smith. Again, under Smith v District Court, the fundamental task of the court when construing a statute is to effectuate the intent of the Legislature. 15th Cir 2006. When looking to the legislative history of the CMA, it is clear that the intent of the legislature was to include diabetes medication in the types of medication that school personnel could administer. In 2002, the Legislature passed AB 481 which would have amended section 3 of the SMA to explicitly provide that other unlicensed school personnel could administer insulin. However, the Governor vetoed the bill because he 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 AB 481 (2002 Reg. Sess.) (Sept. 26, 2002). Your demand letter mentions the veto but failed to look into the reason why the Governor vetoed the Bill. Had you looked into the

reasoning, you would clearly see that his reasoning favors the Departments position.

Furthermore, this construction is in line with the US Department of Health and Human Services Policy. The Department of Health and Human Services recognizes that insulin must be administered at both predictable and unpredictable times during the course of the school day. Helping the Student with Diabetes Succeed: A Guide for School Personnel, USDHHS, September 1, 2016. The Guide also provides that collaboration among the school nurse or "other school personnel," physicians, and the student's parents/guardian is essential to proper diabetes management. Id.

Your argument that the SMA authorizes unlicensed school personnel to only assist students with medication, and not administer medication to students only proves the Departments point that the term assist is ambiguous. Further, not allowing school personnel to administer insulin creates an unreasonable result that conflicts with the purpose of a federal objective, the Individuals with Disabilities Education Act (IDEA), 20 USC Sections 1400, et seq.. The IDEA grants students with disabilities a right to a free appropriate public education, with a complementary right to health care services, at no cost to themselves or their families, in order to enable them to take full advantage of educational opportunities equally with their peers. If the SMA were to be construed to mean that school personnel could not administer insulin, this would undermine the IDEA objective because parents would have to homeschool their children or enroll them in private institutions with full time nurses. It is true that some diabetics are able to administer their own insulin, but not all can do so and there must be procedures and safeguards to guarantee disabled students safety in the absence of a full time nurse.

Thus, the Legislative intent and history demonstrates that the SMA authorizes school personnel to administer insulin to diabetic students. Therefore, the

Department declines to withdraw our Legal Advisory.

The NPA does not prohibit unlicensed school personnel from administering insulin to students with diabetes

Like the CMA, the NPA explicitly states that it is to be construed broadly. NPA § 35. The CNA erroneously relies on Sections 2 and 3(a)(2) to argue that no person may engage in the practice of nursing, including the administration of insulin. *Id.* However, Section 4(e) of the NPA explicitly states that the statute 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 the physician, *as long as such person does not hold him- or herself out as a nurse.*" (emphasis added) *Id.*

Here, the school personnel would not be engaging in the practice of nursing because the school personnel is acting under the direction of a physician and the child's parent/guardian. The school personnel are not holding themselves out to be nurses. The plain language of Section 4 is enough to render that the NPA does not prohibit the school personnel from administering insulin to disabled students. The CNA cites to no legal authority or policy that suggests that the plain language of Section 4(e) means anything other than what it explicitly states. Under statutory construction, this is where the analysis stops.

However, even if we were to look to the legislative intent, the NPA expressly provides that the intent of the Legislature is "to promote the health and safety of the people of this state." NPA § 35. Here, the state is suffering from a nursing shortage and the legislature does not want to punish disabled students because of this fact. If one were to construe the NPA to mean that school personnel could not administer insulin to diabetics, this would not be in line with the Congressional intent of the IDEA.

Thus, the NP does not prohibit unlicensed school personnel from administering insulin to students with diabetes. Therefore, the Department again declines to withdraw our legal advisory.

These statutes are in line with the Congressional objective of the IDEA

The Supreme Court found in Hines v. Davidowitz, that "any prohibition in state law that stands as an obstacle to the accomplishment of Congressional objectives is preempted under the Supremacy Clause of the United States Constitution." Davis v. Francis Howell School District. US District Ct for the No. Dis Ct of Col (2015); See Hines v Davidowitz (US Supreme Ct. 1941). This means that if a state law is in conflict with the IDEA, the IDEA will preempt the state law. However, as articulated above, the NPA and CMA explicitly grant non-licensed school administrators the authority to administer medication as prescribed to students. Thus, there is no conflict between the state and federal laws.

As you are aware, the Davis v. Francis Howell School District. case is the fundamental case concerning the IDEA. Id. US District Ct for the No. Dis Ct of Col (2015). The CNA relies on this case to argue that the IDEA does not grant students with disabilities any right to medication except as needed. The Department agrees with this notion. The Advisory letter does not grant students with disabilities a right to medication at any time they want. Instead, the CMA provides that the medication must be administered pursuant to the physicians orders and with the consent of parents. Thus, allowing nonlicensed school personnel to administer the medication does not give the personnel unfettered authority to administer the medication as they deem acceptable. They must follow the physicians orders.

The situation is different than the Davis situation because the facts are fundamentally different. In Davis, the court construed the Medication Review Act

(MRA) by using its plain meaning to find that the MRA did not create an obstacle to the Congressional objectives of the IDEA. In the case, a school nurse refused to administer a dangerous dosage of Ritalin to a student suffering from ADHD. The student's parents argued that this statute should be preempted by the IDEA because it created an obstacle. The MRA states that a "school nurse has the right and obligation to refuse to give any medication in excess of the recommended maximum dosage as stated in the Physician's Desk Reference." MRA § 3. The court held that "the IDEA does not grant any student with any disability a right to receive even needed medication in a potentially dangerous dosage." Davis. This objective of the MRA was found to be in compliance with the IDEA and thus not preempted by it. Likewise, the SMA and NPA do not preempted by state statutes because using the canons of statutory construction any other construction would yield unreasonable results and would create an obstacle to the Congressional objectives in the IDEA.

Furthermore, the CNA seems to use the dangerous language from the Davis decision to argue the ridiculous notion that Insulin is too dangerous to administer. The Davis decision concerned a nurse who used the Medication Review Act to refuse administering a dangerous dosage of medication to the student. While the Department agrees that insulin is not a trivial matter, it is not as dangerous as your demand letter makes it out to be. Insulin is listed as a high alert medication by the US Department of Health and Human Services. High-Alert Medications, USDHHS January 1, 2017. High-alert medications are substances that carry a heightened risk of causing significant patient harm when they are used in error. *Id.* There are special safeguards to reduce the risk, one of those is storage. Insulin must be kept at a certain temperature at all times. Generally, it is stored in a refrigerator or when the patient is planning to be out for the day they have the insulin surrounded by cool packs or in a cooler. This is the only high risk with insulin. The school personnel will keep the insulin stored properly. Other than that, the school personnel will be administering the dosage pursuant to the physician's directions. Thus, insulin is not "too dangerous" for school personnel to

administer. CNA's argument to the contrary is without merit.

In conclusion, the Department will not withdraw its Legal Advisory. The Legal Advisory is not contrary to law, in fact the law fully supports the Departments position that the SMA and NPA authorize unlicensed school personnel to administer insulin to students with diabetes. The SMA and NPA both support the Congressional objective found in the IDEA to support students with disabilities and provide a free appropriate education to them.

We urge the CNA to do what is right and drop this issue entirely. However, we are prepared to go to court over this and the law is on our side. The Department is looking out for the best interests of our disabled students especially in light of the public health crisis caused by the shortage of nurses in Columbia.

Sincerely,

James Wood, Esq
General Counsel.

Question #1 Final Word Count = 2354

END OF EXAM