

The Educator as Doctor, Nurse, Pharmacist, Patient



By Matthew Pence, PAGE Staff Attorney

Throughout the school year, public school educators are often directed to store and administer to students a variety of medications. Moreover, educators are expected to be knowledgeable about the medical impairments of their students. Furthermore, educators often report for duty with medication for their own personal use. Dealing with medication in public schools requires strict adherence to established protocols that educators should not take lightly. The following scenarios are typical of the medication issues that arise in the school setting:

Suzie is in the fourth grade. She has an allergy to bee stings and carries an EpiPen. She knows how to administer the EpiPen. One day at recess, she is stung by a bee, but has difficulty injecting the EpiPen. Ms. Jones, her teacher, administers it for her.

Amy, an 11th-grader, suffers from severe headaches. She keeps Excedrin in her purse and takes it as needed. During English class, Devon, another student, tells Amy he has a headache. Mrs. Smith, their teacher, sees Amy give him the medication and sees Devon take two pills. The next day, Amy forgets her Excedrin. Mrs. Smith keeps a supply of Tylenol in her file cabinet. She

gives Amy two Tylenol for her headache.

Johnny is a special education student who uses a catheter. As part of his IEP, his teachers must change his catheter. Ms. Williams, his teacher, is nervous about doing this duty because she is afraid that she will hurt him.

Mr. Greene, a teacher, has a chronic condition that requires him to take a prescription medication every day with lunch. He brings the entire month's supply of pills to school with him and leaves them hidden away on the bookcase next to his desk. He takes one daily at lunch.

THE EDUCATOR AS MEDIC:

The starting point in analyzing legal issues regarding medication is each school system's medication policy. Generally, school systems in this state require that all medications brought to school by students be stored in a secure centralized location, such as the front office or a nurse's office. This includes prescription medication and over-the-counter medications, such as Tylenol or Advil. The staff or faculty member in charge of medication should make sure that it is identifiable and has an accompanying note from the parent/guardian and the prescribing physician. This should include a description of the medication, as well as the instructions for the administration of the medication.

When administering medicine, the educator should take the appropriate steps to ensure that he or she is administering the correct medication to the correct student. Also, the educator should keep a log of medication administered to each student on a

given day. Many school systems require this as part of their medication policies.

State law does allow students to carry certain medications with them at all times and to self-administer them if the need arises. These three exemptions involve the carrying and administration of auto-injectable epinephrine (EpiPen) by students¹, possession and administration of asthma medication², and certain equipment for the treatment of diabetes³. In each of these circumstances, students are allowed to keep certain needed medications in their possession, such as the EpiPen for allergies or an inhaler for asthma. Diabetic students will have on file with the school a diabetes medical management plan that dictates which medicine and/or equipment the student will possess and administer to himself/herself (if at all). For EpiPens, state law requires both a physician's authorization of the EpiPen and parent permission for the student to carry the EpiPen. In the example involving Suzie, the student is legally allowed to carry the medication because time lost transporting her to the nurse or transporting her medication from the nurse could result in severe harm. Furthermore, Ms. Jones, her teacher, is allowed to administer the EpiPen to her, as the same state law prohibits liability so long as Ms. Jones does not engage in misconduct that is willful or wanton. Here, Ms. Jones has not engaged in misconduct; in fact, she has behaved appropriately.

There seems to be a general expectation among school systems that students should not carry any type of medication unless it falls into one of the exceptions above. While it is common for students, particularly older students, to bring over-the-counter medication for headaches, sore throats and muscle aches, many school systems in Georgia hold this to be a violation of board policy. In situations involving the administration of over-the-counter medicine, the general requirement is that

Students often bring over-the-counter medication for headaches, sore throats and muscle aches, but many school systems hold this to be a violation of board policy. The general requirement is that the student must turn medicine over to the person in charge of medication along with a note from the parent/guardian explaining what the medication is for and how long the student will need to take it.

the student must turn the medication over to the person in charge of medication along with a note from the parent/guardian explaining what the medication is for and how long the student will need to take it. There is no general requirement for an accompanying note from a physician when storing or administering over-the-counter medication. In the scenario involving Amy, Mrs. Smith has behaved inappropriately by allowing Amy to keep the medication. Also, she should not allow Amy to give Devon any medication, regardless if she thinks or knows that it is over-the-counter.

THEY WANT ME TO DO WHAT?

While the administration of a pill or syrup to a student is a relatively easy task, educators might often be called upon to perform what appears to be a more complex medical procedure. Oftentimes, this scenario arises with special education students. Under the Individuals with Disabilities Education Act, all schools that receive federal funds must provide disabled children with special education and “related services.” A school system’s personnel do not have to perform medical services. Per IDEA, “medical services” are those services that are provided by a licensed physician. This has been affirmed by the United States Supreme Court.⁴ The threshold question is whether the delegated duty or service to be provided requires the skill and expertise of a licensed physician. If the answer is no, then the district and its personnel may be legally obligated to perform the duty or provide the service. In the example involving Johnny, the district can be legally required to change a

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catheter because that does not require a licensed physician. However, Ms. Williams, his teacher, must take appropriate steps to protect herself from liability, such as securing the appropriate training to perform the duty, communicating her concerns to her administrator and finding another adult to be with her while she performs the duty.

THE EDUCATOR AS A PATIENT

Every day, educators report to school with health issues ranging from minor to serious. In these circumstances, many educators bring medication to school. While the starting point remains the local district’s policy, those policies do not often address what steps an educator should take when storing his or her own personal medication. Therefore, educators must behave reasonably. Reasonable behavior in this regard means that the educator must secure the medicine in a manner that keeps it from getting dispersed into the school population. It is best practice to lock the medication in a file cabinet or a drawer. Moreover, only a very limited supply of the medication should be stored at school. Under no circumstances should an educator ever give medicine prescribed to himself or herself to a colleague or a student. From the examples, Mr. Greene is placing himself in peril because he has brought too much medication into the school and is not keeping

it secure. Also from the examples, Mrs. Smith should not give Amy any Tylenol that she brought to the school for her own personal use.

It is worth noting here that an educator with a medication issue might best be served by seeking a reasonable accommodation under the Americans with Disabilities Act.

For questions regarding your particular situation and the ADA, feel free to call the PAGE Legal Department and speak to one of the attorneys on staff.

THE PRESCRIPTION FOR AVOIDING MEDICATION PITFALLS

Medication laws and policies are written to protect all who enter the public schools. Unsecured medication circulating among students can result in horrible consequences. To best protect themselves and serve their students, educators need to familiarize themselves with local board policies governing medication and become familiar with all medical and health needs of their students. Make sure all medication, including over-the-counter, is secured and stored per the local school system policy. Finally, educators should use caution when securing all personal medication by bringing as little as possible into the school and making sure it is in a drawer or cabinet that is locked.

For questions regarding medication or any other legal issue, call the PAGE Legal Department at 770-216-8555. ■

1. Ga. Code Ann. § 20-2-776 (2014).
2. Ga. Code Ann. § 20-2-774 (2014).
3. Ga. Code Ann. § 20-2-779 (2014).
4. Cedar Rapids Community School District v. Garret F., 526 U.S. (1999).