Health Services Under the IDEA: Diagnosing the Problems

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Are health services a related service under the IDEA?

- “Related service” is defined as transportation and such developmental, corrective and other supportive services required to assist a student with a disability to benefit from special education . . .34 C.F.R. § 300.34(a)
- Specifically included in the definition are “school health services” and “school nurse services”

- “School nurse services” – services provided by a qualified school nurse
- “School health services” – services that may be provided either by a qualified school nurse or otherwise qualified person

34 C.F.R. § 300.34(c)(13)
Questions to Consider:

- Does the student have a health condition that effects the student’s ability to access special education?
- What specific health-related services does the student require to benefit from special education?
- Are those services medical services or school health or nurse services?
- What will be the frequency and duration of the services?
- What will be the location of the services?
- Who will provide the services – a school nurse or other qualified person?
- Who is “other qualified person” and what training/supervision must be provided to this person?

What is the difference between school health services and school nurse services and medical services?

“Medical services” are those that must be provided by a doctor. The school district must provide medical services as a type of related service only for evaluation purposes to determine a medically related disability. Reg. 300.34(c)(4)
USDOE Guidance – 2006

“Each public agency is responsible for providing services necessary to maintain the health and safety of a child while the child is in school, with breathing, nutrition and other bodily functions (e.g., nursing service, suctioning a tracheotomy, urinary catheterization) if these services can be provided by someone who has been trained to provide these services and are not the type of service that can only be provided by a licensed physician.” 71 Fed. Reg. 46571 (2006)

- There is no “multi-factor” view to determine if a required health service is a related service or excluded as a medical service.
- There is only a bright line test – is a doctor required to provide the required health service?
  - Yes = “medical service”
  - No = “related service”


Medical Devices

- The IDEA specifically excludes “a medical device that is surgically implanted, or the replacement of such device” from the definition of a related service.
- The IDEA draws a sharp distinction between maintenance services (e.g. checking and replacing hearing aid batteries) which are covered in the act and optimization of devices (e.g. mapping of cochlear implants) which are NOT covered

34 CFR 300.34; Petit v. U.S. DOE, 58 IDELR 241 (D.C. Cir. 2012)
The IEP must state the special education and related services and supplementary aids and services that will enable the child to . . .

(a) Advance appropriately toward attaining the annual goals;
(b) Be involved and progress in the general education curriculum; and
(c) Be educated and participate with other children with disabilities and nondisabled children.

Should health services and/or nursing services be included in the IEP?

What to put in the ARD?

- Frequency of the necessary health/nursing service
- Duration of the necessary health/nursing service
- Location of the necessary health/nursing service
- Position of the district staff member(s) [more than one] providing the health/nursing service
- Necessary training of the staff member(s)
School district is required to evaluate in all areas of suspected disability and need, including health services or nursing services. Information provided by a student’s physician is important information for inclusion in a health services/nursing services evaluation and IEP development. Obtaining expert guidance from own medical professionals also important and may be necessary if parent provides incomplete information.

**FACTS:** Parent and school had a dispute regarding the extent and type of health services required. School sought to do its own medical evaluation to get complete information after parent limited the school’s access to the student’s doctor. Parent refused to consent. School sought to override lack of consent.

**HOLDING:** School was entitled to do its own medical evaluation. Such a medical evaluation was not a violation of the student’s right to privacy. The parent could decline IDEA services if she did not want to allow the student to be evaluated.
Parents of child with disabilities could be required to consent to school district’s request to evaluate student by expert of its choice or else forfeit student’s OHI status.

FACTS: LD, SI, and OHI (ADHD) Student. Parent requested homebound placement due to son’s allergies and multiple chemical sensitivities. Student’s doctor wrote a letter and signed homebound referral. There was no evidence from school staff that student was struggling with allergies.

HOLDING: Because the parent failed to provide medical documentation supporting the existence of her son’s allergies and multiple chemical sensitivities, she could not establish that the district unlawfully denied him a homebound placement. Factors considered: (1) doctor never tested the student for multiple chemical sensitivities; (2) doctor examined the student just once in 2011 and once in 2012; (3) student prescribed no medications; and (4) student’s activities outside of school were unrestricted – went to the mall, restaurants, social gatherings, and participated in swimming and soccer.

FACTS: Student with complicate seizure disorder which required extensive experience to recognize the onset of her various seizures. Student’s private duty nurse had spent years with student and had extensive knowledge. District proposed that District staff would train with student’s nurse in order to draft and implement appropriate IEP. Parent refused.

HOLDING: While school district did not develop an appropriate IEP, parent’s requested remedies were denied because the parent refuses to allow district staff to train with private duty nurse. “The development of an IEP is a collaborative process and I find that the refusal of the parents to allow the school district personnel into the home to give important knowledge of the student’s very complex medical condition does frustrate the process. If the actions of the parents are determined to be unreasonable than the school district cannot be faulted for an incomplete IEP.”
Least restrictive environment applies equally to students with health needs as it does to others.

The right to LRE can be curtailed if doing so furthers the best interest of the student’s health and welfare.

Student safety can never be jeopardized simply to achieve technical compliance with the LRE requirement.

However, just because a student is medically fragile does not mean a district must agree to a more restrictive placement.

FACTS: Severely-disabled student, who takes daily immunosuppressive medications, which compromise the student’s immune system and put him at greater risk of infection. Doctor and parent request that student be educated at home. School district offered a gradual transition to a school setting at a small school designed to support medically fragile children.

QUESTION: Is homebound instruction or the school setting the LRE for this student?

HOLDING: Because the school considered all available medical information, as well as the student's educational abilities and needs, the ALJ concluded that the school setting offered FAPE in the LRE. Factors considered: (1) school’s small student population and highly-trained staff, including a full-time RN; (2) school’s commitment to proper infection control precautions; (3) doctor’s generalized impression that public schools are “full of sick kids” not persuasive; and (4) no evidence that school setting was any less safe than his visits to doctors’ offices, other children’s homes, or church, which were all sanctioned by his doctor.

Gwinett County Sch. Dist., 114 LFR 43625 (SEA GA 2014)
FACTS: Medically fragile student with severe disabilities, brain-stem level cognitive functioning, and increased agitated vocalizations and who requires one-on-one nursing care due to unstable and unpredictable health care needs. District’s proposed placement is a habilitation center. Parent requests neighborhood elementary campus.

QUESTION: Was habilitation center the LRE?

HOLDING: Given the severity of the student’s disabilities and the unpredictability of his medical needs, habilitation center is appropriate. Factors considered: (1) speculative benefit of being educated with non-disabled peers at home school is outweighed by health and safety concerns; (2) agitated vocalizations; (3) noise and distraction of continuous nursing interventions; and (4) habilitation center had necessary specialized medical equipment and staff.

Northside ISD, 33 IDELR 201 (SEA TX 2000)

FACTS: 8 year old boy – severe multiple disabilities including cerebral palsy, a seizure disorder, mental retardation, and visual impairment who required routine tracheal suctioning to clear airway.

QUESTION: Is suctioning required to be done in the classroom as the least restrictive environment or can the district remove the student to the health office?

HOLDING: The hearing officer held that there were a number of reasons which justified the school district’s decision to remove the student from the classroom for suctioning including (1) his susceptibility to infection in the classroom; (2) the loud sound of the suctioning machine causing distraction to students who had other health conditions; (3) the health office was the safest and most effective place for performing the procedure; and (4) evidence that the student’s medical condition supported his need for a registered nurse to perform the procedure.

Special Sch. Dist. No. 6, South Saint Paul, Special Sch. Dist. No. 6, South Saint Paul, Special Sch. Dist. No. 6, South Saint Paul, Special Sch. Dist. No. 6, South Saint Paul, 23 IDELR 119 (SEA MN 1994)

FACTS: 5th grade student with a tracheostomy who is wheelchair and ventilator dependent. A private nurse accompanies student to school to monitor student and provide suctioning as needed. From 1st grade through 4th grade, student’s nurse was allowed to use her discretion to decide the location for suctioning in non-emergency situations, which most of the time was done in the student’s classroom. Starting in 5th grade, student’s nurse was required to suction student outside of the regular classroom except in emergency situation.

QUESTION: Is suctioning required to be done in the classroom as the least restrictive environment or can the district require the removal of the student?

HOLDING: The hearing officer found that removing the student from the regular classroom for suctioning violated LRE. The evidence showed that no student, parent, teacher, or administrator had ever complained that suctioning in the classroom was disruptive; the machine was not overly noisy; the procedure took only a few minutes; and other students’ academic performance was not affected.

Wyomissing Area Sch. Dist., 109 LRP 21661 (SEA PA 2007)
FACTS: 15-year old 9th grade student diagnosed with Downs Syndrome Type One Juvenile Diabetes. Required to prick the tip of his finger with a lancet and draw a drop of blood to be placed on a Glucometer strip and inserted into machine to test blood sugar levels every day before lunch. Student needs assistance in interpreting the results of the test.

QUESTION: Can the school require student to go to the nurse's office to have his blood glucose levels monitored?

HOLDING: District denied a student FAPE in the LRE by requiring the student to leave the classroom in order to complete blood sugar testing, when the testing could have been conducted in the classroom with the assistance of a trained adult aide or the student's one-on-one aide. Hearing officer looked at the following factors: (1) minimal health risk of doing the test in the classroom; (2) minimal class disruption; (3) the importance of on-the-spot testing to student’s health; and (4) nursing judgment is not necessary to supervise testing or to interpret results.

Bloomfield Township Board of Educ., 109 LRP 35236 (SEA NJ 2008)


QUESTION: Is suctioning during the bus ride a related service or an excluded medical procedure?

HOLDING: Applied bright line test. Suctioning does not have to be performed by a doctor. A nurse is not required, but even if a nurse was required, it would still be a school health or school nurse service. He had to have the service to get to and from school. It was required for him to benefit from special education.


FACTS: If student suffered epileptic seizure on the bus, he had to have an immediate rectal injection.

QUESTION: Was school required to provide an aide for the student on the bus?

HOLDING: School convinced the ALJ that the driver could adequately treat the child in an emergency and the parent’s demand for an aide on the bus was denied. The district showed that one currently employed bus driver had been trained to recognize the onset of the seizure and administer the medication and that an emergency stop and administration of medicine was feasible within one minute. Factors considered: (1) bus route was short; (2) privacy drape could be used; (3) relative infrequency of student’s seizures (last one 12 to 18 months before hearing); (4) willingness of driver to administer medication; and (5) parents drive student around community with only one adult in the car.

Forest Area Community School, 47 IDLR 117 (SEA MI 2006)
FACTS: Parent’s medical insurance had paid for nursing services for quadriplegic, ventilator–dependent student at school and during transportation. Insurance company sued school for repayment of the costs.

HOLDING: The services were not required to be provided by a doctor. The student required them to be present at school. These were school health services the school should have provided. Insurance company entitled to reimbursement.

Students with Communicable Diseases
- The right to LRE for students with communicable diseases is only restricted when it poses a safety threat
- Showing such threat involves a high standard of proof, which necessarily includes medical evidence
- Focus is on threat to general population
- Must do more than find a “remote theoretical possibility” of transmission

Location Considerations:
- The severity of the student’s medical needs
- The student’s privacy
- The safety of the special education student
- The safety of other students
- Disruption to the class/bus
- The time needed to complete the procedure
- Whether the procedure has to be delivered immediately
- Whether medication and/or equipment can be properly stored at the location
- Whether or not the student needs assistance with the procedure and from whom
If a student must take medication during the school day in order to effectively participate in his/her education program, the administration of the medication is a related service under the IDEA and cannot be refused.

In re: Student with a Disability, 103 LRP 57786 (SEA NM 2003) (holding that a district’s policy of requiring parents to sign a liability waiver or come to the school each day to administer student’s medication ran contrary to the IDEA)

Discussion at ARD:
- The purpose of the medication (as indicated in documentation provided by the doctor)
- Which individuals at the school have responsibility for administering the medication
- Whether any staff training for administration of the medication is needed
- The protocol to be followed in the event of an emergency involving the student and his/her medicine
Texas law also addresses the administration of medication which provides immunity for the employee. Tex. Educ. Code § 22.052.

- District must adopt a policy on the administration of medication by district employees to create immunity.

Medication Administration

- Districts have no obligation under the IDEA to supply a student’s medication. The medication itself is neither special education nor a related service.

School cannot require parents to medicate a student as a condition of attending school, receiving a special education evaluation, or receiving special education and related services. Reg. 300.174

- School staff may speak to a parent regarding academic and functional performance, behavior or the need for a special education evaluation. Reg. 300.174
School has no right to compel the administration of medication to a student. Whether the parent provides medication or not may impact what educational planning is appropriate.

If a parent’s failure to medicate jeopardizes the life of the student, consider whether neglect should be reported to CPS.

Student Self-Medication

Student self-medication may be appropriate in certain circumstances. *Atlanta (GA) Pub. Schs.*, 49 IDELR (OCR 2007) (holding that it is appropriate for districts to require a physician’s note before allowing a student to self-administer medicine)

OCR has held that a district CANNOT rely on a student with ADHD to present herself to take her medication. *San Juan (CA) Unified Sch. Dist.*, 20 IDELR 549 (OCR 1993) (holding that failure to ensure that a student consistently took her medicine violated the student’s right to FAPE)

**FACTS:** Doctor prescribed medication to be given two times a day at school. Second dosage exceeded the maximum per day amount in the Physician’s Desk Reference. Nurse refused to administer the second dose.

**HOLDING:** Policy prohibiting administration of medication in excess of recommended dosage applied to all students. This was not discrimination against disabled students. Policy was rationally related to protecting students’ health. Nurse’s refusal upheld.

**FACTS:** Prescription for seizure medication said it was to be administered by a registered nurse. School refused to hire full-time nurse to administer medication.

**HOLDING:** School’s expert testified that a trained, non-medical person could safely administer the premeasured doses. Principal and Assistant Principal had been trained by nurse. School prevailed.

_Culver County Sch. Dist., 110 LRP 7471 (SEA FL 2009)_

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**WHO WILL PROVIDE THE HEALTH-RELATED SERVICE?**

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Who selects the provider of services?

IDEA case law makes it clear that the school has sole discretion with respect to personnel assigned to provide special education services as long as the student is receiving FAPE. Schools are not required to provide notice to parents or obtain their consent regarding the assignment of personnel.
Court upheld school’s replacement of personal care assistant chosen by the parent with its own employee even though the IEP stated the parents would provide the assistant.

As long as the IEP services are being provided, the parent has no IDEA right to determine who will provide them even if the aide the parent wants is more knowledgeable or better trained.


School was not required to comply with parent’s demand that the school employ her private or home care provider to provide school services.

Zawaler v. Mendy Park City School Dist., 60 Fed. Appx. 27 (9th Cir. 2003)

FACTS: Student was a quadriplegic and required significant health services at school, including a ventilator-trained nurse to perform suctioning and trach-care. Student received the services of a private duty nurse (PDN) and school district allowed PDN to attend school with student while it pursued hiring a nurse. After RN hired, district requested that PDN train new RN and that the District be allowed to consult with student’s doctors. Parent refused to allow training or consent for access to medical information and kept student home from school. District requested DPH. Parent countered for compensatory services.

What do you think happened?
HOLDING: “It is a recognized right of the school district to make personnel selections and determine what personnel will deliver services to the child.” However, the issue is whether the school district personnel are indeed “qualified” to deliver student’s nursing care. Hearing Officer found that district’s efforts to train its nursing personnel were “derailed completely when [parent] refused to allow” PDN to train school district personnel specific to student. In addition, hearing officer found it “absolutely necessary” to have consent to confer with student’s doctors. “In the absence of such consent, [school district] will be relieved of its obligation to provide special education services to [student] at school.”

Plano ISD, 62 IDELR 159 (TEA 2013)

Court denied the demand of nurse/mother to come to school to provide health services. As long as school provides FAPE, methodology, including the selection of personnel, is left to the school.

Monterey Peninsula School District, 38 IDELR 223 (CA SEA 2003)

Court upheld the school’s replacement of a nurse from a private nursing agency used by the parent with its own nurse.

Independent School District No. 728, 30 IDELR 461 (DN 1998); Yuba City Unified School District, 114 LR P 17835 (SEA CA 2014)
A school nurse is an educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act.

If an LVN provides services in a school setting, it should be under the supervision of a RN, physician, or physician’s assistant.

The Texas Board of Nursing provides guidance regarding what tasks may and may not be delegated to unlicensed personnel

22 TAC 225.9, 225.10, 225.11, 225.12

Rule 225 specifically applies to RN delegation to unlicensed personnel in independent living environments for clients with stable and predictable conditions, which is the environment most likely present in the school setting.
Delegation by School Nurse

Examples of some delegable tasks:
- Emergency administration of Epi-pens
- Administration of oxygen
- Nebulizer treatments
- G-tube feedings
- Administration of medication
  - Must provide training
  - Must verify competency

FACTS: Section 504 student with extreme asthma at school with no nurse on campus. School agreed to provide nonmedical personnel with appropriate training in the administration of the student’s asthma medication and agreed that the student would not go outside. Parent refused to send student to school.

QUESTION: Was school required to provide a nurse for the campus to address the needs of this student?

HOLDING: OCR found no violation by school where the district agreed to provide nonmedical personnel with appropriate training in the administration of the student’s asthma medication and where the student’s doctor advised the district that he was not aware of any acute medical reason for keeping the student home from school.

Murfreesboro City Sch. Dist., 34 IDELR 299 (TN OCR 2000)

FACTS: 1st grade student with potential life threatening seizure disorder. If student’s seizure is prolonged (longer than 3 minutes) and his breathing is not restored, he could suffer irreversible damage or death. School staff have been trained in student’s seizure protocol, including ventilation with an AMBU bag and CPR. However, the administration of the medication required that a syringe be inserted rectally into the student.

QUESTION: Was school required to provide a nurse for the campus to address the needs of this student?

HOLDING: The hearing officer concluded that the services of a RN and the RN’s presence on school grounds at all times were school health services the district was required to provide. Student’s doctors indicated that the administration of medication to student during a seizure required a licensed RN due to potential complications.

Silsbee ISD, 25 IDELR 1023 (SEA Texas 1997)
What if a parent wants to pay for a service provider to assist student at school?

- If the service is required for FAPE, it is the DISTRICT’S responsibility. (F=FREE)
  - Parent could seek reimbursement
- Document in the ARD what is necessary for the student to receive FAPE
  - If the district can provide FAPE without the private duty nurse, should CLEARLY state that in the ARD.
  - If the parent still wants the private duty nurse, it is up to the District whether to permit it or not.

Factors to Consider

- Not an employee
  - No control
  - Not subject to school policies
  - Confidentiality and FERPA issues
  - No immunity for person
- Loyalty to family
- Unwilling to take direction from teacher
- Interference with other students
- How to say “no” next time
Private Duty Nurse Agreement

- Written agreement with nurse and/or nursing agency
- Acknowledged by parent
- Indicate the District’s ability and willingness to provide FAPE at NO charge to the parent
- Criminal background clearance and proof of license
- Roles and responsibilities of nurse
- Compliance with school district policies and requests of teachers/administrators
- Confidentiality
- Not an employee of the school district
- Interference with education
- Engaging in personal activities when responsible for student
- Sharing of health information with school
- Procedures for absences/substitute
- Waiver of liability for injury to nurse

QUESTIONS?

THANK YOU!!!

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