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Chapter 12: Public Health Nurses Can Again Assist Special Needs Children in Schools

Melissa A. Meth

Code Section Affected

Education Code § 49423.5 (amended).
AB 342 (Saldaña); 2007 STAT. Ch. 12.

I. INTRODUCTION

Brian is a three-and-a-half year old child with severe epilepsy.¹ He has spent much of his life in and out of emergency rooms due to frequent seizures.² Brian has been treated with a range of medications, and doctors have finally figured out how to minimize the duration and effects of his seizures.³

Given Brian's age, he is eligible for his local school district's early education program and the special education services that schools must provide.⁴ In Brian's case, this means that the school must furnish Brian with a one-on-one aide to provide services such as feeding him a specialized diet, providing water and medicine through a gastrointestinal tube, and administering special medication.⁵ A nurse must be available at all times to supervise the aide and assist Brian in case he has a seizure.⁶

Brian is one of the many students who require specialized health services throughout the day, but providing these services (in addition to the routine health services required for all of California's six million students) is extremely difficult in the face of a severe shortage of school nurses.⁷ The daunting task of providing the required care became more difficult last year when Assembly Bill 1667 (AB 1667) eliminated public health nurses from the list of qualified personnel who could assist school children who required specialized health services.⁸ Public

1. *Student v. S.F. Unified Sch. Dist.*, No. 2331, at 2 (Cal. Dep't of Educ. 2002), http://www3.scoed.net/speced/seho/seho_search/sehoSearchDetails.cfm?ID=1742 (on file with the *McGeorge Law Review*). Brian is a fictitious name.

2. *Id.* at 3.

3. *Id.* at 2-3.

4. *Id.* at 3.

5. *See id.* at 2, 16 ("The District shall provide STUDENT with one-to-one health care services to administer food and fluids, address any coughing, gagging or vomiting, monitor STUDENT's condition throughout the school day, administer Diastat if needed, in accordance with [the doctor's] most current protocol, and provide emergency ventilation services if needed.").

6. *Id.*

7. Joel Rubin, *Fewer Ill Students Can Visit the School Nurse; One in 10 Attends a Campus With None on Staff: District Budget Cuts are Blamed*, L.A. TIMES, Mar. 20, 2005, at B1.

8. ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF AB 342, at 1-2 (Apr. 10, 2007).

health nurses are licensed nurses who do not have a school nursing credential.⁹ Nonetheless, many public health nurses work in schools and assist children with special needs.¹⁰ Chapter 12 rectifies the unintended consequences of AB 1667 by adding public health nurses back into the statute.¹¹

II. LEGAL BACKGROUND

A. Federal Law

Federal law requires that students with disabilities be given the same access to public schools as non-disabled students.¹² In 1975, Congress pushed for equality in the school system when it passed the Education for All Handicapped Children Act (EAHCA).¹³ At that time, Congress noted that there were more than “eight million disabled students in the United States,” less than half of whom had adequate access to education.¹⁴ In fact, Congress estimated that one million disabled students were denied public education altogether.¹⁵

The EAHCA, renamed in 1990 as the Individuals with Disabilities Education Act (IDEA), continues to govern educational opportunities for disabled children.¹⁶ Students with certain types of disabilities, such as mental retardation, speech impairments, and autism, are eligible for special education if the disability has a detrimental effect on the student’s academic performance.¹⁷ In order to meet the requirements of the IDEA and receive federal funding,¹⁸ schools must provide a “free appropriate public education” in which students receive an individualized

9. Letter from Nancy Spradling, Executive Dir., Cal. Sch. Nurses Org., to Assembly Member Lori Saldaña, Cal. State Assembly (Apr. 3, 2007) [hereinafter CSNO Letter] (on file with the *McGeorge Law Review*).

10. ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF AB 342, at 1-2 (Apr. 10, 2007).

11. SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF AB 342, at 1 (May 23, 2007).

12. Leslie Seid Margolis, *The Provision of School Health Services to Students with Disabilities: The Intersection of Health Care Policy, Education and the Law in the Post-Garret F. Era*, 5 J. HEALTH CARE L. & POL’Y 99, 99-100 (2002).

13. Kim Millman, Comment, *An Argument for Cadillacs Instead of Chevrolets: How the Legal System Can Facilitate the Needs of the Twice-Exceptional Child*, 34 PEPP. L. REV. 455, 463 (2007). The EAHCA is also known as Public Law 94-142. 20 U.S.C.A. § 1400(c)(2) (West 2000 & Supp. 2007).

14. Donna M. Sheen, Note, *CIVIL RIGHTS/EDUCATION—Accommodating Disabilities: How Far Must Schools Go in Providing Related Services of a Medical Nature for Students with Disabilities?* Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66 (1999), 35 LAND & WATER L. REV. 625, 628 (2000).

15. *Id.*

16. *Id.* at 629. The EAHCA was renamed IDEA in 1990. *Id.*

17. 20 U.S.C.A. § 1401(3)(A) (West 2000 & Supp. 2007) (“The term ‘child with a disability’ means a child . . . with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . , orthopedic impairments, autism, traumatic brain injury, other health impairments, or special learning disabilities”); Margolis, *supra* note 12, at 100.

18. Sheen, *supra* note 14, at 639.

education plan (IEP).¹⁹ The IEP gives annual goals for each child and describes the “special education and related services” the child will receive.²⁰

The IDEA also requires schools to provide services to students with health impairments such as diabetes, epilepsy, and asthma.²¹ Some of the “related services” that schools must provide to disabled students are “school health services,” defined as “services that may be provided by either a qualified school nurse or other qualified person.”²² Schools do not have to provide “medical services,” defined as those “services provided by a licensed physician.”²³ However, schools must provide medical services that are used for diagnostic or evaluative purposes.²⁴

The types of services that can be defined as “related services” are very broad.²⁵ The U.S. Supreme Court has held that clean intermittent catheterization²⁶ and ventilator services²⁷ are required under the IDEA. As a result, schools have had to provide “a host of services ranging from tube feeding and administration

19. 20 U.S.C.A. § 1401(9) (West Supp. 2007).

20. *Id.* § 1414(d)(1)(A) (West 2000 & Supp. 2007).

21. 34 C.F.R. § 300.8(c)(9)(i) (2007). The enumerated list of disabilities covered under the IDEA includes “other health impairments.” 20 U.S.C.A. § 1401(3)(A) (West 2000 & Supp. 2007). “Other health impairment” is defined in the regulations as

having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that . . . [i]s due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome . . . ; and . . . [a]dversely affects a child’s educational performance.

34 C.F.R. § 300.8(c)(9) (2005).

22. 34 C.F.R. § 300.34(c)(13) (2007).

School health services and school nurse services means health services that are designed to enable a child with a disability to receive [free appropriate public education] as described in the child’s IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

Id. (emphasis omitted).

23. *Id.* § 300.34(c)(5).

24. 20 U.S.C.A. § 1401(26)(A) (West Supp. 2007).

25. See Margolis, *supra* note 12, at 108-09 (noting that nurses and other non-physicians have begun performing more medical services, thereby making it difficult to find services that would be excluded under the IDEA).

26. *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883, 884, 895 (1984). Clean intermittent catheterization (CIC) is a procedure done to drain the bladder. *Id.* at 885. In *Irving*, a child with spina bifida required such a service every three to four hours. *Id.* The Supreme Court held that CIC was not a “medical service” under the statute because it could be done by a layperson. *Id.* at 894-95. Instead, it was considered a “related service” which the school was required to provide. *Id.* at 895.

27. *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 526 U.S. 66, 69 (1999) (holding that ventilator services are required by the IDEA). In *Cedar Rapids*, a quadriplegic student was ventilator dependent and required continuous nursing care while at school. *Id.* The Court found that the required services could all be “provided competently by a school nurse or other trained personnel.” *Id.* at 75. The Court noted that continuous services were costly but stated that “[w]hatever its imperfections, a rule that limits the medical services exemption to physician services is unquestionably a reasonable and generally workable interpretation of the statute.” *Id.* at 76.

of oxygen to administration of insulin and intravenous treatments.”²⁸ This is necessary because the purpose of the IDEA is to integrate disabled students into public schools and ensure meaningful access to education.²⁹ Therefore, the Court has stated that schools must provide the “services that enable a disabled child to remain in school during the day.”³⁰

B. California Law

California law generally mirrors the requirements of the IDEA.³¹ Current statutes require schools, if necessary, to perform many specialized health services.³² Specialized physical health services are defined in Education Code section 49423.5 and include “catheterization, gastric tube feeding, suctioning, or other services that require medically related training.”³³ Section 49423.5 also describes which school personnel can perform such services.³⁴

In 1978, proponents urged the addition of section 49423.5 to meet the federal requirements of the EAHCA.³⁵ The early version of the law allowed specialized physical health services to be performed by school nurses, public health nurses, or “qualified designated school personnel” who were trained in the specific health service and who performed the service “under the supervision of a school nurse, public health nurse, or licensed physician and surgeon.”³⁶

In 2006, the Legislature passed AB 1667 that amended section 49423.5.³⁷ AB 1667 limited the types of health services that non-licensed school personnel could provide.³⁸ AB 1667 declared that school nurses could only train other school personnel to perform health services that were “routine,” carried “little potential harm for the pupil,” could be “[p]erformed with predictable outcomes,”

28. Margolis, *supra* note 12, at 108.

29. *Cedar Rapids Cmty. Sch. Dist.*, 526 U.S. at 73 (citing *Tatro*, 468 U.S. at 891).

30. *Id.* at 73. In *Cedar Rapids*, the Court noted that Garret’s services were required in order for him to be able to attend school. *Id.* at 79. The Court stated that “[u]nder the statute, our precedent, and the purposes of the IDEA, the District must fund such ‘related services’ in order to help guarantee that students like Garret are integrated into the public schools.” *Id.* at 79.

31. See CAL. EDUC. CODE § 56000(d) (West 2003 & Supp. 2007) (“It is the intent of the Legislature to unify and improve special education programs in California . . . [and] to ensure that all individuals with exceptional needs are provided their rights to appropriate programs and services which are designed to meet their unique needs under the Individuals with Disabilities Education Act.”).

32. *Id.* § 49423.5(a)(1)-(2) (West 2006 & Supp. 2007).

33. *Id.* § 49423.5(d).

34. *Id.* § 49423.5(a)(2).

35. Letter from Wilson Riles, Superintendent of Pub. Instruction & Dir. of Educ., Cal. State Dep’t of Educ., to the Senate Educ. Comm., Cal. State Senate (Aug. 3, 1978) (on file with the *McGeorge Law Review*).

36. 1978 Cal. Stat. ch. 1220, § 2, at 3944 (enacting CAL. EDUC. CODE § 49423.5).

37. CAL. EDUC. CODE § 49423.5 (amended by Chapter 414).

38. CAL. SCH. NURSES ORG., ACCOMPLISHMENTS OF 2006, at 1 (2006), <http://www.csno.org/docs/CSNO%20Accomplishments%202006.pdf> (on file with the *McGeorge Law Review*).

and “[did] not require a nursing assessment, interpretation, or decisionmaking by the designated school personnel.”³⁹

In addition to limiting the types of services that could be provided by school personnel, AB 1667 removed “public health nurses” from the list of qualified personnel delineated in section 49423.5.⁴⁰ However, since public health nurses continue to work in schools, the Legislature passed Chapter 12.⁴¹

III. CHAPTER 12

Chapter 12 is “a technical clean up to AB 1677.”⁴² Chapter 12 amends section 49423.5 of the Education Code by adding persons with a certificate in public health nursing back onto the list of qualified individuals who can assist students during the school day.⁴³ Chapter 12 also provides that public health nurses, in addition to credentialed school nurses and licensed physicians, can oversee other designated school personnel who are trained in performing specialized medical services.⁴⁴

IV. ANALYSIS

A. 2006 Legislation

The California Legislature passed AB 1667 in response to the nursing shortage in California that left only 2,791 school nurses to attend to the needs of over six million public school children.⁴⁵ In 2005, the California School Nurses Organization (CSNO) found that while there should be only 750 students per school nurse, the number was actually 2,257 students per school nurse, with many districts left with no nurse at all.⁴⁶ The CSNO also noted that “[m]any of these school nurses [were] ‘roaming’ nurses and not full-time at any one particular school.”⁴⁷

The nursing shortage resulted in school nurses having to train other school personnel, such as teachers and teacher aides, to perform more and more health services, some of which were beyond the skill and ability of non-medical personnel.⁴⁸ Delegating such services was unsafe and was not in the best interests

39. CAL. EDUC. CODE § 49423.5(a)(2)(A)-(D) (amended by 2006 Cal. Stat. ch. 414).

40. *Id.* § 49423.5(a)(1)-(2) (amended by 2006 Cal. Stat. ch. 414).

41. *See* ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF AB 342, at 1-2 (Apr. 10, 2007) (referring to AB 342 as addressing the “unintended consequences” of AB 1667).

42. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 342, at 1 (May 2, 2007).

43. CAL. EDUC. CODE § 49423.5(a)(1) (amended by Chapter 12).

44. *Id.* § 49423.5(a)(2) (amended by Chapter 12).

45. ASSEMBLY COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 1667, at 2 (May 4, 2005).

46. *Id.*

47. *Id.*

48. ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF AB 1667, at 3-5 (Apr. 26, 2005);

of the students.⁴⁹ Moreover, when non-licensed personnel performed health care tasks, they did so under the license of the school nurse.⁵⁰ This meant that the nurse may have been held liable for the actions of non-licensed personnel.⁵¹ Therefore, AB 1667 limited the tasks non-licensed personnel could perform in order to protect both the students and the licensed nurses.⁵²

B. Fixing the 2006 Legislation

Prior to passage of AB 1667, public health nurses had been removed from various sections of the Education Code.⁵³ This led legislators to believe that public health nurses “no longer provided services in the school setting.”⁵⁴ Consequently, when legislators debated and reviewed AB 1667, they removed public health nurses from the list of qualified personnel who could assist students with specialized health care services.⁵⁵ For Brian, this meant that only a credentialed school nurse could supervise his aide and assist in case he had a seizure.⁵⁶ However, many schools did not have a credentialed school nurse on site, and public health nurses continued to work in schools.⁵⁷ Chapter 12 ensures that Brian may attend a school where a public health nurse has the proper authority to oversee his medical care.⁵⁸

The difference between public health nurses and school nurses is a credential.⁵⁹ Public health nurses are registered nurses who have earned a certificate in public health.⁶⁰ The California Legislature has recognized that “public health nursing is a service of crucial importance for the health, safety, and sanitation of the population . . . of California[.]”⁶¹ Services provided by public health nurses include “[c]ontrol and prevention of communicable

see Rubin, *supra* note 7 (noting that many school districts rely on secretaries or other untrained staff to perform health services).

49. ASSEMBLY COMMITTEE ON HEALTH, COMMITTEE ANALYSIS OF AB 1667, at 4 (Apr. 26, 2005).

50. *Id.*

51. *Id.*

52. FACT SHEET: AB 1667, 2005-2006 Sess. (Cal. 2006) (on file with the *McGeorge Law Review*).

53. SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF AB 342, at 2 (May 23, 2007).

54. *Id.*

55. *Id.*

56. *See* CAL. EDUC. CODE § 49423.5 (West 2006 & Supp. 2007) (requiring school personnel who administer specialized physical health services to act under the supervision of a credentialed school nurse).

57. SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF AB 342, at 2 (May 23, 2007).

58. *See* CAL. EDUC. CODE § 49423.5(a)(1) (amended by Chapter 12) (allowing public health nurses to both assist students directly and to supervise other school personnel who administer specialized physical health services).

59. CSNO Letter, *supra* note 9.

60. CAL. CODE REGS. tit. 16, § 1491 (2005).

61. CAL. BUS. & PROF. CODE § 2818(a) (West 2003).

disease[,] [p]romotion of maternal, child, and adolescent health[,] and [p]revention of abuse and neglect of children, elders, and spouses.”⁶²

School nurses, on the other hand, are registered nurses with a certificate in public health who also earned a school nursing credential.⁶³ School nurses can perform tasks such as immunizing students, designing health maintenance plans for individuals, and interpreting “medical and nursing findings appropriate to the student’s individual educational plan.”⁶⁴ School nurses focus on “detection and correction of health problems” and are “especially prepared and uniquely qualified in preventive health, health assessment, and referral procedures.”⁶⁵

The fact that public health nurses do not have a credential means that they have not had post-graduate work in subjects such as special education or federal and state law.⁶⁶ Nevertheless, public health nurses, as licensed nurses, do have the ability to perform physical health care procedures.⁶⁷ Thus, public health nurses “provide a valuable service for K-12 students with specialized health care needs.”⁶⁸ In light of the school nurse shortage, supporters of Chapter 12 indicated that “reinstatement of public health nurses in the statute will provide more students with access to nursing services.”⁶⁹

V. CONCLUSION

Chapter 12 addresses one small part of the school nursing shortage by clarifying that registered nurses, even those who do not have a school nursing credential, can assist students at school.⁷⁰ “California used to have [registered nurses] in every school and [supporters of Chapter 12] look forward to the day when that is a reality again.”⁷¹ Nurses are an indispensable part of our public school system and are especially necessary to ensure that students with special health needs, like Brian, have the opportunity to attend school.

62. *Id.* § 2818(a)(1)-(3).

63. CAL. EDUC. CODE § 49426 (West 2006).

64. *Id.* § 49426(a), (d), (g).

65. *Id.* § 49426.

66. CSNO Letter, *supra* note 9.

67. *Id.*

68. SENATE HEALTH COMMITTEE, COMMITTEE ANALYSIS OF AB 342, at 3 (May 23, 2007).

69. *Id.*

70. Letter from Nancy Spradling, Executive Dir., Cal. Sch. Nurses Org., to Assembly Member Lori Saldaña, Cal. State Assembly (June 4, 2007) (on file with the *McGeorge Law Review*).

71. Letter from Donna Gerber, Dir. of Gov’t Relations, Cal. Nurses Ass’n, to Assembly Member Mervyn Dymally, Cal. State Assembly (Apr. 3, 2007) (on file with the *McGeorge Law Review*).

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