

Legal Issues in School Nursing

Basic knowledge to support safe practice
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THE LAW

School nurses confront numerous legal issues in their daily work. It is important to know the standards of nursing practice specific to your state of licensure, as well as legal duties and responsibilities of the school nurse.

Legal Foundations

The legal foundation for the law governing school nurse practice is in the constitution itself that establishes the government and its powers and responsibilities and that establishes the legal protections and rights afforded individuals living within the government's jurisdiction.

Government- 3 Branches

- Legislative
- Executive
- Judicial

What governs health practice?

The Executive branch consists of the Office of the President and all federal agencies. Of importance to the nurse are the US Department of Education and the US Department of Health and Human Services.

Federal Laws

Examples of laws of importance to the school nurse

- Individuals with Disabilities Education Act (IDEA)
- No Child Left Behind Act of 2001
- Family Educational Rights and Privacy Act (FERPA)
- Health Insurance Portability and Accountability Act (HIPAA)

Individuals with Disabilities Act

- IDEA was enacted in 1990 to combine several laws to ensure that all children had available to them a free and appropriate education (FAPE) in the least restrictive environment.

No Child Left Behind (2001)

- Requires schools to demonstrate accountability by using testing standards to measure student achievement, requires teachers to have specific qualifications for the courses they teach.

Federal Educational Rights and Privacy Act (1974)- FERPA

- Federal Law protecting the privacy of educational records
- Parents can access ALL educational records, including health records which may contain referral for confidential services under HIPAA
- Provides parents and eligible students with privacy protections and rights
- Education records are "any record containing personally identifiable information about a student that is maintained by the school, its staff members or contracting employees". Health records are educational records in a school setting.

FERPA- continued

- School divisions must notify parents annually about the policies and procedures regarding student records.
- Limits who can see what's in the record without parental permission and assures their right to view the record
- Parents can request an amendment if they feel that the information in the record is inaccurate, misleading, or in violation of the student's rights of privacy

FERPA- continued

- Parental permission is not needed when the health information is disclosed for educational purposes within the school division. You must have permission to send it outside the school division. Written parental consent is required if providing any outside agency, including the health department and medical offices, with student information.

Health Insurance Portability and Accountability Act (1996)- HIPAA

Law to protect the privacy of electronically transmitted personal health data

Defers to state laws regarding minor's consent to treatment statues

Examples of confidential student information

- Any personally identifiable information about a student's past or present health and development status, whether physical, psychological, or behavioral, and whether oral, printed, electronic, or in any other format. Includes family information
- Immunizations
- Health assessment data, Individualized health care plans
- Screening results

Confidential Information (continued)

- Injury reports
- Incident reports of alcohol or drug use in schools
- Evaluation reports related to special education eligibility
- Referral for suspected child abuse
- Notes from visits to the health office
- Medication logs, doctor's orders for medication, parental consent forms

Exceptions to the release of confidential information without parental consent

- Information to child protective services workers
- Contracted employees that provide educational services to or on behalf of the school district (i.e. school nurses provided by the local health department)
- Another school division where the child seeks to enroll
- In response to a judicial order
- Health and safety emergencies
- Juvenile justice system

Minor's Right to Consent to Medical Treatment

- Access to contraceptive services- all minors can consent to services
- Access to prenatal care- can consent under the law to prenatal care
- Access to STD services and HIV testing/treatment- all minors
- Minor's as parents- may consent for placing child for adoption & medical care of their infant

State Regulations

Examples of State laws of importance to school nurses.

- Child immunization requirements
- Communicable disease notification
- Communicable disease prevention procedures
- Health screenings
- Medication administration requirements
- Confidentiality protections
- Nurse Practice Act

Code of Virginia

Citations relevant to nursing practice

- § 22.2- 270- Physical Exam requirements
- § 22.1- 272.2- Immunization requirements
- § 22.1- 272.1- Contacting the parent: imminent risk of suicide
- § 22.1- 273- Vision and hearing screening
- § 22.1-273.1- Scoliosis screening
- § 22.1-274(D)- School staff may refuse to provide medical care

Code of Virginia (continued)

- § 22.1-274.2- Self administration of inhaled asthma medications
- § 22.1-274E- School buildings with ten or more staff have two employees with current training, within the last 2 years in CPR and first aid
- § 22.1-274E- One or more students diagnosed with diabetes in a school building, at least 2 employees will be trained in the administration of insulin and glucagon.

Code of Virginia (continued)

- § 22.1-274.3 Policy prohibiting school staff from recommending psychotropic drugs for any student.
- § 54-2987.1- Do not resuscitate orders

DELEGATION of Health Services

The transfer of responsibility to another to perform an activity, with the former retaining accountability for the outcome.

American Nurses Association

To delegate or not to delegate!

Delegation is often necessary in the school setting due to a lack of health care staff. Nurse practice acts in Virginia address the ability to delegate by limiting it to selected tasks in a select situation. If nursing assessment and judgment is required, delegation is not appropriate.

Tasks RN can/cannot delegate in Virginia

YES

- Tube feeding
- Diapering/ Elimination
- Oral feeding

No

- Medication administration
- Development of care plans

Building Administrator- Responsibility

The on-site administrator has the authority to designate unlicensed personnel to perform health-related functions in each school building. RN's may be requested to train unlicensed personnel to perform these functions and document such training. The unlicensed staff member is not covered by the RN's licensure in the event of negligence. If following such training the RN feels the unlicensed person is not capable of safely performing the duty assigned he/she should report this immediately to the appropriate administrator.

Resources

For further information about the law refer to:

<http://leg1.state.va.us/lis.htm>

This website offers links to the Code of Virginia and the Virginia Administrative Code, two sites that maintain legislative codes governing school nursing practice.

For guided practice refer to the web search activity.
