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Bill Analysis
Legislative Service Commission

Sub. S.B. 164
126th General Assembly
(As Passed by the Senate)

Sens. Schuring, Gardner, Stivers, Schuler, Spada, Zurz, Brady, Fedor, Cates, Padgett, Austria, Clancy, Fingerhut, Grendell, Harris, Kearney, Niehaus, Wilson, D. Miller, Amstutz, Dann, Prentiss, R. Miller, Hagan, Goodman

BILL SUMMARY

- Permits students of school districts, community schools, and chartered nonpublic schools to possess and use epinephrine autoinjectors with (1) the written approval of the prescribers of the medication and the students' parents and (2) provision of backup medication to the school.
- Explicitly provides immunity from liability to a school district and its board of education or employees, a community school and its governing authority or employees, or a chartered nonpublic school or its directors, officers, governing authority, or employees for good faith actions in connection with this permission.
- Requires a school employee to request assistance from an emergency medical service provider whenever a student is administered epinephrine at school or at a school activity.

CONTENT AND OPERATION

Permission to self-administer epinephrine

(R.C. 3313.718(B) and 3314.03(A)(11)(d))

Continuing law contains extensive provisions for school districts to permit or prohibit school employees from administering medication to students, but with one exception, does not expressly address a situation in which a student would self-administer medication.¹ The exception is a law enacted in 1999 that

¹ R.C. 3313.713 (not in the bill).

specifically permits students in public and chartered nonpublic schools to possess and use asthma inhalers, if they have written permission from their physicians and parents.² However, under their general authority to operate schools and establish policy for the behavior of students on school premises, school districts presumably could adopt policies concerning the possession and use of other medications by students.³

The bill expressly permits a student attending school in a school district, chartered nonpublic school, or community school to carry and use an epinephrine autoinjector to treat anaphylaxis (an intense allergic reaction). Similar to the 1999 law concerning asthma inhalers, this permission extends to any activity, event, or program sponsored by the student's school or in which the school participates.

Possession of an epinephrine autoinjector is permitted only if (1) the student has written approval from the prescriber of the medication and, if the student is a minor, from the student's parent,⁴ (2) that written approval is on file with the principal of the student's school and, if one is assigned, the school's nurse, and (3) the principal or nurse has received a backup dose of the medication from the parent or the student. The prescriber's written approval must specify at least the following information:⁵

- (a) The student's name and address;
- (b) The names and dose of the medication contained in the autoinjector;

² R.C. 3313.716 (not in the bill).

³ R.C. 3313.20, 3313.47, and 3313.661 (none in the bill).

⁴ *In the absence of a parent, the legal guardian or other person having care or charge of the student may provide the approval. Under some circumstances, continuing law permits a student to attend school in a district where the student lives with a grandparent, instead of in the district where the parents reside. In this case, the bill specifies that the grandparent may complete the "parental" approval to authorize the student's possession of epinephrine medication. The school would incur no liability for accepting a written approval from the grandparent instead of the parent (R.C. 3313.64).*

⁵ *Under the bill, a "prescriber" is an individual who is authorized by law to prescribe drugs in the course of the individual's professional practice, including (1) a physician authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatry, (2) a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe drugs, (3) a dentist, (4) an optometrist licensed to practice under a therapeutic pharmaceutical agents certificate, or (5) a veterinarian (R.C. 4729.01, not in the bill).*

(c) The date the administration of the medication is to begin and, if known, the date the administration of the medication is to cease;

(d) Acknowledgment that the prescriber has determined the student is capable of possessing and using the autoinjector appropriately and has provided the student with training in the proper use of the autoinjector;

(e) Circumstances in which the autoinjector should be used;

(f) Written instructions that outline procedures school personnel should follow if the student is unable to administer the medication or the medication does not produce the expected relief from the student's anaphylaxis;

(g) Any severe adverse reaction that either (i) the child may experience that should be reported to the prescriber, or (ii) that may occur to another child for whom the medication is not prescribed, if that child receives a dose of the medication;

(h) At least one emergency telephone number each for contacting the prescriber and the parent; and

(i) Any other special instructions from the prescriber.

Contact of emergency medical services

(R.C. 3313.718(C) and 3314.03(A)(11)(d))

Under the bill, whenever a student is administered epinephrine at a public or chartered nonpublic school or at an activity, event, or program sponsored by the school or in which the school is a participant, a school employee must immediately request assistance from an emergency medical service provider. This request for medical assistance applies whether the student self-administers the medication or a school employee administers it to the student.

Immunity from tort liability for damages

(R.C. 3313.718(D) and 3314.141)

School districts, community schools, and their employees acting within the scope of employment generally have immunity from liability in the performance of governmental functions through the Sovereign Immunity Law (R.C. Chapter 2744.). Under that law, unchanged by the bill, the provision of a system of public education is explicitly included as a governmental function and, accordingly, school districts and community schools have immunity from liability while

providing "public education." In addition, courts have consistently held extra-curricular activities to be part of the public education function.

Nonetheless, the bill explicitly provides that no school district or member of its board of education, community school or member of its governing authority, chartered nonpublic school or officer or director, or employees of those schools, is liable in damages in a civil action for injury, death, or loss to person or property allegedly arising in three cases:

(1) A school employee's prohibiting a student from using an epinephrine autoinjector if the employee has a good faith belief that the conditions for carrying and using the medication have not been satisfied;

(2) A school employee's permitting a student to carry and use an epinephrine autoinjector because of the good faith belief that the conditions have been satisfied; or

(3) In instances in which a student is rightfully permitted to carry an epinephrine autoinjector, the use of the medication by a student for whom it was not prescribed.

The bill also explicitly states that all immunities granted to school districts and community schools under the Sovereign Immunity Law or any other law still apply. (Chartered nonpublic schools, as nongovernmental entities, do not have immunity under the Sovereign Immunity Law.)

HISTORY

ACTION	DATE
Introduced	08-02-05
Reported, S. Education	05-10-06
Passed Senate (31-0)	05-10-06

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