Legal Issues in Student Health
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October 18, 2017

Disclaimer

This presentation is intended as a summary of law only, and is not meant as legal advice. Please consult your attorney to obtain legal advice.
Supplemental Materials

You will receive a link to a DropBox folder of pertinent materials by email. This folder can be accessed for 30 days from the workshop date.

Key Topics

- FERPA & HIPPA
- Ability to Clarify Letters From Doctors
- Concussion Protocols Extended to Middle Schools
- Attendance & Medical Excuses
- Opioid Crisis / Naloxone Administration
- Medical Marijuana
- Home Instruction for Students Out Sick
- Board Sanctioned Activities
- Private Physician Requirement to Complete Cardiac Module
What does FERPA say?

- FERPA = federal Family Educational Rights and Privacy Act of 1974
- FERPA is a funding law
- FERPA protects the privacy of students’ education records
- FERPA applies to all educational agencies and institutions that receive USDOE funds

HIPAA privacy rule

- HIPAA “privacy rule”—prohibits covered entities from disclosing protected health information to third parties without prior authorization from the subject of the information
Does HIPAA privacy apply to elementary and secondary schools?

- Generally, no
- HIPAA applies to health plans, health care clearinghouses, and health care providers that transmit health information electronically in connection with certain transactions; rarely are schools in those categories
- Schools maintain health information in student health records that are “education records” under FERPA and, thus, not protected health information under HIPAA

Sources:
- HHS HIPAA website, [http://www.hhs.gov/ocr/privacy/](http://www.hhs.gov/ocr/privacy/)

Letters From Doctors

- If letter from doctor is directed to the school, FERPA permits school nurse or school physician to follow up with doctor directly to seek clarification regarding a doctor’s note

- If letter is addressed to “whom it may concern” parent permission required. However, the school could condition excusing the student absence on first getting any necessary clarification from the doctor.

- Clarification is often needed for open-ended or otherwise vague notes
Recording Attendance - Medical Condition

- Attendance exemption in IEP or 504 plan—even when such an exemption exists, student can only be marked present, absent or excused for religious observance
  - If student with an IEP or 504 plan has a medical condition that will result in extensive absence, school should place the student on home instruction

Opioid Reversal
Naloxone

- NJ Law P.L. 2013,c.46 Overdose Prevention Act

- NJDOE position: school districts may develop and adopt policies and procedures to maintain and administer opioid antagonists to any student or school personnel during school hours and on site school-sponsored activities...
  - Training through your local ER
NJ Medical Marijuana Law

PL 2015 Ch. 158 - Compassionate Use Medical Marijuana Act (CUMMA)

- See May 24, 2016 Guidance from NJDOE

Elements of Required District Policy under CUMMA:

- Require that students be authorized to engage in the medical use of marijuana pursuant to CUMMA and that the parent, guardian or primary caregiver be authorized to assist the student
- Expressly authorize parents, guardians and primary caregivers to administer medical marijuana to the student while on school grounds, aboard a school bus, or attending a school-sponsored event
- Establish protocols for verifying registration status and ongoing authorization
- Identify locations on school grounds
- Prohibit administration to a student by smoking or other form of inhalation

Home Instruction

- NJAC 6A:16-10.1c
- Requests must document:
  - projected term of confinement
  - 10 consecutive or 20 cumulative school days
  - "the written determination from the pupil’s physician may be forwarded to the school physician who shall verify the need for home instruction."
  - School physician must respond to request within 5 school days and instruction must start within 5 school days of school physician approval
  - Instruction shall be for “the number of days and length of time sufficient to continue the student’s academic progress and dependent upon the student’s ability to participate.”
  - May include online instruction
  - Must be a certified teacher
Board Sanctioned Activity

- What constitutes a “board sanctioned activity’?
- Is it being promoted by the school district?
- Are school personnel involved in planning and/or carrying out the event?
- Is funding for the event being provided by the school?
- If so (to any of the above) likely to be considered a school sanctioned activity

Conclusion

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