



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority  
serving school and  
college districts  
throughout the state.*

5350 Skylane Boulevard  
Santa Rosa, CA 95403

Tel: (707) 524-2690  
Fax: (707) 578-0517  
santarosa@sclscal.org  
www.sclscal.org

*General Counsel*  
Carl D. Corbin

*Attorneys*  
Monica D. Batanero  
Nancy L. Klein  
Damara L. Moore  
Jennifer E. Nix  
Steven P. Reiner  
Mia N. Robertshaw  
Loren W. Soukup  
Patrick C. Wilson  
Frank Zotter, Jr.

*Of Counsel*  
Robert J. Henry  
Margaret M. Merchat  
Virginia A. Riegel

## LEGAL UPDATE

August 16, 2016

**To: Superintendents, Member School Districts (K-12)**

**From: Damara Moore** *DM*  
**Senior Associate General Counsel**

**Subject: January 1, 2017, Repeal of Anti-Seizure Medication Statute Will Allow Trained Unlicensed School Personnel to Administer Anti-Seizure Medication to Students**  
**Memo No. 24-2016**

Occasionally the Legislature passes a law which is repealed “by its own terms” when it is enacted. Such is the case with Education Code section 49414.7, which authorized nonmedical employees to provide medical assistance to pupils who suffer from seizures due to epilepsy.<sup>1</sup> Education Code section 49414.7 was passed in 2011. This statute remains in effect until January 1, 2017 unless the Legislature extends this statute.

Since the passage of this statute, the California Supreme Court has interpreted another statute, Education Code section 49423, which allows trained school personnel, including staff without a service credential with a specialization in health, to administer medication pursuant to a doctor’s prescription. In *American Nurses Association v. Torlakson* (2013) 57 Cal. 4<sup>th</sup> 570, the American Nurses Association challenged whether the Nursing Practice Act conflicted with this statute by permitting unlicensed school personnel to administer insulin or other medication to students in school. The California Supreme Court held that:

California law expressly permits trained, unlicensed school personnel to administer prescription medications such as insulin in accordance with the written statements of a student's treating physician and parents (Ed.Code, §§ 49423, 49423.6; Cal.Code Regs., tit. 5, §§ 600, 604, subd. (b)) and expressly exempts persons who thus carry out physicians' medical orders from laws prohibiting the

<sup>1</sup> Typically the medication prescribed and administered is Diastat.



unauthorized practice of nursing (Bus. & Prof.Code,  
§ 2727, subd. (e)). *Id.* at 575.

The Supreme Court noted Education Code section 49414.7 required specific training to administer anti-seizure medication and this statute also expressly permitted trained, unlicensed school personnel to administer anti-seizure medication when no nurse is available. *Id.* at 586. With the anticipated repeal of Education Code 49414.7 by operation of law, it is our opinion that trained unlicensed school personnel may administer medication under the broad authority of California Education Code section 49423 and its promulgating regulations, without any of the specific strictures that previously limited administration of anti-seizure medication.

Therefore, after December 31, 2016, in accordance with the *American Nurses Association v. Torlakson* decision, trained, unlicensed school personnel may administer anti-seizure medication in the absence of a nurse in accordance with Education Code section 49423.

Because the revocation of this law only affects anti-seizure medication administration insofar as it brings administration of this medication in line with other medication administration protocol, there should be limited-to-no implications for this change upon your collective bargaining agreements.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

© 2016 School and College Legal Services of California

*All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client's own non-commercial purposes.*