

SCHOOL AND COLLEGE LEGAL SERVICES *of California*

General Counsel
Carl D. Corbin

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

Reply to:
Santa Rosa Office
5350 Skylane Blvd.
Santa Rosa, CA 95403
(707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org

Attorneys
Monica D. Batanero
Nancy L. Klein
Margaret M. Merchat
Mia N. Robertshaw
Loren W. Soukup
Patrick C. Wilson
Frank Zotter, Jr.

Of Counsel
Robert J. Henry
Janna L. Lambert
Virginia A. Riegel

For information
Susanne K. Reed
(1947 – 2010)

LEGAL UPDATE

October 23, 2014

To: Superintendents, Member School Districts (K-12), County Offices of Education, Charter Schools

From: Monica D. Batanero, Associate General Counsel *MDB*

Subject: New Requirements Regarding the Provision and Stocking of Epinephrine Auto-Injectors at Schools
Memo No. 32-2014

Effective January 1, 2015, school districts, county offices of education and charter schools will be required to provide emergency epinephrine auto-injectors to **school nurses and trained personnel who have volunteered** and would authorize school nurses and trained personnel to use epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction. Senate Bill 1266, which amended California Business and Professions Code section 4119.2 and California Education Code section 49414, was signed into law by Governor Jerry Brown on September 15, 2014.

Annual Notice to Staff

A school district, county office of education, or charter school must distribute a notice at least once per school year to all staff that contains the following information:

1. A description of the volunteer request stating that the request is for volunteers to be trained to administer an epinephrine auto-injector to a person if the person is suffering, or reasonably believed to be suffering, from anaphylaxis, defined as a potentially life-threatening hypersensitivity to a substance.

2. A description of the training that the volunteer will receive.

The Role of the Trained Volunteer

Each public and private elementary and secondary school in the state may designate one or more volunteers to receive initial and annual refresher training regarding the storage and emergency use of an epinephrine auto-injector from the school nurse or other qualified person designated by an authorizing physician and surgeon.

A school nurse or, if the school does not have a school nurse or the school nurse is not onsite or available, a volunteer may administer an epinephrine auto-injector to a person exhibiting potentially life-threatening symptoms of anaphylaxis at school or a school activity when a physician is not immediately available.

A volunteer shall initiate emergency medical services or other appropriate medical follow-up in accordance with the training materials provided.

A school district, county office of education, or charter school shall ensure that each employee who volunteers under this section will be provided defense and indemnification by the school district, county office of education, or charter school for any and all civil liability. This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file.

Training Requirements for the Administration of Epinephrine Auto-Injectors

Training for the administration of epinephrine auto-injectors must include all of the following:

1. Techniques for recognizing symptoms of anaphylaxis.
2. Standards and procedures for the storage, restocking, and emergency use of epinephrine auto-injectors.
3. Emergency follow-up procedures, including calling the emergency 911 telephone number and contacting, if possible, the pupil's parent and physician.
4. Recommendations on the necessity of instruction and certification in cardiopulmonary resuscitation.
5. Instruction on how to determine whether to use an adult epinephrine auto-injector or junior epinephrine auto-injector, which shall include consideration of a pupil's grade level or age as a guideline of equivalency for the appropriate pupil weight determination.
6. Written materials covering the information provided during the training.

Training shall be consistent with the most recent Voluntary Guidelines for Managing Food Allergies In Schools and Early Care and Education Programs published by the federal Centers

for Disease Control and Prevention and the most recent guidelines for medication administration issued by the department.

A school must retain for reference the written materials prepared and provided to staff as part of the training given.

Duties of the Qualified Supervisor of Health

A qualified supervisor of health, which can be a school nurse, at a school district, county office of education, or charter school must obtain from an authorizing physician and surgeon a prescription for each school for epinephrine auto-injectors that, at a minimum, includes, for elementary schools, one regular epinephrine auto-injector and one junior epinephrine auto-injector, and for junior high schools, middle schools, and high schools, if there are no pupils who require a junior epinephrine auto-injector, one regular epinephrine auto-injector. A qualified supervisor of health at a school district, county office of education, or charter school shall be responsible for stocking the epinephrine auto-injector and restocking it if it is used.

If the epinephrine auto-injector is used it must be restocked as soon as reasonably possible, but no later than two weeks after it is used. Epinephrine auto-injectors must be restocked before their expiration date.

If a school district, county office of education, or charter school does not have a qualified supervisor of health, an administrator at the school district, county office of education, or charter school shall carry out the above duties.

The Role of Pharmacies

Pursuant to California Business and Professions Code section 4119.2, pharmacies may furnish epinephrine auto-injectors to school districts, county offices of education and charter schools if all of the following conditions are met:

1. The epinephrine auto-injectors are furnished exclusively for use at a school district site, county office of education, or charter school.
2. A physician or surgeon provides a written order that specifies the quantity of epinephrine auto-injectors to be furnished.
3. Records regarding the acquisition and disposition of epinephrine auto-injectors furnished shall be maintained by the school district, county offices of education, or charter school for a period of three years from the date the records were created. The school district, county office of education, or charter school shall be responsible for monitoring the supply of epinephrine auto-injectors and ensuring the destruction of expired epinephrine auto-injectors.

A prescription obtained under this new law may be filled by local or mail order pharmacies or epinephrine auto-injector manufacturers.

The Role of the Superintendent

Every five years, or sooner as deemed necessary by the Superintendent, the Superintendent shall review minimum standards of training for the administration of epinephrine auto-injectors. The Superintendent must consult with organizations and providers with expertise in administering epinephrine auto-injectors and administering medication in a school environment, such as the State Department of Public Health, for example.

Acceptance of Gifts, Grants, and Donations Are Permissible

A state agency, the department, or a public school may accept gifts, grants, and donations from any source for the support of the public school carrying out the duties under this new law, including, but not limited to, the acceptance of epinephrine auto-injectors from a manufacturer or wholesaler.

For information on the EpiPen4Schools[®] program, offered by Mylan Specialty, the marketer and distributor of EpiPen[®] (epinephrine) and EpiPen Jr[®] (epinephrine), please go the following link: <https://www.epipen4schools.com/>. The program offers four free EpiPen or EpiPen Jr Auto-Injectors to qualifying public and private kindergarten, elementary, middle and high schools in the U.S. Requirements to qualify for this offer include having a valid prescription.

Please contact our office with questions regarding this 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.

© 2014 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 non-commercial purposes.