



# IDPH

ILLINOIS DEPARTMENT OF PUBLIC HEALTH

122 S. Michigan Ave., Suite 700 • Chicago, IL 60603-6119 • [www.dph.illinois.gov](http://www.dph.illinois.gov)

August 17, 2016

*Via Electronic Mail*

Kimberly A. Small, General Counsel  
Illinois Association of School Boards  
Secretary, Illinois Council of School Attorneys  
[ksmall@iasb.com](mailto:ksmall@iasb.com)

Patricia J. Whitten, Partner  
Chair, Illinois Council of School Attorneys  
Franczek Radelet P.C.  
[pjw@franczek.com](mailto:pjw@franczek.com)

**Re: August 1, 2016 Letter Seeking Guidance to Illinois Schools**

Dear Ms. Small and Ms. Whitten,

I am in receipt of your August 1, 2016 correspondence, wherein you request guidance from the Illinois Department of Public Health (“IDPH”), and two other State agencies, regarding a “conflict between the [Care of Students with Diabetes] Act [105 ILCS 145] and the Illinois Nurse Practice Act [225 ILCS 65/50-1].” Also noted in your letter, and the accompanying memo, was the role of the Illinois School Code [105 ILCS 5/1-1] with regard to the aforementioned laws.

Please note that as a practice, IDPH does not provide legal advisory opinions. Moreover, IDPH cannot opine on the appropriate interpretation of the laws cited above, as they only tangentially empower, implicate, or mandate action by IDPH. IDPH regulates neither the nursing profession nor schools in Illinois.

Please do not hesitate to contact me further at [kyle.stone@illinois.gov](mailto:kyle.stone@illinois.gov) if you have questions or if I can be of further assistance.

Very Truly Yours,

Kyle Stone  
General Counsel

cc: Jessica Baer, General Counsel, Illinois Department of Financial & Professional Regulation  
Stephanie Donovan, General Counsel, Illinois State Board of Education



# Illinois State Board of Education

100 North First Street • Springfield, Illinois 62777-0001  
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James T. Meeks  
Chairman

Tony Smith, Ph.D.  
State Superintendent of Education

September 29, 2016

## VIA ELECTRONIC MAIL

Kimberly A. Small, General Counsel  
Illinois Association of School Boards  
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## **RE: AUGUST 1, 2016, LETTER SEEKING GUIDANCE TO ILLINOIS SCHOOLS**

Dear Ms. Small and Ms. Whitten:

ISBE has received your August 1, 2016, correspondence requesting guidance from the Illinois State Board of Education (ISBE), the Illinois Department of Public Health (IDPH), and the Illinois Department of Financial and Professional Regulation (IDFPR), regarding the relationship among Section 10-22.21b of the School Code (105 ILCS 5/10-22.21B), the Care of Students with Diabetes Act (105 ILCS 145), and the Illinois Nurse Practice Act (225 ILCS 65/50-1). I am responding on behalf of General Counsel Stephanie Donovan, who is currently on a leave of absence and regrettably unable to respond.

Generally speaking, ISBE only issues legal advisory opinions to school districts and Regional Offices of Education. Further, I cannot comment on any conversation between Ms. Baasten and IDFPR counsel in 2011 because I was not part of that conversation.

As to your specific requests, ISBE cannot interpret the Nurse Practice Act because ISBE is not responsible for implementing or enforcing the Nurse Practice Act or any accompanying administrative rules. In this situation, ISBE can only provide technical assistance with respect to matters concerning schools and students.

### **School Code**

Section 10-22.21b of the School Code governs administration of medication to students. It provides that, while the administration of medication is generally discouraged during school hours, "under no circumstances shall teachers or other non-administrative school employees except

Kimberly A. Small, General Counsel  
Patricia Whitten, Partner  
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certified school nurses and non-certificated registered professional nurses, be required to administer medication to students.”<sup>1</sup> However, in the event of an emergency, neither this section, nor the School Code generally, prevents any school employee from assisting a student in need.

### **The Care of Students with Diabetes Act**

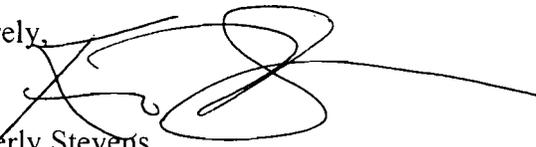
The Care of Students with Diabetes Act speaks to the administration of medication within the specific context of the administration of insulin to diabetic students. Consistent with the School Code, this Act recognizes exceptions for situations that are not ideal and in which a school nurse may not be available for the administration of medication.

The legislative intent of the Act reflects that, while a school nurse is the most appropriate person in a school setting to attend to a student’s medical needs, there are emergency circumstances in which a nurse may not be available to administer medication that is critical to protect the health and safety of a student.<sup>2</sup> Consequently, the Act allows a school to designate a “delegated care aide”, defined as a “school employee who has agreed to receive training in diabetes care and to assist students in implementing their diabetes care plan and has entered into an agreement with a parent or guardian and the school district or private school.”<sup>3</sup> A diabetes care plan includes methods of insulin administration.<sup>4</sup>

If further clarification on this matter requires interagency cooperation, ISBE is open to discussing these issues with IDPH and IDFPR.

We appreciate your attention to this matter.

Sincerely,

  
Kimberly Stevens  
Deputy General Counsel – Program Support

cc: Jessica Baer, General Counsel, Illinois Department of Financial and Professional Regulation  
Kyle Stone, General Counsel, Illinois Department of Public Health

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<sup>1</sup> 105 ILCS 5/10-22.21b, *Administering medication*

<sup>2</sup> 105 ILCS 145/5(5), *Legislative findings*

<sup>3</sup> 105 ILCS 145/10, *Definitions*

<sup>4</sup> 105 ILCS 145/15, *Diabetes care plan*