



Guide staff in accommodating students who need nursing services

February 7, 2011

A Kentucky district did not have to hire a new nurse just so a kindergartner with Type I diabetes could attend the school closest to his home. *R.K. by J.K. and R.K. v. Board of Educ. of Scott County, Ky.*, 55 IDELR 247 (E.D. Ky. 2010).

Under Kentucky law, only medical personnel are authorized to monitor insulin pumps. As such, the court held that the district acted reasonably when it offered to provide insulin pump monitoring at another district school where there already was a nurse on staff.

Hiring another nurse so the student could attend his neighborhood school would have placed an undue financial burden on the district, the court determined. In addition, the district was not required to expose itself to potential liability under state law by allowing a different staff member to perform the monitoring.

Show staff members how to proceed when they have a 504-eligible student who needs nursing services. Address state law issues as well as alternative models for providing access to a registered nurse.

"I realize that funding is an issue, but I'm not in favor of training unlicensed staff to manage diabetes," said Marilyn Healy, health services specialist for Baltimore County Public Schools. "The bottom line is that every child should have access to a registered nurse."

That being said, Healy recognizes that school districts sometimes must look at alternatives. A "cluster nurse" model is one such alternative, she said. Here, a nurse monitors two or three campuses where health assistants are on staff and authorized to perform some tasks. Still, not all tasks can be delegated, she added.

Districts also might check into partnering with a local hospital or health department to secure needed services, Healy said.

Consider these additional steps to support proper provision of diabetes care:

- **Find out who, under state law, can lawfully assist students with diabetic care needs.** "Many states allow unlicensed or nonmedical staff to assist students with diabetic care, including administering insulin injections, but some states do not," said Holly Boyd Wardell, a school attorney with Schwartz & Eichelbaum Wardell Mehl and Hansen PC in Austin, Texas. "In Texas, for example, state law allows unlicensed diabetes care assistants to assist students during the school day," she said. In Kentucky and other states, however, the state board of nurses has taken the position that only nurses or other qualified medical personnel can administer insulin, monitor insulin pumps, and calculate carbohydrates, Wardell explained.

- **Conduct 504 evaluations for students with diabetes,** Wardell advised. When doing so, keep in mind the new, broader definition of disability enacted by the ADA Amendments Act, she said. Remember, the amendments bar schools from considering a student's use of mitigating measures in determining if an impairment substantially limits a major life activity. The act also adds to the definition of disability an expanded list of major life activities, which explicitly includes endocrine function. Thus, "for students whose diabetes substantially limits a major life activity, such as endocrine function, districts will need to consider whether accommodations are necessary," Wardell said.

- **Know when you can consider cost in providing accommodations.** Your district has a duty under Section 504 to provide whatever related aids and services an eligible student needs to receive FAPE, unless it can show that doing so would fundamentally alter the nature of the program or create an undue burden. In the *Scott County* case, the court applied a "reasonable accommodation" standard to the question of whether the district had to provide services at the student's neighborhood school, Wardell pointed out. The court noted that hiring another nurse would have been unduly burdensome given the cost of doing so and that the district was not required to expose itself to liability under state law.

- **Review neighborhood school requirements.** There is no "absolute right" to attend one's neighborhood school or to replicate services on all campuses in a school district, Wardell said. "Failure to place a student at his neighborhood school is not discrimination based on disability," especially if there are appropriate services available at another site in the district. *Urban by Urban v. Jefferson County Sch. Dist. R-1*, 24 IDELR 465 (10th Cir. 1996). "This is good news, as many school systems are facing budget shortfalls and do not have the luxury of replicating services at several different locations," she said.

Melissa Greenwood covers Section 504 and other special education issues for LRP Publications.