Private Duty Nurses in Texas Public Schools

Mari McGowan, Abernathy, Roeder, Boyd & Hullett, P.C.
PRIVATE DUTY NURSES IN TEXAS PUBLIC SCHOOLS

Mari McGowan
Director/Shareholder
Abernathy, Roeder, Boyd & Hullett, P.C.
McKinney, TX
MMcGowan@Abernathy-Law.com

LEGAL DISCLAIMER

This presentation should not be construed as legal advice related to any specific facts or circumstances. Although this presentation covers legal subjects, it is intended to educate attendees about school law topics and not to provide advice that will be the basis for action or inaction in any specific circumstance. Attending this presentation or viewing these materials does not create an attorney-client relationship between Abernathy, Roeder, Boyd & Hullett, P.C. and the attendees or the attendees’ institutions. For circumstance-specific legal advice, please directly contact a licensed attorney.

PRESENTATION AGENDA

- The Difference Between School Nurses and Private Duty Nurses
- School Nursing, Section 504, IDEA, and FAPE
- The Private Duty Nurse Option
- Pros and Cons of Special Needs and Private Duty Nurses
- Documentation of Nursing Services
- Guidelines for School Nursing Services
- Privacy Rights and the Nurse’s Obligation
- PDNs and Parental Cooperation with School Districts
- Frequently Asked Questions
INTRODUCTION

- Advancements in health care enable many students to attend school.
- Result: School districts find the need to provide intensive nursing care for students with special health care needs.
- Options:
  - Hire special needs nurse.
  - Contract with third party for nursing services.
- Concerns arise regarding accountability, communication, confidentiality, liability, cost, billing, and attendance at educational meetings.

SCHOOL NURSES AND PRIVATE DUTY NURSES
WHAT IS THE DIFFERENCE?

DEFINITION - SCHOOL NURSE

“An educator employed to provide full-time nursing and health care services and who meets all requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.” Tex. Admin. Code § 153.1022
“NO SCHOOL NURSES LEFT BEHIND”

- A 2005 study showed that nationally, only 2/3 of schools had a full-time school nurse.
- In 2013 in Texas, less than 2% of each educational dollar was spent on nursing services.
- All of this points to a critical need for nursing services.

DEFINITION – PRIVATE DUTY NURSE (PDN)

- Independent practice:
  - RN;
  - LVN under the supervision of an RN; or
  - Services provider employed by a home and community support services agency (HCSSA) enrolled in the Texas Medicaid Program to provide private duty nursing services.

- PDN services include:
  - Observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a recipient who
    - has a disability;
    - chronic health condition; or
    - is experiencing a change in normal health processes.
SCHOOL NURSING, SECTION 504, IDEA, AND FAPE

ESSENTIAL LINKS IN THE EDUCATION CHAIN

NURSING AND THE SECTION 504 FRAMEWORK

- The registered professional school nurse is an essential member of ARD/IEP Team or the 504 Committee.
- School nurses are:
  - the link between the medical and educational communities;
  - a primary resource to the school team.

NURSING AND FREE AND APPROPRIATE PUBLIC EDUCATION (FAPE)

- Services provided under a Section 504 plan are meant to provide the student with disabilities with the same access to education as non-disabled students and a FAPE.
- "Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met."
- Nursing is a “related service” under IDEA.
SECTION 504 DEFINITION OF “SCHOOL NURSE” AND “SCHOOL HEALTH SERVICES”

- School nurse services:
  - Services provided by a qualified school nurse.
- School health services:
  - Services provided by either
    - a qualified school nurse, or
    - a person otherwise deemed qualified.
      - This includes a PDN.

NURSING AND FAPE

- A nurse’s expertise is critical to identify students who have possible health, socio-emotional, or developmental issues.
- Nurses contribute to the development of the individual health plan, emergency care plan, and educational plan (IHP / ECP / IEP) or 504 Accommodation Plans enabling student to participate in his/her educational program.

NURSING AND FAPE

- The school nurse’s role in the 504 or IDEA process may also include:
  - Assessing a child’s health status, in collaboration with the child, parent/guardian, and healthcare providers.
  - Recommending required accommodations or services.
  - Providing training for teachers and staff regarding the child’s health needs.
  - Providing (or supervising unlicensed assistive personnel to provide) specialized healthcare services in the school setting.
  - Evaluating the effectiveness/revise health-related components of the IEP.
PRIVATE DUTY NURSES: OPTIONAL OR REQUIRED?

DETERMINING THE LEVEL OF NURSING CARE AND PERSONNEL FOR STUDENTS WITH SPECIAL HEALTH CARE NEEDS

- School nurse assesses students' health care needs and determines the type of personnel/services necessary using input from parents, medical providers, home health care agencies, & previous IEPs.
- Delegation of nursing tasks is based on the complexity of the task/care, predictability of the student's health status, and preparation, abilities, and scope of practice of school personnel with/without a health care license.
- Nurse judges expertise needed to safely provide nursing care when delegating tasks and provides necessary training in consultation with District nursing coordinator.
- If care cannot be safely delegated, school nurse can help ISD determine the extent of nursing education, training, & experience necessary to perform the health care tasks. This could include a PDN.

RESPONSIBILITY FOR PROVIDING NURSING SERVICES AT SCHOOL

- The Individuals with Disabilities Education Act (IDEA) dictates that school districts are responsible for providing a FAPE to all students, including students with special health care needs.
- The school district has the obligation to provide the nursing care needed for a student to receive a FAPE, no matter which service mechanism is used.
- School Nurse (district employee).
- PDN (contractor).
SPECIAL NEEDS AND PRIVATE DUTY NURSES

THE ADVANTAGES AND DISADVANTAGES OF BOTH

SPECIAL NEEDS NURSE

- Advantages:
  - Direct supervision by school personnel.
  - Control of the duties.
  - Accountability for nursing care.
  - Flexibility to adjust to changes in care.

- Disadvantages:
  - School district must hire and supervise the nurse (nurse is a district employee).
  - May be limited availability of nurses to provide backup coverage.

PRIVATE DUTY NURSE

- Advantages:
  - Saves time since the agency or family completes the hiring process of the nurse.
  - Agency can often provide back-up nurses in situations where the regular nurse is unavailable.
  - Family preference (family can give input, but final decision is still up to the district).
  - Possible existing relationship with the student and family outside of the school day (adds to the family’s comfort level with the nursing care).

- Disadvantages:
  - Inability to provide care for other students.
  - Inability to use special education and categorical aid for partial funding.
  - Lack of involvement of the nurse in the student’s educational needs.
  - Lack of direct accountability to school personnel for the nursing care.
DOCUMENTATION OF NURSING SERVICES

The need for nursing services should be documented in the present level of performance and the related service sections of the IEP.

The school district may want to add school nurse consultative services in the program modification and support section of the IEP to address the impact of the child's health on their ability to learn.

A private duty nurse can (and should) participate in the ARD meeting and in drafting the IEP.

The IEP should include:

- nursing services necessary to benefit from an education;
- consultation between the nurse, school nurse, and teachers; and
- the nurse's involvement in the student's educational program.

GUIDELINES FOR SCHOOL NURSING SERVICES

A MODEL APPROACH
NURSING ADMINISTRATIVE GUIDELINES

- One of the most comprehensive sources in Texas regarding Health Services Administrative Guidelines is that of Plano ISD found online at the Texas Department of State Health Services website at http://www.dshs.texas.gov/schoolhealth/tgshs/skilledprocedures/plano/, it provides:
  - guidance covering a broad range of nursing functions, treatments, and conditions.
  - a specific chapter on Private Duty Nurses.
  - PDN Administrative and Operational Guidelines
  - Sample PDN Agreement

ADMINISTRATIVE GUIDELINES FOR PRIVATE DUTY NURSES

- To accommodate student needs that require one-on-one skilled nursing care to access the services offered by a District in accordance with an IEP or Section 504 plan, the District will provide the services (by contract), or the student's parent/guardian may request the District permit a private duty nurse to accompany the student in lieu of accepting the services offered by the District.
- The District holds no employment relationship with the contracted agency or PDN.

ADMINISTRATIVE GUIDELINES FOR PRIVATE DUTY NURSES

- Need is determined by District's assessment of the student's health needs during the school day and transportation to/from school.
- The District will develop a plan for nursing services through a Response to Intervention (RTI), 504, or ARD committee prior to student entry into school.
REFUSAL OF SERVICES

- If Parent(s)/guardian(s) refuse the District’s services, the District may, but is not obligated to:
  - permit a parent-contracted private duty nurse (PDN) to accompany the student during the school day.
  - Arrangement is subject to execution of the District’s PDN agreement.
  - Parent(s)/guardian(s) must
    - execute the District’s agreement,
    - sign refusal of the nursing services offered by the District, and
    - ensure execution of the District’s PDN agreement with the selected contractor.

ADMINISTRATIVE GUIDELINES FOR PRIVATE DUTY NURSES

- A District’s agreement to allow a private duty nurse to accompany a student is in no manner an admission of a violation of a District’s obligation to provide FAPE.
- All district rules, regulations, policies and guidelines must be followed by the contracted private duty nurse while on duty on District property, while using its transportation, or while attending District-sponsored activities with student.

ADMINISTRATIVE GUIDELINES FOR PRIVATE DUTY NURSES

- Parent/guardian must provide written consent allowing the District’s designee, including District medical professionals, to obtain/share a student’s health-related information with the medical health professional or health care provider identified by the parent/guardian.
- Copies of the agreement and written consent will be maintained:
  - on campus, and
  - with the special education nurse case manager.
ADMINISTRATIVE GUIDELINES FOR PRIVATE DUTY NURSES

- School officials are not responsible for the clinical supervision of the private duty nurse.
  - NOTE: Safety of the student is the general responsibility of the District, so District staff has authority to intervene in the event student safety is at risk and make reports to parent, agency, state and/or federal authorities.
- Parent/guardian will be notified of interventions and reports to authorities.
- District has right to exclude any PDN who does not comply with the District’s policies and procedures. The District will notify the student’s parent(s)/guardian(s) of the exclusion of the student’s PDN.

PDN: DAILY OPERATIONS

- Before student’s first day in a District school:
  - Conduct a 504, or ARD committee meeting to outline the District’s determination of student’s educational need for nursing services.
  - Develop an evaluation-based nursing services plan to include emergency medical protocol & nurse absence contingency.
  - Parent(s)/guardian(s) and PDN must execute and submit ISD’s PDN agreement.
  - Parent(s)/guardian(s) must sign the refusal of the nursing services offered by ISD.
  - PDN must formally gain access to ISD property.
  - School nurse must maintain file copy of student’s:
    - current physician orders for care required during the school day,
    - medications,
    - health plan, and health care needs.

PDN: DAILY OPERATIONS

- PDN must:
  - Review the student’s nursing services plan with the campus nurse.
  - Provide copy of daily nursing notes/records of nursing services for the student to the campus/district nurse on a regular (i.e. weekly) basis.
  - Sign in/out each day at the campus.
  - NOT interfere with the educational process.
- Campus will maintain daily log of attendance/absence of PDN.
PDN ABSENCES

- During PDN absence:
  - School will comply with the contingency plan provided in the student’s IEP, 504 plan, or nursing services plan.
  - Campus/special education nurse case manager will contact parent(s)/guardian(s) to evaluate care options for the remainder of the school day.
- During PDN breaks (lunch, restroom, etc.):
  - District must provide services as required in IEP or 504 plan. Possible solutions:
    - School nurse fills in.
    - Agency provides a substitute.
- DO NOT LEAVE THE STUDENT UNATTENDED.

PDN: ACCESS TO DISTRICT PROPERTY

- PDN will maintain data including:
  - Keep personal data and physician directives on file with the special education nurse case manager.
  - Name, license, and CPR card.
  - Contact information for the nurse, employer, supervisor, and emergency contact.
  - Copy of physician orders to provide care during the school day/activities.
  - Complete a criminal background check.
  - Fingerprints to Texas Department of Public Safety (TDPS) - required by law.
  - Proof of fingerprinting to District Security.

- PDN should also:
  - Obtain a photo ID through District Security AFTER it approves the background check.
  - Report to the campus office prior to reporting to the classroom assignment.

- Security Services will:
  - Maintain campus access list of authorized PDNs for principals.
  - Verify licensure from Texas Board of Nursing at www.bon.texas.gov/olv/verification.html.
PDN: PROPER BUSINESS BEHAVIOR

- Business attire - required (i.e. scrubs or uniform).
- Cell phone use - restricted.
- Rest and food consumption - restricted to lunch and breaks.
- Confidentiality of student information - maintained in compliance with Family Educational Rights and Privacy Act (FERPA) and other applicable laws.
- All physician's orders - must be followed by the PDN for student safety and wellbeing.
- Behavior putting student in physical/emotional danger - District will retain the right to report to the agency.
- When PDN is present, District employees staff should not participate in nursing care of the students, unless necessary in an emergency or if required for student safety & wellbeing.

MORE GUIDANCE

- For more specific guidance on school health programs, the Texas Department of State Health Services offers excellent information in The Texas Guide to School Health Programs located at http://www.dshs.texas.gov/schoolhealth/pgtoc.shtm.
- In particular, Module 7 provides detailed information on:
  - Special Education: Children With Special Health Care Needs
  - Children with Disabilities
  - Children Requiring Special Health Care Procedures
  - Children with Chronic Illnesses
- The Legal Appendix provides information on all Texas Statutes and Codes relative to School Health Programs.

PRIVACY RIGHTS AND THE NURSE'S OBLIGATION

IMPLICATIONS OF FERPA
HEALTH CARE INFORMATION AND THE RIGHT TO PRIVACY

- Student medical records are “education records” under FERPA. PDN must maintain confidentiality of student records and any information the PDN incidentally acquires about other students.
- FERPA allows for the good-faith disclosure of personally identifiable student information in emergencies that must sometimes be made before all of the facts are known.
- FERPA allows health care professionals treating in the school environment to discuss the student with other care providers, teachers, counselors, nurses, and any others with a legitimate educational interest.

PARENTAL COOPERATION OR LACK THEREOF

- Burleson ISD v. Student, 102 LRP 17452 (SEA Tex. 2002)
- Parent refused to allow the District nurse to train with the PDN.
- Parent refused to allow consent to consult with private health care providers.
- District did not invite parent to training of student nursing care providers.
- Hearing officer found the parent derailed training efforts and the District's ability to provide a FAPE.
- Takeaway: Document any incident of parental efforts to obstruct a District's ability to provide nursing care as part of a FAPE obligation.
FREQUENTLY ASKED QUESTIONS

FAQ'S

• What hours should the nurse expect to work daily and weekly?
  - PDN hours are directly dependent on the student's Individual Education Plan from the ARD which may include riding the bus with the student to and from school and will include serving the student at school during the school day or at school-related activities (i.e. field trips).
• Will a PDN be asked to work over the summer?
  - Yes, if a child's need extends into summer school.

FAQ

• Are districts required to provide a PDN after school hours?
  - YES: If the child is staying late to receive an educational benefit (tutoring, club, activity).
  - NO: If the child is staying late merely to accommodate a parent's schedule.
### FAQ

- **What if the PDN must use the restroom or take a break?**
  - The IEP or 504 Plan should outline a contingency plan.
  - The school nurse or a substitute PDN may need to fill in.
- **What if the PDN will be absent?**
  - The PDN agreement should outline the procedures for a PDN to alert the agency and campus that the PDN will be absent.
  - The IEP or 504 Plan should outline the contingency plan for a PDN's absence.

---

- **Are contractors expected to supply any equipment?**
  - That is between the contractor and the parent. Districts do not typically provide medication, equipment, or supplies.
- **When does a District pay for a PDN?**
  - The District is obligated to provide a nurse if required by the IEP unless a FAPE can be provided without one.

---

- **Who is responsible for clinical oversight of a PDN?**
  - While the vendor agency is responsible for supervision of their PDN with the expectation that the vendor would visit the PDN on a regular basis (i.e., twice a month), the campus nurse will monitor care given to the student and be an emergency resource for the PDN.
  - If the District can provide school health services, should a District agree to use a PDN contracted by the parents?
  - The District can decide to permit this arrangement or not.
FAQ

- To what extent is a PDN involved in developing a plan of care?
  - The PDN provides a copy of the plan of care and the Physician's orders to the campus nurse who must also be familiar with care provided to the student.

- What if the student has a severe auto-immune disorder?
  - The IEP or 504 Plan may need to include a contingency plan for the student to receive remote education services during seasons of disease outbreak (ex: videoconferencing during flu season), and outline the nursing services provided.

YOUR QUESTIONS?

THANK YOU!

Mari McGowan
Director/Shareholder
Abernathy, Roeder, Boyd, & Hullett, P.C.
MMcGowan@abernathy-law.com