Interactive Convention 2014
Learning Labs

Health Services, Nursing Services, and Private Duty Nurses

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HEALTH SERVICES AND NURSING SERVICES UNDER IDEA AND SECTION 504

1. Are health services and nursing services a related service under IDEA?

Yes. The term "related service" means: transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. 34 CFR § 300.34.

Related services include:

Parent training, speech therapy, occupational therapy, recreational therapy, rehabilitative counseling, interpreting services for the deaf, visual therapy, school health services, medical services (diagnostic and evaluation only), parent counseling, psychological services, physical therapy, counseling, orientation and mobility services, school social work services, transportation, school nurse services, early identification and assessment of children with disabilities. 34 CFR § 300.34 (a)(emphasis added).

Special education and related services are provided to the student at no cost to the parent consistent with the definition of FAPE under the IDEA.

Free appropriate public education or FAPE means special education and related services that –
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA [State Education Agency], including the requirements of this part;
(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
(d) Are provided in conformity with an individualized education program (“IEP”) that meets the requirements of §§ 300.320 through 300.324.
34 C.F.R. § 300.17.

2. Is there an exception to the definition of related services regarding surgically implanted devices?

Yes.

(b) exception; services that apply to children with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device’s functioning (e.g., mapping), maintenance of that device, or the replacement of that device.
(2) Nothing in paragraph (b)(1) of this section –
(i) Limits the right of a child with a surgically implanted device (e.g., cochlea implant) to receive related services...that are determined by the IEP Team to be necessary for the child to receive FAPE.
(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).

3. How does the law define “school health services?”

"School health services and school nurse services” means health services that are designed to enable a child with a disability to receive a FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person." at 34 CFR § 300.34(c)(13)(2011).

4. What is meant by the term, “medical services?”

“Medical services” means services provided by a licensed physician to determine a child's medically related disability that results in a child's need for special education and related services. 34 CFR § 300.34(c)(5)(2002).

NOTE: School districts are not required to provide medical services unless those services are for diagnostic or evaluation purposes.

5. How do the courts distinguish between medical services and school health services?

Prior to the March 3, 1999, U. S. Supreme Court decision in Cedar Rapids v. Garret F., the courts were frequently asked to determine whether a particular health task was a “related service” that fell within the definition of “school health service,” or whether such task was a “medical service” for which the school district was not responsible.


When Garret was four years old, he was injured while riding on the rear seat of a motorcycle. A blanket he was holding became entangled in the driving mechanism of the motorcycle, suddenly causing him to jerk his head and permanently injure his spinal cord. He was paralyzed from the neck down and requires a ventilator for life support. When Garret was in the sixth grade, his mother, a single parent, requested a due process hearing when the school district refused to provide health care services during the school day to assist the student. At that time, Garret had successfully attended school since kindergarten and had never required
emergency care at school. His family relatives (mother, aunt and others) provided his health care. Garret needed catheterization, suctioning of his tracheotomy tube, monitoring of his ventilator, ambu-bagging, and assistance with feeding and positioning. The cost of these services was estimated at between $20,000-$30,000 annually.

Decision: The lower court held that the school district was required to provide these services to the child. The 8th Circuit Court affirmed the decision of the lower court. The U. S. Supreme Court simply affirmed the lower court decisions.

There was a split among the courts prior to Garret F. as to whether or not nursing care services were required in the public schools. However, the court in Garret F. adopted what is referred to as the “Bright Line Test.” Under the “Bright Line Test,” if the requested service must be performed by a physician, then it is considered a "medical service" which the courts have generally held that the school district is not required to provide.

Additionally, in Garret F., the U. S. Supreme Court made it clear that continuous nursing services are a “related service” and therefore must be provided by a public school district. The Supreme Court indicated that the “Bright Line Test” should be used in the public schools.

6. Are school health services a related service required under Section 504?

Under Section 504, health services that can be delivered by a school nurse or other appropriately trained personnel, such as the administration of medication, may be a required related aid or service, if necessary for a student with a disability to effectively participate in his or her educational program. 34 CFR § 104.33.

Palm Beach County (FL) Sch. Dist., 52 IDELR 109 (OCR 2009)

A 5 year old student with diabetes required blood sugar tests and food monitoring. The parent requested that the District allow a private aide to attend school with Student to monitor him throughout the day for signs of high or low blood sugar, test his blood sugar levels at the appropriate times and monitor what he eats for lunch. The District refused to allow the private aide to attend school with Student reasoning that the District was capable of handling Student’s health needs and staff were appropriately trained to assist Student with his diabetes. The District convened a Section 504 meeting for Student and developed a 504 Plan to address his individual needs. The 504 Plan included training of three staff members to provide services for Student which included identification of physical signs of blood sugar changes, administration of glucagon and possible insulin injections. The 504 Plan also required that staff be able to provide this care for Student both during school and outside of school hours in extracurricular activities and field trips. The parent alleged the District told her that if she desired for Student to participate in field trips, she would need to attend to monitor his diabetes. OCR found that allegation to be unsubstantiated because the 504 Plan included the necessary health services for Student during field trips. Additionally, OCR found the District’s 504 Plan appropriately address Student’s individual needs regarding health services for his diabetes.
7. **Is the administration of medication at school a related service?**

Yes. If a student with a disability must take medication during the school day to access his/her education, then the administration of the medication is a related service under IDEA or Section 504. *Berlin Brothersvalley (PA) Sch. Dist.*, 353 IDELR 124 (OCR 1988).

8. **Must health services and nursing services be included in the student’s IEP if necessary for FAPE?**

The IDEA implementing regulations require that a statement of the related services be included in the IEP, as well as the frequency and during of the related services. 34 C.F.R. § 300.320(A)(4)-(7).

See also the USDE comment “A child who is medically fragile and needs school health services or school nurse services in order to receive FAPE must be provided such services, as indicated in the child’s IEP.” 71 Fed. Reg. 46,574 (2006).

**NOTE:** When determining the appropriate health services and/or nursing services for a student in an ARD Committee meeting, be sure to document the frequency and duration of any necessary health services and/or nursing services on the schedule of services page. Also, include in the IEP the position of the district staff member to provide the health services and/or nursing services, and any necessary training.

*Glocester School Department*, 110 LRP 2792 (SEA RI 2009)

The hearing officer held that the District’s proposed transition plan, including nursing services and training, noted in a letter to the parent should have been included in the IEP. The District proposed the District staff would train with Student’s private nurse regarding recognition of seizure onset. The student presented with a complicated seizure disorder which required extensive experience to recognize the onset of her various seizures. Her private nurse had spent years with Student and the evidence showed she recognized the onset of Student’s seizures. The hearing officer denied the parent’s requested remedies, despite the fact that the District failed to include the transition and training plans, as stated in a letter, in the actual IEP because the parent refused to allow district staff to train with Student’s private nurse. Key quotes:

> It appears to me that the Parents have an obligation to assist school personnel in becoming familiar with the Student’s seizures so as to identify them…

> The development of an IEP is a collaborative process and I find that the refusal of the Parents to allow the School district personnel into the home to give important knowledge of the Student’s very complex medical condition does frustrate the process. If the actions of the Parents are determined to be unreasonable then the School District cannot be faulted for an incomplete IEP…This is why there are no remedies for the violations.
I find it to be totally unreasonable for the Parents to not cooperate with the School District is assisting the School Personnel in the Parents’ home to observe the Student to gain experience in recognizing the onset of seizures.

SCHOOL NURSES AND DELEGATION OF TASKS

9. Who can serve as a school nurse?

In clarifying who can receive creditable hours of service, the Texas Administrative Code indicates a school nurse is:

An educator employed to provide full-time nursing and health care services and who meets all the 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 who has been issued a license to practice professional nursing in Texas. 19 T.A.C. § 153.1021(17).

Additional provisions that apply to nurses can be found in the Texas Nurse Practice Act located in the Texas Occupations Code, Chapters 301, 303, 304, and 305, and in the Texas Board of Nursing Rules and Regulations located in 22 T.A.C. § 211 and following.

10. Can an LVN serve as a school nurse?

If an LVN provides services in the school setting, it should be under the supervision of an RN, physician or physician’s assistant. Tex. Occ. Code § 301.353. Supervision may be on-site or by remote means depending on the proximity of an RN, the stability of the student’s condition, the experience and education of the RN, and the kind of tasks that are required from the LVN. Additional guidance can be found from the Frequently Asked Questions Texas Board of Nursing on LVN’s Supervision of Practice located at http://www.bon.texas.gov/practice/faq-lvnspractice.html.

11. What duties can a district nurse delegate to unlicensed personnel?

The Texas Board of Nursing provides guidance regarding what tasks may and may not be delegated to unlicensed personnel. 22 T.A.C. §§ 225.9, 225.10, 225.11, 225.12.

12. Case summary regarding the delegation of health services to an aide:

East Main Sch. Dist., 33 ECLPR 55 (SEA IL 2011)

Student had medical issues that required monitoring throughout his school day for potentially fatal aspiration, dehydration, and constipation. The District previously provided Student a 1:1 nurse throughout his school day. However, the District became concerned that the 1:1 nurse impeded Student’s progress in communication skills as he tended to only communicate through the 1:1 nurse. As a result, the District decreased Student’s 1:1 nursing services to
120 minutes per day and provided for an aide for the remainder of the school day and on the bus for Student. The parents disagreed based on their opinion that Student required the supervision of a nurse throughout the school day and filed a request for a due process hearing. The Hearing Officer agreed with the parents and opined that the parent’s expert provided credible testimony that Student’s monitoring for fatal aspiration, dehydration, and constipation required the skill and expertise of a nurse, not an aide. The Hearing Officer held the failure to provide Student a 1:1 nurse therefore resulted in a denial of FAPE.

NOTE: It is important to ensure that task delegated to aides or staff are delegated consistent with the TAC rules noted above. Additionally, seeking consent to consult with the student’s physician, or even consent to conduct the District’s own medical evaluation, may assist in resolving disputes regarding whether certain tasks may be delegated to an aide or other staff, as opposed to conducted by a nurse.

13. What if the student needs direct nursing services but we don’t have enough nurses?

Prince George’s (MD) County Schools, 39 IDELR 103 (OCR 2003)

The student required a certified nurse to administer her insulin at school if necessary. Prior to hiring a certified nurse, the district only had a certified nursing assistant on staff, who was not permitted to inject insulin. During this time, student’s mother came to the school and administered her insulin. OCR held the district should have hired a nurse sooner and ordered the district to reimburse the parent for lost wages and mileage she incurred in coming to the school to administer the insulin to the student.

EVALUATION

14. Should we conduct an evaluation to determine appropriate health services and/or nursing services for a student?

Yes. We need to evaluate in all areas of suspected disability and need, including health services or nursing services. Not only is it required in conducting an appropriate evaluation, identifying all areas of need for a student is the first step in developing an appropriate IEP for the student. A thorough evaluation sets the stage to develop an IEP “specifically designed to meet the child’s unique needs” as required for FAPE. 34 C.F.R. § 300.304(c) provides a school district must ensure that—

- The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. . .
- In evaluating each child with a disability…the evaluation is sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (emphasis added).
15. **Further guidance regarding evaluations for related services:**

*Letter to Anonymous, 50 IDELR 47 (OSEP 2007)*

In this letter, OSEP provides guidance regarding the importance of evaluation data in determining a student’s individual need for related services. Key quotes:

The evaluation procedures in 34 C.F.R. § 300.304 require the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining: (i) whether the child is a child with a disability under 34 C.F.R. § 300.8; and (ii) the content of the child’s individualized education program (IEP)...

Further, under 34 C.F.R. § 300.304(b)(2), no single measure or assessment can be used as the sole criterion for determining...an appropriate educational program for the child...

Under 34 C.F.R. § 300.306(c)(1)-(2), in interpreting evaluation data for the purpose of determining if a child is a child with a disability under 34 C.F.R. § 300.8 and the educational needs of the child, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior, and must ensure that information obtained from all such sources is documented and carefully considered...

These determinations are unique to the facts and circumstances involving a particular child and must be made on an individual basis.

NOTE: The use of a variety of assessment tools, strategies, and sources of information is documented in the evaluation. Every evaluation should include recommendations for IEP development, and these recommendations are then considered by the ARD Committee in determining the appropriate health services and/or nursing services for the student.

16. **How do we address information provided by the physician?**

Information from the physician is important information for inclusion in a health services/nursing services evaluation and IEP development.

*North Kitsap Sch. Dist., 59 IDELR 58 (SEA Wash. 2012)*.

In this case, the student’s parents disputed the close proximity of the nurse to the student. The Hearing Officer affirmed the District’s implementation of the Health Care Plan (“HCP”) to address a seizure disorder and the provision of school nursing services. Key quotes:

The District received Dr. Sotero’s seizures protocols and incorporated them into the Student’s Seizure HCPs. When presented with a new seizure protocol, the
District considered it and revised the Student's Seizure HCP as needed. This occurred at least twice during the 2011-2012 school year. There was no evidence to support a conclusion that the Seizure HCPs did not incorporate Dr. Sotero's protocols appropriately or correctly.

Much time was spent at hearing with the parties presenting evidence and developing the record with respect to Ms. Halbert's nursing care for the Student. The evidence was carefully considered, and Findings of Fact determined herein. Based upon those Findings of Fact, it must be concluded that the Parents have not proven that Ms. Halbert failed to follow the Seizure HCPs, and by incorporation Dr. Sotero's seizure protocols. The facts do not support a conclusion that Ms. Halbert did not properly administer the Student's rescue medications. The facts do not support a conclusion that Ms. Halbert mis-used or over used the VNS magnet. The facts do not support a conclusion that Ms. Halbert gave the Student fluids during a seizure. Ultimately, the facts do not support any conclusion that Ms. Halbert did not follow the Student's Seizure HCPs or Dr. Sotero's physician orders.”

17. What do we do if the parent will not give consent for the district to conduct its own medical evaluation?

A school district has the right to conduct its own medical evaluation if the evaluation is necessary for IEP development. Sometimes additional medical evaluation data is necessary to resolve conflicting or incomplete information about a student’s health services and/or nursing services needs.

In Shelby v. Conroe ISD, 454 F.3d 450 (5th Cir. 2006), the District sought to conduct its own medical evaluation when the parent limited the District’s access to the child’s medical information. The Court held that:

CISD is entitled to perform a reevaluation of Shelby…In order for CISD to know how to formulate an IEP consistent with Shelby’s extreme symptoms, Shelby’s ARD Committee needed access to her medical history and specialist, Dr. Kelly. However, Shelby’s guardian, Ms. T., limited the medical information that was available to Shelby’s ARD Committee by scripting the main encounter between Dr. Kelly’s answers to the ARD Committee with 14 pre-approved questions. Ms. T. then edited Dr. Kelly’s answers to the ARD Committee’s questions. Without more complete medical information about Shelby, the ARD Committee was not able to fashion an IEP that would allow CISD to perform its IDEA – mandated duty.

18. Use evaluation data to develop student IEPs and placement recommendations.

R.K. v. Board of Ed. of Scott County, 59 IDELR 152 (6th Cir. 2012) (Unpublished)
The Circuit Court remanded the case back down for determination due to the “paucity of facts in the record.” R.K.’s parents alleged by assigning R.K. to a non-neighborhood school, the board had discriminated against him in violation of the ADA because other children with diabetes in the district were allowed to attend their neighborhood schools. R.K. was a student with Type 1 Diabetes who required daily insulin injections to maintain glucose levels. The school board assigned him to a school which had a full-time nurse on duty, which was not his neighborhood campus. However, even after R.K.’s parents informed the school that R.K. had been fitted with an insulin pump and he would no longer need daily injections by a nurse, the Board continued to deny his parents’ request for R.K. to attend his neighborhood campus.

The district court granted summary judgment in favor of the school board on all counts. The Circuit Court, however, could not determine from the scarce evidence in the record whether the board had a discriminatory blanket policy that required children with diabetes to attend schools that had full-time nurses as the parents contended, or if the board followed Section 504 procedures including conducting an individualized assessment complete with the student’s “aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior” before making the determination that the student should attend a school other than his home campus.

19. Evaluation data as a basis for the health/nursing services in the IEP may be used to show the district provided certain services for nondiscriminatory reason and assist the district in a defense against a discrimination claim.

_T.B. v. San Diego Unified Sch. Dist._, 58 IDELR 278 (S.D. Ca 2012)

The student required G-Tube feeding to attend school. The student’s IEP included specific information regarding the amount of nursing services the student would receive, training, and consultation regarding his health services needs. However, the District failed to include in the IEP specifically the position/classification of who would oversee the student’s G-Tube feedings at school. At the due process hearing, the ALJ concluded the failure to identify the position/classification of who would oversee the student’s G-Tube feeding resulted in a denial of FAPE because it failed to include a plan that would enable the student to attend school. The District provided the student’s one-on-one aide to oversee his G-Tube feeding. The ALJ determined that the District failed to show the amount of training provided the aide qualified her to perform the specialized health care services under state law.

The parents subsequently filed suit against the District claiming discrimination based on the same facts. Regarding the discrimination claim, the parents must show the District intentionally discriminated against the student or acted with deliberate indifference regarding his health services needs. The federal district court ruled in favor of the District as a result of the District’s responsiveness to parent concerns and the District’s gathering of information regarding the student’s health services and/or nursing services needs. Key quotes:

First, the School District never ignored the Brenneises’ concerns. It was, at all times, engaged in meaningful, substantive discussions about providing properly-trained adult
supervision during T.B.’s G-Tube feedings at school...At every turn, the School District diligently responded in good faith to Mrs Brenneises’ ongoing concerns and vacillating requests. The record also demonstrates that the School District never refused to offer a qualified, competent, trained person to assist T.B.’s feeding procedure – it simply offered an approach to meet T.B.’s needs in a manner that differed slightly from the Brenneises’ interpretation of the statute.

Second, the School District offered accommodations based upon its knowledge of T.B.’s abilities, which allowed any trained adult to assist him with the procedure...The parents disagreed with the opinion, but they have no proof that the School District acted with deliberate indifference to T.B.’s health and safety needs.

Upon gathering accurate, comprehensive facts about T.B.’s special needs and the opinions of educators, the School District also obtained expert guidance from medical professionals...In addition to the input from several nurses, the School District also relied on expert guidance from the Chief Medical Consultant, Dr. Taras, who stated that many students are able to safely accommodate G-Tube feedings with the assistance of a competent and trained aide...

NOTE: The gathering of evaluation data, which the District utilized in developing the student’s health/nursing services, enabled the district to successfully defend against the parents discrimination claim.

PLACEMENT AND LRE DECISIONS

20. How do we decide what services may be provided in the general education setting and what services require a more restrictive placement?

Privacy considerations and concerns over the potential disruption of the student's classroom, as well as upsetting the student's classmates, enter LRE decisions about whether a student may remain in the classroom while undergoing medical/health procedures. When making the decision on where to provide the services the ARD committee should make the decision based on the individual needs of the child. Additionally, a safer environment in light of a student’s health needs may outweigh the benefit the student would receive from access to other students.

It has been established since 1984 that catheterization is a related service. Of course, catheterization is a service that requires privacy.

_Tatro v. State of Texas, 625 F.2d 557 (5th Cir. 1980); on remand 516 F. Supp 968(N.D Tex. 1981); aff’d 703 F.2d 823(5th Cir. 1983); aff’d sub. nom. Irving ISD v. Tatro, 468 US 883, 104 S. Ct. 3371, 82 L.Ed. 2d 664 (1984). Amber Tatro, age five, suffered from spina bifida. As a result of this birth defect, Amber had orthopedic and speech impediments, as well as a neurogenic bladder. She required clean intermittent catheterization every three to four hours. When she became eligible for the district’s Early Childhood Program, the District refused to provide the catheterization. The District court found that this was not a related service, but_
the Fifth Circuit held that the child was entitled to this procedure as a “related service” since she could not benefit from special education without it. The Supreme Court affirmed the decision of the Fifth Circuit.

*Northside ISD, 33 IDELR 201 (SEA TX 2000)*

The District’s proposed placement in a habilitation center was the LRE for a student with significant and unpredictable medical needs. The parent disagreed with the District’s proposed placement at the habilitation center and instead requested Student be placed at his neighborhood elementary campus, or a combination of his elementary campus and homebound placement. The District convened multiple ARD Committee meetings and made several attempts to transition Student from the habilitation center to his neighborhood elementary campus. However, Student failed to make adequate progress on his goals and objectives in the special education classroom and the frequency of his required nursing interventions was disruptive to the learning of other students, as were Student’s agitated vocalizations. Additionally, the evidence revealed Student did not socialize or interact with other students, either disabled or nondisabled. The hearing officer found the habilitation center had the necessary specialized medical equipment and staff to address the student’s health services needs.

Key quotes:

Vincent is a medically fragile ten-year-old boy who has severe disabilities due to a birth injury…His cognitive functioning is at the brain-stem level. He requires one-on-one nursing care at all times…His health, especially respiratory, is unstable and unpredictable…

Given the severity of Vincent’s disabilities and the unpredictability of his medical needs, NISD’s proposed placement in the Northside Habilitation Program (NHP) is appropriate…Any benefit from additional association with non-disabled students at the neighborhood school is speculative, and is far outweighed by health and safety concerns, which are threshold issues in Vincent’s education…In addition, his agitated vocalizations increased and he was harder to soothe. This, in combination with the noise and distraction of his continuous nursing interventions, was disruptive to other students at Elrod, especially in his special education classroom.

While IDEA expresses a preference for placement at the neighborhood school, consideration of the school closest to home is one of several factors in placement decisions, and does not carry presumptive weight. The NHP campus is the least restrictive environment appropriate for Vincent at this time…The ARD committee should regularly monitor Vincent’s health and educational status to determine if a transition to a regular campus might be appropriate in the future.

*Glocester School Department, 110 LRP 2792 (SEA RI 2009)*

Student presented with a severe seizure disorder, was legally blind, nonverbal, and non-ambulatory. Her physician recommended her educational placement be within 30 minutes from a hospital trauma room because Student was at risk for sudden death during
In this case, the 14-year-old student had a debilitating genetic disorder that prevented him from attending school on average from 35 to 55 days per school year. During a portion of the days in which he was not physically capable of attending school, he was alert and capable of receiving instruction. The student became overwhelmed with the amount of make-up work as a result of his absences and began to struggle academically. The District provided the student one hour of home-bound tutoring for every day of instruction he missed. The home-bound tutoring did not include direct instruction, and instead focused on assignment completion. Student’s parents requested the District provide Student a webcam setup that would allow Student to receive instruction remotely during the acute and recovery phases of his illness when he was unable to physically attend school. The Principal was resistant to the use of the webcam from home. Instead, the IEP Team proposed the availability of a webcam for the student in a room by the nurse’s office should the student become ill at school. Student was only able to access the webcam room at school 4 days; otherwise, he was not physically capable of attending school when ill. The Student’s aide assigned to attend the webcam room with him was not trained in his health care needs. The parents filed a request for a due process hearing and claimed the District denied the Student FAPE by denying him access to technology to allow Student to access classroom instruction from home. The hearing officer found in favor of the parents. Key quotes:

The federal regulations are certainly written in terms of physical locations. Yet the federal LRE regulations are also clear that a student must, if at all possible, be educated in the school where the student would attend if not disabled and that
“consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

In this case, the student has been denied a FAPE because the District has not sought to educate the child in the LRE. It seems counter-intuitive to find that a placement at a school-based site is more restrictive than a student’s home. Yet given the student’s diagnosis and symptoms, and the effect of those diagnosis/symptoms on the student’s learning, the District is in a position through the use of available technologies to make the student’s regular education environment available to the student as a live video/audio stream or on a storage device. While a live stream is available in the District’s webcam room, the potential harmful effect on the student or on the quality of services that the student needs outweighs the fact that it is physically located at a District site.

CONFIDENTIALITY

21. Which rules apply to confidentially of a student’s health services and/or nursing services?

If your health care worker is concerned about disclosing medical information, guidance is available. Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Record is produced jointly by the U.S. Department of Health and Human Services and the USDE questions and answers addressing confidentiality of records maintained by the school nurse and is available at:

Unless the school district maintains a separate health clinic that bills insurance directly, the records related to the student’s medical needs are education records and subject to disclosure under the provisions of FERPA.

PRIVATE DUTY NURSES

22. Should we agree to use at parent request a student’s private duty nurse to provide school health services that the district can provide?

Remembering that the public education agency has the obligation to provide a free appropriate public education, it would be important to ensure that the ARD committee develops the IEP and determines what services the student requires. If the student requires a nurse to be assigned to the student throughout the school day, the district should provide one and document it in the ARD paperwork. If the student can be served by having a nurse nearby or one assigned to the classroom, we need to clearly indicate it in the ARD documentation. If we can provide a FAPE without using the private duty nurse, we should clearly state it. If the parent still wants to use a private duty nurse for the parent’s child in the school setting, it is up to the district whether to permit it or not.
If a district decides to permit a private duty nurse to provide services to an individual child on the campus, a written agreement should memorialize the terms of the agreement. At a minimum, the agreement between the parent and the district should indicate the district’s ability to provide a FAPE, including providing all school health services and the provision of nursing services needed for the child to receive an educational benefit. Subsequent to permitting a private duty nurse to provide services on the campus absent a clear indication that the district can and will provide such services at no charge to the parent, a hearing officer could find that the district needs to reimburse the parent for costs related to the private duty nurse.

Any contract needs to address criminal background clearance, proof of licensure, the relationship between the district and the private duty nurse clarifying that the nurse is not an employee of the school district and the duties to be performed by the private duty nurse. Provisions should preclude the private duty nurse’s interference with the educational process, and ensure the district’s nurse is kept current on the student’s medical needs and treatment.

The parent needs to notify the district if the private duty nurse is going to be absent, to permit the district to arrange for the provision of school health services and nursing services to the student consistent with the IEP. The nurse should sign a confidentiality agreement to protect the confidential information of other students. Any agreement should contain a clause waiving liability for any injuries sustained by the nurse while on the campus or on district transportation. Contact your legal counsel for guidance in drafting such an agreement.

23. What if the parent wants the student’s PDN to attend school with the student and refuses to cooperate in our efforts to provide nursing services by school district nurses?

_Burleson ISD v. Student_, 102 LRP 17452 (SEA Tex. 2002)

The parties in this case disputed whether the district provided the student appropriately trained nurses, whether the student’s private duty nurse (“PDN”) should be allowed to attend school with her at district expense, and whether the District should have consent to consult with student’s private health care providers. As a result of a car accident, Student was a quadriplegic and required significant health services at school. Student required a ventilator trained nurse to perform her suctioning and trach-care. Student received the services of a PDN 20 hours per day. Initially, the District allowed Student’s PDN to attend school with her during ESY and pursued hiring of an additional school nurse for Student. The District hired an RN and planned for the RN to train with Student’s PDN; however Student’s parent did not allow this training to occur. Additionally, the parent denied the District consent to consult with Student’s private health care providers. The District convened an ARD and agreed to allow Student’s PDN to attend school with her if the parent would sign an agreement acknowledging the District’s willingness to provide Student’s nursing services. The parent ultimately failed to sign the agreement and disagreed with the provision of Student’s nursing services by District nurses. The District scheduled another ARD meeting and determined the District would provide Student’s nursing services with District nurses. The parent refused to send Student to school because she had not participated in the training of the District nurses. The District ultimately requested a due process hearing to resolve the
dispute. The parent filed a counter claim and requested compensatory services. The hearing officer denied the request for compensatory services for the entire time Student did not attend school based on the parent’s failure to allow training of the District nurse with the PDN, and her failure to provide consent for the District to consult with Student’s private health care providers. Compensatory services were awarded for a portion of the time period based on the District’s failure to allow the PDN to attend school with Student prior to requesting the due process hearing and the District’s failure to include Student’s parent in the training of the District nurses regarding Student’s health services needs. Key Quotes:

It is a recognized right of the school district to make personnel selections and determine what personnel will deliver services to the child…While I agree with the Petitioner that Burleson ISD may select the personnel who will provide services to a disabled child, the issue in the current case turns on whether Burleson ISD personnel are indeed “qualified” in accordance with IDEA to deliver [Student’s] school nursing care…I find that Burleson ISD’s efforts to train its nursing personnel during summer 2001 were derailed completely when Mandi R. refused to allow CCHH to train Burleson ISD nursing personnel specific to [Student].

I find it significant that Mandi R. was not directly invited to participate in the training of the Burleson ISD nurses until December 2001…I found the testimony of Dr. Hadeed and Mandi R. to be persuasive as to the importance of Mandi R.’s involvement in training [Student’s] nursing care providers…Yet, I find that Mandi R.’s actions contributed to the situation and therefore I decline to award compensatory services for the entire period.

Lastly, I find it remains absolutely necessary for Burleson ISD to have current healthcare orders and other pertinent healthcare information in order to provide [Student] a FAPE that includes the receipt nursing services tailored to her unique needs at school... In the absence of such consent, Burleson ISD will be relieved of its obligation to provide special education services to [Student] at school.

NOTE: This case illustrates the importance of considering whether parental involvement in training of school district nurses for individual student health services needs is necessary, as well as the importance of documenting efforts to obtain consent to consult with private health care providers regarding the individual student’s health services needs.