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The University of North Carolina at Greensboro, 1987

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Legal Aspects Of Administering Medication To Public School Students in North Carolina

by

Larry Keith Weatherly

A Dissertation Submitted to
The Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

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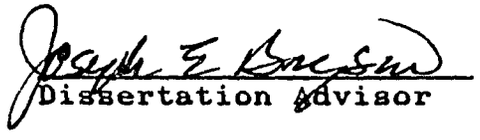

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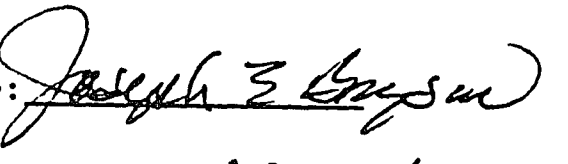
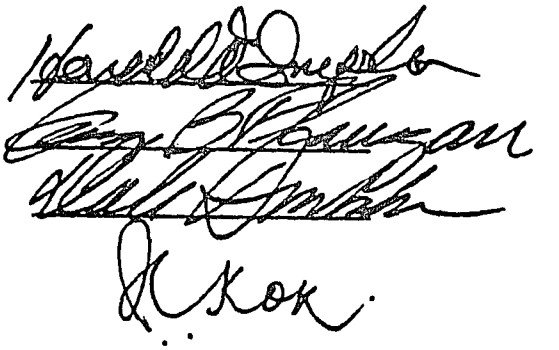
Dissertation Advisor: 

Committee Members: 

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This dissertation examines the legal aspects of administering medication to school students in North Carolina. The purpose of the study is to render educational decision-makers appropriate, accurate information in conjunction with the legal aspects of administering medication to students.

Areas of concentration include: (1) the responsibilities of the local school board, administrators, parents, students, physicians, and the school personnel designated to administer the medication, (2) the proper handling, storage, and disposal of medication, and (3) the actual method of administering the medication.

A survey of policies currently in use in the North Carolina public school system was conducted by contacting one hundred forty one (141) school districts. An analysis of these policies is provided. Based on research, criteria for a sound policy was developed. The currect policies when compared with the established criteria, prove grossly inadequate in providing safety for the student's health and the

school designee's legal rights.

Though North Carolina teachers are not required by law to administer medication and local school boards cannot mandate this action, the principal's designee, or volunteer, should receive appropriate education as to the legal risks involved, the risks to the student's health, and the proper procedures in administering medication.

Based on research findings, a recommended policy and necessary forms are included. If followed properly, this policy should afford protection to the students and all school personnel involved.

ACKNOWLEDGEMENTS

I would like to express my appreciation to Dr. Harold Snyder and Dr. George Flanigan for serving on my committee; and to Dr. Dale Brubaker for the encouragement that meant so much.

To Dr. Joe Bryson, I give special thanks for his friendship, support, and guidance, not only in the dissertation, but throughout my graduate program.

TABLE OF CONTENTS

CHAPTER I

MEDICATION ADMINISTRATION:

SCOPE AND DILEMMA

Throughout the history of American education, the administration of medication by educational personnel has been a litigious problem. However, as James Ross states:

> Legal ramifications and responsibilities of school personnel in administering medication is an often neglected yet highly controversial issue. Though an abundance of written material is available on injuries to students and the legal culpability of school personnel, research studies, journal articles, and surveys addressing the liability of school employees administering medicines to children are minimal.[1]

Of the limited material that is available, the majority of this data deals primarily with administering medicines and/or medical services to handicapped children or to those students whose behavioral characteristics require the use of psycho-active

[1] James C. Ross, "Protect Teachers and Students With Policies Governing Medical Matters" The American School Board Journal. 171 9 (Sept. 1984), 34.

medication for behavior control.

> "While teachers, administrators, parents, and politicians continue to debate the legal merits of such practices, school employees continue to administer medication, especially if cited in the Individual Education Plans, or IEP, of a handicapped child."[2]

Often the medication is administered without clearly defined guidelines and procedures, and in a large number of cases, no guidelines and procedures at all.

While the question of the legality of administering medication has not been adjudicated, a considerable number of specific issues, such as the Clean Intermittent Catheterization[3] of a handicapped child, have been settled through litigation; conversely, such rulings have only raised more questions as to the liability incurred by a teacher or other school personnel administering medication and the limits of medical service the public schools should provide.

Thus, the primary factor in stimulating debate in this area is the Education for All Handicapped Children Act, (Public Law 94-142),[4] which states and

[2] Patricia Solberg, "Administering Medications In The School," School Law Bulletin, XI 1 (Jan. 1980), 1.

[3] Irving Independent School District V. Tatro, 82 L Ed 2d 664, 1 a.

[4] The Education for All Handicapped Children Act of 1975, Public Law 94-142, sect. 615 20 U.S.C. 1411 et. seq.

requires that appropriate educational experiences should be afforded all children regardless of handicap. With this legislation, issues related to the medical needs of students, not restricted to the handicapped or to those in special classes, have emerged. The central focus of this study is to review court cases, legal opinions, and educational publications pertinent to the administering of medication to students in general, while focusing on major court cases, and current guidelines and regulations used in school districts throughout North Carolina.

The expressed purpose of this study is to render educational decision-makers appropriate, accurate information in conjunction with the legal aspects of administering medication to students. By providing guidelines, sample policies and procedures, educational personnel may formulate sound specific schema in reference to this issue.

STATEMENT OF PROBLEM

Today, the increasing demands placed on school

personnel to undertake and provide medical services have created a dilemma which not only persists but grows. Inherent in implementing the provisions of the Education For All Handicapped Children Act of 1975 (Public Law 94-142) is the guarantee of appropriate educational opportunities for all handicapped students. In addition to the growing parental awareness of due process rights, special interest groups have lobbied to assure that handicapped children attain the rights and opportunities mandated by law. Monitored by these groups, educators are expected to assure that no handicapped child is denied his rights, including the right to receive medication while in school facilities.[5] Concurrently, parents of "normal" children are increasingly demanding that school personnel provide medical services for their children.[6] These services are not limited to medication for such afflictions as diabetes, allergies, seizures, and other ailments requiring medicines, but include such over-the-counter medicines as aspirins, cold tablets, and cough drops.[7] The possible

[5] Dr. Jo Pettigrew, "New Law Dictates Medicine Policy," Oklahoma School Board Journal 33, (August 1984), 4.
[6] Ross, p. 34.
[7] Ibid.

dangers of providing non-prescription medication is overshadowed by the widespread use of such products. However, improper storage, handling, administration, and allergic reactions may lead to harmful, even fatal, accidents.

The necessity of administering medication is not questioned; the method of providing this service is.[8] Precautions are necessary to avoid the hazards that go hand in hand with the administering of medication by school personnel. In North Carolina, teachers are not required to administer medication; local School Boards and Administrators cannot mandate this action.[9] Thus, on a strictly volunteer basis, those who improperly administer medication may be subject to civil liability suits.[10] Consequently, it is imperative to establish written policies and procedures with regard to the control, storage, and administration of all prescription and over the counter medications.

[8] Ibid.
[9] North Carolina Public School Law 115c-307(c).
[10] Anne M. Dellinger, North Carolina School Law: The Principal's Role, Institute of Government, (Chapel Hill, N.C.), 15-16.

QUESTIONS TO BE ANSWERED

One of the stated purposes of this study is to provide school administrators and decision-makers adequate, concise data for the development of practical, legal guidelines on the administering of medication. Listed below are key questions which must be considered and answered while developing these guidelines:

1. What are the major educational and legal issues regarding medication for school students?

2. Which of these issues are likely to be included in court cases?

3. Which of the legal principles established in relevant cases regarding appropriate education are applicable?

4. What specific issues are currently being litigated?

5. What are the legally acceptable policies and procedures for administering medication?

In this historical study, the legal aspects of administering medication to students throughout the United States, focusing on North Carolina, will be reassessed through court litigations and their results to determine the possible effects these decisions will have on schools. In addition, state laws, sample

policies from school boards, and an overview of current policies used in districts throughout North Carolina will be utilized to develop competent, well-constructed legal guidelines for the administering of medication. Without a doubt, the controversial debate of this practice will not be completely resolved.

METHODS, PROCEDURES, AND SOURCES OF INFORMATION

In order to determine whether a need existed for a study on the legal aspects of administering medication, a search was made of Dissertation Abstracts for related topics, and then, relevant journal articles were located through the Reader's Guide to Public Law, Educational Index, and the Index of Legal Periodicals.

Additionally, general research summaries were found in the Encyclopedia of Education Research and various books of school law. A review of related literature was obtained through the Educational Resources Information Center (ERIC).

Related federal and state court cases were

acquired through the Corpus Juris Secundum, American Jurisprudence, Wests' School Law Digest, and the National Organization on Legal Problems of Education (N.O.L.P.E.) School Law Reporter. (The cases were categorized corresponding to issues noted in the general literature review.)

Other supplementary materials specifically related to the administering of medication were ascertained from the North Carolina State Attorney General's Office, the University of North Carolina Institute of Government, and the Research Division of the National Education Association (NEA).

DEFINITION OF TERMS

Contributory Negligence - Negligence on the part of the plaintiff who is seeking to recover for injuries sustained as a result of the defendent's negligence. If alleged and proven by the defendent, contributory negligence will either ban or reduce recovery by the plaintiff.[11]

[11] Henry C. Black, MA, Black's Law Dictionary Publisher's Editorial Staff, (St. Paul, MN, West Publishing Co., 1979), 430.

Demurrer - A motion which questions whether the claims and contentions, contained in a pleading filed against the party making the motion, is legally sufficient to make out a cause of action or defense. Under a demurrer, the allegations in the pleading being tested are accepted as true. If the allegations are not sufficient to make out a legal case, the demurrer will be sustained and the lawsuit may be dismissed.[12]

Governmental Immunity - The Federal, State, and Local governments are not amenable to actions in tort, except in cases in which they may have consented to be sued.[13]

Indictment - a written accusation by a grand jury to the court in which it is impanelled, charging that a person named therein has committed an act, which by law is a criminal offense.[14]

Malfeasance - The performance of an unlawful

[12] Black, p. 389.
[13] Black, p. 626.
[14] Black, p. 695.

act.[15]

Misfeasance - The improper or illegal performance of an otherwise lawful act, or the doing of an act in an improper manner.[16]

Negligence - The omission to do something which a reasonable man, guided by ordinary circumstances, would do; or the doing of something which a reasonable and prudent man would not do. To be actionable, such omission or act of omission must result in harm to another.[17]

Nonfeasance - The failure or omission to perform a duty; most often used to refer to some failure to perform a duty of public office.[18]

Statute - A law enacted by the legislative branch of the government as distinguished from case law or law made by courts.[19]

[15] Black, p. 862.
[16] Black, p. 902.
[17] Black, p. 930.
[18] Black, p. 950.
[19] Black, p. 1264.

Tort - A private wrong; an infringement of the rights of an individual, but not founded on a contract. The most common tort action is a suit for damages sustained in an automobile accident.[20]

Waiver - The intentional and voluntary relinquishment of a legal right.[21]

In Loco Parentis -In place of the parent, the school personnel have a duty to protect a student's welfare.[22]

Standard of Care - Responsibility of the teacher to the educational and physical well-being of students, measured by what the parent would do under similar circumstances.[23]

Save Harmless - Legislation which states that no harm is inflicted unless permanent damage is sustained.[24]

[20] Black, p. 1335.
[21] Black, p. 1417.
[22] Michael R. Smith, Law and The North Carolina Teacher, (Danville, Ill., The Interstate Printers and Publishers, Inc.), 53.
[23] Chester M. Nolte, How To Survive In Teaching: The Legal Permission, (Chicago: Teach'Em 1978), 104.
[24] Nolte, p. 94.

SIGNIFICANCE OF STUDY

To fully comprehend the necessity for developing sound policies and procedures to protect the school personnel and the students involved in administering medication, it is vital to review the history of court litigations involving school districts and/or personnel. By assimilating the significant data of these cases, major aspects can be applied in developing policies for the administration of medicines.

Until recently, tort litigation has dealt primarily with cases of negligence with teachers acting "in loco parentis."[25] Under the stipulations of "in loco parentis," teachers assume responsibility for the educational and physical well-being of a child during school hours. Thus, teachers become legal foster parents whose rights are similar to those of the natural parent. Despite in loco parentis, the parent still retains the right to determine who, if anyone, will treat the child medically, what religious training he will receive, and if the child should undergo

[25] Chester M. Nolte, Guide To School Law, (New York: Parker Publishing Company, Inc., 1969), 71-72.

psychiatric evaluation.[26] Professor Chester M. Nolte has indicated that:

> The natural parent may legally assume that during the time the child is absent from home under the State's compulsory school attendance, he is in a safe place, that his interests and welfare are watched over by responsible adults, and that he will be returned safely home when his educational pursuits are over for the day...the State recognizes the overriding interests of the parent in their child and limits the teacher's control to matters of education.[27]

As Professor Martha McCarthy noted in her book Public School Law: Teachers' and Students' Rights, tort actions are divided into three major categories: intentional torts, strict liability, and negligence. Strict liabilities, which are rare in educational cases, result from the creation of an unusual hazard. Intentional torts are committed with the desire to inflict physical or emotional damages. This includes assault, battery, defamation, false imprisonment, and trespass. By far, the majority of court cases involving school personnel result from allegations of negligence.[28] Professor McCarthy

[26] Nolte, p. 72.
[27] Nolte, pp. 98-99.
[28] Martha M. McCarthy, Public School Law: Teachers' and Students' Rights, (Boston: Allyn and Bacon, Inc., 1981), 167.

maintains:

> Teachers and administrators, because of their special training,....are expected to make sound judgements as to the appropriate standard of care required in any given school situation. The adequacy of care is measured against the risk of harm involved. Reasonable actions in one instance may be considered unreasonable under other conditions. Courts assess the facts of each case in determining whether the standard of care is proper in light of the attendant circumstances.[29]

Teachers are accountable for their students' educational and physical well-being while in their charge. Professor McCarthy further acknowledges that the nature of duty is determined by factors such as the age of the pupils, the environment, and the type of instructional activity taking place, with classes such as chemistry, shop, and physical education having higher risk factors.[30] Thus, duty increases where risk increases.

Foreseeability is a major factor in determining negligence. Since it is impossible to anticipate any and every accident which may occur, teachers cannot be held liable for unforeseen injuries.[31] In

[29] McCarthy, p. 173.
[30] McCarthy, p. 168.
[31] Ibid.

Missouri, "An appeals court concluded that a kindergarten teacher did not breech her duty of supervision simply because she was attending to other students when a child fell during recess while attempting to swing down from a jungle gym."[32] The teacher had given adequate supervision to all the children in her care. The accident was unforeseen. If, in administering medication, school personnel are not fully briefed on all possible side effects of a given medication, should they be held liable if a student experiences unforeseen reactions?

Teachers are also required to instruct students of any known hazard within the scope of their educational activities. Two cases illustrate the valuable effects of communicating a known hazard, each with a different outcome. In a chemistry class where a teacher was demonstrating an experiment in the production of explosive gases, a student was permanently injured as a result of the demonstration. The teacher was held liable for failure to point out the dangerous nature of the demonstration and to exercise greater caution. Conversely, a student was injured after he sneaked chemicals from a cabinet to construct a rocket which

[32] Clark V. Furch, 657 SW 2d 456 (Mo. App. 1978).

exploded. Though the chemicals were kept in an unlocked cabinet, the teacher was exonerated because the teacher had previously discussed the dangerous nature of the chemicals to the students.[33] In dealing with medication, should school personnel provide orientation on the possible effects of improperly used medications and of using medications prescribed to another individual? This issue could be competently dealt with by the inclusion of a substance abuse lesson in health and physical education courses. However, proper administration and regulation of prescribed drugs used by students during school hours should alleviate this possible problem.

Contributory negligence is another factor in the defense of teachers. Professor Nolte insists that, "Contributory negligence depends on the age of the child; if he is too young to comprehend the danger of his act, he cannot be held to have contributed to his injury. There is no legal age at which children are supposed to reach 'reason'."[34] In the case of Weems V. Robinson,[35] a student was injured

[33] Face V. Long Beach High School District, 137 P. 2d. 60 (Calif. 1943).
[34] Nolte, p. 110.
[35] Weems V. Robinson , 9 So. 2d. 882 (Ala. 1942.

by a bus. The court upheld that a child of eight does not lack the ability to reason that the impact of a moving bus will result in injury. Thus, he contributed to his own injury. When this data is applied to administering medication, two questions arise: first, should the school be held liable for contributory negligence if the proper personnel are not notified by the parents that a child will be taking medicine, and secondly, should the school be held liable for contributory negligence if the child takes more than the proper dosage?

Of course, in all liability cases, it must first be established that the teacher lacked "due care" in the safety of a student. This standard of care is measured by what the parent would do in similar instances.[36] With handicapped students, however, the standard of care differs from that of the so-called normal child.

With the passing of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), and the subsequent mainstreaming of handicapped children, public schools are required to provide special educational and related services necessary for

[36] Nolte, p. 104.

each handicapped child to receive a free appropriate education in the least restrictive environment. Teachers feel the added burden of the responsibility of children they were ill-prepared to handle, for the newly mainstreamed children often require medical services during regular school hours.[37]

School health services are placed in the category of "related services" by the Code of Federal Regulations implementing the Education for All Handicapped Children Act, which defines related services as:

> ...transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services, and parent counseling and training.[38]

The subsequent controversy of providing and administering to medical needs centers around the ambiguity of the Education for All Handicapped Children

[37] James Ross, "A Comparison of Legal Aspects of Administering Medication in Schools with Practices Followed in Ohio Schools" (Ph.D. Dissertation, Kent State University, December 1981), 62.
[38] Ross, p. 64.

Act. Though it clearly requires schools to permit the handicapped to participate fully in all school activities, it does not state that it is the teacher's responsibility to perform necessary medical services.[39]

Consequently, schools are left to delegate these duties either to teachers on a voluntary basis or to the personnel specifically trained and hired to perform them. If schools are required to provide these services to the handicapped, it is only logical that these services are to be provided to all children in need. Because of the extraordinary development of new drugs, treatment which was virtually impossible for some disorders is now available. "The use of these drugs, however, carries with it the increase in the possibility of side effects or untoward reactions."[40]

Schools must be prepared to accept the responsibility of ministering to the medical needs of handicapped and non-handicapped students alike.

DESIGN OF THE STUDY

[39] Ross, p. 34.
[40] Donald G. Cooley, ed., Family Medical Guide, (New York: Meredith Press, 1966), 672.

Chapter Two contains a review of related literature dealing with court litigations as well as specific articles on administering medications. Through these articles, the need for establishing policies and procedures to protect schools from further litigation will be made evident.

Chapter Three is a chronological history of court litigations involving school personnel. These in-depth reviews will show the relationship between the educational and legal issues and their effects on the administration of medicine.

Chapter Four deals with specific court cases related to the Education for All Handicapped Children Act. This law is the current center of controversy and the basis for most legal actions brought against schools in the administering of medication.

Current policies and procedures used in school districts throughout North Carolina are analyzed in Chapter Five. By comparing and contrasting these policies, weaknesses and strengths will be brought to bear on developing policies and procedures.

The summary and conclusion in Chapter Six summarizes research findings, draws conclusions, and

makes recommendation on specific issues in the administration of medication.

CHAPTER II

REVIEW OF LITERATURE

The expansion of services to handicapped students and the development and use of medicines have increased requests that medication be administered during school hours. Thus the administration of medication is a rapidly growing area of concern for parents, educators, and Boards of Education.

Handicapped students are not the only students in need of this service. A 1980-81 survey of health records in a Wisconsin school district revealed that 16.5 to 19.6 percent of non-handicapped students attending public schools suffered from such disorders as diabetes, seizures, hemophilia, allergies, sinusitis, colitis, severe headaches, and ulcers. Of this faction, over sixty percent received some form of medication for the control and relief of these conditions.[1]

[1] William F. Patton, School Law For A New Decade, National Organization On Legal Problems of Education, 1981, 171.

An increasing number of cases pertain to students taking medication on a temporary basis for ailments, such as colds and flu. Not only is the school faced with administering prescribed medications for the more severe cases, but also with the less severe cases of sore throat, runny nose, sneezing, etc. Students are often sent to school with (or without) notes requesting that the child be allowed to take certain over the counter medicines, such as aspirin products, non-aspirin cold products, low dose antihistamines, and decongestants.

Attention has not been focused on the quality and/or precautions of administering medication.[2] Unfortunately, the majority of past and current litigation are centered on the lack of these services available in the public schools. Consequently, state and local districts have begun to formulate legal and responsible solutions to this problem. In addition, school publications and bulletins, as well as family magazines, continue to shed light on this most controversial issue.

[2] Ibid.

RESEARCH RELATED TO MEDICINE ADMINISTRATION

The primary function of school health programs organized in the early 1900's was the treatment of sickness or injury during the school day. However, during the 1930's, programs expanded to include preventive health services. According to Judith B. Igoe of the University of Colorado Medical Center, schools are becoming the logical area in the provision of primary health care for children.

One major factor for expanding services in schools, other than the influence of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), is that over sixty-two percent of families with children of school age have parents employed outside the home. Thus, no one is available to travel to the school facility to administer necessary medication.

Another factor is required immunization. In North Carolina, students must have received certain immunizations prior to entering school.[3] In some cases, the school nurse administers these injections to

[3] North Carolina General Statute 130A-152(a).

the students. Recently, however, because of severe reactions experienced by some immunized children, this vaccination requirement has come under attack. Some policy makers feel that the danger is great enough that the vaccinations should cease. Others feel that although the vaccinations are harmful to a few, the majority benefitting from the immunizations warrant their continuance. In the case of Streich V. Board of Education of Aberdeen,[4] the court stated that "a thing may be reasonable, though it conflicts with the individual views of a few, if it conforms to that of the many."[5]

Seemingly, the most common requests for medication to be administered during the school day are for the treatment of common colds and influenza symptoms. The medicines mainly given are antibiotics and cold remedies. The policy of medication administration varies from system to system, ranging from no policy at all (which allows the students to take the medication "on their own" from their lockers or pockets with no actual supervision or control), to very strict policies with precise procedures, closely supervised medication

[4] Streich V. Board of Education of Aberdeen, 34 S.D. 169, 147 NW 770 (1914).

[5] Ibid.

administration, and detailed documentation.

Schools in North Carolina were sternly warned in the early 1980's concerning the administration of aspirin products to students.[6] Previously, there had been little difficulty in a student receiving aspirin upon request. Athletes, especially, could readily obtain aspirin from the coach, since hardly any first aid kit was lacking a bottle of aspirin tablets. However, with numerous deaths caused by Reyes Syndrone linked to aspirin consumption, the distribution of aspirin products was stopped considerably and quickly. The attitude that aspirin was good for almost anything changed as public awareness of the harmful side effects of the product increased. At this point, any teacher giving an aspirin product to a student could certainly be risking a lawsuit, since clear warnings have been distributed concerning the dangers of the drug.

One assumption formulated during the period of the 1930's to the 1960's was that the school health services must not interfere with the private practice of medicine.[7] An alliance between the American

[6] Opinion Chief Deputy Attorney General Andrew A. Vanore, for J. P. Elmore, (Feb., 24, 1981), North Carolina.
[7] Judith B. Igoe, "Changing Patterns In School Health and School Nursing," Nursing Outlook, (Aug. 1980), 486.

Medical Association and the National Education Association in the 1920's strongly discouraged any delivery of treatment services in the schools. This agreement was taken as a legally binding directive; schools assumed that failure to comply with the directive would lead to serious legal consequences. In 1970, Kohn conducted a survey of school health legislation and determined that no state legally prohibits or restricts the delivery of medical treatment and services in the schools.[8] North Carolina is one of only seven states having statutes dealing with the administration of medication to students by school employees.[9]

There is a distinct difference between the terms "practice" and "administer" in the area of medicine. As early as 1917, the Attorney General of Wisconsin noted that persons convicted of practicing medicine without a license diagnosed the illness, as well as administered the medication. To the contrary, no conviction has been rendered against a person

[8] Igoe, p. 488.
[9] James C. Ross, "A Comparison of Legal Aspects of Administering Medication in Schools with Practices Followed in Ohio Schools," (Ph.D. Dissertation, Kent State University, December 1981), 37.

administering medication under the direction of a licensed physician.[10]

In People V. Shokunbi,[11] this case discusses the importance of school employees merely administering medication already prescribed by a licensed physician and not making their own diagnosis of the student. This was evidenced as the court concluded that statutes are protection to the community-at-large against those who believe themselves to possess skills for the diagnosis and treatment of disease without proper education and training.[12] According to James Clark, there are several theories in determining that a person who merely dispenses medication to a student upon the request of the parent, and in accordance with the directions or orders from a physician, is not engaging in the practice of medicine. However, Mr. Clark draws the line with the giving of injections and cites a Wisconsin Statute which states that the giving of injections would appear to come within the definition of the practice of medicine.[13]

[10] VI Opinion, Attorney General 800, 802 (1917) Wisconsin.

[11] People V. Shokunbi, 223 NE 2nd, 226, (1967).

[12] Ibid.

[13] James F. Clark, "Dispensing, Administering Medication, Legal Comment," Wisconsin School News, 34, (October 1979), 23.

Certainly, a school employee must act responsibly and must follow precisely the directions on a prescription as detailed by a doctor, since any variance in these directions could cause that employee to be accused of being a medical practitioner.[14]

The case of O'Brien V.Township Heights School District[15] clearly substantiates the aforementioned position. The Illinois Court of Appeals stated emphatically that:

> When teachers undertake the responsibility of providing medical treatment, there is little need for the broad discretion and latitude required in the classroom setting. When medical treatment is undertaken by a school or its employee, public policy considerations dictate an obligation to ensure that it is competently rendered.[16]

Furthermore, all publications specifically related to the medical needs of students strongly urge that administrators, teachers, parents, and the family physician take an active part in the medical services provided during school hours, not only to protect the health of the child, but also the legal rights of the

[14] William F. Patton, "Legal Aspects of Student Medication," School Laws Of A New Decade, N.O.L.P.E., (1981), 178.

[15] O'Brien V. Township Heights School District, 392 N.E. 2d 615 (1979).

[16] Ibid.

personnel directly involved with the dispensing and administration of the medication.

Similar substantiation was given by Ms. Solberg. She concludes that perhaps the administering of medication should be considered a nursing function legally performed only by a registered nurse and/or a licensed practical nurse. Because of the Nursing Practice Act adopted by many states, defining the practice of nursing as encompassing only those acts done for compensation, school employees in those states probably will not violate the state laws, as long as there is no fee charged for the administering of medicines. A possible counter-argument to this position would be that the school employee administering the medication is salaried; therefore, he is in effect being paid to administer drugs.[17]

Further, to protect employees, the State of North Carolina clearly defines the medical care which teachers may provide to students in 115C-307: Duties of Teachers:

(c) To provide some medical care to

[17] Patricia Solberg, "Administering Medicines In The Schools," School Law Bulletin, Institute Of Government, (University of North Carolina Chapel Hill), XI; 1, (January 1980), 1.

> students. It is within the scope of duty of teachers, including substitute teachers, teacher aides, student teachers, or any other public school employee, when given such authority by the Board of Education or its designee, (i) to administer any drugs or medication prescribed by a doctor upon written request of the parents...provided that no one shall be required to administer drugs or medication.[18]

Mr. Algozzine states that although teachers and school personnel do not actually prescribe medication, they are in a position to observe and monitor its effects. Certain vital information must be noted when a medication is prescribed by a doctor so that any personnel who deal with the child may be aware of and/or familiar with the symptoms being treated, the possible side effects, and how to determine if the drugs being used are effective. Thus, should any complications arise, the parents and physician can be contacted immediately.[19]

In preparation for this added responsibility, the Federal Food and Drug Administration has developed a guideline of basic knowledge about medicines; all personnel administering medication to or dealing with

[18] North Carolina General Statute 115c-307(c).
[19] Bob Algozzine, "Some Practical Considerations of Hyperactivity and Drugs," The Journal Of School Health, 48 (October 1978), 480.

special needs of students should become familiar with these:

1. See that prescription medicines are taken only on the advice and under the directions of a doctor.

2. Remember that all medicines carry risks. Along with benefits, they have a potential for harm. Undesirable side effects can occur, such as sleepiness, swelling, nausea.

3. Inform the doctor of any allergic reactions to drugs or foods, such as rashes, headaches, or dizziness.

4. Be aware that over-the-counter drugs may interact with prescribed medicines and cause unwanted side effects.

5. Keep in mind that medicine is not the answer to every health problem; drugs should only be taken when needed.

6. Avoid serving certain foods to students taking medicines. Some antibiotics, for example, will not work if consumed with dairy products.

7. Insist that instructions on administering medication be specific. For example, does "three times daily" mean morning-noon-night? or with three meals? or every eight hours by the clock? Should the medicine be taken before meals, with meals, after meals?

8. Determine whether the medicine should be given until it is totally consumed, until the child feels better, or a specific amount has been consumed.

9. Advise staff members that if a drug is not doing what it should, perhaps a different dosage might be needed or a different drug prescribed.

10. Note any instructions on labels for storage of the medication. Some drugs must be kept in cool dry storage; some may need to be protected from sunlight; some may need refrigeration.

11. Always keep medicine in locked cabinets and/or out of the reach of children.

12. Never let anyone take medicine prescribed for another person, even though the symptoms may be the same.

13. Never administer medication without checking the label.

14. Never transfer medicines from the containers in which they were dispensed.[20]

In addition, the physical characteristics of drugs should be noted. Many drugs lose their potency or become harmful when exposed to heat and humidity; these would need to be stored in a cool, dry, dark cabinet. Some medicine should be stored in a refrigerator, as indicated on the label.[21]

Mr. J.L. Lippert cautions in a magazine article that the expiration dates posted on labels apply to

[20] United States Department of Health, Education, And Welfare (HEW), We Want You To Know About Prescription Medicines, HEW Publication (FDA) #73-3029 (1978).

[21] James C. Ross, "Protect Teachers and Students With Policies Governing Medical Matters," The American School Board Journal, (September 1974), 34.

unopened packages or bottles, but that the date does not guarantee that the medicine is still effective after that date. Therefore medicine should be properly disposed of after the posted date. In addition, the physician should be contacted for further instructions if tablets become discolored or if liquids change in color or consistency.[22]

To eliminate other problems, quantities of the drugs should be limited to a weekly supply. Medicines should be packaged in single-dose quantities in sealed plastic bags, with each bag clearly labelled with the child's name, the name of the medication, the dosage measurement, and the dosage timetable/schedule. This approach, though time consuming, can greatly reduce the chance of error.[23]

When a physician prescribes medication which must be taken during the school day, Doctors Grotsky, Sabatino, and Ohrtman (1976) offer the following policy-oriented procedure to prevent this situation from perplexing the teacher, as administration of medication is outside the usual range of duties of a teacher:

[22] J. L. Lippert, "When and Why Medicine Goes Bad" Good Housekeeping 186, 1 (Jan. 1978), 168-169.
[23] Ross, p. 34.

> As drugs have a definite but limited role in the treatment of the learning and behavior problems of a student, certain circumstances can be aided by medication. Reports vary, but seemingly thirty to fifty percent of children referred to physicians due to disruptive classroom behavior and/or poor academic achievement can be helped by medication alone or in combination with psychotherapy, remedial tutoring, or a special education problem in the school. One must keep in mind, however, that fifty to seventy percent of those children referred do not respond to or are not appropriate candidates for medication.[24]

The procedure under which a teacher may administer medication varies by the school districts. The established policy of the individual school district should be adhered to, if for no other reason than the legal protection of the system. The following guidelines should be considered by a school system in dealing with the handicapped child:

> (a) Written orders should be provided to the school from a physician, detailing the name of the drug, dosage, and the exact time interval for the administration of the medication. These orders should be reviewed periodically.

[24] J. Grotsky, D. Sabatino, And W. Ohrtman, (eds.), The Concept of Mainstreaming: A Resource Guide For Regular Classroom Teachers, (King of Prussia, PA, E. Pa. Regional Resources Ctr. For Special Education, 1976), 8-10.

(b) A written request should be given to the school district from the parent/guardian of the student, together with a letter from the physician indicating the necessity for the medication during the school day, the type of disease process or illness involved, the desired effect of the medicine, the possible adverse effects, and an emergency number at which he can be reached. Both letters should be placed in the pupil's student file.

(c) Medication should be brought to the school in a container appropriately labelled by the pharmacy or attending physician.

(d) The initial medication dose should be administered by the school nurse. If the teacher is to give subsequent medication, the nurse should discuss with the teacher the dosage and medication, including the possible and/or inevitable side effects.

(e) The school nurse should prepare a written statement to the building administrator as to the side effects of the drug, if any, and a copy should be placed in the student's file.

(f) A locked cabinet must be provided for the storage of all medications. Opportunities should be provided for communication with the student, parent, and physician regarding the effectiveness of the medication administered during school hours.

(g) With the consent of both parent and physician, medication for short-term therapy may be administered by the teacher.

(h) The school district should retain the discretion to reject requests for administration of medicine.[25]

[25] Edward C. Bolmier, The School In The Legal Structure. (Cinn., W.H. Anderson Co., 1973), 226.

The teacher will need certain information in order to effectively understand and interact with a child on medication. With written parental permission and through the school nurse, the following information should be obtained from the child's physician.

(a) How does the medication actually work?

(b) What change (if any) can be expected in the student's behavior?

(c) What effect will the medication have on the child's attention span, memory, motor dexterity, personality, sleeping and/or eating habits?

(d) What, if any, undesirable side effects can this medicine produce?

(e) What behavior and/or motoric reactions indicate that the dosage may be toxic or inadequate for the child's needs?

(f) How long will the child be on the medication?

(g) Could the child become physically and/or psychologically addicted to the medication?[26]

SUMMARY

Contrary to this information, schools should not

[26] Bolmier, p. 228.

be unduly burdened when providing medical treatment. They should, however, be subject to ordinary care standards. There should be a limit in terms of what can be expected in the providing of medication for school students. This is a situation that is changing rapidly.

Administering medication involves more than simply handing out a pill. It is evident that an employee is running a risk to haphazardly maintain, store, and administer any medication. If a person is not sure of the proper procedures and is not informed as to the desired effects of a particular medication, he would be advised to refrain attempting to provide the service.

CHAPTER III

HISTORY OF COURT LITIGATIONS

INTRODUCTION

The majority of court cases involving public school employees have not dealt with administering medication to school students. Nevertheless, educators fear that future lawsuits will be filed due to the increased demands from the public for the school systems to provide expanded health programs to the students.[1] Although many schools are already providing certain services to students, research indicates that many have no policy governing the actual administering of medication to a student by a teacher or other employee of the system.

Hence, to better determine the risks assumed in administering medication, and to develop a policy that minimizes those risks, it becomes necessary to review

[1] William F. Patton, "Legal Aspects Of Student Medication", (School Laws for a New Decade, M.A. McGheheiy, ed.), (N.O.L.P.E., 1981), 169-170.

past legal cases involving schools, and to determine the reasons for schools being required to perform specific services now.

IN LOCO PARENTIS AND ITS IMPLICATIONS

The concept of "In Loco Parentis" has been a generally accepted doctrine which basically states that the teacher acts as parent while the child is in the teacher's custody. The teacher, in essence a foster parent, has certain privileges in directing the child. These are limited to actions that the average, normally prudent parent would perform in the same or similar circumstances.[2]

Along with these privileges are a number of responsibilities: providing a safe environment, protecting the child's constitutional rights, providing certain services necessary for the child to attend school, and administering appropriate aid should an emergency arise.[3]

Having a specific system-wide set of policies

[2] Chester M. Nolte, How To Survive in Teaching: The Legal Dimension, (Teach 'Em, Inc., Chicago, 1978), 58.

[3] E. Edmund Reulter, Jr., Schools and The Law, (Oceana Publication, Inc., Dobbs Ferry, NY, 1981), 56-77.

regarding the administration of medication to students provides a process which assists not only in protecting the child, but also the teacher while acting as an agent of the school board. In North Carolina, boards of education can claim governmental immunity in liability cases. Despite this fact, school boards have chosen to carry liability insurance, thus waiving their governmental immunity at least to the extent of the insurance coverage.[4] As exemplified by the 1962 ruling of the Supreme Court of Minnesota in Spanel V. Mounds View School District,[5] a school district could indeed be held liable for damages, thus showing the instability of the governmental immunity doctrine.[6] The court based its opinion on the availability and relatively low cost of liability insurance.[7] Currently, many insurance companies no longer provide coverage for boards of education; companies which have continued their coverage have increased their rates or premiums drastically.[8]

[4] H.C. Hudgins, Jr., Law And Education: Contemporary Issues and Court Decisions, (The Michie Company, Charlottesville, Va., 1985), 105.

[5] Spanel V. Mounds View School District, 118 N.W. 2d, 795, Minn. (1963).

[6] Ibid.

[7] Nolte, p. 94.

[8] Ed Dunlap, Associate Director of the North Carolina School Boards Association, in North Carolina School Boards Association Legislative Work Session, Oct., 1985.

As reported by Chester Nolte, there have been thousands of cases illustrating an individual teacher's liability for damages resulting from negligence.[9] The cases rest upon the basic assumption that a child is not in school voluntarily, but at the insistance of the State. Therefore, since the natural parents cannot be present, the teacher, acting "In Loco Parentis," is expected to provide as safe an environment as is humanly possible for the student during the school day. School personnel should be held personally liable only if actions fail to come up to that standard of care which an average, normally prudent parent would have exercised under the same or similar circumstances.[10] For protection, a teacher may purchase personal liability insurance or be covered by a blanket insurance policy through his school system. Many states have a "save harmless" statute which passes this type of liability from the individual teacher to the employer, the school district.[11]

[9] John P. Linn, Chester M. Nolte, School Laws For Teachers, (The Interstate Printers and Publishers, Inc., Danville, Ill., 1963), 241.

[10] Nolte, p. 94.

[11] Ed Dunlap, Associate Director of the North Carolina School Boards Association, Address in North Carolina School Boards Association Legislative Work Session, October 16, 1985.

ELEMENTS OF LIABILITY

In liability cases, "tort" is commonly used when referring to a wrongful act committed by one person against another person, through either misfeasance, malfeasance, or nonfeasance. Whenever a person alleges "tort," the court will determine the case based on the following three questions:

1. Did the defendent owe the plaintiff a duty?
2. Was there a breach of the duty owed?
3. Was the breach the proximate cause of the plaintiff's injury?[12]

In most instances, the response to question number one would be "yes" in cases of a teacher supervising a student. The emphasis would then be placed on question number two, and then to number three.

Often legal precedents, (cases which have previously been tried) are used as a basis for court decisions in similar cases. According to Edward

[12] Linn, p. 241.

Bolmeir, though courts usually follow precedents, changing social values must be considered.

> In referring to the legal principle established in an earlier case than the one at hand, the court pointed out that 'the law is not static and must follow and conform to changing conditions and new trends in human relations to justify its existence as a servant and protector of the people and, when necessary, new remedies must be applied where none exist.'[13]

According to James Ross, a review of the various state statutes found that school districts in eleven states have been held liable for damages in claims of tort.[14] Twenty nine states, one of which is North Carolina, have statutes affording school employees some financial relief from personal liability. North Carolina Law #115C-42 states:

> Any local board of education, by securing liability insurance as herein after provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the

[13] Edward Bolmier, School Law For Teachers, 2d Ed, (W.H. Anderson Co., Cincinatti, 1973), p. 113.

[14] James Ross, "A Comparison of Legal Aspects of Administering Medication in Schools with Practices Followed in Ohio Schools," (Ph.D. Dissertation, Kent State Univ., 1981), 22.

> negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.[15]

Teachers are subject to the same laws that govern liability for all citizens. When a child is under the care of a teacher, the law requires that the teacher act in a reasonable and prudent manner under the circumstances. Professional personnel are held to a legal standard of care that is commensurate with one's professional training.[16]

James George defines negligence as a deviation from accepted standards of care. He states that there are four particular elements that must be alleged and proven in a court of law in order to sustain a lawsuit for negligence. These are: duty, breech of duty, damages, and proximate cause. A definition for each follows.

Duty, in essence, is the establishment of a

[15] North Carolina General Statute 115C-42.
[16] E. Edmund Reulter, Schools And The Law, 5 ed., (Oceana Publications, Inc., New York, 1981), 77.

legal relationship between two parties. In the case of educators, this duty has long been established. The question as to administering medication to students, however, is not so clearly defined as a duty.

In a breach of duty, personal conduct does not comply with the expected reasonable standard.[17] Malfeasance would be the result of an action taken when that result does not conform to the reasonable standard of care expected. Nonfeasance would be the failure to act when appropriate action should have been taken. (An example of nonfeasance would be the failure to resuscitate a patient in cardiopulmonary arrest by medical personnel when medical practices dictate that it should be done.)[18]

The third element necessary in sustaining negligence is damages. The court will entertain an action for negligence only if the plaintiff has suffered harm that is discernible, whether physical or psychological damage.[19]

The fourth element of negligence is proximate cause, requiring that there be some reasonable cause

[17] James George, Law and Emergency Care, (C.V. Mosby Corp., St. Louis, 1980), 1.
[18] George, p. 2.
[19] Ibid.

and effect relationship existing between the damages that the defendant suffered and the actions of the defendant, (or the defendant's failure to act in a situation).[20]

In addition, James George discussed other areas of law that deal with cases of negligence. Rather prominent is the doctrine of "res ipsa loquitur", the statute of limitations, and the law of agency.

> Res ipsa loquitur ... evolved as a device to assist an injured party (plaintiff) in recovering damages under circumstances in which it would be unjust to expect him to be able to prove all of the elements of negligence. ... The effect of res ipsa loquitur is to shift the burden of proof from the plaintiff to the defendant. ... This doctrine has been broadly applied recently and frequently has been misapplied. The injudicious expansion of the doctrines of res ipsa loquitur is of grave concern to both the medical profession and the legal profession.
>
> Statutes of limitations ... say in essence that it is against public policy to let the threat of a lawsuit hang over one's head forever. Thus a time limit is placed on the filing of a lawsuit in court. The time limit of the statute of limitations usually varies with the type of action, such as actions arising under contract law or tort law. Most statutes of limitations for negligent actions are from two to three years. If a complaining party does not file a legal action within the period allowed by the Statute of Limitations, he or she will

[20] George, p. 3.

> thereafter be prevented by a court of law from filing that action.
>
> A final area of general law that merits brief discussion is agency law. Personnel ... includes ... a variety of ... employees. The relationships that can be present among the individuals include employer/employee and independent contractor relationships. It is important to know exactly what relationships exist, because the particular type of relationship will determine who is legally liable for damages in the event of a successful suit for negligence. Generally speaking, everybody is liable for his own torts. Also, an employer is liable for the torts of employees committed within the scope of employment, but an employer is not liable for the torts of an independent contractor if the employer had no significant control over the actions of the independent contractor. ... The court will leave it up to the various defendents to sort out among themselves who will pay all or any part of any money damages for negligence.[21]

LIABILITY AND BOARDS OF EDUCATION

Two basic categories of litigation in which boards of education may become involved, are errors and omissions, or wrongful acts, and general liability. The former is commonly referred to as errors and omissions, or wrongful acts, (which involves violations of someone's constitutional and/or civil rights). The latter is general liability. This covers matters such

[21] George, p. 4.

as accidents and injuries; for example, injuries resulting from slipping on a wet floor, injuries resulting from a football stadium bleacher seat collapsing, injuries resulting from a pencil thrown in a classroom by another student, or perhaps injuries resulting from improperly administering medicine to a student by a teacher.

To this end, boards of education are not entitled to use the concept of governmental immunity in cases classified under errors and omissions. These cases involve in some manner the denial of one's constitutional and/or civil rights. Members of the board, as well as its employees have personal property at risk, thus a possibility of having to sell a home, a car, or other property to pay off a monetary judgment is inevitable. Therefore, it becomes absolutely necessary for board members and employees to have insurance coverage.

The realization that the concept of governmental immunity is rather loosely constructed in liability cases underlies the fact that most boards of education and school systems, out of a sense of moral obligation, now carry general liability insurance on themselves and their employees.

Governmental immunity does not extend to teachers; therefore, unless there is a statute specifically providing for immunity from liability, school boards are not generally liable for damages due to negligence of the board's employees.[22]

It is important to note that waivers or parental permission slips are good administrative procedure, but they lack validity in court. If a minor signs a waiver, it is not legal; a parent cannot legally waive negligence that injures the child. Unfortunately, waivers have little legal value.[23]

If an employee is to make a decision as to whether or not they are to administer medication to a student, he should be well informed of the legal responsibilities and ramifications involved. Knowing the risks of litigation may reduce the number of employees who are willing to administer medication, but it can, in turn, underscore the importance of following established policies for those who chose to administer medication.

[22] Corpus Juris Secundum 78, Art. 320 b.
[23] Herb Appenzeller, Physical Education And The Law, (Charlottesville, Va., Michie Co., 1978), 148.

HISTORY OF LITIGATIONS INVOLVING GOVERNMENTAL IMMUNITY

Governmental tort immunity has its litigation origin in Devon, England, 1788. The case, Russell V. Men of Devon,[24] was brought about when Russell's horse fell through a bridge that had not been kept in good repair. The English courts ruled that the town had no money to pay for such a tort; and, further, they ruled they would not assess the men of the town responsible for the claim.[25]

The doctrine of governmental immunity was carried over to the American Courts.[26] The first use of this doctrine was Mower V. Leicester.[27] In 1959, the Morlitor V. Kaneland [28] case in Illinois marked the turning point for this doctrine when the Illinois Supreme Court declared that since the courts were responsible for establishing governmental immunity, the courts would also take the responsibilty of abolishing it. Based on the idea that in their

[24] Russell V. Men of Devon, 100 Eng. Rep. 359, 2 T.R. 667, Eng. (1788).
[25] Ibid.
[26] Chester M. Nolte, How To Survive In Teaching: The Legal Dimension, (Teach 'Em, Inc., Chicago, 1978), 94.
[27] Mower V. Leicester, 9 Mass. 247, Mass, (1812).
[28] Molitar V. Kaneland, 20 Ill. 555, 155 NE 2d, 841, (1959).

timetable and circumstances, when public education constituted one of the largest businesses in the country, school immunity could not be justified on the "protection of public funds" theory.[29]

However, in general, courts continued to hold to the doctrine of Governmental Immunity until 1962. At that time, the Minnesota Court ruled that since liability insurance is readily available, governmental immunity is no longer a viable concept.[30] Only a few states still permit the governmental immunity rule; others have abolished the doctrine either through judicial fiat or legislation.[31] Wisconsin has a statute limiting the amount which can be recovered in a lawsuit against a governmental agency or the employees acting in behalf of the agency.[32] In 1979, the Wisconsin State Supreme Court ruled that settlements would not be restricted by law if insurance coverage merited a higher award.[33]

In a Pennsylvania case, Guerrieri V. Tyson,[34] however, a ten year old public school student had an

[29] Ibid.
[30] Spanel V. Mounds View School District, 118 N.W. 2d 795, Minn, (1963).
[31] Nolte, p. 94.
[32] Wisconsin Statute Ch. 895.43.
[33] Stanhope V. Brown County, 280 N.W. 2d 711 (1979).
[34] Guerrieri V. Tyson, 147, Pa. Supp., 239 24 A, 2d, 468 (1942).

infection in his little finger, which had not prevented him from playing basketball at noon. Nevertheless, a teacher and the principal heated water and immersed the student's hand in the scalding water for ten minutes. When the student was taken home, the parent immediately contacted a doctor. The student was admitted to a hospital. As a result of the extremely hot water, the infection was aggravated and the child's hand was permanently disfigured. Since the damage was a direct result of the treatment given by the teacher and principal, the parents were successful in seeking compensation. The court stated:

> Under the circumstances, the defendants were legally liable for the damages resulting from their tort. Teachers stand in loco parentis to the child, but there is nothing in the relationship that would justify the defendant's actions. There is no implied delegation of authority to exercise their lay judgment as a parent in the matter of this infection. Defendants were not acting in an emergency, and defendants were not school nurses. Neither of them had any medical training or experience. Treatment of the infection was a matter for the parents to decide. The injury was a direct result of defendant's actions.[35]

In contrast, Carroll V. Fitzsimmons, [36] a

[35] Ibid.
[36] Carroll V. Fitzsimmons, 384 p. 2d 81 Colo. (1963).

Colorado case, was presented to the courts by the parents of a child who received injury to his eye when a rock was thrown by a fellow student. The parents filed charges of breach of duty on the part of the teacher since the teacher on duty was not in the immediate area. The court ruled that the teacher should not be held liable, because of the inability of a person to forsee that a student would throw a rock at another student. Even if the teacher had been in very close proximity, the accident still could not have been prevented.[37]

In cases where a known hazard exists, the student should be made aware of the dangers. The teacher should be able to prove that adequate warning was given about inherent dangers.[38] Bruenn V. North Yakina School District,[39] evidenced this. A teacher was exonerated because he had provided adequate warning to the students.[40]

In Face V. Long Beach City High School District,[41] the court ruled that the student had

[37] Ibid.
[38] Nolte, p. 104.
[39] Bruenn V. North Yakina School District No. 7, 101 Wash. 374, Pac. 569 (1918).
[40] Ibid.
[41] Face V. Long Beach City H.S. Dist., 137 p. 2d. 60, (California 1943).

contributed to his own injury and therefore was guilty of contributory negligence when he conducted experiments with chemicals that clearly were not part of the science teacher's program.[42]

The age or maturity of the student and the experience of the teacher are two important aspects in assessing the contributory negligence. An adult is expected by society to behave on a certain level of maturity in all situations, with experience in the specific circumstances increasing that level of maturity expected. Likewise, a child is expected to behave according to the level of maturity he possesses, taking into account his age, mentality, etc. Therefore, if an adult or child fail to behave within the expected level of maturity in decision-making, the individual is considered to have contributed to the problem through personal negligence, thus "contributory negligence." In a North Carolina case, Moore V. Order Minor Conventuals,[43] the court concluded that

> anyone of sufficient age to recognize a danger but failing to take steps to avoid such a danger, was guilty of contributory negligence.[44]

[42] Ibid.
[43] Moore V. Order Minor Conventuals, 164 F. Supp. 711, (North Carolina 1958).
[44] Ibid.

Assumption of risk is sometimes used as a defense by a teacher. Although the risk is not unlimited, there are some areas of student participation which carry a greater degree of risk, such as athletics. In Lawes V. Board of Education,[45] a New York court stated:

> It is unreasonable to demand or expect such perfection in supervision from ordinary teachers or ordinary school management; a fair test of reasonable care does not demand it.[46]

There are numerous cases dealing with litigation in the schools across the country which could be included. Needless to say, there will be countless more cases cited in the future. Each state may vary in its laws, and any policy written must certainly abide by the laws of that particular state. Regardless of the state however, it is important to have a written policy on administering medication. As Chester Nolte notes: one of the prerogatives that a parent retains is to say who shall treat their child medically.[47] In

[45] Lawes V. Board of Education, 213 N.E. 2d 667 (New York 1966).
[46] Ibid.
[47] Nolte, p. 59.

addition, the problems involved in determining "practicing medicine" can be greatly reduced or eliminated with a viable policy on administering medication. As previously discussed, the use of "governmental immunity" is increasingly being denied by the courts and the number of lawsuits continue to rise. As an outgrowth of concern, the North Carolina General Assembly amended North Carolina General Statute 115C-307(c) with the passage of the "good samaritan" act, which provides protection to public school employees.[48]

To be certain that an employee is not guilty of gross negligence, wanton conduct, or intentional wrongdoing, it is important to have proper guidelines and procedures in administering medication to school students. Essentially, the ramification of the cases discussed here evidences much uncertainty in the direction that the courts will take. It is abundantly clear that boards of education and their employees must be kept apprised of the laws and impending laws governing the administering of medication and supervision. They also must be aware of past decisions in cases involving governmental immunity.

[48] North Carolina General Statute 115C-307(c).

SUMMARY

Although school personnel involved in administering medication may act in strict accordance with established policies, some negligent conduct is likely to occur which may result in liability charges. Consequently, school boards and administrators should provide rigid, specific guidelines for the administration of medication and school personnel should be aware of and understand the possible liability of administering medication.

CHAPTER IV

AN ANALYSIS OF SPECIFIC CASES RELATED TO MEDICATION

Several key issues directly related to the administration of medication to students by school personnel include: (1) the question of what constitutes the practice of medicine, (2) the degree to which the procedure must be followed in administering medication, and (3) the question of "related services" as defined by Public Law 94-142. Prior to Public Law 94-142, the question of services was inherent in the Rehabilitation Act. A major concern was the requirement that parents administer medication to their handicapped child during school hours. The degree and types of services were further defined in the case of Irving V. Tatro,[1] involving the Clean Intermittent Catheterization procedure (CIC) for a handicapped child.[2] This landmark case sparked more debate on the degree of

[1] Irving Independent School District V. Tatro, 82 L-Ed, 2d, 664 (1984).
[2] Ibid.

supervision, first aid, and medical services which should be provided to all students, handicapped or non-handicapped.

In Hairston V. Drosick,[3] the parents of a child handicapped by spina bifida filed due process against the school system for its refusal to provide medical services to their child who suffered from bowel incontinence. The parents contended that services for their child were required under the Rehabilitation Act of 1973.[4]

The court concluded that: (1) the school could not condition the child's attendance in school on the presence of the parents, even if the parents were able to go to school on a regular basis; (2) a "minimal" handicapped child cannot be excluded from the regular school classroom without a 'bonafide' educational reason; (3) school officials should make every effort to include the "minimal" handicapped child in the regular classroom, even at the expense of the school system; and (4) any exclusion of a child from a regular classroom must follow due process.

It is important to note the term, "minimal"

[3] Hairston V. Drosick, 423 F. Supp. 180, (West Virginia 1976).
[4] Ibid.

handicapped, used by the courts which implies that the degree of the handicap is a determining factor in deciding whether or not a child could attend regular school classes.[5] Misunderstandings with the Rehabilitation Act of 1973 led to its modification by the passage by Public Law 94-142.

In terms of providing medication, the major significance of Hairston V. Drosick[6] was the ruling that parents were no longer required to go to school to administer medical services to their handicapped children.[7] In 1986, where there is a high percentage of single parent families and situations where both parents are employed, requiring a parent to visit the school to administer a prescribed medication or procedure would be an unreasonable request. Thus, the school is legally obligated to provide certain services to children that would otherwise require the parents to be present to perform.[8]

One important reason for establishing a policy for administering medication would be to gain control of the possession of drugs on the school premises.

[5] Ibid.
[7] United States Public Law #94-142.
[8] Hairston V. Drosick, p. 180.

However, the mere adoption of a "policy" is unsatisfactory unless the policy is: first, clear and precise; second, that it is not ambiguous; and third, easily enforced. The two following cases demonstrate the need for a specific policy detailing procedures.

In a Pennsylvania case, a student was suspended for possessing a substance forbidden by school policy. The court reversed the suspension stating that the school officials must prove what the substance was, and whether or not the substance was forbidden by school district regulations.[9]

In a similar case, a Florida school district had a rule that students could not possess medicine. A student, who had carried three vitamin pills to school and had given two of them to her classmates, was suspended based upon the determination by a pharmacist that vitamins were pharmacologically considered a medicine. The District Court of Appeals in Florida, however, reversed the suspension based on the finding that the term "medicine" was improperly defined. It concluded that parents and students should be able to clearly establish whether or not a substance violates

[9] Big Springs School District Board of Directors V. Hoffman, 489A 2d 998, (Pa. 1985).

the school board's policy on medicine.[10]

One question arising in the administration of medication to a student by a teacher concerns the definition of the "practice" of medicine. In People V. Shokunbi,[11] a 1967 Illinois case, the court defined and detailed what is involved in the "practice" of medicine. Merely administering a prescribed medication to a student would not be defined as "practicing" medicine unless the teacher, or school employee, was involved in the diagnosis of the student's condition and personally prescribed a medicinal treatment. Therefore, school employees following specific orders written by a physician, would not be accused of "practicing" medicine.[12]

The importance of following the specific guidelines laid out by the physician cannot be overstated. Any time a teacher or other employee administering medication chooses to ignore the specific directions or makes any modification in those directions would certainly be doing so at a high risk.

In O'Brien V. Township High School

[10] Bertens V. Stewart, 453 So 2d 92, (Fla. App. 2d Dist. 1985).
[11] People V. Shokunbi, 232 NE 2d 226 (1967).
[12] Ibid.

District,[13] a teacher was sued when the teacher allowed one student to treat another student. The teacher was charged with negligence based upon the lack of the teacher maintaining personal supervision and control in the situation. The student alleged that he was treated by an untrained student and that the treatment was improperly carried out.[14] The court concluded that the educator's immunity provided by the state of Illinois did not bar the student's complaint of negligent action. The court stated:

> When teachers undertake to provide medical treatment, there is no need for broad discretion and latitude required in classroom setting, and when medical treatment is undertaken by a school or its agent, public policy considerations dictate a strict obligation to ensure that it is completely rendered, and to hold school districts to ordinary care standard in such areas does not appear unduly burdensome.[15]

A North Carolina law protects teachers or other school employees from suits involved in administering medication. The law, General Statute 115C-307(c),

[13] Ibid.
[14] O'Brien V. Township Heights School District, 392 N.E. 2d, 615 (1979).
[15] Ibid.

amended in 1985 by the General Assembly of North Carolina, now states:

> It is within the scope of duty of teachers, including substitute teachers, teacher aides, student teachers, or any other public school employee when given such authority by the board of education or its designee, (i) to administer any drugs or medication prescribed by a doctor upon written request of the parents, (ii) to give emergency health care when reasonably apparent circumstances indicate that any delay would seriously worsen the physical condition or endanger the life of the pupil, and (iii) to perform any other first aid or life saving techniques in which the employee has been trained in a program approved by the State Board of Education, provided that no one shall be required to administer drugs or medication or attend lifesaving techniques programs.
>
> At the commencement of each school year, but prior to the beginning of classes, and thereafter as circumstances require, the principal of each school shall determine which persons will participate in the medical care program.[16]

However, because of the increasing fear of lawsuits, many teachers remain hesitant in volunteering their services to administer medication.

The growing need to provide services for the administration of medication comes from both

[16] North Carolina General Statute 115C-307(c).

handicapped and non-handicapped students. Lawmakers felt that the added demands and needs for protecting those employees willing to consent to administering medication merited the amendment. Also important to note is the principal's burden of determining which teacher will provide such services to the student. Implications are that the person selected by the principal will have some degree of training especially in the area of first aid treatment.[17] An obvious situation where training would be necessary is in the case of Cardio Pulmonary Resuscitaion (CPR), as improper technique can be damaging and should only be attempted by a properly trained person.[18]

Another amendment to North Carolina Public Law #115c-307(c), entitled "An Act To Provide Good Samaritan Protection to Public School Employees and Volunteers,"[19] states:

> Section 1. G.S. 115c-307c is amended between the first and second paragraphs by inserting a new paragraph to read: 'Any public school employee, authorized by the board of education or its designee to act under (i), (ii), or (iii) above, shall not be liable in civil damages for any such

[17] Ibid.
[18] Ibid.
[19] Ibid.

> authorized act or for any omission relating to such act unless such act or omission amounts to gross negligence, wanton conduct or intentional wrongdoing.'[20]

This portion of the law protects those who are following prescibed procedures, but still prevents any "practice" of medicine by forbidding any changing or altering of instructions provided by a physician. Cited previously, in the case of O'Brien V. Township High School District,[21] a teacher's failure to follow specific orders for medical treatment can result in a lawsuit.[22]

Courts often reverse their opinions in a relatively short period of time; one such reversal involved an intermittent catheterization case. In Dady V. School Board for the City of Rochester,[23] the court ruled that the school system was not required to provide "medical" services to a handicapped child needing intermittent catheterization. In this case, the catheterization was defined as a "medical service," and therefore was not required by the Civil Rights Act;

[20] Ibid.
[21] O'Brien V. Township, p. 615.
[22] Ibid.
[23] Dady V. School Board for the City of Rochester, 282 N.W., 2d, 328. (Michigan Appeals Court).

the court determined that these medical services were necessary for the child to attend school but were services that were the responsibility of the parent.[24]

The Supreme Court of the United States, in Irving Independent School District V. Tatro,[25] affirmed the Fifth Circuit Court of Appeals decision in regards to intermittent catheterization. This ruling is considered by educators, dealing with handicapped children, as one of the major cases adjudicated since the passage of Public Law 94-142, with the major significance being the term "related services." In this case, an eight year old girl with spina bifida required catheterization every three or four hours, using the procedure known as clean intermittent bladder catheterization. The child's parents brought suit against the school officials for refusing to provide the service. The district court denied the parents request; notwithstanding, the United States Court of Appeals for the Fifth Circuit reversed the decision, on the grounds that catheterization would be considered a "related service" and would be required under the

[24] Ibid.

[25] Irving Independent School District V. Tatro, 82 L. Ed. 2d, 664.

Public Law #94-142.[26]

The Court continued, defining "related services" to include "school health services," (those services provided by a nurse or other qualified person). The term "medical services" is defined as "services provided by a licensed physician." The school was required to provide medical services only for the purpose of aiding the physician in his diagnosis or evaluation. Significantly, the Court contended that previous authorization for a school to administer medication would certainly indicate that handicapped children should be able to receive the same services. The Court also stated that without a handicap requiring special education, the need for what otherwise might qualify as a "related service" does not create an obligation. Further, the Court continues that in regard to services, some incidents would not require the services of a nurse. In such cases, a layperson with minimal training would be considered qualified to provide a service such as clean intermittent catheterization.[27]

In a letter, dated October 1, 1984, from North

[26] Ibid.
[27] Ibid.

Carolina Assistant Attorney General Thomas Ziko to Mr. William Brunsby,[28] an opinion was given as to the legality of North Carolina teachers or other employees catheterizing handicapped students. Assistant Attorney General Thomas Ziko states:

> This opinion is based primarily upon the provisions of N.C.G.S. 115C-307(c). That statute does not make the provision of medical care to students one of the duties of public school employees. Rather, the statute states that the provision of some medical care shall be within the scope of duty of teachers and other employees when they are authorized to provide such care by the board of education. Thus, it appears that the statute was meant to permit employees to provide medical care when they are authorized to and when they desire to rather than require them to administer medical care when directed to by the board of education or its designee.
>
> ... Finally, the Supreme Court's decision in IRVING V. TATRO has no bearing upon who may be required under state law to provide the necessary catheterization services. The fact that the Supreme Court determined that catheterization was a 'related service' rather than a 'medical service' does not mean that catheterization is not 'medical care' as that term is used in 115C-307(c)... In fact, the distinguishing feature of the various forms of medical care described in 115C-307(c) is that they are all tasks which may be performed by properly trained lay persons. Thus the fact that the

[28] Opinion, North Carolina Assistant Attorney General Thomas J. Zilco, for William Brunsey, Oct. 1, 1984.

> Supreme Court did not consider catheterization to be 'medical service' for purposes of the Education of the Handicapped Act does not exempt that task from those medical services which teacher aides may elect not to provide to the students.
>
> Relying on the cited statutes and precedent, it is the opinion of this office that neither the Board nor the Superintendent may require teachers, teacher aides, or other employees to catheterize handicapped students. Having reached that conclusion, we would be remiss if we did not also acknowledge that the present law places the school system in the difficult position of having to provide catheterization service but being unable to require employees to provide those services. This is the unfortunate fate of public servants who must labor in the vineyards of two masters. We can only suggest that the Board and superintendent attempt to provide the necessary medical care with the voluntary cooperation of teachers and teacher aides. Volunteers could be trained in an appropriate program approved by the State Board of Education pursuant to 115C-307(c). If volunteers are not available, the Board and Superintendent can, pursuant to 115C-110, canvass the local human resource agencies to determine whether qualified local personnel can perform the necessary catheterization or contract with some private provider.[29]

The degree of supervision required is a major concern in the administering of medication, as well as in other areas, particularly those involving injuries to students. The case Ferguson V. DeSoto Parish

[29] Ibid.

School Board[30] involved a child who died as a result of injuries that incurred during a softball game at school. During the game held during lunchtime recess, the child was struck in the head by a softball bat. The student showed no immediate signs of serious injury and told the teacher he was "alright." Later, another teacher learning of the incident checked the student's condition. The child was complaining of a headache; an icepack was applied to his head. Soon some discoloration was noted and the child's right eye was unresponsive. The child was rushed to a hospital and died four days later.[31]

The parents filed suit; the trial court ruled in their favor, based on findings of negligence on the part of school employees in that the level of supervision under the circumstances was considered inappropriate. However, on appeal, the court reversed the decision, in favor of the teacher and school board, based on the requirement of a teacher to maintain supervision only on the same level as that expected of any reasonable person under similar circumstances.[32]

[30] Ferguson V. DeSoto Parish School Board 467 So. 2d 1257 (La. App. 2 Cir. 1985).
[31] Ibid.
[32] Ibid.

In Prier V. Horace Mann Insurance Co.,[33] the court concluded:

> Our jurisprudence is such that a school board is not the insurer of the lives or safety of children. School teachers charged with the duty of superintending children in the school must exercise reasonable supervision over them commensurate with the age of the children and the attendant circumstances.
>
> It is also essential to recovery that there be proof of negligence in failing to provide the required supervision and proof of a causal connection between the lack of supervision and the accident.[34]

In supervising a student receiving medication, the same expectation would apply, particularly in the following of specific procedures for administering medication. A more exacting supervision would be required with a young child than with an older child. For example a kindergarten child would need a dose of medicine measured for him, whereas a high school senior should certainly be able to properly measure the amount that is required. The type of medication and the procedure for its administration can also vary the

[33] Prier V. Horace Mann Insurance Company 351 So. 2d. 265. (La. 1977).
[34] Ibid.

degree of supervision that is needed. Insulin, for example, must be given in precise amounts and by injection, both criteria requiring a higher degree of supervision in its administration than, for example, a tablet.

SUMMARY

The necessity of specific guidelines for a teacher to follow is clearly evident. Proper guidelines in an approved school board policy on administering medication to students would determine that medicines are properly administered, as well as afford protection for both the school official administering the medication and the student receiving it.

CHAPTER V

SURVEY OF CURRENT POLICIES ON THE ADMINISTRATION OF MEDICATION IN NORTH CAROLINA PUBLIC SCHOOLS

INTRODUCTION

In providing services to students, there are legal limits under which the school systems must operate. The variety of services offered by the schools of North Carolina includes those required by law and those which schools elect to provide as a convenience to the students and parents. Whether or not the services are required is of little significance when dealing with matters of liability or health and well-being.

As school personnel administering medication may be subject to a liability suit if the medication is improperly given, proper policies and procedures covering all facets of administering medication are needed. These should cover not only the procedures for personnel to follow in the actual administering of medication to the student, but also the procedure for

transporting the medicine to school, including the container required, its storage, and proper disposal procedure of any leftover amounts.

Recognizing the need for medications to be administered at school, the State of North Carolina provided through its General Statute 115C-307(c), the authority to provide certain medical care to students.[1] The law states that the procedure is within the "scope and duty" of teachers, but further clarifies that school personnel cannot be "required" to administer medication.

On the other hand, the law makes no mention of non-prescription medicines, only "any drugs or medication prescribed by a doctor." This does not imply coverage for "over the counter" drugs that have not been specifically prescribed by a doctor. This is extremely significant since the relatively recent knowledge of the link between Reyes Syndrone and aspirin products has become available to the general public.[2] Awareness of possible hazardous effects of some over the counter drugs would necessitate caution in administering these drugs without a doctor's

[1] North Carolina Public Statute 115-307(c).
[2] "Don't Give Young Flu Patients Aspirin," The Charlotte Observer, (February 28, 1986), 11b.

written order or prescription.[3]

Although the responsibility for medication administration by school personnel rests with the principal of the school, whose duty it is to "determine which persons will participate in the medical care program," the actual administration of the medicine by his chosen personnel remains on a voluntary basis.[4]

General Statute 115c-307(c) was amended in 1985 by the General Assembly of North Carolina to provide "good samaritan" protection to employees chosen to administer prescribed drugs to school students, thus protecting the employee from liability in civil damages except for "gross negligence, wanton conduct, or intentional wrongdoing."[5]

This "except for" phrase accentuates the need for a school policy of precise rules and regulations concerning administering medication to students. Although, as was noted in an earlier chapter, a "good samaritan" law does not prevent one from being sued, a precise policy with distinct guidelines would give an employee specific instructions, thus strictly limiting

[3] North Carolina General Statute, 115-307(c), 116.
[4] Ibid.
[5] Ibid.

any area of misinterpretation of the medicational procedures. Not only would the policy protect the employee, but also the student receiving medication, as the teacher would no longer question the safety or "proper" handling of the situation. Furthermore, the parents could feel confident that the proper dosage was being administered appropriately. A specific policy would also allow the employee some relief, for instance, when requested by phone to administer an aspirin product to a child who has called home complaining of a headache.[6]

Having a policy would also enlighten school personnel as to the inappropriateness of giving medication to a student, and an awareness as to the liability that exists in providing medicines to students without proper authorization. As the television commercial comically implies, a school employee may desire to "spell relief," but the temptation to distribute an over-the-counter drug to a student, even a simple antacid tablet, could result in an accusation of illegally practicing medicine.[7]

[6] Margaret W. Steckel, "Monitoring Medications," The Journal of School Health, 47 (Dec. 1977) :621.

[7] "Hazards of Medicating in the Schools," Oklahoma School Board Journal, 33, (April 1984), 4.

Employees asked to administer medication should be trained in the medicinal processes involved and should be knowledgeable in the proper utilization of the governing school policy adhered to.[8]

BREAKDOWN AND EVALUATION OF CURRENT NORTH CAROLINA POLICIES

To review and evaluate current policies used in school systems throughout the state of North Carolina governing the administration of medication, a survey was conducted. A questionnaire was mailed to each system, requesting a copy of their policy covering the administration of medication to students. There were one hundred forty one (141) inquiries made; one hundred (100) responses were received.

The summary listed in Table I establishes that of the one hundred school systems that responded to the questionnaire: (a) thirty six systems indicated that they are functioning with no written policy concerning the administration of medication to students,

[8] Patricia Solberg, "Administering Medication In the School," School Law Bulletin, XI, No. 1, (January 1980), 6.

contending they have experienced no problems because of the lack of School Board policy in the past and anticipate no problems in the future, and (b) the remaining sixty four systems enclosed a copy of their policy. The results of the review of their criteria insuring the safety of both student and school personnel involved in any administration of medication are listed. The names of the systems responding have been deleted, however.

Through the combination of several well-written policies and regulations, two appropriate request forms have been created and are printed at the conclusion of Chapter VI.

TABLES I, II, and III

NUMBER AND PERCENTAGE OF RESPONSES OF PUBLIC SCHOOL SYSTEMS REGARDING THEIR POLICIES AND REGULATIONS FOR THE ADMINISTRATION OF MEDICATION TO CHILDREN

TABLE I:

Differing Types of Approval Required

GUIDELINES	No.	%
Parent AND Physician	41	64
Parent OR Physician	4	6
Parent ONLY	15	23
Physician ONLY	4	6
Both Parents	0	0

SUMMARY OF TABLE I

Each of the school systems possessing a written policy requests written authorization to administer medication. Of those, sixty four percent (64%) require signatures of both the parent/guardian and the physician prescribing the medication, six percent (6%) require authorization by the parent or physician, twenty-three percent (23%) require only the parent signature, and six percent (6%) required only written authorization from the attending physician.

The preferred method would require written authorization by both the parent/guardian and the

physician, enabling the school to work closely with all concerned to ensure the health and safety of the student receiving medication. The physician would provide important information such as dosage amount, time intervals, and physical characteristics of the medication, as well as valuable data concerning possible reactions or side effects possibly induced by the medication. All persons involved in the medication process should be extremely observant of those stated details.

TABLE II:

Responsibility Of Individuals Involved

GUIDELINES	No.	%
Nurse or Principal Appointee	26	56
Student Self-administer	5	8
Function of School Nurse	5	8

SUMMARY OF TABLE II

The responsibility of the actual administration of the medication falls on the principal or his designee in fifty-six percent (56%) of the systems responding.

Of this group, the function of the school nurse is to review files and contact the parents and/or physician should any difficulties arise. Eight percent (8%) allow students to self-administer medication. Two schools allow students to keep medicine in lockers after notifying the principal.

TABLE III:

Storage, Handling, & Administration of Medication

GUIDELINES	NO.	%
Container Holding Medication	22	34
Storage of Medication	26	40
School May Reject Request to Administer	8	13
Waiver Form required to exempt School Employee from Liability	22	34
Supply of medicine to be kept at School	6	9
Information on medication administration recorded in student's folder	5	8
Delivery of medication to school	11	17
Written Record of Medication Given	28	44
New Forms Required Each Year	3	5
Dispensation of unused medication	13	20
Parent duty to inform school of change in medicine	13	20
Verify identity of the student receiving the medication	0	0
Supervision of students as they take the medication	3	5
Teacher Report any Reactions	1	2
Variations in regulations for mature and immature students	3	5
Liquid medicine to be delivered in pre-measured containers	0	0
Non-Prescription Medications	10	16

SUMMARY OF TABLE III

Forty percent (40%) of the policies listing procedures for proper storage of medication included storage in a secure area or locked cabinet, with the exception of medicines requiring refrigeration. Only one response indicated that refrigerated medicine was to be stored in a secured locked area also.

Thirty-four percent (34%) required medicines to be stored in a container properly labelled by the pharmacist with the child's name, dosage, and time interval. Requiring the name of the medication may be an infringement on the child's right to privacy, as established by Roe V. Ingraham.[9] Thirteen percent (13%) of the school systems included the right to refuse the request for medication to be administered at school. In each instance, the discretion of the principal was to be used as the basis for such a decision.

Thirty-four percent (34%) of the policies include a waiver of liability of school employees, to be signed

[9] Roe V. Ingraham, 403, F. Supp. 931 (New York 1975).

by the parent. It should be noted on the waiver that school personnel have not been trained to administer medication and only follow procedures established by the attending physician.

Forty-four percent (44%) of all schools with policies require a written record to be kept on all medication administered at school. These logs, which include the child's name, time of dosage, amount of dosage, and the name of the supervising school employee, were either kept on file with the principal or filed in the health room. Eight percent (8%) require this information to become part of the student's permanent record.

Nine percent (9%) have a policy governing the quantity of medication to be stored at school, varying from one day's supply to an infinite amount. Only twenty percent (20%) specified that the unused medication was to be picked up by the parent for disposal. Seventeen percent (17%) contain guidelines for the delivery of medication to the school. Most schools prefer that a pharmacy deliver the medication. In areas where this is not possible, parents are required to deliver medication to the school. In the event of hardship, the school bus driver may transport

medication with a written agreement from the parent stating the driver is acting as an agent of the school. The student involved would not be allowed to bring the medicine.

Twenty percent (20%) of the current policies include notifying the school of any changes in medication as a responsibility of the parent. This includes changes in dosage or termination of medication.

Five percent (5%) of North Carolina schools specify that school personnel are to supervise the student as the medication is being consumed. Only two percent (2%) state that teachers should report any reaction which may occur.

Five percent (5%) have differing regulations for grade levels. All nonprescription drugs are handled in the same manner as prescription drugs for students in kindergarten through grade six. Students in levels seven through twelve may take prescription medicine with a note from the parent specifying the name of the medication and reason. The student may keep only enough medicine for one day, which cannot be stored in the student's locker.

Sixteen percent (16%) follow the same procedure as

above for prescription and include non-prescription medication as well.

Surprisingly, no school has a guideline for verifying the identification of the student receiving medication. Ideally, medication should be delivered to the student at the appropriate time by the principal or the school designee. Because of schedule conflicts, this is often difficult. Nevertheless, the student should present proper identification (school identification card, driver license, etc.) before receiving medication, especially in larger schools where the designee may not be familiar with all students.

The strengths and weaknesses of policies governing the administration of medication in school systems throughout North Carolina are evident. Each factor listed in Tables I, II, and III is basic, with imperative aspects of the safe administration of medication in public schools; they should be included in every policy used in the public schools.

CHAPTER VI

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

SUMMARY

The introductory material presented in Chapter I identified the fact that the administering of medication is a growing problem in public schools. Advances in medical technology and increased public awareness of legal rights and due process have combined to place an additional demand of the services provided through public education. School officials, in an effort to protect both the health and safety of a child and the legal standing of the school system, must be fully prepared to accept the responsibilities of properly administering medication.

By presenting a review of related literature dealing with court litigations in Chapter II, the need for developing strong district policies was established. Several key issues on the proper

handling, storing, and administering medication were also reviewed. Selected key studies were presented in an effort to clarify the basic judicial considerations contained in Chapters III and IV.

As a guide for research, several questions are formulated and listed in Chapter I. The legal implications and considerations are more fully developed in Chapters III and IV. The answers to these questions form a large portion of legal considerations to which school boards and administrators can refer when developing policies on the administration of medication in public schools.

The first question listed in Chapter I pertained to the major educational and legal issues regarding medication for school students. First, the major educational issues involved in administering medicine include: (a) the inclusion of some medical services as a related service under Public Law #94-142, The Education for All Handicapped Children Act, and (b) the requirement of regular medical services or medication in order for a child to function normally while in the least restricted educational setting. Further, the legal issues involved are: (a) the shared and clearly defined responsibility of school boards, admini-

stration, and parents, and (b) the protection of the reports of the student safely receiving medication and the school employee chosen to administer the medication.

The second question listed in Chapter I was related to issues likely to be included in court litigation. Primarily, court litigation involving the administering of medical services centers either on the right to receive medical services, or negligence on behalf of school personnel.

Question number three addressed the legal principles involving appropriate education. As previously stated, some medical services are required by students while in an educational setting. Irving V. Tatro, a key case, established that medical services must be provided by school personnel. North Carolina, in an effort to protect employees who volunteer to administer medicines or medical services, developed a save harmless statute. The legal principle of res ipsa loquitur has decreased the likelihood of unwarranted cases by placing the burden of proof of negligence on the plaintiff.

The fourth question guide in Chapter I concerns

specific issues currently being litigated. Negligence is the most common legal issue involving school personnel. This has given rise to the acceptable policies and procedures posed in question five, pertaining to aspects of medical services. Medical services provided should be based on knowledge and training. The "reasonable standard of care" policy allows that the depth of knowledge of a physician is not expected in a layman who receives training in an in-service workshop. Further guidelines and procedures are fully developed in Chapter II: Review of Related Literature and Court Litigation.

CONCLUSIONS

Based on an evaluation of judicial decisions and related literature, the following general conclusions can be made concerning the safe administration of medication in the public schools.

1) Medicines and medical services should be administered in the public schools only if no other alternative is available or feasible.

2) Educators, administrators, and school boards, in conjunction with parents, should develop a sound policy on the storage, handling, and administration of medication to students.

3) Every foreseeable medical service should be provided for, even if not applicable to the current student body.

4) Every school within the same system should adhere to the same policy.

5) All persons involved, e.g. the principal, teachers, a school board member, parents, and the students, should meet to discuss the administration of the medication or medical service and the responsibilities of each person involved.

6) All faculty and staff members should be notified if a child has a potentially dangerous or life threatening condition or allergy (epilepsy, allergic reaction to bee sting, etc.)

7) Volunteers or the principal's designee should receive proper and adequate training prior to administering any medication or providing any medical service.

8) Adequate storage, including refrigeration, which can be locked must be provided.

9) Detailed records should be kept and updated on each child receiving medication.

10) All school systems and school boards, as well as individual educators, should carry some degree of liability insurance.

RECOMMENDATIONS

In assimilating the data gathered, several areas of weakness are apparent in current regulations and policies: (1) the establishment and clear division of responsibility of all persons involved with the health and safety of the student; (2) the handling and storing of medication; (3) the proper training of the administering personnel; and (4) a clear understanding of the liabilities involved when administering medication.

After the school board, physician, school administrators and employees have developed a specific and feasible policy for the administration of medication, the school administrator and employee designated to administer the medication should meet with the parents and student directly involved in receiving medication. If possible, the physician should be in attendance. Policies and procedures, responsibilities and restrictions should be thoroughly discussed.

Parents should fill out the appropriate forms, secure the physician's signature and a detailed account of the medication's dosage, storage, and possible side

effects. In addition, they should supply the school with an appropriate supply of medication in a container labeled by the pharmacy, contact the school when the medication has been discontinued, and retrieve any unused portions.

The school employee designated to administer the medication should oversee the storage of the medicine, administer the medication following the physician's orders and in accordance with board policy. The designee should keep accurate, detailed records on the administration of the medication, monitor the child for any reaction, and contact the parents and physician if necessary. The principal or administrator should review the records and observe the procedure to insure all actions are within board policy.

School personnel should receive thorough training before administering any medications. Workshops and in-service training programs on the administration of medication should be conducted by a physician or nurse with expertise in that area. In the event of a medication with a high level of toxicity, thus an increased possibility of side effects/reactions, or of a more complicated procedure for administration being required, the school designee, the student's parents

and the physician should meet to discuss all aspects of the medication as well as the proper procedure for its administration. Should a student with the proper level of maturity, such as in grades seven through twelve, wish to self-administer medication, there should still be close supervision by the school designee.

The North Carolina Statute designed to protect school employees from ordinary negligence in the administration of medication to pupils goes a long way in eliminating the risks involved. Schools need to look at their policies regarding administering medication. Those without policies should develop one; those with policies should revise as it becomes necessary.

In conclusion, the need for a strong policy governing the administration of medication is evident. All medicines carry risks, whether prescription or nonprescription. North Carolina has done much to relieve the burden of liability to school employees who volunteer their services. However, local boards of education need to develop individual policies to provide added assurance as to the health and safety of any child within their school district requiring the administration of medication and afford greater

protection to its employees.

SUGGESTIONS FOR FURTHER STUDY

Further study could be concerned with the comparisons of different states in the Southeast or Nationally, as to policies, and/or state and local laws governing the administering of medication in the schools. In addition, a study could be undertaken in North Carolina to examine the numbers of pupils receiving medication and the types of medication that is administered. This would include both handicapped and non-handicapped students.

With the ever increasing popularity of certified athletic trainers, some schools may be inclined to use these persons for students other than athletes. A study of the types and extent of medication that is administered by these adult trainers, as well as the legal ramifications, could be undertaken.

RECOMMENDED FORMS FOR ADMINISTERING MEDICATION TO STUDENTS

The following two forms were developed by

combining parts of forms used by various public school agencies of North Carolina.

SUGGESTED REQUEST FORM #1 (Page 1 of 4)
For The Administration of Prescription or
Nonprescription Medication at School

To be completed by The PHYSICIAN:

TO: _____ School District Personnel:

Since medication for the student listed below cannot be scheduled for other than school hours, and the administration of such medication may be supervised by nonmedical personnel, it is requested that the medication as indicated below be administered by the school principal or his designee.

1) Name of Student:_____

Address:_____

_____

2) Medication to be Administered:

Name of Medication (Optional):

_____

Purpose (Optional)_____

Description:_____

Dosage (Quantity and Time of Day):

_____

_____

3) Possible Reactions, that if they occur, should be reported to the Physician.

_____

_____

Page 2 of 4
(Form 1 Cont'd)

4) Any Special Instruction (e.g. storage, etc.)

_____

_____

5) Medication is to be continued as above until

_____(date).

6) Date of this request:_____

7) Physician's Signature:_____

8) Physician's Address:_____

_____

9) Physician's Telephone Number

Office: _____

Home: _____

_____

_____

To Be Completed By The PARENT or GUARDIAN

I (We) request that medication be administered to our child _____
(Name of Child)

in accordance with the above instructions of our physician, Dr._____.

a) I (We) understand that the administration of said medication is to be done under the supervision of either the principal or a member of the staff selected by the Principal.

b) I (We) understand that the medication is to be delivered to the school by the parent or guardian ONLY, and that unused medication will be returned to the parent or guardian ONLY, and that any medication not picked up by the parent or guardian within three days after notification will be disposed of by the school principal.

c) I (We) agree to deliver a school week's supply of medication to the school in the original container the first school day of each week unless other arrangements are made with the principal. We understand that the empty container will be returned home the last school day of each week with the student.

d) I (We) agree to notify the school immediately if: 1) we change physicians; 2) the medication or dosage is changed; 3) the administration of the medication is to be terminated.

I (We) give my son/daughter permission to self-administer his/her medication: Yes____ No____
(Parent Initial)

Signature of Parent(s)/Guardian(s)

1. _____ /_____
Signature Date

2. _____ /_____
Signature Date

3. Address of Parents:_____

_____

4. Home Telephone Number:_____

5. Business Telephone Number:_____

To Be Completed By The SCHOOL PRINCIPAL

1. Person(s) authorized to administer medication for:

_____
Name of Student

a) _____ _____ _____
Name Signature Date

b) _____ _____ _____
Name Signature Date

c) _____ _____ _____
Name Signature Date

2. Principal _____ _____
Signature Date

A copy of this form shall be filed near the medication storage area and in the student's permanent record file.

SUGGESTED REQUEST FORM (PAGE 1 OF 3)
FOR MEDICATION TO BE GIVEN DURING SCHOOL HOURS

_____

_____

_____

To Be Completed by PHYSICIAN

Pupil's Name_____ Grade_____

School_____

Medication_____

Time(s) To Be Given:_____am / _____pm

Significant Information: (Include side effects, toxic reactions, omission reactions):

_____

_____

Contraindications for Administration:

_____

_____

* No Injection will be given except in extreme emergency, such as allergy to wasp or bee sting or the like.

To be given from _____ to _____.
(date) (date)

If an emergency occurs during the school day or if the pupil becomes ill, school officials are to:

a) Contact me at my office. Phone #_____

b) Take child immediately to emergency room at:

_____

c) Other option: _____

Page 2 of 3
(Form 2 Cont'd)

This medication is furnished by parent or guardian within a container properly labeled by a pharmacist with identifying information, e.g., name of child, medication dispensed, dosage prescribed, and time(s) to be given.

_____ _____
Physician's Signature Date

_____
_____

To be Completed By PHARMACIST:

Name of Child:_____

Prescribed Medicine Dispensed:

_____

Dosage Unit:_____ Route:_____

Time(s) to be given:_____am / _____ pm

Relationship to Meals:_____

Form of Medication (e.g., tablet, capsule, liquid, etc.):

_____

Other identifying information (Markings, color, etc.)

_____

Signature_____ _____
Pharmacist's Signature Date

To be completed by PARENT:

Name of Child _____

School _____

I hereby give my permission for my child to receive medication during school hours. I understand that the school undertakes no responsibility for the administration of the medication. The medication has been prescribed by a licensed physician.

I realize the importance of administering medication to my child as prescribed by the child's physician, and do hereby agree to relieve designated school personnel of any emergency treatment from any potential ill effects as a result of their injecting or giving my child the medicines prescribed by the child's physician.

I have discussed this with my physician and/or legal counsel (attorney) and realize its ramifications and thoroughly understand the meanings of these statements.

_____ _____
(Parent's or Guardian's Signature) (Date)

(For School Use Only)

Name(s) and Title(s) of Person(s) to Administer Medication:

Approved by: _____ / _____
(Principal's Signature) (Date)

Reviewed by: _____ / _____
(School Nurse's Signature) (Date)

BIBLIOGRAPHY

Books

Appenzeller, Herb. Athletics And the Law. Charlottesville, Va.: Michie Co., 1975.

Appenzeller, Herb. From the Gym to the Jury. Charlottesville, Va.: Michie Co., 1970.

Appenzeller, Herb. Physical Education And The Law. Charlottesville, Va.: Michie Co., 1978.

Appenzeller, Herb. Sports and Law: Contemporary Issues. Charlottesville, Va.: Michie Co., 1985.

Appenzeller, Herb. Sports and the Courts. Charlottesville, Va.: Michie Co., 1980.

Appenzeller, Herb. Successful Sports Management. Charlottesville, Va.: Michie Co., 1985.

Appenzeller, Herb. The Right to Participate. Charlottesville, Va.: Michie Co., 1983.

Bolmier, Edward C. The School In The Legal Structure. Cincinnati: W.H. Anderson Co., 1973.

Bolmier, Edward C. School Law For Teachers. Cincinnati: W.H. Anderson Co., 1973.

Cooley, Donald G., ed. Family Medical Guide. New York: Meredith Press, 1966.

Dellinger, Anne M. The Principal's Role. Chapel Hill, N.C.: Institute of Government, 1981.

Drury, Robert and Kenneth Ray, Essentials of School Law. New York: Apple-Century-Crofts, 1967.

George, James. Law And Emergency Care. St. Louis: C.V. Mosby Corp., 1980.

Grotsky, J, D. Sabatino, and W. Ohrtman, (eds.) The Concept of Mainstreaming: A Resource Guide For Regular Classroom Teachers. King of Prussia: Eastern Pa. Regional Center For Special Education, 1976.

Hudgins, H.C. Jr. and Richard Vacca. Law and Education: Contemporary Issues And Court Decisions. Charlottesville, Va.: The Michie Company, 1985.

Linn, John P. and Chester Nolte. School Law For Teachers. Danville: Interstate Printers and Publishers, 1963.

McCarthy, Martha M. Public School Law: Teachers' and Students' Rights. Boston: Allyn & Bacon, 1981.

Nolte, Chester M. Duties and Liabilities of School Administrators. West Nyack: Parker Publishing Co., Inc., 1973.

Nolte, Chester M. Guide to School Law. New York: Parker Publishing Co., Inc., 1969.

Nolte, Chester M. How To Survive In Teaching: The Legal Dimension. Chicago: Teach 'Em, Inc., 1978.

Nolte, Chester M. School Law For Teachers. Danville, Ill.: The Interstate Printers and Publishers, Inc., 1963.

Reulter, Edward E. Schools and The Law. Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1981.

Reulter, Edward E. The Law of Public Education. Mineola, New York: The Foundation Press, Inc., 1976.

Roemer, Ruth and George McKray, ed., Legal Aspects of Health Policy, Issues and Trends. Wesport, Conn.: Greenwood Press, 1980.

Smith, Michael Jr. Law And The North Carolina Teacher. Danville: Interstate Printers and Publishers, Inc., 1975.

Journals, Periodicals, and Newspapers

Algozzine, Bob. "Some Practical Considerations of Hyperactivity and Drugs." Journal of School Health 48 (October, 1978): 479-483.

Clark, James F. "Dispensing, Administering Medication, Legal Comment." Wisconsin School News 34 (1979): 23.

Creighton, Helen and Marjorie Squaires, "School Nurses: Legal Aspects of Their Work," Nursing Clinics of North America 9, 3 (Sept., 1974):467-474.

"Don't Give Young Flu Patients Aspirin." The Charlotte Observer (Feb. 28, 1986): 11B.

Flowers, Annella, "Medicines at School: How Safe Are They?" Home Life, 39, 12 (Sept. 1985):19.

"Hazards of Medication In The Schools." Oklahoma School Board Journal 33 (April 4, 1984): 4.

Igoe, Judith B. "Changing Patterns In School Health And School Nursing." Nursing Outlook (August, 1980): 486.

Lippert, J.L. "When and Why Medicine Goes Bad." Good Housekeeping 186, 1 (January 1978): 168-169.

Patton, William F. "Legal Aspects of Student Medication." (School Laws of a New Decade, M.A. McGheheiy, ed.) NOLPE (1981): 169-170.

Pettigrew, Dr. Jo. "New Law Dictates Medicine Policy." Oklahoma School Board Journal 33 (Aug. 1984): 4.

Ross, James C. "Protect Teachers and Students With Policies Governing Medical Matters." The American School Board Journal 171, 9 (1984): 672.

"School Rule Found Unconstitutional." Legal Notes For Education VI, 21 (1985): 5.

Solberg, Patricia. "Administering Medication In The School." School Law Bulletin 11 (January, 1980): 6.

Steckel, Margaret W. "Monitoring Medications." The Journal of School Health 47 (Dec., 1977): 621.

"Student Drug Expulsion Reversed." Legal Notes For Education VII, 3 (July, 1985): 5.

Court Cases

Bentons V. Stewart, 453 So 2d 92, (Fla. App. 2d. Dist. 1984).

Big Springs School District Board of Directors V. Hoffman, 489 A 2d 998 (Pa. CMWLTH., 1985).

Bruenn V. North Yakina School District No. 7, 101 Wash. 374, Pac. 569, (1918).

Carroll V. Fitzsimmons, 384, 2d, 81 Colo. (1963).

Dady V. School Board for the City of Rochester, 282 N.W., 2d, 328 (Mich. Appeals Court 1979).

Ferguson V. DeSota Parish School Board, 467 So 2d, 1257 (La App. 2 Cir. 1985).

Face V. Long Beach City High School District, 137 p. 2d, 60 (Calif 1943).

Guerrieri V. Tyson, 147, Pa. Supp, 239 24 A, 2d, 468 (1942).

Hairston V. Drosick, 423 F. Supp. 180 (W. Va. 1976).

Irving Independent School District V. Tatro, 82 L Ed 2d 664 (1984).

Laws V. Board of Education, 213 N.E. 2d 667 (N.Y. 1966).

Moore V. Order Minor Conventuals, 164 F. Supp. 711 (N.C. 1958).

Molitar V. Kaneland, 20 Ill, 555, 155 N.E. 2d, 841, (1959).

Mower V. Leicester, 9 Mass. 247, (Mass. 1812).

O'Brien V. Township Heights School District, 392 N.E. 2d, 615 (1979).

People V. Shokunbi, 223 N.E. 2d, 226 (1967).

Prier V. Horace Mann Ins. Co., 351 So. 2d, 265 (La. 1977).

Roe V. Ingraham, 403. F. Supp. 931 (N.Y. 1975).

Russell V. Men of Devon, 100 Eng. Rep. 359, 2 T.R. 667 (England, 1788).

Spaniel V. Mounds View School District, 118 N.W. 2d, 795, (Minn. 1963).

Stanhope V. Brown County, 280 N.W. 2d, 711 (1979).

Streich V. Board of Education of Aberdeen, 34 S.D. 169, 147 NW 770 (1914).

Weems V. Robinson, 9 So. 2d. 882 (Ala. 1942).

Other Sources

Black, Henry C. MA. Black's Law Dictionary , Publisher's Editorial Staff, St. Paul, MN., West Publishing Co., 1979.

Corpus Juris Secundum, Vol 78, New York: The American Law Books Company, 1952.

Dunlap, Ed. Associate Director of the North Carolina School Boards Association, Address in North Carolina School Boards Association Legislative Work Session, October 16, 1985.

National Report Systems, St. Paul Minnesota:
West Publishing Company,
The Atlantic Reporter
The California Reporter
The Southeastern Reporter
The Southern Reporter
The Federal Reporter
The Federal Supplement
The Supreme Court Report.

North Carolina General Statute 115c-42.

North Carolina General Statute 115c-307(c).

North Carolina General Statute 130A-152(a).

Opinion North Carolina Assistant Attorney General Thomas J. Zilco, for William Brunsey, Oct. 1, 1984.

Opinion North Carolina Chief Deputy Attorney General Andrew A. Vanore, for J. P. Elmore, Feb. 24, 1981.

Ross, James. "A Comparison of Legal Aspects of Administering Medication In Schools With Practices Followed In Ohio Schools." Ph.D. Dissertation, Kent State University, 1981.

The Education for All Handicapped Children Act of 1975, Public Law 94-142, Sect. 615, 20 U.S.C. 1411 et.seq.

U.S. Department of Health, Education and Welfare, "We Want You To Know About Prescription Medicines." HEW Publication No. (FDA) 78-3059 (1978).

VI Opinion Attorney General 800, 802 (1917) Wisconsin.

Wisconsin Statute Chapter 895.43.