

GEORGIA SPECIAL EDUCATION UPDATE

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REFUSAL TO GIVE SEIZURE MEDS ON BUS DENIES FAPE

Consistent with the recommendations of Children's Healthcare of Atlanta, a Georgia school district had an informal policy prohibiting the administration of Diastat on school buses. The Superintendent's cabinet was willing to consider exceptions to the rule and, in fact, made an exception for a special education student during community field trips. The due process complaint grew out of the cabinet's refusal to extend the exception beyond community outings.

During school outings, the school district implemented an emergency protocol whereby it would evacuate the other students off the bus, place the student having a seizure on a plastic mat on the bus, and have a trained paraprofessional administer Diastat for a seizure lasting more than five minutes.

In a recent Office of State Administrative Hearings ruling, the Administrative Law Judge took issue with the fact that the

Superintendent's cabinet and not the IEP team was making the final decision about services. The ALJ also ruled against the district on substantive grounds, finding that the district's refusal to provide the student with a trained bus aide who could administer Diastat at times other than community outings constituted a denial of a free appropriate public education under the Individuals with Disabilities Education Act.

Given the safety-related implications of off-loading students from buses in route, nursing and transportation personnel should be involved in the development of emergency protocols for students who may need seizure medication on a school bus. Because Diastat is administered rectally, the privacy of the student having the seizure is an important consideration. However, student safety and control is often best maintained by keeping students on the school bus. The decision to evacuate should be made in close consultation with transportation

personnel and alternatives to protecting student privacy should be considered and agreed to by the IEP team or Section 504 committee. The primary focus should be getting all students to a point of safety until the emergency has resolved.

Given the nature and complexity of health needs that must be managed in schools and on school buses, school districts should review their school bus evacuation protocols and develop procedures for reviewing and requesting medical records that would substantiate the need for requested services. Although the decision whether to evacuate and how to do so will often fall within the discretion of school officials best able to assess the situation at the time, emergency protocols and evacuation guidelines can help inform and focus the decision-making process. Developing school bus specific plans will ensure that those guidelines are appropriate for both the route and the riders.

HBS EDUCATION PRACTICE GROUP

Our attorneys handle claims involving student issues such as discipline, school violence, special education, testing/promotion, and student records. We also handle employment issues involving teacher evaluation, remediation and discipline, teacher dismissals, at-will employees, sexual harassment, and Title VII.

In addition to handling litigation needs, our Education Practice Group focuses on the prevention of legal problems through comprehensive board policy development and review. We also provide staff development on a variety of topics.

In addition to providing legal advice and handling litigation needs, our firm

believes in the need to focus on litigation prevention through regular consultations with decision makers, resulting in early identification of concerns and issues. Our firm provides a wide range of resources in this regard. We emphasize risk management in the prevention of legal disputes through ongoing consultation and training. We provide legal seminars for administrators and staff members in personnel law, student discipline, and other issues affecting schools. Our Education Practice Group also provides legal workshops for school board members, school system officials, and professional educators. In addition, we assist school lawyers in Georgia in representing their respective school clients.

ABOUT THE AUTHOR



ANDREA L. JOLLIFFE

Ms. Jolliffe serves as both outside general counsel and trial counsel for school districts throughout Georgia. She regularly provides advice and assistance

to special education administrators and other district personnel, helping to avoid the filing of due process and administrative complaints and defending school districts in connection with such complaints. Ms. Jolliffe also regularly represents school districts in connection with a variety of matters, including student issues, personnel matters and policy development. She is also a State-approved governance training provider.