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DEPARTMENT OF JUSTICE
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OPINION 13-0152

**94 - SCHOOLS & SCHOOL DISTRICTS - Administration,
Government and Officers**

Honorable J. P. Morrell
State Senator, District 3
Suite 405
6305 Elysian Fields Avenue
New Orleans, LA 70122

La. R.S. 17:436.1K

Addresses the requirement that the governing authority of each public elementary and secondary school adopt a policy authorizing a school nurse or trained school employee to administer auto-injectable epinephrine to a student under certain circumstances whether or not the student has a epinephrine prescription.

Dear Senator Morrell:

We are in receipt of your request for an opinion from our office on questions relating to certain provisions in Section Twenty-Three of the 2013-14 Student Rights and Responsibilities Handbook and Discipline Policy ("the Handbook") published by the East Baton Rouge Parish School System on August 12, 2013.

Specifically, you ask whether Section Twenty-Three of the Handbook (Medication Policy) is in conformity with the provisions of La. R.S. 17:436.1 K.

La. R.S. 17:436.1 governs the administration of medications to students in public elementary and secondary schools. Subpart K was enacted by the legislature in 2012¹ to require, in pertinent part, that:

Notwithstanding any provision of law or any rule, regulation, or policy to the contrary, the governing authority of each public elementary and secondary school shall adopt a policy authorizing a school nurse or trained school employee to administer auto-injectable epinephrine...to a student who the school nurse or trained school employee, in good faith, professionally believes is having an anaphylactic reaction, whether or not such student has a prescription for epinephrine.

La. R.S. 17:436.1 K (1).

Further, Subpart K (3) requires that:

Each school shall include the policy required by this Subsection in its student handbook and post such policy on the school's website, if it has one. Such policy shall also be disclosed to any parent of other legal

¹ Act 624, §1, eff. June 7, 2012.

guardian who notifies the school in which the student is enrolled, in writing, that the student has an allergy or other condition which puts him at risk of anaphylaxis.

La. R.S. 17:436.1 K (3).

The Handbook published by the East Baton Rouge Parish School System on August 12, 2013, incorporated the requirements of La. R.S. 17:436.1 K (1) and (3) as stated in the law through the following provision:

SECTION TWENTY-THREE – MEDICATION POLICY

...
(8) Pursuant to Act 624 of 2012, this is notice that the school nurse or a trained school employee is authorized to administer auto-injectable epinephrine, as defined in La. R.S. 17:436.1(J)(4)(a) to a student who the school nurse or trained school employee; [sic] in good faith, professionally believes a student is having an anaphylactic reaction, whether or not such student has a prescription for epinephrine. The administration of an auto-injectable epinephrine to respond to a student's anaphylactic reaction may be under a standing protocol from a physician licensed to practice medicine in the state.

East Baton Rouge Parish School System Student Rights and Responsibilities Handbook and Disciplinary Policy, 2013-2014, p. 47.

This language tracks the law as written. However, immediately after the above provision, the Handbook contains the statement: **"Parents must notify the student's teacher and principal, in writing, that the student has an allergy or other condition which puts the student at risk of anaphylaxis in order to allow administration as stated above."** Id. (Emphasis added). The Handbook, including the provisions quoted above, is also posted on the East Baton Rouge Parish School System's website.²

A plain reading of the statement that follows subpart (8) in the Handbook can only be interpreted to mean that the quoted statement modifies subpart (8) to permit the administration of auto-injectable epinephrine only if a student's parent has provided written notification of a student's risk of anaphylaxis to the student's teacher and principal. However, the law does not give schools the discretion to make the authority granted in La. R.S. 17:436.1 K conditional on parental notice. Rather, it expressly provides that the authority is granted "notwithstanding any provision of law or any rule, regulation, or policy to the contrary." Therefore, we believe that Section Twenty-Three, paragraph (8) and the statement following it of the Handbook are not in conformity with the law.

² <http://www.ebrschools.org/explore.cfm/schoolinfo/studenthandbook/>, (last visited October 18, 2013).

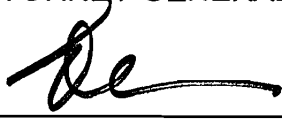
We are advised by the school system that in actual practice, the law is being followed as written. The school system reports that it has conducted training for its personnel and has communicated to its personnel that prior written parental notice is not required for the administration of auto-injectable epinephrine under the circumstances set forth in La. R.S. 17:436.1 K. Nonetheless, we believe that the plain language of the Handbook as written does not comply with the requirements of La. R.S. 17:436.1 K.

We hope that this opinion has addressed the issue that you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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BY:



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JDC:PHW