



John Rau

Final Analysis
Legislative Service Commission

Am. Sub. H.B. 121
123rd General Assembly
(As Passed by the General Assembly)

Reps. Gardner, Roman, Vesper, Willamowski, Mead, Peterson, Allen, Austria, Sullivan, Verich, Mottley, Brading, Hollister, Clancy, Womer Benjamin, Myers, Goodman, Olman, Jolivette, Householder, Corbin, Buehrer, Wilson, Ogg, Grendell, Gerberry, Boyd, Hoops, Distel, Gooding, Haines, Sutton, Jones, Core, Barnes, Harris, Bateman, D. Miller, Salerno, Opfer, Bender, Perry, DePiero, Barrett, Britton

Sens. Kearns, Mumper, Gardner, White, Wachtmann, Johnson, McLin, DiDonato, Nein, Hagan, Fingerhut, Drake, Spada, Armbruster, Espy, Prentiss

Effective date: *

ACT SUMMARY

- Permits public or chartered nonpublic school students to use an inhaler to self-administer asthma medication with the written approval of the parent and physician.
- Removes any cause of action against a school district and its board of education or employees, or against any chartered nonpublic school or community school and its directors, officers, governing authority, or employees, for the following:
 - (1) A school employee permits a student to use an inhaler because of a good faith belief that the required written approvals had been received;
 - (2) A school employee prohibits the student from using an inhaler because of a good faith belief that the required written approvals had not been received; or

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- (3) A student for whom the inhaler was not prescribed uses it.

CONTENT AND OPERATION

Self-administration of asthma medication

(secs. 3313.716(A) and 3314.03; Section 50.52.5 of H.B. 215 of the 122nd G.A.)

Continuing law (sec. 3313.713, not in the act) contains extensive provisions for school districts to permit or prohibit school employees from administering medications to students, but does not expressly cover the situation where a student would self-administer medications. However, under their general authority to operate schools and establish policy for the behavior of students on school premises (secs. 3313.20, 3313.47, and 3313.661, not in the act), many school districts have adopted policies concerning possession and use of medications by students. Presumably, some of these policies could limit the ability of a student to self-administer asthma medication.

The act expressly establishes the right of a student in a public school, community school, or chartered nonpublic school to possess and use a metered dose inhaler or a dry powder inhaler either before exercise to prevent the onset of asthmatic symptoms or to treat the symptoms once they occur. The right extends to any activity, event, or program sponsored by the student's school or in which the school participates.

In order to acquire the right to self-administer an inhalant under the act, the student must have the written approval of both the student's physician and (if the student is a minor) the student's parent or other caretaker. In addition, the school principal and the school nurse (if a nurse is assigned to the student's school) must have received copies of these required written approvals. The physician's written approval must specify at least the following information:

- (1) The student's name and address;
- (2) The name and dose of the medication contained in the inhaler;
- (3) The date the administration of the medication is to begin;
- (4) The date, if known, that the administration of the medication is to cease;

(5) Written instructions that outline procedures school personnel should follow in the event that the asthma medication does not produce the expected relief from the student's asthma attack;

(6) Any severe adverse reactions that may occur to the child using the inhaler and that should be reported to the physician;

(7) Any severe adverse reactions that may occur to another child, for whom the inhaler is not prescribed, should he or she receive a dose of the medication;

(8) At least one emergency telephone number for contacting the physician;

(9) At least one emergency telephone number for contacting the parent, guardian, or other person having care or charge of the student in an emergency; and

(10) Any other special instructions from the physician.

Immunity from tort liability

(secs. 3313.716(B) and 3314.14; Section 50.52.6 of H.B. 215 of the 122nd G.A.)

School districts, community schools, and their employees acting within the scope of employment generally have immunity from tort liability in the performance of governmental functions through the sovereign immunity law (Chapter 2744. of the Revised Code). Under that law, unchanged by the act, the provision of a system of public education is explicitly included as a governmental function and, accordingly, school districts have immunity from tort liability while providing "public education." In addition, courts have consistently held extra-curricular activities to be part of the public education function.

Nonetheless, the act specifically states that under any circumstances, neither a school district nor any member of the board of education nor any employee is liable for injury, death, or loss to person or property when a district employee prohibits a student from using an inhaler because the employee believes in good faith that the required written approvals had not been received by the principal. Similarly, liability cannot accrue because the employee permits the use of an inhaler when the employee believes in good faith that the written approvals *have* been received as required by the act. It further asserts that school districts and their board members and employees are not liable for injury, death, or loss to person or property allegedly arising from the use by another student, for whom the inhaler was not prescribed, of an inhaler that the act entitles a student to possess and use.

Identical immunities are granted to community schools and their governing boards and employees.

The act also explicitly states that all immunities granted to school districts and community schools under the sovereign immunity law still apply.

Chartered nonpublic schools, as nongovernmental entities, do not acquire immunity under the sovereign immunity law. However, the act grants them and their employees, officers, and directors the same immunities from liability with respect to student use of inhalers that it specifies for public schools and community schools.

Grandparent may sign in lieu of parent

(sec. 3313.64)

Under some circumstances, continuing law permits a student to attend school in a district where the student lives with a grandparent, instead of in the district where the parents reside. In this case, the act specifies that the grandparent may be asked by the district to complete the written "parental" approval required by the act for use of an inhaler. The school district would incur no liability for accepting a written approval from the grandparent instead of from the parent.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|---|----------|---------------|
| Introduced | 01-28-99 | p. 123 |
| Reported, H. Education | 03-17-99 | pp. 318-319 |
| Passed House (91-0) | 03-23-99 | pp. 338-339 |
| Reported, S. Education | 06-16-99 | pp. 611-612 |
| Passed Senate (33-0) | 06-16-99 | p. 618 |
| House concurred in Senate amendments (93-0) | 06-23-99 | pp. 909-910 |

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