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Bill Analysis
Legislative Service Commission

S.B. 164

126th General Assembly
(As Introduced)

Sens. Schuring, Gardner, Stivers, Schuler, Spada, Zurz, Brady

BILL SUMMARY

- Permits students of school districts, community schools, and chartered nonpublic schools to possess and use epinephrine inhalers or autoinjectors with the written approval of the students' physicians and parents.
- Removes any cause of action against a school district and its board of education or employees, a community school and its governing authority or employees, or a chartered nonpublic school or its directors, officers, governing authority, or employees for good-faith actions in connection with this permission.

CONTENT AND OPERATION

Permission to self-administer epinephrine

(R.C. 3313.718(A) and 3314.03)

Continuing law contains extensive provisions for school districts to permit or prohibit school employees from administering medication to students, but with one exception, does not expressly address a situation in which a student would self-administer medication.¹ The exception is a law enacted in 1999 that specifically permits students in public and chartered nonpublic schools to possess and use asthma inhalers, if they have written permission from their physicians and parents.² However, under their general authority to operate schools and establish policy for the behavior of students on school premises, school districts presumably

¹ R.C. 3313.713 (not in the bill).

² R.C. 3313.716 (not in the bill).

could adopt policies concerning the possession and use of other medications by students.³

The bill expressly permits a student attending school in a school district, nonchartered public school, or community school to carry and use an epinephrine inhaler or epinephrine autoinjector to treat anaphylaxis (an intense allergic reaction). Substantially similar to the 1999 law concerning asthma inhalers, this permission extends to any activity, event, or program sponsored by the student's school or in which the school participates.

Possession of an epinephrine inhaler or autoinjector is permitted only if: (1) the student has written approval from a physician and, if the student is a minor, from the student's parent, guardian, or other person having care or charge of the student,⁴ and (2) that written approval is on file with the principal of the student's school and, if one is assigned, the school's nurse. The physician's written approval must specify at least the following information:

(a) The student's name and address;

(b) The names and dose of the medication contained in the inhaler or autoinjector;

(c) The date the administration of the medication is to begin and, if known, the date the administration of the medication is to cease;

(d) Written instructions that outline procedures that school personnel should follow if the medication does not produce the expected relief from the student's anaphylaxis;

(e) Any severe adverse reaction that either (i) the child may experience that should be reported to the physician, or (ii) that may occur to another child for whom the medication is not prescribed, if that child receives a dose of the medication;

³ R.C. 3313.20, 3313.47, and 3313.661 (none in the bill).

⁴ 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 bill specifies that the grandparent may complete the "parental" approval to authorize the student's possession of epinephrine medication. The school would incur no liability for accepting a written approval from the grandparent instead of the parent (R.C. 3313.64).

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

(g) Any other special instructions from the physician.

Immunity from tort liability for damages

(R.C. 3313.718(B) and 3314.141)

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 bill, 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 bill provides that no school district or member of its board of education, community school or member of its governing authority, chartered nonpublic school or officer or director, or employees of those schools, shall be liable in damages in a civil action for injury, death, or loss to person or property allegedly arising in three cases:

(1) A school employee's prohibiting a student from using an epinephrine inhaler or autoinjector if the employee has a good faith belief that the conditions for carrying and using the medication have not been satisfied;

(2) A school employee's permitting a student to carry and use an epinephrine inhaler or autoinjector because of the good faith belief that the conditions have been satisfied; or

(3) In instances in which a student is rightfully permitted to carry an epinephrine inhaler or autoinjector, the use of the medication by a student for whom it was not prescribed.

The bill 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.

HISTORY

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