

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION
LEGISLATION STRATEGY BILL ANALYSIS

SB 161 (Huff), SCHOOLS: Emergency medical assistance; administration of epilepsy medication.

Effective Date: January 1, 2012 until January 1, 2017.

Bargaining Unit Employees Affected: All classified employees in merit and non-merit school districts, county offices of education, or charter schools (K-12). Referenced herein as “District”.

Code/Section Amended or Modified: Education Code section 49414.7

Summary or Analysis of Bill:

SB 161, Chapter 560, statutes of 2011 authorizes a District who has pupils with epilepsy suffering from seizures to request classified employees, on a volunteer basis, to provide emergency medical assistance to these pupils. The emergency medical assistance is for the administration of an “anti-seizure medication” called diazepam rectal gel; otherwise currently known and referred herein as “Diastat.” The new law has a number of requirements and offers some protections for classified employees, which is discussed below.

CSEA Position/Interpretation: This bill contains very important safeguards and protections for classified employees; the most important of which is that the training and administration of Diastat is voluntary. The full scope of protections must be circulated to all of our members. These protections include notice mandates, training requirements, no intimidation, rescission rights, and indemnification.

1. **Voluntary:** Any agreement for a classified employee to provide medical assistance to pupils with epilepsy suffering from seizures must be **voluntary**. A classified employee who does not volunteer, or who has not been trained, shall not be required to provide emergency medical assistance.
 - a. **No Intimidation:** The new law requires that the employer “shall not directly or indirectly use or attempt to use his or her authority or influence for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce any employee who does not choose to volunteer, including, but not limited to, direct contact with the employee.” Therefore, classified employees who do not volunteer to be trained to administer Diastat may not be disciplined, laid off, or have their hours reduced because they do not volunteer.
 - b. **Method of Notice:** The request for volunteers can **only** be sent by electronic notice, no more than two (2) times per school year, per child, to all staff. Please note that the electronic notice is the only method a District can use to communicate their request for volunteers. Also, important to note is that Districts can not send the notice to individual employees or certain classifications. The notice has to go to **all** school employees.

- i. The notice must include:
 1. A description of the volunteer request including the purpose (administration of Diastat)
 2. A description of the training to be received
 3. A description of the voluntary nature of the program, and
 4. The volunteer rescission timelines discussed below.

2. Rescission: Any classified employee who volunteers may rescind his/her offer to administer medication up to three (3) days after the completion of the training. After that time, a volunteer may rescind his/her offer with a two week notice, or until a new health plan has been developed for the affected pupil, whichever is less.

3. Training and Related Issues: The District shall provide classified employees who volunteer with emergency medical training as follows:
 - a. The volunteer will receive training from a licensed health care professional regarding the administration of Diastat.
 - i. If the classified employee has not administered the medication within the prior two (2) years, and there is a pupil enrolled who may need the administration of same, the employee shall attend a new training program to retain the ability to administer Diastat.
 - b. Training shall be provided by a physician or surgeon, physician's assistant, a credentialed school nurse, a registered nurse, or a certified public health certificated nurse.
 - c. Recognition and treatment of different types of seizures.
 - d. Basic emergency follow-up procedures. This requires the District to identify a school administrator or, if the administrator is not available, another staff member to call emergency 911 and to contact the pupil's parent or guardian. It does not require a pupil to be transported to an emergency room. It also requires the school administrator or staff member to notify the school nurse assigned to the District. If no school nurse is assigned, the superintendent or designee must be notified when Diastat is administered.
 - e. Techniques and procedures to ensure pupil privacy.
 - f. All written materials used in the training shall be retained by the school.
 - g. Training documentation must be received by the classified employee volunteer and recorded in their personnel file before they can administer Diastat.
 - h. The State Department of Education will include a list of best practices in training classified employees in administering Diastat.

4. **Follow-up Observation:** A protocol for observing the pupil after a seizure and the length of time the pupil should be under direct observation will be established. Any required observation time beyond a classified employee's normally scheduled work hours is subject to payment for such time. The parent and school nurse shall be contacted by the administrator or another school staff member to continue the observation plan.
5. **Indemnity:** Any classified employee who volunteers to administer Diastat will be provided defense and indemnification by the District for any and all civil liability; this includes punitive damages. This information shall be provided in writing to the volunteer and retained in his/her personnel file. If an employee is sued in the performance of administering an anti-seizure medication, the District will be required to both hire a lawyer to defend the lawsuit and also to pay any damages (including punitive) if the classified employee volunteer loses the case.

Discussion of Possible Strategies/Tactics:

It is essential that CSEA classified employees are aware that the administration of Diastat by classified employees is voluntary. If your District has, or will have, a pupil that requires administration of Diastat, the first course of action is to identify an RN or LVN that can perform the service. Some Districts have created LVN job descriptions in the classified bargaining unit who perform administration of Diastat as part of their job duties. This work can also be performed by certificated employees or administrators.

However, if the District is unwilling to contemplate such action and instead reaches out to staff for volunteers, it is imperative to put the District on notice that they must meet and negotiate the effects of the implementation of SB 161.

Note: It is important that a District not be allowed to add the administration of “anti-seizure medication (currently Diastat) into any classified job description since it is always a voluntary decision by the classified employee.