

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1336 Session of 2009

INTRODUCED BY M. SMITH, BEYER, BRENNAN, BRIGGS, CAUSER, EACHUS, FABRIZIO, FRANKEL, FREEMAN, GEIST, GEORGE, GRUCELA, HELM, HENNESSEY, HESS, HORNAMAN, KAUFFMAN, M. KELLER, KORTZ, KULA, MANN, McILVAINE SMITH, MELIO, MILLARD, MILLER, MOUL, M. O'BRIEN, PALLONE, PASHINSKI, PAYTON, READSHAW, ROAE, ROHRER, SAYLOR, SEIP, SIPTROTH, K. SMITH, STEVENSON, SWANGER, WAGNER, YOUNGBLOOD, DENLINGER AND MURT, APRIL 22, 2009

AS REPORTED FROM COMMITTEE ON EDUCATION, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 22, 2009

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," in school health services, further
6 providing for possession and use of asthma inhalers.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 1414.1 of the act of March 10, 1949
10 (P.L.30, No.14), known as the Public School Code of 1949, added
11 November 30, 2004 (P.L.1471, No.187), is amended to read:

12 Section 1414.1. Possession and Use of Asthma Inhalers and
13 Epinephrine Auto-injectors.--(a) Each school entity shall
14 develop a written policy to allow for the possession and self-
15 administration by children of school age of an asthma inhaler,
16 epinephrine auto-injector and the prescribed medication to be
17 administered thereby in a school setting. ~~A school setting shall~~ ←

~~include, but not be limited to, the pupil's school, school
sponsored transportation or any activity, event or program
sponsored by or in which the pupil's school is participating.~~

THE POLICY SHALL COMPLY WITH SECTION 504 OF THE REHABILITATION
ACT OF 1973 (PUBLIC LAW 93-112, 29 U.S.C. § 701 ET SEQ.), THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT (PUBLIC LAW 91-230,
20 U.S.C. § 1400 ET SEQ.) AND 22 PA. CODE CH. 15 (RELATING TO
PROTECTED HANDICAPPED STUDENTS). THE POLICY SHALL BE DISTRIBUTED
WITH THE CODE OF STUDENT CONDUCT REQUIRED UNDER 22 PA. CODE §
12.3(C) (RELATING TO SCHOOL RULES) AND MADE AVAILABLE ON THE
SCHOOL ENTITY'S PUBLICLY ACCESSIBLE INTERNET WEBSITE, IF ANY.

(b) The policy under this section shall require a child of
school age that desires to possess and self-administer an asthma
inhaler or epinephrine auto-injector in a school setting to
demonstrate the capability for self-administration and for
responsible behavior in the use thereof and to notify the school
nurse immediately following each use of an asthma inhaler or
epinephrine auto-injector. The school entity shall develop a
system whereby the child may [verify] DEMONSTRATE COMPETENCY to
the school nurse that the child is capable of self-
administration and has permission for carrying and taking the
medication through the use of the asthma inhaler or epinephrine
auto-injector. DETERMINATION OF COMPETENCY FOR SELF-

ADMINISTRATION SHALL BE BASED ON THE FOLLOWING FACTORS: AGE,
COGNITIVE FUNCTION, MATURITY AND DEMONSTRATION OF RESPONSIBLE
BEHAVIOR. The school entity shall also restrict the availability
of the asthma inhaler, epinephrine auto-injector and the
prescribed medication contained therein from other children of
school age[, with immediate confiscation of {both}]. THE POLICY
SHALL SPECIFY CONDITIONS UNDER WHICH A STUDENT MAY LOSE THE

PRIVILEGE TO SELF-CARRY the asthma inhaler, epinephrine auto-
injector and the medication [and loss of privileges] if the
school policies are abused or ignored. A SCHOOL ENTITY THAT
PREVENTS A STUDENT FROM SELF-CARRYING AN EPINEPHRINE AUTO-
INJECTOR AND THE PRESCRIBED MEDICATION SHALL ENSURE THAT THEY
ARE APPROPRIATELY STORED AT LOCATIONS IN CLOSE PROXIMITY TO THE
STUDENT PROHIBITED FROM SELF-CARRYING AND NOTIFY THE STUDENT'S
CLASSROOM TEACHERS OF THE PLACES WHERE THE EPINEPHRINE AUTO-
INJECTOR AND MEDICATION ARE TO BE STORED AND MEANS TO ACCESS
THEM.

(c) The policy under this section may include the following:

(1) The requirement of a written statement from the
physician, certified registered nurse practitioner or physician
assistant that provides the name of the drug, the dose, the
times when the medication is to be taken and the diagnosis or
reason the medicine is needed unless the reason should remain
confidential. The physician, certified registered nurse
practitioner or physician assistant shall indicate the potential
of any serious reaction that may occur to the medication, as
well as any necessary emergency response. The physician,
certified registered nurse practitioner or physician assistant
shall state whether the child is qualified and able to self-
administer the medication.

(2) The requirement of a written request from the parent or
guardian that the school entity comply with the order of the
physician, certified registered nurse practitioner or physician
assistant. The parent's note shall include a statement relieving
the school entity or any school employee of any responsibility
for the benefits or consequences of the prescribed medication
when it is parent-authorized and acknowledging that the school

1 entity bears no responsibility for ensuring that the medication
2 is taken.

3 (3) The ability of the school entity to reserve the right to
4 require a statement from the physician, certified registered
5 nurse practitioner or physician assistant for the continued use
6 of any medication beyond a specified time period. The school
7 entity may SHALL also require updated prescription and parental ←
8 approval on an annual basis from the pupil.

9 ~~(c.1) (1) A school entity, member of a board of directors~~ ←
10 ~~or trustee of a school entity, administrator or employe of a~~
11 ~~school entity is not liable for damages in a civil action for~~
12 ~~injury, death or loss to person or property allegedly arising~~
13 ~~from a pupil being prohibited by an employe of the school entity~~
14 ~~from using an inhaler or epinephrine auto injector because of~~
15 ~~the employe's reasonable belief formed after a reasonable and~~
16 ~~ordinary inquiry that the conditions addressed in the school~~
17 ~~entity's policy required under subsection (a) had not been~~
18 ~~satisfied.~~

19 ~~(2) A school entity, member of a board of directors or~~
20 ~~trustee of a school entity, administrator or employe of a school~~
21 ~~entity is not liable for damages in a civil action for injury,~~
22 ~~death or loss to person or property allegedly arising from a~~
23 ~~pupil being permitted by an employe of the school entity to use~~
24 ~~an inhaler or epinephrine auto injector because of the employe's~~
25 ~~reasonable belief formed after a reasonable and ordinary inquiry~~
26 ~~that the conditions addressed in the school entity's policy~~
27 ~~required under subsection (a) had been satisfied.~~

28 ~~(3) This subsection shall not be construed to eliminate,~~
29 ~~limit or reduce any other immunity or defense that a school~~
30 ~~entity, member of a board of directors or trustee of a school~~

~~entity, administrator or employee of a school entity may have
under the law of this Commonwealth.~~

~~(c.2) A principal or other chief administrator who is aware
that a pupil is in possession of an inhaler or epinephrine auto-
injector pursuant to this section shall notify each of the
pupil's classroom teachers of that fact and of the provisions of
this section.~~

(d) As used in this section, "school entity" means a school
district, intermediate unit [or], area vocational-technical
school or charter school.

(E) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE,
ESTABLISH OR EXPAND ANY CIVIL LIABILITY ON THE PART OF ANY
SCHOOL ENTITY OR SCHOOL EMPLOYEE.

(F) WITHIN 120 DAYS OF THE EFFECTIVE DATE OF THIS
SUBSECTION, THE DEPARTMENT OF EDUCATION IN COORDINATION WITH THE
DEPARTMENT OF HEALTH SHALL PROVIDE TECHNICAL ASSISTANCE AND
RESOURCES AND PUBLISH INFORMATION ON ITS PUBLICLY ACCESSIBLE
INTERNET WEBSITE REGARDING THE ADMINISTRATION OF MEDICATION FOR
ALLERGIES BY PERSONS EMPLOYED WITH A SCHOOL ENTITY INCLUDING THE
FOLLOWING:

(1) PROPER USE OF EPINEPHRINE DEVICES;

(2) THE IMPORTANCE OF FOLLOWING THE DISTRICT'S STUDENT
SERVICES PLAN REQUIRED UNDER 22 PA. CODE § 12.41 (RELATING TO
STUDENT SERVICES) AND ITS RESPONSIBILITIES TO COMPLY WITH
SECTION 504 OF THE REHABILITATION ACT OF 1973 (PUBLIC LAW
93-112, 29 U.S.C. § 794) AND 22 PA. CODE CH. 15;

(3) RECOGNITION OF THE SYMPTOMS OF A SEVERE ALLERGIC
REACTION;

(4) REQUIREMENTS FOR PROPER ACCESS, STORAGE AND SECURITY OF
STUDENT MEDICATIONS;

1 (5) NOTIFICATION OF APPROPRIATE PERSONS FOLLOWING
2 ADMINISTRATION OF MEDICATIONS; AND
3 (6) RECORDKEEPING.

4 Section 2. This act shall take effect in ~~60~~ 90 days.

