



SPANZ

SECONDARY PRINCIPALS' ASSOCIATION OF NEW ZEALAND INC.

Health and Safety – Administering of Drugs to Students

Introduction

This is an update to a legal opinion on a school's obligations and potential liabilities regarding the administering of drugs to students (printed in June 1997 as SPANZ Principal Matters (Paper No.51)). In preparing this update the Ministry of Education's 'Health and Safety in Schools', common law negligence, the Accident Rehabilitation and Compensation Insurance Act, and the Health and Disability Commissioners Act have been reviewed.

If a school agrees to administer drugs to students, it is unlikely that the school will be liable for damages in the event of an injury to a student as a result, however the school should ensure:

1. It is prepared to have the drugs on school premises, and has the necessary procedures to ensure that the drugs are not accessible by anyone not authorised to do so;
2. That the person who will administer the drugs has the necessary expertise to do so and that no unauthorised person will administer the drugs;
3. That the parents or guardians of the student have confirmed in writing that the medication has been prescribed to the student, that they will advise the school in writing of any alterations to the prescription or medication, and that they will not hold the school liable for any failure by the school in the administering of the drugs; and
4. Where administering of drugs is required as part of first aid to a student, it is undertaken by a person qualified to do so and with the consent of the student and / or parents or guardians.

The steps outlined above should ensure that the school has taken "all practicable steps" to ensure that a student is not harmed, as required by the Health and Safety in Employment Act. Outside of a person administering the drugs in a grossly negligent or reckless manner, it is not considered that there is any real likelihood of liability under New Zealand law.

Health and Safety in Schools – Ministry of Education Guidelines

1. The Ministry of Education has published 'Health and Safety in Schools', which includes Guidelines to the Health and Safety in Employment Act and The Health and Safety Code of Practice for State and Integrated Schools.
2. The Health and Safety in Employment Act relates primarily to an employer's duty to ensure the safety of employees at work, however the Act does extend to non-employees, and in the school context this will include students and visitors to the school. The basic requirement under the Act, as it relates to students, is for a school to ensure that it takes all practicable steps to ensure that no action or inaction of any employee harms any other person, and to ensure that students are not harmed by hazards arising at the school. As this relates to the administration of drugs, "all practicable steps" will amount to a school having in place a policy for medical treatment along the lines of that outlined in the introduction.
3. The Health and Safety Code of Practice for State and Integrated Schools outlines the requirement of Boards to ensure that a school is a safe environment and contains specific requirements in relation to numerous areas of the school, including first aid facilities. The Board is required to ensure that minimum first aid supplies (which are specifically identified in the Code) are available at the school, in a location that all school staff is aware of. The Board must ensure that a person appropriately trained or qualified is in charge of the first aid supplies and first aid room (if a school has one), and that this person is available during normal school hours. The Board is also required to keep a register of accidents, recording specific details of the first aid provided, including any referral to a doctor or nurse.

Common Law Negligence

1. There is potential for a school to be liable for damages where extreme negligence leads to personal injury to a student. This is a potential liability that every organisation and individual faces in any event, and the threshold of extreme negligence is high, requiring grossly negligent and reckless acts, or an outrageous and flagrant disregard for a person's safety. Such a risk of potential liability is therefore minimal as it relates to administering drugs to students at school.
2. Provided that schools implement a basic policy for the administration of first aid and drugs to students, such as outlined in the introduction, it is very unlikely that school would be joined as a party to any negligence claim.

Accident Rehabilitation and Compensation Insurance Act

1. Under the Accident Rehabilitation and Compensation Insurance Act, a person is not able to sue for personal injury caused by accident. However, if the personal injury is caused by grossly negligent or reckless acts, a person may be able to sue for exemplary damages.
2. Provided that a school ensures that only suitably qualified people have access to any medication held at the school, and administer drugs to students, it is extremely unlikely that a school would be joined in any exemplary damages claim against a person who has acted in a grossly negligent or reckless manner. The threshold for an exemplary damages claim is very high, and cases are unusual and rare.

Health and Disability Commissioners Act

1. It is not considered that a school will be deemed to be a health provider under the Health and Disability Commissioners Act. An organisation is deemed to be a health provider if it maintains medical treatment facilities or employs medical personnel, and will be subject to the Code of Health and Disability Services Consumers Rights ("the Code"), in respect of such facilities or personnel. In our view the existence of a first aid room or sick bay will not be sufficient to bring the school into the category of health provider.
2. However, if a school employs a nurse, the nurse will be required to comply with the Code, which covers all registered health professionals. The Code outlines 10 rights of consumers and the duties of providers, and provides an obligation to take "all reasonable actions in the circumstances to give effect to the rights, and comply with the duties" in the Code. In summary, the rights are.
 - a. To be treated with respect;
 - b. To freedom from discrimination, coercion, harassment, and exploitation;
 - c. To dignity and independence;
 - d. To services of an appropriate standard;
 - e. To effective communication;
 - f. To be fully informed;
 - g. To make an informed choice and give informed consent;
 - h. To support;
 - i. Rights in respect of teaching or research; and
 - j. To complain.
3. Schools should ensure that any nurse employed by it is providing medical treatment, including the administration of drugs, in accordance with the Code. Any complaints under the Code are dealt with by investigation and recommendations for correction, rather than any award of damages. Damages may only be awarded if recommendations are not followed.

*12 November 2007
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