

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 9, 2011

SENATE BILL

No. 161

Introduced by Senator Huff
(Coauthor: Senator Rubio)
(Coauthor: Assembly Member Halderman)

February 2, 2011

An act to add and repeal Section 49414.7 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 161, as amended, Huff. Schools: emergency medical assistance: administration of epilepsy medication.

Existing law provides that in the absence of a credentialed school nurse or other licensed nurse onsite at the school, a school district is authorized to provide school personnel with voluntary medical training to provide emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia.

This bill would authorize a school district to provide school employees with voluntary emergency medical training to provide, in the absence of a credentialed school nurse or other licensed nurse onsite at the school, emergency medical assistance to pupils with epilepsy suffering from seizures, in accordance with guidelines developed by specified entities. The bill would allow a parent or guardian of a pupil with epilepsy who has been prescribed ~~Diastat~~ *an emergency antiseizure medication* by the pupil's health care provider, to request the pupil's school to have one or more of its employees receive voluntary training, as specified, in order to administer ~~Diastat~~ *the emergency antiseizure medication*, as defined, in the event that the pupil suffers a seizure when

a nurse is not available. The bill would require a school that ~~decides~~ *elects* to train school employees to distribute an electronic notice, as specified, to all staff regarding the request. *The bill would authorize the State Department of Education to include, on its Internet Web site, a clearinghouse of best practices in training nonmedical personnel in administering an emergency antiseizure medication pursuant to these provisions.* The bill would make various legislative findings and declarations and state the intent of the Legislature in enacting this measure. The bill would repeal these provisions on January 1, 2017.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:
- 3 (1) All individuals with exceptional needs have a right to
4 participate in a free appropriate public education, and that special
5 instruction and services for these individuals are needed in order
6 to ensure they have the right to an appropriate educational
7 opportunity to meet their unique needs in compliance with the
8 federal Individuals with Disabilities Education Act (20 U.S.C. Sec.
9 1400 et seq.).
- 10 ~~(2) The federal Food and Drug Administration has determined~~
11 ~~that Diastat is an emergency medication approved for~~
12 ~~administration by trained, nonmedical persons.~~
- 13 ~~(3) If all of the following specific circumstances are met, then~~
14 ~~the safety and welfare of a pupil may be compromised,~~
15 ~~necessitating the authorization of nonmedical school staff, who~~
16 ~~have volunteered and been trained, to administer Diastat to a pupil:~~
- 17 ~~(A) A pupil's health care provider states that Diastat must be~~
18 ~~administered within a timeframe that a licensed medical person or~~
19 ~~a paramedic cannot reasonably be expected to respond and be~~
20 ~~available.~~
- 21 ~~(B) Failure to administer Diastat in a timely manner can~~
22 ~~reasonably be expected to result in death or permanent physical~~
23 ~~injury to the pupil.~~
- 24 ~~(C) Diastat and the procedure for its administration has been~~
25 ~~found to be safe from harmful side effects by competent personnel.~~

1 (2) *The safety and welfare of a pupil with epilepsy is*
2 *compromised without immediate access to an emergency*
3 *antiseizure medication and, therefore, clarification is needed to*
4 *ensure that nonmedical school staff, who have volunteered and*
5 *have been trained in its correct administration, may administer*
6 *an emergency antiseizure medication.*

7 (3) *As used in this section, “immediate access” means the time*
8 *period that the pupil’s health care provider states that an*
9 *antiseizure medication must be administered, provided that it is*
10 *within the timeframe that a licensed medical person or paramedic*
11 *can reasonably be expected to respond and be available.*

12 (b) It is the intent of the Legislature that individuals with
13 exceptional needs and children with disabilities under the federal
14 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
15 et seq.) and Section 504 of the federal Rehabilitation Act of 1973
16 (29 U.S.C. Sec. 794) shall have a right to an appropriate
17 educational opportunity to meet their unique needs, and that
18 children suffering from seizures due to epilepsy have the right to
19 appropriate programs and services that are designed to meet their
20 unique needs. In order to meet that goal, it is the intent of the
21 Legislature to authorize nurses to train and supervise employees
22 of school districts and county offices of education to administer
23 ~~Diastat~~ *an emergency antiseizure medication* to children with
24 epilepsy in the public schools. The American Academy of
25 Pediatrics and the Epilepsy Foundation of America support training
26 of school employees to administer ~~Diastat~~ *an emergency antiseizure*
27 *medication* and believe that ~~Diastat~~ *an emergency antiseizure*
28 *medication* may be safely and effectively administered by trained
29 school employees. The Legislature further finds and declares that,
30 in the absence of a credentialed school nurse or other licensed
31 nurse onsite at the school, it is in the best interest of the health and
32 safety of children to allow trained school employees to administer
33 ~~Diastat~~ *an emergency antiseizure medication* to pupils in public
34 schools.

35 SEC. 2. Section 49414.7 is added to the Education Code, to
36 read:

37 49414.7. (a) It is the intent of the Legislature that, whenever
38 possible, ~~Diastat~~ *an emergency antiseizure medication* should be
39 administered by a school nurse *or licensed vocational nurse* who
40 has been trained in its administration.

1 (b) Notwithstanding Sections 2052 and 2732 of the Business
2 and Professions Code, in the absence of a credentialed school nurse
3 or other licensed nurse onsite at the school, a school district may
4 provide school employees with voluntary emergency medical
5 training to provide emergency medical assistance to pupils with
6 epilepsy suffering from seizures. A school employee with voluntary
7 emergency medical training shall provide this emergency medical
8 ~~assistance in accordance with the guidelines established~~ *assistance*
9 *using a training plan approved on the department's Internet Web*
10 *site pursuant to subdivision—(k) (m), and the performance*
11 *instructions set forth by the licensed health care provider of the*
12 *pupil. A school employee who does not volunteer or who has not*
13 *been trained pursuant to subdivision—(k) (m) shall not be required*
14 *to provide emergency medical assistance pursuant to this section.*

15 (c) If a pupil with epilepsy has been prescribed ~~Diastat an~~ *an*
16 *emergency antiseizure medication* by his or her health care
17 provider, the pupil's parent or guardian may request the pupil's
18 school to have one or more of its employees receive training
19 pursuant to this section in the administration of ~~Diastat an~~ *an*
20 *emergency antiseizure medication* in the event that the pupil suffers
21 a seizure when a nurse is not available.

22 (d) Pursuant to Section 504 of the federal Rehabilitation Act of
23 1973, as amended, (29 U.S.C. Sec. 794), upon receipt of the
24 parent's or guardian's request *pursuant to subdivision (c)*, the
25 school shall notify the parent or guardian that his or her child may
26 qualify for services or accommodations *under the Section 504*
27 *plan*, assist the parent or guardian with the exploration ~~of that~~
28 ~~option, including, but not limited to, the development of a seizure~~
29 ~~action plan in accordance with the parent's or guardian's direction~~
30 *of that option*, and encourage the parent or guardian to adopt that
31 option if it is determined that the child is eligible for a Section 504
32 plan.

33 (e) The school may ask the parent or guardian to sign a notice
34 verifying that the parent or guardian was given information about
35 Section 504 of the federal Rehabilitation Act of 1973, and that the
36 parent or guardian understands that it is his or her right to request
37 a Section 504 plan at any time.

38 (f) If the parent or guardian does not choose to have the pupil
39 assessed for a Section 504 plan, the school may create an
40 individualized health plan, seizure action plan, or other appropriate

1 health plan designed to acknowledge and prepare for the child's
2 health care needs in school. The plan may include the involvement
3 of trained volunteer school employees *or a licensed vocational*
4 *nurse*.

5 ~~(g) If a school decides to train school employees pursuant to~~
6 ~~this section, the school shall distribute an electronic notice to all~~
7 ~~staff that states all of the following:~~

8 ~~(1) The notice is a request for volunteers to administer Diastat~~
9 ~~to a pupil experiencing a severe epileptic seizure, in the absence~~
10 ~~of a school nurse.~~

11 ~~(2) Diastat is an FDA-approved, predosed, rectally administered~~
12 ~~gel that reduces the severity of epileptic seizures.~~

13 ~~(3) A volunteer will receive training from a licensed health~~
14 ~~professional regarding the administration of Diastat.~~

15 ~~(4) Any agreement by an employee to administer Diastat is~~
16 ~~voluntary, and no employee of the school or district shall directly~~
17 ~~or indirectly use or attempt to use his or her authority or influence~~
18 ~~for the purpose of intimidating, threatening, coercing, or attempting~~
19 ~~to intimidate, threaten, or coerce, any staff member who does not~~
20 ~~choose to volunteer.~~

21 *(g) If a school elects to train employees pursuant to this section,*
22 *the school shall ensure the following:*

23 *(1) A volunteer receives training from a licensed health care*
24 *professional regarding the administration of an emergency*
25 *antiseizure medication. A staff member who has completed training*
26 *shall, if he or she has not administered an emergency antiseizure*
27 *medication within the prior two years and there is a pupil enrolled*
28 *in the school who may need the administration of an antiseizure*
29 *medication, attend a new training program to retain the ability to*
30 *administer an emergency antiseizure medication.*

31 *(2) Any agreement by an employee to administer an emergency*
32 *antiseizure medication is voluntary, and no employee of the school*
33 *or school district shall directly or indirectly use or attempt to use*
34 *his or her authority or influence for the purpose of intimidating,*
35 *threatening, coercing, or attempting to intimidate, threaten, or*
36 *coerce any staff member who does not choose to volunteer,*
37 *including, but not limited to, direct contact with the employee.*

38 *(3) Any employee who volunteers pursuant to this section may*
39 *rescind his or her offer to administer an emergency antiseizure*
40 *medication up to three days after the completion of the training.*

1 *After that time, a volunteer may rescind his or her offer to*
2 *administer an emergency antiseizure medication with a two-week*
3 *notice, or until a new individual health plan or Section 504 plan*
4 *has been developed for an affected pupil, whichever is less.*

5 *(4) The school shall distribute an electronic notice to all staff*
6 *that states the following information in bold print:*

7 *(A) A description of the volunteer request, stating that the*
8 *request is for volunteers to administer an emergency antiseizure*
9 *medication to a pupil experiencing a severe epileptic seizure, in*
10 *the absence of a school nurse, and that this emergency antiseizure*
11 *medication is an FDA-approved, predosed, rectally administered*
12 *gel that reduces the severity of epileptic seizures.*

13 *(B) A description of the training that the volunteer will receive*
14 *pursuant to paragraph (1).*

15 *(C) A description of the voluntary nature of the volunteer*
16 *program, which includes the information described in paragraph*
17 *(2).*

18 *(D) The volunteer recision timelines described in paragraph*
19 *(3).*

20 *(h) An employee who volunteers pursuant to this section shall*
21 *not be required to administer an emergency antiseizure medication*
22 *until completion of the training program adopted by the school*
23 *and documentation of completion is recorded in his or her*
24 *personnel file.*

25 *(i) If a school elects to participate pursuant to this section, the*
26 *school shall ensure that each volunteer will be provided defense*
27 *and indemnification by the school, in accordance with Division*
28 *3.6 (commencing with Section 810) of Title 1 of the Government*
29 *Code. This information shall be reduced to writing, provided to*
30 *the volunteer, and retained in the volunteer's personnel file.*

31 ~~(h)~~

32 *(j) If there are no volunteers, then the school shall renotify the*
33 *pupil's parent or guardian of the option to be assessed for services*
34 *and accommodations guaranteed under Section 504 of the federal*
35 *Rehabilitation Act of 1973.*

36 ~~(i) A school that chooses~~

37 *(k) A school that elects to participate pursuant to this section*
38 *shall have in place a school plan that shall include, but not be*
39 *limited to, all of the following:*

- 1 (1) Identification of existing licensed staff within the district or
2 region who could be trained in the administration of ~~Diastat an~~
3 *emergency antiseizure medication* and could be available to
4 respond to an emergency need to administer ~~Diastat an emergency~~
5 *antiseizure medication*. The school shall consult with the school
6 district or county office of education to obtain this information.
- 7 (2) Identification of pupils who may require the administration
8 of ~~Diastat an emergency antiseizure medication~~.
- 9 (3) Written authorization from the parent or guardian for a
10 nonmedical school employee to administer ~~Diastat an emergency~~
11 *antiseizure medication*.
- 12 (4) The requirement that the parent or guardian notify the school
13 if the pupil has had ~~Diastat an emergency antiseizure medication~~
14 administered within the past four hours on a schoolday.
- 15 (5) Notification of the parent or guardian that ~~Diastat an~~
16 *emergency antiseizure medication* has been administered.
- 17 (6) A written statement from the pupil's health care practitioner
18 that shall include, but not be limited to, all of the following:
 - 19 (A) The pupil's name.
 - 20 (B) The name and purpose of the medication.
 - 21 (C) The prescribed dosage.
 - 22 (D) Detailed seizure symptoms, including frequency, type, or
23 length of seizures that identify when the administration of ~~Diastat~~
24 *an emergency antiseizure medication* becomes necessary.
 - 25 (E) The method of administration.
 - 26 (F) The frequency with which the medication may be
27 administered.
 - 28 (G) The circumstances under which the medication may be
29 administered.
 - 30 (H) Any potential adverse responses by the pupil and
31 recommended mitigation actions, including when to call emergency
32 services.
 - 33 (I) A protocol for observing the pupil after a seizure, including,
34 but not limited to, whether the pupil should rest in the school office,
35 whether the pupil may return to class, and the length of time the
36 pupil should be under direct observation.
 - 37 (J) *Following a seizure, the pupil's parent and guardian and*
38 *the school nurse shall be contacted to continue the observation*
39 *plan as established in subparagraph (I).*
 - 40 (j) ~~A school that chooses~~

1 (l) A school that elects to allow volunteers to administer ~~Diastat~~
2 an emergency antiseizure medication shall compensate a volunteer
3 when the administration of ~~Diastat~~ an emergency antiseizure
4 medication and subsequent monitoring of a pupil requires a
5 volunteer to work beyond his or her normally scheduled hours.

6 ~~(k)~~

7 (m) (1) The Legislature encourages the Epilepsy Foundation
8 of America to develop guidelines for the training and supervision
9 of school employees in providing emergency medical assistance
10 to pupils with epilepsy suffering from seizures. The guidelines
11 may be developed in cooperation with the State Department of
12 Education, the California School Nurses Organization, the
13 California Medical Association, and the American Academy of
14 Pediatrics. *Upon development of the guidelines, the department*
15 *may approve the guidelines for distribution and make those*
16 *guidelines available upon request.*

17 (2) *The department may include, on its Internet Web site, a*
18 *clearinghouse for best practices in training nonmedical personnel*
19 *to administer an emergency antiseizure medication to pupils.*
20 *Before a training program is placed on the best practices*
21 *clearinghouse, it shall be approved by the Professional Advisory*
22 *Board of the Epilepsy Foundations of Greater Los Angeles, San*
23 *Diego County, and Northern California, in consultation with the*
24 *department.*

25 ~~(2)~~

26 (3) Training established pursuant to this subdivision shall
27 include, but not be limited to, all of the following:

28 (A) Recognition and treatment of different types of seizures.

29 (B) Administration of ~~Diastat~~ an emergency antiseizure
30 medication.

31 (C) Basic emergency followup procedures, including, but not
32 limited to, calling the emergency 911 telephone number and
33 contacting the pupil's parent or guardian.

34 (D) Techniques and procedures to ensure pupil privacy.

35 (4) *Any written materials used in the training shall be retained*
36 *by the school.*

37 ~~(3)~~

38 (5) Training established pursuant to this subdivision shall be
39 conducted by one or more of the following:

40 (A) A physician and surgeon.

1 (B) A ~~physician and surgeon's~~ *physician's* assistant.

2 (C) A credentialed school nurse.

3 (D) A registered nurse.

4 (E) A certificated public health nurse.

5 ~~(4)~~

6 (6) Training provided in accordance with the manufacturer's
7 instructions, the pupil's health care provider's instructions, and
8 guidelines established pursuant to this section shall be deemed
9 adequate training for purposes of this section.

10 ~~(5) (A)~~

11 (n) (1) A school employee shall notify the credentialed school
12 nurse assigned to the school district if he or she administers ~~Diastat~~
13 *an emergency antiseizure medication* pursuant to this section.

14 ~~(B)~~

15 (2) If a credentialed school nurse is not assigned to the school
16 district, the school employee shall notify the superintendent of the
17 school district, or his or her designee, if he or she administers
18 ~~Diastat~~ *an emergency antiseizure medication* pursuant to this
19 section.

20 ~~(C)~~

21 (3) A school shall retain all records relating to the administration
22 of ~~Diastat~~ *an emergency antiseizure medication* while a pupil is
23 under the supervision of school staff.

24 ~~(6)~~

25 (o) The pupil's parent or guardian shall provide all materials
26 necessary to administer ~~Diastat~~ *an emergency antiseizure*
27 *medication*, including the information described in paragraph (6)
28 of subdivision ~~(i)~~ (k). A school shall not be responsible for
29 providing any of the necessary materials.

30 ~~(l) For purposes of this section, "Diastat" means diazepam rectal~~
31 ~~gel, marketed as Diastat AcuDial, approved by the federal Food~~
32 ~~and Drug Administration for patients with epilepsy for the~~
33 ~~management of seizures.~~

34 (p) For purposes of this section, the following definitions apply:

35 (1) An "emergency antiseizure medication" means diazepam
36 rectal gel and emergency medications approved by the federal
37 Food and Drug Administration for patients with epilepsy for the
38 management of seizures by persons without the medical credentials
39 listed in paragraph (5) of subdivision (m).

1 (2) *“Emergency medical assistance” means the administration*
2 *of an emergency antiseizure medication to a pupil suffering from*
3 *an epileptic seizure.*

4 ~~(m)~~

5 (q) This section shall remain in effect only until January 1, 2017,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2017, deletes or extends that date.