

1999 DRAFTING REQUEST

Bill

Received: 03/22/2000

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Himself**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Education - miscellaneous**
Health - miscellaneous

Extra Copies: **PG**

Pre Topic:

No specific pre topic given

Topic:

Administration of drugs to pupils by advance practice nurse prescribers

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	kunkemd 03/22/2000	ygeller 03/22/2000	martykr 03/22/2000	_____	lrb_docadmin 03/22/2000	lrb_docadmin 03/24/2000	

FE Sent For:

<END>

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cooperative educational service agency and county children with disabilities education board.

Section note: Ch. 83, Laws of 1977; Ch. 317, Laws of 1981; 1983 Acts 27, 189, 512; 1987 Acts 27, 338; 1993 Act 492; 1995 Act 27; 1997 Acts 27, 164

118.257 Liability for referral to police. (1) In this section:

(a) "Controlled substance" has the meaning specified in s. 961.01 (4).

(am) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(at) "Delivery" has the meaning given in s. 961.01 (6).

(b) "Distribute" has the meaning specified in s. 961.01 (9).

(c) "Pupil services professional" means a school counselor, school social worker, school psychologist or school nurse.

(d) "School" means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

(2) A school administrator, principal, pupil services professional or teacher employed by a school board is not liable for referring a pupil enrolled in the school district to law enforcement authorities, or for removing a pupil from the school premises or from participation in a school-sponsored activity, for suspicion of possession, distribution, delivery or consumption of an alcohol beverage or a controlled substance or controlled substance analog.

Section note: Ch. 331, Laws of 1975; Ch. 79, Laws of 1981; 1983 Act 373; 1987 Act 170; 1995 Act 448

118.258 Electronic communication devices prohibited.

(1) Each school board shall adopt rules prohibiting a pupil from using or possessing an electronic paging or 2-way communication device while on premises owned or rented by or under the control of a public school. The rules may allow for the use or possession of such a device by a pupil if the school board or its designee determines that the device is used or possessed for a medical, school, educational, vocational or other legitimate use.

(2) (a) Annually, the school board shall provide each pupil enrolled in the school district with a copy of the rules under sub. (1).

(b) The school board shall submit a copy of the rules under sub. (1) to the state superintendent when the rule is first adopted and whenever the rule is amended.

Section note: 1989 Act 121; 1997 Act 27

118.26 Claim against school district. No action may be brought or maintained against a school district upon a claim or cause of action unless the claimant complies with s. 893.80. This section does not apply to actions commenced under s. 19.37, 19.97 or 281.99.

Section note: Ch. 285, Laws of 1977; Ch. 323, s. 33, Laws of 1979; 1995 Act 158; 1997 Act 27

118.27 Gifts and grants. The school board of a district may receive, accept and use gifts or grants of furniture, books, equipment, supplies, moneys, securities or other property, real or personal, used or useful for school research and educational purposes. All moneys received as gifts or grants shall be placed in the school district treasury but shall be considered segregated trust funds. Whenever a school board receives gifts or grants under this

section, it shall make such use thereof, or invest the same in the case of moneys, as the donor or grantor specifies. In the absence of any specific direction as to the use of such gifts or grants by a donor or grantor, the school board may determine the use of or invest the same in accordance with the law applicable to trust investments. In the use, control or investment of such gifts or grants, the school board may exercise the rights and powers generally conferred upon trustees.

118.28 Community action agencies. The school board of a school district may appropriate funds for promoting and assisting any community action agency under s. 49.37.

Section note: Ch. 29, Laws of 1977; 1983 Act 27 s. 2200 (20); 1995 Act 27

118.29 Administration of drugs to pupils and emergency care. (1) DEFINITIONS. In this section:

(a) "Administer" means the direct application of a drug or prescription drug, whether by injection, ingestion or other means, to the human body.

(b) "Drug" has the meaning specified in s. 450.01 (10).

(c) "Health care professional" means a person licensed as an emergency medical technician under s. 146.50 or any person licensed, certified, permitted or registered under chs. 441 or 446 to 449.

(d) "High degree of negligence" means criminal negligence, as defined in s. 939.25 (1).

(e) "Practitioner" means any physician, dentist or podiatrist licensed in any state.

(f) "Prescription drug" has the meaning specified in s. 450.01 (20).

(2) AUTHORITY TO ADMINISTER DRUGS; CIVIL LIABILITY EXEMPTION. (a) Notwithstanding chs. 441, 447, 448 and 450, a school bus operator validly authorized under ss. 343.12 and 343.17 (3)(c) to operate the school bus he or she is operating, any school employe or volunteer, county children with disabilities education board employe or volunteer or cooperative educational service agency employe or volunteer authorized in writing by the administrator of the school district, the board or the agency, respectively, or by a school principal, and any private school employe or volunteer authorized in writing by a private school administrator or private school principal:

1. May administer any drug which may lawfully be sold over the counter without a prescription to a pupil in compliance with the written instructions of the pupil's parent or guardian if the pupil's parent or guardian consents in writing.

2. May administer a prescription drug to a pupil in compliance with the written instructions of a practitioner if the pupil's parent or guardian consents in writing.

3. Is immune from civil liability for his or her acts or omissions in administering a drug or prescription drug to pupil under subd. 1 or 2 unless the act or omission constitutes a high degree of negligence. This subdivision does not apply to health care professionals.

(b) Any school district administrator, county children with disabilities education board administrator, cooperative educational service agency administrator, public or private school principal or private school administrator who authorizes an employe or volunteer to administer a drug or prescription drug to a pupil under par. (a) is immune from civil liability for the act of authorization unless it constitutes a high degree of negligence.

(3) EMERGENCY CARE; CIVIL LIABILITY EXEMPTION. Any school bus operator validly authorized under

ss. 343.12 and 343.17 (3) (c) to operate the school bus he or she is operating and any public or private school employe or volunteer, county children with disabilities education board employe or volunteer or cooperative educational service agency employe or volunteer, other than a health care professional, who in good faith renders emergency care to a pupil of a public or private school is immune from civil liability for his or her acts or omissions in rendering such emergency care. The immunity from civil liability provided under this subsection is in addition to and not in lieu of that provided under s. 895.48 (1).

(4) **WRITTEN POLICIES.** Any school board, county children with disabilities education board, cooperative educational service agency or governing body of a private school whose employes or volunteers may be authorized to administer drugs or prescription drugs to pupils under this section shall adopt a written policy governing the administration of drugs and prescription drugs to pupils. In developing the policy, the school board, board, agency or governing body shall seek the assistance of one or more appropriate health care professionals who are employes of the school board, board, agency or governing body or are providing services or consultation under s. 121.02 (1) (g). The policy shall include procedures for obtaining and filing in the school or other appropriate facility the written instructions and consent required under sub. (2) (a), for the periodic review of such written instructions, for the storing of drugs and prescription drugs, for record keeping and for the appropriate instruction of persons who may be authorized to administer drugs or prescription drugs to pupils under this section.

(5) **EXEMPTION.** No employe except a health care professional may be required to administer a drug or prescription drug to a pupil under this section by any means other than ingestion.

Section note: 1983 Act 334; 1985 Acts 146 s. 8, 218; 1987 Acts 14, 399; 1989 Acts 56, 102, 103; 1991 Act 102; 1997 Act 164

118.291 Asthmatic pupils; possession and use of inhalers. (1) While in school, at a school-sponsored activity or under the supervision of a school authority, an asthmatic pupil may possess and use a metered dose inhaler or dry powder inhaler if all of the following are true:

(a) The pupil uses the inhaler before exercise to prevent the onset of asthmatic symptoms or uses the inhaler to alleviate asthmatic symptoms.

(b) The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the pupil's parent or guardian.

(c) The pupil has provided the school principal with a copy of the approval or approvals under par. (b).

(2) No school district, school board or school district employe is civilly liable for damage to a pupil caused by a school district employe who prohibits a pupil from using an inhaler because of the employe's good faith belief that the requirements of sub. (1) had not been satisfied or who allows a pupil to use an inhaler because of the employe's good faith belief that the requirements of sub. (1) had been satisfied.

Section note: 1997 Act 77; 1997 Act 77 s. 3 provides that the Act creating this section takes effect on September 1, 1999.

118.295 Suicide intervention; civil liability exemption. Any school board, private school, county children with disabilities education board or cooperative educational service agency, and any officer, employe or volunteer thereof, who in good faith attempts to prevent suicide by

a pupil is immune from civil liability for his or her acts or omissions in respect to the suicide or attempted suicide. The civil liability immunity provided in this section is in addition to and not in lieu of that provided under s. 895.48 (1).

Section note: 1985 Act 29; 1987 Act 14; 1997 Act 164

118.30 Pupil assessment. (1) (a) The state superintendent shall adopt or approve examinations designed to measure pupil attainment of knowledge and concepts in the 4th, 8th and 10th grades.

(b) If the governor has issued pupil academic standards as an executive order under s. 14.23, the department shall develop a high school graduation examination that is designed to measure whether pupils meet the pupil academic standards.

(1g) (2) By August 1, 1998, each school board shall adopt pupil academic standards in mathematics, science, reading and writing, geography and history. If the governor has issued pupil academic standards as an executive order under s. 14.23, the school board may adopt those standards.

(b) Each school board operating high school grades shall adopt a high school graduation examination that is designed to measure whether pupils meet the pupil academic standards adopted by the school board under par. (a). If the school board has adopted the pupil academic standards issued as an executive order under s. 14.23, the school board may adopt the high school graduation examination developed by the department under sub. (1) (b). If a school board develops and adopts its own high school graduation examination, it shall notify the department.

(c) Each school board operating elementary grades may develop or adopt its own examination designed to measure pupil attainment of knowledge and concepts in the 4th grade and may develop or adopt its own examination designed to measure pupil attainment of knowledge and concepts in the 8th grade. If the school board develops or adopts an examination under this paragraph, it shall notify the department.

(1m) Except as otherwise provided in this section and in s. 118.40 (2) (d), annually each school board shall do all of the following:

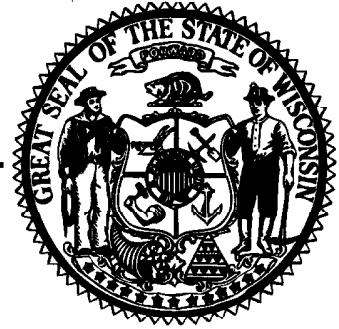
(a) 1. Except as provided in sub. (6), administer the 4th grade examination adopted or approved by the state superintendent under sub. (1) (a) to all pupils enrolled in the school district, including pupils enrolled in charter schools located in the school district, in the 4th grade. Beginning on July 1, 2002, if the school board has not developed and adopted its own 4th grade examination, the school board shall provide a pupil with at least 2 opportunities to achieve a score on the examination administered under this subdivision that is sufficient for promotion under sub. (5) (a) 1.

2. Beginning on July 1, 2002, if the school board has developed or adopted its own 4th grade examination, administer that examination to all pupils enrolled in the school district, including pupils enrolled in charter schools located in the school district, in the 4th grade. The school board shall provide a pupil with at least 2 opportunities to pass the examination administered under this subdivision.

(am) 1. Except as provided in sub. (6), administer the 8th grade examination adopted or approved by the state superintendent under sub. (1) (a) to all pupils enrolled in the school district, including pupils enrolled in charter schools located in the school district, in the 8th grade.

-4808

FRED A. RISSER
President
Wisconsin State Senate



To: Mark Kunkel
Legislative Reference Bureau

From: Senator Fred Risser

Date: 16 March 2000

RE: Drafting Request

I am writing to request changes to chapter 118.29, relating to administration of drugs to pupils and emergency care.

Recently, the Madison Metropolitan School District implemented a program that allows Advanced Practice Nurse Prescribers (APNP) to be employed within schools to diagnose and treat students for minor illnesses. Part of the responsibility of the APNP's is to prescribe medications to students with illnesses.

After reviewing chapter 118.29, it was found that APNP's are not included in the definition of "practitioner". Due to this omission, school nurses would not be able to accept medication orders from APNP's.

I would request that 118.20(1)(a) be amended to include Advance Practice Nurse Prescribers under the definition of "Practitioner".

Thank you for your assistance with this request. If you should have any questions, please contact Sarah Bridgeman in my office.

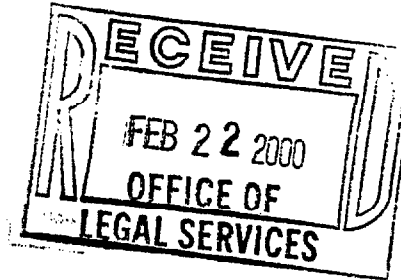
Madison Metropolitan School District

Doyle Administration Building
545 West Dayton Street
Madison, WI 53703-1995

Health Services

February 22, 2000

Legal Services
Department of Public Instruction
125 S. Webster
Box 7841
Madison, WI 53707



Hello:

The Madison Metropolitan School District recently implemented a project that allows Advanced Practice Nurse Prescribers (APNPs) employed by the district to diagnose and treat students for minor illnesses. Since this may involve writing a prescription for medication, we considered how the medication would be administered at school. We proposed that the APNP would initiate a medication administration order for the medication to be given at school by herself or by her delegate.

Review of the project by our district legal counsel suggested that our plan was in conflict with Wisconsin state statute 118.29 *Administration of drugs to pupils and emergency care (1e) Definitions "Practitioner" means any physician, dentist or podiatrist licensed in any state.* Our district interpreted that since the definition limits practitioners to physicians, dentists and podiatrists and does not include APNPs as practitioners, school nurses could not accept medication orders from APNPs.

11.16 Communication with Wayne Austin, legal counsel for the State Board of Nursing, confirmed that an APNP could prepare a medication order for administration by others, but that 118.29, whether by oversight or by design, was not amended to permit APNPs to order administration of prescription drugs by school employees. Mr. Austin suggested that 118.29 is a Department of Public Instruction statute and that DPI rather than the Board of Nursing was charged with interpreting its terms.

Therefore, I am requesting your clarification and interpretation of 118.29 (1e) and 118.29 (2)2. Can an APNP order a medication to be administered by a school employee?

If DPI is not the correct agency to make this interpretation, please tell me which agency to contact. Clarification of the statute is quite important in areas of practice other than the specific situation I described above. APNPs practicing in primary care throughout the state are prescribing medication for children that often needs to be administered during the school day.

I can be reached at 266-6159 if you need more information about my question.

Thank you.

Sincerely,

Freddi Adelson

Freddi Adelson, MS, RN, CS
Health Services Supervisor



State of Wisconsin
Department of Public Instruction

Mailing Address: P.O. Box 7841, Madison, WI 53707-7841
125 South Webster Street, Madison, WI 53702 (608) 266-3390/(608) 267-2427 TDD

John T. Benson
State Superintendent

Steven B. Dold
Deputy State Superintendent

March 10, 2000

Ms. Freddi Adelson, MS, RN, CS
Health Services Supervisor
Madison Metropolitan School District
Doyle Administration Building
545 West Dayton Street
Madison, WI 53703-1995

RE: Advanced Nurse Practitioners - §118.29, Stats.

Dear Ms. Adelson:

This is in reply to your letter of February 22, 2000 in the above-referenced matter. I appreciate your requesting the Department of Public Instruction to review the meaning of the statute as it comes within the state education chapters of the law.

As far as §118.29 is concerned, I think it is very clear from the face of the statutory language, that Advanced Practice Nurse Prescribers (APNP) are *not* included in the definition of "practitioner." Rather, practitioners, as defined, are limited to "any physician, dentist or podiatrist licensed in any state." One of the first rules of statutory construction is that if a statute is plain on its face, the plain meaning of the statutory words are to be applied. Only in the case of ambiguous statutes, where the meaning or definition is not clear on the face of the statute, is it permitted for a court (or an administrative agency) to delve into the legislative history of a statute in order to determine which interpretation is consistent with legislative intent.

Since §118.29 is clear on its face on this point, I have not researched its legislative history, nor looked into the legislative history of §441.16(2), which authorizes qualified APNPs to issue "prescription orders." In other words, I have not looked to see whether or not it may have been an oversight when the legislature, in amending §§441.16 or 118.29, failed to expressly include APNPs as practitioners able to administer prescription drugs in a public school setting. I thus agree on this point with your district legal counsel.

Ms. Freddi Adelson, MS, RN, CS

March 9, 2000

Page 2

As a policy matter, DPI would support expanding the definition of "practitioner" in §118.29 to include APNPs, allowing them to prescribe, administer and instruct other school employees to administer prescription drugs under §118.29(2)(a)2, Stats.

I hope this is helpful.

Very truly yours,

Robert J. Paul
Chief of Legal Services

RJP/jas

Cc: Juanita Pawlisch
Linda Caldert-Olson



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4808/1

MDK:.....
A
JLg

1999 BILL

1 AN ACT ^{gen}...; relating to: [✓] civil immunity for administration of drugs to pupils in
2 compliance with instructions of advance practice nurse prescribers.

Analysis by the Legislative Reference Bureau

Under current law, certain school employees and volunteers, school bus operators and other individuals are immune from civil liability for administering prescription drugs to pupils if certain requirements are satisfied. For the immunity to apply, a pupil's parent or guardian must consent in writing to the administration of the prescription drug. In addition, the prescription drug must be administered in compliance with the written instructions of a practitioner. Current law defines "practitioner" as a physician, dentist or podiatrist licensed in any state.

This bill changes the definition of "practitioner" [✓] so that it also includes an advanced practice nurse prescriber who is licensed in any state.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 118.29 (1) (e) ^X of the statutes is amended to read:

4 118.29 (1) (e) "Practitioner" means any physician, dentist, advanced practice
5 nurse prescriber [✓] or podiatrist licensed in any state.

6 History: 1983 a. 334; 1985 a. 146 s. 8; 1985 a. 218; 1987 a. 14, 399; 1989 a. 56, 102, 105; 1991 a. 103; 1997 a. 164.

(END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 03/22/2000

To: Senator Risser

Relating to LRB drafting number: LRB-4808

Topic

Administration of drugs to pupils by advance practice nurse prescribers

Subject(s)

Education - miscellaneous, Health - miscellaneous

1. **JACKET** the draft for introduction _____

in the Senate or the Assembly (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Mark D. Kunkel, Legislative Attorney
Telephone: (608) 266-0131