

Legal Issues

Janice Doyle, MSN, RN, NCSN, FNASN

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The Chain of Command

Source: Katie Johnson, MN, RN-BC, NCSN - OSPI

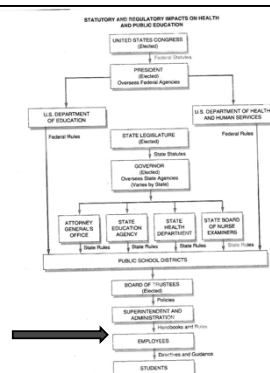


Figure 13.1.1 © Statutory and regulatory impacts on health and public education.

Source: Katie Johnson, MN, RN-BC, NCSN - OSPI

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RCWs



The Revised Code of Washington

- Compilation of all permanent laws currently in force
 - Session Laws
 - Enacted by the Legislature & signed by the Governor
 - Enacted via the initiative process
 - Structure
 - Amendments included
 - Repealed laws not included
 - Temporary laws such as appropriations acts not included
 - Located at <http://apps.leg.wa.gov/rcw/>

Source: Katie Johnson, MN, RN-BC, NCSN - OSPI

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WACs

Washington Administrative Code

- Regulations of executive branch agencies
 - Issued by authority of statutes
 - A source of primary law in Washington State
 - Similar to legislation and the Constitution
 - Codifies regulations
 - <http://apps.leg.wa.gov/wac/>

* Source: Katie Johnson, MN, RN-BC,
* NCSN - OSPI

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Administrative Agencies

Health Law

- RCW
 - RCW 18.79 Nursing Care
 - RCW 70 Public Health & Safety
- WAC
 - WAC 246 Department of Health
 - WAC 296 Labor & Industries (BBP)
- Department of Health
 - Nursing Care Quality Assurance Commission

Education Law

- RCW
 - RCW 28A Common School Provisions
- WAC
 - WAC 392 Public Instruction
 - WAC 181-79A Teacher Standards
- Office of the Superintendent of Public Instruction (OSPI)
 - Student Support
 - Health Services

* Source: Katie Johnson, MN, RN-BC,
* NCSN - OSPI

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Health Practice Requirements

- Nurse Practice Act – Chapter 18.79 RCW
 - <http://apps.leg.wa.gov/RCW/default.aspx?cite=18.79>
 - Functions of a registered nurse and licensed practical nurse
 - <http://apps.leg.wa.gov/WAC/default.aspx?cite=246-840-705>
- Nursing Commission
 - <http://www.doh.wa.gov/LicensesPermitsandCertificates/NursingCommission.aspx>
 - Laws related to nursing
 - <http://www.doh.wa.gov/LicensesPermitsandCertificates/NursingCommission/Laws.aspx>

* Source: Katie Johnson, MN, RN-BC,
* NCSN - OSPI

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Health Law

- Department of Health Title 246 WAC
 - <http://apps.leg.wa.gov/wac/default.aspx?cite=246>
 - Communicable Diseases (notifiable conditions; immunizations; contagious disease)
 - Parent / Child Health (Auditory and vision; standards)
 - Professional Standards and Licensing
- Immunization Chapter 246-105 WAC
 - <http://apps.leg.wa.gov/WAC/default.aspx?cite=246-105&full=true>
- Public Health & Safety Title 70 RCW
 - <http://apps.leg.wa.gov/rcw/default.aspx?Cite=70>
 - Medical Records
 - <http://apps.leg.wa.gov/rcw/default.aspx?cite=70.02>
- Children with Special Health Care Needs Chapter 246-71- WAC Coordinated Children's Services
 - <http://apps.leg.wa.gov/wac/default.aspx?cite=246-710>

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Education Practice Requirements

- ESA Certification **Chapter 181-79A WAC**
 - **181-79A-223** Academic and experience requirements for certification -- School nurse, school occupational therapist, school physical therapist, school speech-language pathologist or audiologist, or school social worker.
 - **181-79A-226** Issues of abuse course work requirement for continuing or professional certification -- Educational staff associate
 - <http://apps.leg.wa.gov/wac/default.aspx?cite=181-79A>

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Education Law

- Education Law – Title 28A RCW Common School Provisions
 - <http://apps.leg.wa.gov/rcw/default.aspx?cite=28A>
 - Chapter 28A.225 RCW
 - <http://apps.leg.wa.gov/RCW/default.aspx?cite=28A.225>
- Health – screening and requirements Chapter 28A.210 RCW
 - <http://apps.leg.wa.gov/rcw/default.aspx?cite=28A.210>
- Rules for Special Education
 - <http://apps.leg.wa.gov/WAC/default.aspx?cite=392-172A>
 - WAC 392-172A – 01155 Related Services (definition)
 - FAPE
 - Personnel Qualifications **WAC 392-172A-02090**
 - <http://apps.leg.wa.gov/WAC/default.aspx?cite=392-172A-02090>

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Documentation

- RCW 246L.840.700 Standards of Nursing Practice - RN & LPN
 - Shall communicate significant changes in the client's status to appropriate members of the health care team.
 - In a timely manner
 - Shall document, on essential client records, the nursing care given and the client's response to that care
- RCW 70.02 Medical Records
 - <http://apps.leg.wa.gov/rcw/default.aspx?cite=70.02>

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Documentation Privacy

- FERPA governs the privacy of student information
 - Health records become education records when transferred to school.
- Covers Personally Identifiable Information
- Applies to all agencies that receive federal funds
- Must have written permission to disclose

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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FERPA

- Exceptions:
 - Legitimate educational interest
 - Transferring schools
 - Audit/evaluation
 - Judicial order
 - Health & safety emergency
 - <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- Resource: Guidelines for Handling Health Care Information in School Records

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Staff Model

- Recommended Staffing
 - **ESA Certified School Nurses** – responsible for 1500 student caseload; determining acuity level; delegating care to RNs, LPNs, UAPs; training and supervision of staff; SpEd evaluations; IHPs and health 504 plans; health education; surveillance of health and safety of building; immunization monitoring; caseload management; care coordination.
 - **RNs & LPNs** – Based on student severity coding. LPNs need supervision by RN, MD or LHCP
 - **Health Room Asst** – special training to assist in health room; supervised by RN; especially staffing for high use time. Elementary 0.1 FTE/100 students; Secondary 0.1 FTE/200 students. Needs weekly face-to-face time with RN
 - **Clerical Staff** – clerical duties; data entry; managing health forms & immunizations

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NCSN - OSPI

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Medications

- RCW 18.79.260 Registered Nurse
- Under the general direction of a licensed physician and surgeon, dentist, osteopathic physician and surgeon, naturopathic physician, optometrist, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, or advanced registered nurse practitioner
- Administer medications, treatments, tests, and inoculations including:
 - Severing or penetrating of tissues
 - Independent judgment and skill

* Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Delegation

- "3) A **registered nurse** may delegate tasks of nursing care to other individuals where the registered nurse determines that it is in the best interest of the patient.
- (a) The delegating nurse shall:
- (i) Determine the competency of the individual to perform the tasks;
 - (ii) Evaluate the appropriateness of the delegation;
 - (iii) Supervise the actions of the person performing the delegated task; and
 - (iv) Delegate only those tasks that are within the registered nurse's scope of practice.

• RCW 18.79.260

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NCSN - OSPI

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Delegation

- RCW 18.79.260
- The following may not be delegated
 - Acts requiring substantial skill
 - Piercing or severing of tissues
 - Acts that require nursing judgment
- Nurses cannot be coerced to delegate

* Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Scope of Practice Decision Tree

- Describes RN Scope of Practice
 - Assessment, nursing diagnosis, setting goals, planning care strategies, implementing care, delegating care to qualified others, supervising, evaluating, teaching, managing care, maintaining client safety, collaborating with other health care members.
- Guides decision on interventions within scope – including delegation
 - <http://www.doh.wa.gov/Portals/1/Documents/Pubs/609305.pdf>

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NCSN - OSPI

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Life Threatening Conditions

- WAC 392-380-045
- Attendance conditioned on presentation of
 - Medication or treatment order
 - Nursing plan to implement order
 - Medication provided by parent to carry out the order
- Exclusion by written notice; with provisions for hearing if a dispute

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NCSN - OSPI

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Anaphylaxis (Allergies)

- Anaphylaxis – Policy Guidelines – Procedures – Reports
RCW 28A.210.380.
 - Prevention
 - Care
 - Procedure to treat anaphylaxis
 - Content for training for school personnel
 - Communication plan
 - Strategies to reduce risk
- Life Threatening Health Conditions
 - RCW 28A.219.320; WAC 392-380-005-080; OSPI Bulletin B061-02
- Provisions to self carry
 - RCW 28A.210.380
- Special Dietary Needs USDA Regulations
 - multiple sections

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Type I Diabetes

- RCW 28A.210.330 Students with Diabetes
- Requires Individual health plans including
 - Parent requests
 - LHCP orders
 - Storage of medical equipment provided by parents
 - Provisions for testing & treating blood sugar
 - Accommodations for eating
 - Scheduling information
 - Care by Parent Designated Adults
 - Consultation with RN or ARNP for coordination, training & supervision

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Asthma

- **RCW 28A.210.370**
- Uniform policy for training of school staff
- Policies for rescue
- Provisions for self – administration
 - HCP approval and orders
 - RN at school approval
 - Written treatment plan for care at school
 - Proper use demonstrated
- Provisions for all school activities
- Provisions for backup medication

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Medical Marijuana

RCW 69.51A.060

- (1) It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.
- (4) Nothing in this chapter requires any accommodation of any on-site medical use of marijuana ...in any school bus or on any school grounds, in any youth center... or smoking medical marijuana in any public place ...

<http://apps.leg.wa.gov/RCW/default.aspx?cite=69.51A>.

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Medical Marijuana

- "... a district that allows marijuana on school grounds puts its Title I and any other federal funding at risk.
- Any school nurse or other staff person who administers medical marijuana, even to a "qualified patient" under Washington law, would risk criminal prosecution under federal law.
- The same would be true of staff members and students who possessed marijuana at school."

Heidi Maynard WSSDA Newsletter, October 2012

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Blood Borne Pathogens

- RCW 70.24.290 HIV Instruction for PS Employees
- WAC 296-823 Occupational exposure to bloodborne pathogens
- WAC 392-198
- WAC 296-802: 296-27 Records and reporting
 - OSPI Guidelines for Training on HIV /AIDS & BBP
<http://www.k12.wa.us/HealthServices/pubdocs/GuidelinesHIVBloodborne.pdf>
- Department of Labor and Industries
 - Employees with potential exposure
 - Identification
 - Training
 - Control of exposure
 - Personal Protection Equipment
 - Hepatitis B Vaccine provision at no cost to employee
 - Examples of vulnerable employees at Dept of L&I
<http://www.lni.wa.gov/Safety/Topics/Atoz/default.asp?KWID=39>

Source: Katie Johnson, MN, RN-BC,
NCSN - OSPI

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Head Injury / TBI

- RCW 28A.600 amended by HB 1824 Youth Sports – Head Injury Policies (Lystedt law)
- OSPI Bulletin 043-09M Head Injury
- Requires statement of compliance with policies to manage concussion and head injury.
- Remove youth athlete from play with suspected concussion or head injury
 - Until evaluation by LHCP trained in management of concussion
 - Written clearance required
- Collaborate with WIAA on forms
- Annual information fact sheet to parents/athletes
 - <http://www.leg.wa.gov/pub/billinfo/2009-10/Pdf/Bills/Session%20Law%202009/1824SL.pdf>

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Legal Terms

- Negligence
- Malpractice
- Liability
- Standard of Care

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Malpractice

- Dereliction of professional duty
- Failure to provide same care

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Negligence

- 4 elements
 - Duty
 - Breach of duty
 - Proximate cause
 - Damages

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Liability

- Preponderance of evidence points to culpability

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Standard of Care

- National
 - NASN
 - ANA Code
 - Publications

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Standard of Care

- State - Nurse Practice Act
- Local
 - Job description
 - Board of Education Policies & Procedures
 - Nursing Policies & Procedures

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Potential Causes of Liability

- Inappropriate delegation
- Failure to observe & report changes
- Failure to document accurately
- Alteration of records
- Failure to keep current
- Failure to function within established policies/
scope

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Potential Causes of Liability

- Failure to administer medications properly
- Abandonment
- Failure to resuscitate promptly & properly

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Strategies

- Interpersonal skills
- Know standards/laws
- Update policies
- Stay current
- Document accurately & thoroughly
- Document concerns
- Educate consumers

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Age of Consent

- HIV - 14 years
- STD - 14 years
- Drug, alcohol abuse (outpatient) - 13 years
- Chemical dependency tx (residential) - 18 years
- Mental health (outpatient) - 13 years
- Birth control, abortion - no age limit, student's consent is required

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Questions??

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