



## SUPPORTING STUDENTS WITH MEDICAL CONDITIONS: POINTS OF LAW

<b>POLICY INTENDED FOR:</b>	Students
<b>CATEGORY:</b>	Medical
<b>PUBLISHED:</b>	Server, Policy Folders at College and Students Accommodations, Staff Handbook
<b>POLICY IMPLEMENTED BY:</b>	Principal
<b>POLICY MONITORED BY:</b>	Principal and Deputy Principals
<b>REVIEWED BY:</b>	Principal
<b>REVIEWED DATE:</b>	August 2021
<b>CONSULTATION WITH:</b>	Senior Leadership Team (SLT)
<b>RECORD OF CHANGES &amp; ADDITIONS:</b>	None
<b>NEXT REVIEW:</b>	August 2022

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**Note:** *This document does not constitute an authoritative legal interpretation - that is exclusively a matter for the courts. It remains for colleges to develop their policies in the light of their statutory responsibilities and their own assessment of local needs and resources.*

#### STATUTORY DUTIES

Section 100, *Students and Families Act 2014* came into force on 1<sup>st</sup> September 2014. It places a duty on educational institutions to make arrangements for supporting students with medical conditions. Colleges **must** make arrangements to support students with medical conditions; including making sure that a policy for supporting students with medical conditions in college is developed and implemented.

The government's aim is to ensure that all students with medical conditions, in terms of both physical and mental health, are properly supported in college so that they can play a full and active role in college life, remain healthy and achieve their academic potential.

In meeting this duty, the Senior Leadership Team **must** have regard to the statutory guidance issued by the Secretary of State under this section. 'Having regard' means that colleges **must** take account of the guidance and that there would have to be a good reason, which could be justified in a court of law, for not complying with the guidance.

#### GOVERNMENT GUIDANCE

The statutory guidance *Supporting Students in Schools with Medical Conditions* sets out a clear framework for colleges working with Local Authorities and the National Health Service to develop policies to ensure that all students with medical conditions receive appropriate support.

The guidance provides advice to colleges on supporting students, developing medicines policies, dealing with medicines safely and drawing up health care plans for students with ongoing or permanent medical needs.

#### KEY POINTS

- Students at college with medical conditions should be properly supported so that they have full access to education, including college trips and physical education.
- The Senior Leadership Team **must** ensure that arrangements are in place in colleges to support students at college with medical conditions.
- The Senior Leadership Team **must** ensure that sufficient staff have received suitable training and are competent before they take on responsibility to support students with medical conditions.

- The Senior Leadership Team should ensure that college leaders consult health and social care professionals, students and parents to ensure that the needs of students with medical conditions are effectively supported.

#### OTHER RELEVANT LEGISLATION

The *Equality Act 2010* means that the Senior Leadership Team/college **must not** discriminate against, harass or victimise disabled students, young people and mental health disorders. They **must** make reasonable adjustments to ensure that disabled students and young people are not at a substantial disadvantage compared with their peers. This duty is anticipatory; adjustments **must** be planned and put in place in advance, to prevent that disadvantage

The college has a *Disability and Accessibility Policy*, which includes a section on supporting students with medical conditions and administering medicines to students, since many students with long term medical conditions and many of those requiring regular medication will be considered disabled under the *Equality Act 2010* definitions. Such students would be put at a disadvantage if colleges did not either provide support and/or arrange for students to take medicines.

*Section 21 of the Education Act 2002* provides that the Senior Leadership Team **must**, in discharging their functions in relation to the conduct of the college, promote the well-being of students at the college.

*Section 175 of the Education Act 2002* provides that the Senior Leadership Team **must** make arrangements for ensuring that their functions relating to the conduct of the college are exercised with a view to safeguarding and promoting the welfare of students who are students at the college. Paragraph 7 of *Schedule 1 to the Independent School Standards (England) Regulations 2010* set this out in relation to independent schools.

*Section 3 of the Students Act 1989* provides a duty on a person with the care of a student (who does not have parental responsibility for the student) to do all that is reasonable in all the circumstances for the purposes of safeguarding or promoting the welfare of the student.

The *Health and Safety at Work Act 1974* requires employers, including local authorities and the college, to have a health and safety policy. This should incorporate managing the handling of medicines which includes administration by staff, storage, oversight of self-administration and carrying of medicines by students.

The *Misuse of Drugs Act 1972* and the *Medicines Act 1968* are also relevant to colleges in dealing with students with medical conditions.

### LEGAL SITUATION

Notwithstanding the new statutory requirement there is a tension between the duty of care that colleges owe to students, and the fact that staff and tutors are not legally obliged to administer medication. This has caused problems in some colleges. The most high-profile case was in 2002 when Preston County Court awarded £3,000 to a student who was banned from a college visit because he had diabetes. Complaints have been voiced at Union conferences that staff and tutors are often emotionally blackmailed by parents into providing medical care for students.

Most students will occasionally need short-term medication. Some require medicines in particular circumstances. Others may need medication on a long-term or permanent basis.

The Senior Leadership Team are responsible for the health and safety of all the students in their care. However, college staff have no legal or contractual duty to administer medicines to students, or to supervise them taking medication. However, all staff in charge of students have a common law duty of care and in exceptional circumstances this may extend to giving medication in an emergency.

The statutory guidance recommends that Principal and Student Services Manager and House Parent on this responsibility as part of their contract, but that all such staff should be trained appropriately.

It is also possible for staff to volunteer to administer medicines or supervise the taking of medicines. In all cases staff should receive appropriate training and guidance from the appropriate health professionals before doing so.

Whatever systems and types of support are put into place, colleges **must** now accept responsibility. Colleges **must** have clear policies covering students' short- and long-term medical needs, based on the government's guidance.

Of course, there will always be some students who are temporarily unable to attend college because of their medical condition and where this happens there **must** be arrangements in place to ensure the continuation of their education.

## ROLES AND RESPONSIBILITIES

### The Senior Leadership Team

Must make arrangements to support students with medical conditions and mental health disorders in college.

Must make sure that a policy for supporting students with medical conditions in college is developed and implemented.

Should ensure that a student with medical conditions is supported to enable the fullest participation possible in all aspects of college life.

Should ensure that sufficient staff have received suitable training and are competent before they take on responsibility to support students with medical conditions.

Should also ensure that any members of college staff who provide support to students with medical conditions are able to access information and other teaching support materials as needed.

Government guidance states that the Principal has overall responsibility for the development of individual healthcare plans. They should inform the Student Services Manager and House Parent in the case of any student who has a medical condition that may require support at college.

### The National Health Service

The National Health Services responsible for notifying the college when a student has been identified as having a medical condition which will require support in college.

Although the Student Services Manager does not have an extensive role in ensuring that the college takes appropriate steps to support students with medical conditions, they may support staff on implementing a student's individual healthcare plan and could provide advice and liaison, for example on training.

Some students with long-term medical needs may receive dedicated support from specialist nurse, for instance a students' oncology nurse or a specialist nurse in diabetes or epilepsy. Community nursing teams may also be a valuable potential resource for the college in seeking advice and support.

## Parents

Colleges should expect parents to provide sufficient and up-to-date information about their student's medical needs. Indeed, they may be the first to notify the college that their student has a medical condition. Parents are key partners and should always be involved in the development and review of their student's individual healthcare plan. They may provide medicines and equipment and always make sure that they or another nominated adult are contactable at all times.

## Students

Students are often best placed to provide information about how their condition affects them. They should be fully involved in discussions about their medical support needs and contribute as much as possible to the development of their individual healthcare plan. Other students should be encouraged to be sensitive to the needs of those with medical conditions.

## Local Authorities

Local authorities (LAs) are commissioners of college nursing services for maintained colleges and academies. Section 10, *Students Act 2004* requires LAs to promote cooperation between relevant partners such as the Senior Leadership Team of the college, clinical commissioning groups and NHS England, with a view to improving the well-being of students so far as relating to their physical and mental health, and their education, training and recreation.

LAs should provide support, advice and guidance, including suitable training for college staff, to ensure that the support specified within individual healthcare plans can be delivered effectively. LAs should also work with colleges to support students with medical conditions to attend full time. Where students would not receive a suitable education in a mainstream college because of their health needs, the LA has a duty to make other arrangements. Statutory guidance for LAs sets out that they should be ready to make arrangements under this duty when it is clear that a student will be away from colleges for 15 days or more because of health needs (whether consecutive or cumulative across the college year).

### Providers of Health Services

Health services should co-operate with colleges to support students with medical conditions, including enabling liaison with the college's Principal and Student Services Manager and other healthcare professionals such as specialist and student's community nurses, as well as participation in locally developed outreach and training.

### ADMINISTERING MEDICINES

The statutory guidance Supporting Students in Schools with Medical Conditions states that:

- No student under 16 should be given prescription or non-prescription medicines without their parent's written consent - except in exceptional circumstances where the medicine has been prescribed to the student without the knowledge of the parents. (In such cases, every effort should be made to encourage the student to involve their parents whilst respecting their right to confidentiality).
- Colleges should set out the circumstances in which non-prescription medicines may be administered.
- A student under 16 should never be given medicine containing aspirin unless prescribed by a doctor. Medication, e.g. for pain relief, should **never** be administered without first checking maximum dosages and when the previous dose was taken. Parents should be informed.
- Colleges should only accept prescribed medicines that are in-date, labelled, provided in the original container as dispensed by a pharmacist and include instructions for administration, dosage and storage. The exception to this is insulin which must still be in date but will generally be available to colleges inside an insulin pen or a pump, rather than in its original container.
- Staff administering medicines should do so in accordance with the prescriber's instructions.
- All medicines should be stored safely. Students should know where their medicines are at all times and be able to access them immediately. Where relevant, they should know who holds the key to the storage facility.
- Medicines and devices such as asthma inhalers, blood glucose testing meters and adrenaline pens should be always readily available to students and not locked away. This is particularly important to consider when outside of college premises (e.g. on college trips).
- A student who has been prescribed a controlled drug may legally have it in their possession if they are competent to do so but passing it to another student for use is an offence. Monitoring arrangements are imperative.

- Colleges should keep controlled drugs that have been prescribed for a student and not in their possession securely stored in a non-portable container.
- Only named staff should have access to controlled drugs.
- Controlled drugs should be easily accessible in an emergency. A record should be kept of any doses used and the amount of the controlled drug held in college.
- College staff may administer a controlled drug to the student for whom it has been prescribed.
- Colleges should keep a record of all medicines administered to individual students, stating what, how and how much was administered, when and by whom. Any side effects of the medication to be administered at college should be noted.
- When no longer required, medicines should be returned to the parent to arrange for safe disposal.
- Sharps boxes should always be used for the disposal of needles and other sharps.

If an LA or governing body instructs the Principal or Student Services Manager, or gives advice on the administration of medicines, the instructions or advice should be adhered to.

### PAIN RELIEF

Colleges are often wary about handing out analgesics to students. Many colleges do not do it. But some Principals may consider that it would be a proper exercise of their duty of care to provide pain relievers. They might properly consider that it is better for the college to provide them under controlled arrangements, than for students to bring their own.

***It is to be noted that government guidance advises that aspirin should never be administered to students under 16 unless prescribed by a doctor or nurse consultant.***

If the college decides that it wants to help the parent and student with the administration of non-prescription medications, then the college should seek its own medical advice - or get advice from the student's doctor. If the college then decides to go ahead, it must get written permission for exactly what is agreed.

### SELF-MANAGEMENT

It is good practice to support and enable students to take responsibility to manage their own medicines. Students with a long-term illness should, whenever possible, assume complete responsibility under the supervision of their parent and the relevant healthcare professional. Students develop at different rates and so the ability to take responsibility for their own medicines varies. This should be borne in mind

when making a decision about transferring responsibility to a student. Health professionals need to assess, with parents and students, the appropriate time to make this transition. In any event:

- Students should know where their medicines are always and be able to access them immediately. Where relevant, they should know who holds the key to the storage facility.
- Medicines and devices such as asthma inhalers, blood glucose testing meters and adrenaline pens should be always readily available to students and not locked away. This is particularly important to consider when outside of college premises (e.g. on college trips).
- A student who has been prescribed a controlled drug may legally have it in their possession if they are competent to do so but passing it to another student for use is an offence. Monitoring arrangements may be necessary.

The college's policy on medication should say whether students may carry, and administer (where appropriate), their own medicines, bearing in mind the safety of other students and medical advice from the prescriber in respect of the individual student.

### THE PRINCIPAL'S DISCRETION

In most colleges Principals are left to their own discretion. The Principal should consider each case and the needs of the student separately. Principals should always have the best interests of the student in mind, regardless of either parents or college staff preferences. But they must also consider the implications for the staff and the other students. At all times it must be seen from their actions that they are acting reasonably.

Some Principals might decide to refuse to administer medicines and insist on them being administered by parents – either by the student going home at a break time, or the parent coming into college. But this would be impracticable and would be considered unreasonable, especially if the student requires medicines on a permanent or long-term basis and are essential to the student's well-being and health. Indeed, such a decision could be construed as failing to comply with the statutory duty as set out at Section 100, *Students and Families Act 2014*.

Principals **must** bear in mind that some students with medical needs are protected from discrimination under the *Equality Act 2010* because they are disabled. Such needs could include the necessity for medicines during the college day either regularly or in emergencies. Any student, for whom regular or emergency medication during the college day is essential, in that it would be detrimental to the student's health if the medicine were not administered, is likely to fall within the legal definition of disability.

When Principals accept the responsibility for management and administration of medicines, they should ensure that as a minimum:

- College policies and protocols are in line with LA policies and guidance.
- Staff and parents are aware of these policies and practices.
- Written agreement is obtained from parents.

It is to be noted that staff **must not** give prescription medicines or undertake health care procedures without appropriate training (updated to reflect any individual healthcare plans).

The following safeguards should be in place:

- The Principal should speak to any relevant staff, ensure they are trained in administration of the particular medicine, and secure their agreement.
- Ensure that the date/time of administration is recorded.
- Arrange for a trained member of staff or health professional such as a college nurse to review the log on a regular basis.
- For long-term medical needs, the college should draw up a health care plan with input from the medical practitioner or nurse consultant with responsibility for the student's health, the parents and, where appropriate, the student.
- Medicines must be in the original container.
- Medicine should usually be locked away in the college.
- Medicine (such as an asthma inhaler) must be accessible to the student at all times.
- Where a student can administer their own medicine, albeit under adult supervision, it must be easily accessible.
- Medicines not in their original container, as dispensed, should **never** be accepted.
- Medicines **must** be labelled with:
  - Contents.
  - Name of student.
  - Dosage.
  - How and when to be administered.

If the medicine may be dangerous if wrongly administered, or where administration requires intimate contact or an injection, Principals should ensure that staff are trained specifically in the particular procedure and certified as properly trained by the appropriate health professional.

### PARENTAL CONSENT

Parents and persons with parental responsibility should be required to give their consent to the administration of medication. Students over the age of 16 can also give consent.

Sometimes it may not be possible to obtain the parent's consent. In these circumstances the Principal will have to make a decision in place of the parent. The decision must be seen to be reasonable and should only go against a parent's express wishes if the student's life is in danger. This is rare, and normally teachers are able, for example on a college visit, to accommodate parents' wishes at the same time as ensuring that the student's health and safety is safeguarded, which is the prime duty of the college under the *Students Act 1989*.

### FUNDING

The government therefore expects appropriate support for students with medical conditions to be provided from within existing budgets.

### LIABILITY AND INDEMNITY

The college **must** ensure that the appropriate level of insurance is in place and that it reflects the level of risk. It is imperative that the college policy sets out the details of the college's insurance arrangements which cover staff providing support to students with medical conditions. Insurance policies **must** be accessible to staff providing such support.

Insurance policies **must** provide liability cover relating to the administration of medication, but individual cover may need to be arranged for any specific health care procedures. The level and ambit of cover required must be ascertained directly from the relevant insurers. Any requirements of the insurance such as the need for staff to be trained should be made clear and complied with.

In the event of a claim alleging negligence by a member of staff, civil actions are likely to be brought against the employer.

### COMPLAINTS

The Senior Leadership Team **must** ensure that the college's policy sets out how complaints may be made and will be handled concerning the support provided to students with medical conditions.

If parents or students are unhappy with the support provided, they should be able discuss their concerns directly with the college. If for whatever reason this does not resolve the issue, they may make a formal complaint via the college's complaints procedure.

Making a formal complaint to the Department for Education should only occur if it comes within scope of section 496/497 of the *Education Act 1996* and after other attempts at resolution have been exhausted.

In cases where the student is disabled the parents can lodge an appeal with the First Tier Tribunal (SEN and Disability). Ultimately, parents (and students) will be able to take independent legal advice and bring formal proceedings if they consider they have legitimate grounds to do so.

### ISI

ISI's inspection framework places a clear emphasis on meeting the needs of disabled students and students with SEN and considering the quality of teaching and the progress made by these students. Inspectors are already briefed to consider the needs of students with chronic or long-term medical conditions alongside other vulnerable groups and to report on how well their needs are being met. They will be interested to see what staff are doing to ensure that they are safeguarding and supporting these students. Reporting against this might occur in any of the judgements. Colleges are expected to have a policy dealing with medical needs and to be able to demonstrate that this is implemented effectively.

It is worthwhile mentioning in the college's self-evaluation any provision that is being made to support students. If there are students with medical needs on roll and the college has not identified how it supports them in its self-evaluation, inspectors may investigate further.

Inspectors will look closely at attendance data. Where there are students with long and persistent absence from college due to medical needs, they will want to know how the college is supporting their education, personal development and wellbeing. If another organisation or agency is involved, it is important that the college demonstrates that there is close liaison with them.

Inspectors will want to see that:

- The college has a policy for dealing with medical needs and the administration of medication.
- This policy is monitored and evaluated.
- The Student Services Manager is responsible for dealing with students who are unable to attend college because of medical needs.
- There are staff in the college who have sufficient knowledge to help manage students' medical needs.

- College's Senior Leadership Team track the progress of students with medical needs as a separate group.
- The college seeks the views of parents who have students with medical needs, to check that they are satisfied with the quality of support.

Where a student has a chronic or long-term condition, inspectors will also be looking to see that:

- Teaching, the curriculum and/or the use of resources are amended to help meet the student's needs.
- Teachers are aware of when it is – and when it is not – advisable for the student to participate in different activities.
- Teachers are aware of the potential risks associated with a student's condition, and of what constitutes an emergency and how they should respond.
- Disruption to education is minimal, including at transition times.

With an increasing emphasis on attendance, this is an important area to develop as part of the college's improvement process.

## REFERENCES AND ADVICE

The statutory guidance - Supporting students at School with Medical Conditions:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/306952/Statutory\\_guidance\\_on\\_supporting\\_students\\_at\\_college\\_with\\_medical\\_conditions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306952/Statutory_guidance_on_supporting_students_at_college_with_medical_conditions.pdf).

The statutory guidance - Education for Students with Health Needs Who Cannot Attend School:

<https://www.gov.uk/government/publications/education-for-students-with-health-needs-who-cannot-attend-college>.

The Early Years Foundation Stage: <https://www.gov.uk/government/publications/early-years-foundation-stage-framework> - sets out specific requirements on early years settings in managing medicines for students under 5 years of age.

DfE links to other useful resources at:

<https://www.gov.uk/government/publications/supporting-students-at-college-with-medical-conditions/links-to-other-useful-resources>.

Model templates for recording student information at:

<https://www.gov.uk/government/publications/supporting-students-at-college-with-medical-conditions>.

Medical Conditions at College Partnership:

<http://medicalconditionsatcollege.org.uk/partners/>

### FURTHER INFORMATION

For further information about support for students with Epilepsy at OIC please speak with Kim Terrar.

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