

AEDs in Schools: A Legal Perspective

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By:

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Each year nearly two thousand children and young adults between the ages of 5 and 24 become victims of sudden cardiac death (SCD).¹ As many as 1 in 100,000-300,000 school age athletes die annually of cardiac related causes.² Many of these deaths occur on school and college campuses and most are unpredictable. Examples of children dying suddenly in schools are reported regularly.

Most children and young adults who suffer SCA may be saved if their condition is recognized early and they are quickly treated with a defibrillator. A recent example is the 16-year old New York high school student who was effectively resuscitated by the prompt use of the school's automated external defibrillator (AED). Despite their need and effectiveness, few schools currently possess AEDs.

A brief look at the legal and public policy landscape helps explain why AED deployment in schools is not yet prevalent. Generally, schools might buy and deploy AEDs for three reasons.

Voluntary AED Deployment. First, schools may choose to deploy AEDs voluntarily for both risk management and public health reasons or because of grass roots efforts precipitated by the sudden cardiac death of a student. Examples of schools voluntarily implementing AED programs are found in Pennsylvania, West Virginia and Washington state, among others. Yet, probably due to a lack of funding and the absence of a high priority perception of need, this voluntary movement is not widespread.

Legislative Action. Schools may also deploy AEDs because of a legislative mandate or because funding is made available by a state. Legislative mandates arise in many contexts when legislatures direct that certain activities occur. An example of a legislative mandate is the Aviation Medical Assistance Act of 1998, which requires that all passenger-carrying commercial aircraft carry AEDs by April 2004.³ Similarly, some state legislatures are beginning to consider mandating or encouraging the placement of AEDs in schools.

New York passed a law specifically mandating AEDs in schools. New York's law is quite specific and requires:

School districts [and other school related entities] shall provide and maintain on-site in each instructional school facility automated external defibrillator (AED) equipment in quantities and types deemed . . . to be adequate to ensure ready and appropriate access for use during emergencies.

Among other things, the law also requires that at least one staff member trained in AED use be present for events using public school facilities. Officials must also ensure that an AED is available at school-sponsored athletic events held away from school.⁴

In contrast to New York, Pennsylvania and Delaware created voluntary school AED programs that provide funding for purchase of the devices. Each of these laws imposes a number of conditions that must be met in order to obtain funding. Examples include training, maintenance, device accessibility, and EMS system involvement. Neither state requires schools to obtain AEDs.

Legislative activity relating to school AED programs appears on the rise. However, there seems to be no consistency in approach or public policy rationale surrounding these initiatives.

Common Law Mandate. A third reason schools may choose to deploy AEDs is because of a perceived standard of care mandate created by negligence law. The primary driver here is the fear of being sued if a student suffers SCA and no defibrillator is available. Olmstead Falls High School (Ohio) was subject to just such a claim. The parents of a 15-year old student who died from SCA after participating in a track event sued the local school district and board of education claiming their daughter died because no AED or phone was immediately available after she collapsed. The case has been withdrawn.⁵

Given the publicity surrounding the death of students in schools, coupled with a growing awareness of AEDs and their benefits, it is likely more lawsuits against school districts will arise. Schools, as public entities, have special immunity defenses not available to private parties so it remains to be seen how successful these claims are. However, the fear of negligence suits will certainly drive some schools to initiate AED programs.

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Endnotes

- 1 State Specific Mortality from Sudden Cardiac Death - United States, 1999, MMWR 2002;51(06):123-6.
- 2 Cardiovascular Pre-participation Screening of Competitive Athletes, Circulation. 1996;94:850-856.
- 3 P.L. 105-170, 49 U.S.C. 44701; 14 CFR § 121.803.

4 N.Y. Education Law, Article 19, § 917.

5 Hosta v. Olmstead Falls School District, CV 02-471620 (2002) (Cuyahoga County, OH).