

A REPORT BY
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY
725 Court Street
Martinez, California 94553

Report 1604

**Are Our Schools in Compliance with the
“EpiPen” Law, SB 1266?**

It Could be a Matter of “Life or Death”

APPROVED BY THE GRAND JURY:

Date: 5/31/16


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ACCEPTED FOR FILING:

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JOHN T. LAETTNER
JUDGE OF THE SUPERIOR COURT

Contra Costa County Grand Jury Report 1604

Are Our Schools in Compliance with the “EpiPen” Law, SB 1266?

It Could be a Matter of “Life or Death”

TO: Contra Costa County Superintendent of Schools , Contra Costa County Office of Education; District School Boards for Acalanes Union High, Antioch Unified, Brentwood Union, Byron Union, Canyon, John Swett Unified, Knightsen Elementary, Lafayette, Liberty Union High, Martinez Unified, Moraga, Mt. Diablo Unified, Oakley Union Elementary, Orinda Union, Pittsburg Unified, San Ramon Valley Unified, Walnut Creek, and West Contra Costa Unified

SUMMARY

Effective January 1, 2015, California law Senate Bill (SB) 1266 requires all public schools to stock epinephrine auto-injectors (Pens). Schools must provide Pens to school nurses or trained personnel who have volunteered to administer them to students who are suffering, or reasonably believed to be suffering from, a severe allergic reaction.

This report concerns implementation of this law by public schools in the County and their compliance with it. Most but not all schools are in compliance, although not all schools responded to the investigation.

Recommended actions include:

- Annual verification of K-12 public schools compliance under SB 1266
- Determining the practical and legal issues related to Pen use at offsite school events
- Determining the practical and legal issues related to Pen use at pre-schools under the direction of Contra Costa Office of Education

METHODOLOGY

The Grand Jury:

- Conducted a mail survey of Contra Costa’s eighteen public school districts (K-

12)--243 schools in all. Contra Costa County Office of Education schools (i.e., juvenile detention facilities) and charter schools were not included in the survey.

- Conducted telephone interviews with BioRidge Pharma, the order processor for Pens
- Reviewed the California School Nurses Organization (CSNO) website
- Conducted on-site school visits

CONFLICT DISCLAIMER OF INTEREST

One or more Grand Jurors recused themselves due to a possible conflict of interest and did not participate in the investigation, preparation, or approval of this report.

BACKGROUND

Sending a child off to school each morning requires daily preparation – a computer with today’s homework, permission slips, gym shoes, lunch and most importantly, for a child with severe allergies, allergy medication.

Anaphylactic shock is a severe allergic reaction. A recent law, SB 1266, defines anaphylactic shock as a potentially life-threatening hypersensitivity to a substance. A severe allergic reaction can restrict airways in the lungs, severely lower blood pressure, and cause suffocation by swelling of the tongue or throat. Food is the most common allergen. Other common allergens (or triggers) include biting or stinging insects, medications, and latex. At times, the trigger is unknown.

According to Food Allergy Research & Education (FARE), a national nonprofit organization, anaphylaxis affects one in every thirteen children under eighteen or an average of two children in every classroom. The Center for Disease Control and Prevention (CDC) reports this number to be one in every twenty-five children and says that about one in every four students that have a severe and potentially life-threatening reaction at school had no previously known food allergy. The CDC reports that food allergies are on the rise. A study released in 2013, revealed that food allergies among children:

- Are the leading cause of anaphylaxis outside the hospital setting;
- Increased approximately fifty percent between 1997 and 2011;
- Resulted in 300,000 ambulatory-care visits a year among children under eighteen; and
- Cost nearly twenty-five billion dollars per year.

Epinephrine (adrenaline) is a medication that can reverse anaphylactic shock. It is administered as a shot using an auto-injector, often referred to as a “Pen”. According to the National Food Allergy Association guidelines, epinephrine is the first-line of treatment for life-threatening allergic reactions. A delay of minutes in administering epinephrine can result in death. Hospitals admit about 9,500 children each year for some form of food allergy.

To assist public schools in responding to instances of anaphylactic shock, the California legislature passed SB 1266, which adds section 4119.2 to the Business and Professions and Education Code and section 49414 to the Education Code. The new law requires school districts, county offices of education and charter schools to provide Pens to school nurses and other personnel trained in the use of such Pens.

Additionally, each private elementary and secondary school in the State may voluntarily determine whether to make emergency Pens and trained personnel available at its school.

DISCUSSION

SB 1266, which became effective January 1, 2015, requires, rather than simply allows, California public schools, county offices of education and charter schools to stock Pens. Schools must provide Pens to school nurses or trained personnel who have volunteered to administer them to students who are suffering, or reasonably believed to be suffering from, an anaphylaxis reaction.

In the County, there are approximately 180,000 students at K -12 public schools, special education classes offered the local education agency, charter schools, and Horizon schools. Over 1,200 of these students have their own epinephrine injectors kept in their school's emergency medical cabinet. However, there likely are many more who have an allergy, but that allergy is unknown to their parents or caregivers. While the estimates vary of those students with allergies unknown to their parents or caregivers, a reasonable range for such students in the County is somewhere between 6,000 students (based on the CDC's number of one in twenty-five experiencing an allergic reaction) to 12,650 students (based on FARE estimates of one student in thirteen).

SB 1266 and What It Means

SB 1266 requires all California public schools, the county office of education and charter schools to:

- stock epinephrine auto injectors in case of student emergency; and
- train school nurses or at least one volunteer to administer Pens to students who are suffering or reasonably believed to be suffering from an emergency anaphylaxis reaction.

The law also requires the Superintendent of Public Instruction to establish minimum standards of training for the administration of epinephrine auto-injectors. The standards must be based on commonly accepted standards and the Superintendent must review the adequacy of the standards at least once every five years.

Public schools, county offices of education and charter schools must keep and maintain prescriptions up-to-date for Pens. As of November, all of Contra Costa public school districts had a prescription for Pens on file.

The law's only concerns Pen use at a public school or county office of education school. The California School Nurses Organization's (CSNO) website, as revised March 2015, states:

"The law does not address field trips or other off site school activities. CSNO recommends that school nurses work with their districts to develop policies and procedures that address activities outside of the school site, considering school nurse staffing and other challenges with regards to evenings and weekends."

Additionally, early childhood education centers, identified, as California Preschool Instructional Network by the Contra Costa Board of Education, are not required to stock Pens. FARE research estimates that nearly six million or eight percent of children (nationally) have food allergies – young children are most affected. Casual exposure to allergens presents a greater risk to young children who frequently put their hands in their mouths. Depending on the amount of contact and the location of the contact, these reactions are occasionally more serious. Failure to promptly treat food anaphylaxis with epinephrine is a risk factor for fatalities.

Training of Staff and Volunteers

Each school may designate one or more school volunteers be trained to administer Pens. Volunteers must receive an initial training as well as annual refreshers. SB 1266 establishes that training shall include all of the following:

- Techniques for recognizing symptoms of anaphylaxis.
- Standards and procedures for the storage, restocking, and emergency use of epinephrine auto-injectors.
- Emergency follow-up procedures, including calling the emergency 911 telephone number and contacting, if possible, the pupil's parent and physician.
- Recommendations on the necessity of instruction and certification in cardiopulmonary resuscitation
- Instruction on how to determine whether to use an adult epinephrine auto-injector or a junior epinephrine auto-injector, which shall include consideration of a pupil's grade level or age as a guideline of equivalency for the appropriate pupil weight determination. Additionally, the training must be consistent with the most recent Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs published by the Federal Centers for Disease Control (CDC) and Prevention. The current CDC guidelines recommend:
 - Accommodations or services needed for the allergic child to be safely included in activities like allergen-free classrooms and allergy-friendly seating arrangements.
 - Provision of instructions for treatment of allergic reaction posted in the cafeteria, establishment of designated allergy-friendly seating during meals (open to any child eating foods free of identified allergens), rapid access to epinephrine auto-injectors in cases of food allergy emergency, and training in use for staff.

The law also states:

“A school district, county office of education or charter school shall ensure that each employee who volunteers will be provided defense and indemnification by the school district, county office of education or charter school for any and all civil liability. The school district, county office of education or charter school must also notify each volunteer that the volunteer is being provided with defense and indemnification for any and all civil liability associated with administering epinephrine auto-injectors.”

Procurement and Funding of Pens

Schools receive two boxes of Pens at no charge once per calendar year from Mylan Specialty, the manufacturer. Schools that have used the Pen for an emergency may receive replenishment Pens from Mylan Specialty at no cost if they complete a replenishment form detailing the incident resulting in Pen use. If the Pen expires, schools may order more at a discount. The Pen has a shelf life of twelve to eighteen months.

CSNO recommends that school nurses work with school districts to develop and implement documentation procedures ensuring proper care, follow-up, and the replenishment of medications in a timely manner. Additionally, CSNO suggests the information to be reported to the CSNO website at:

<http://www.csno.org/step-up-and-be-counted.html>

Survey of Schools to Monitor Compliance

The Grand Jury mailed surveys in November 2015 to Contra Costa’s K-12 public school in eighteen districts, 243 schools in all. The Grand Jury evaluated the following four responses from each school to determine compliance with the law:

- How many regular EpiPens® are on hand for emergency use at your school?
- How many EpiPen Jr® are on hand for emergency use at your school?
- How many trained volunteers or nurses can administer EpiPen® at your school?
- Does your school have a prescription for EpiPens® on file?

The following schools were not in compliance with SB 1266 as of March 2016:

Antioch Unified School District	
Mission Elementary	Prospect High Alternative
Live Oak	Bridges
Kimball Elementary	Fremont Elementary
Antioch High	Belshaw Elementary

Bidwell Continuation High

The Grand Jury had insufficient information to complete its evaluation of the following schools as of March 2016:

West Contra Costa Unified School District

El Cerrito High

Richmond High

Downer Elementary

Dover Elementary

Korematusu Middle

Ellerhorst Elementary

FINDINGS

- F1. Mylan Specialty Division supplies Pens at no cost to public schools in the district.
- F2. Mylan Specialty Division will replace Pens at public schools in the district that have expired at a discounted cost.
- F3. FARE and CDC statistical information project a range of 4 percent to 7.7 percent of students (7,200 to 13,850 out of the estimated 180,000 students in Contra Costa County's eighteen school districts) that may have an allergy that is unknown to parents and undiagnosed.
- F4. Over 1,200 students in Contra Costa County's eighteen school districts have Pens with their names located in the school emergency medicine cabinet.
- F5. SB 1266 does not clearly address the use of Pens at off-campus school activities or events.
- F6. SB 1266 does not cover California Preschool Instructional Network centers.
- F7. SB 1266 does not require follow up procedures for reporting the use of a Pen.
- F8. After more than a year, one or more schools in the Antioch School District are not in full compliances with SB 1266.
- F9. It is unknown whether all of the schools in the West Contra Costa School District are in compliance with SB 1266.

RECOMMENDATIONS

- R1. The West Contra Costa Unified School District should contact those schools within their district and verify the schools are in compliance with SB 1266
- R2. The Antioch Unified School District should contact those schools found not to be in compliance with SB 1266 and ensure they become compliant by the beginning of the 2016-2017 School year.

- R3. Each of the School District Boards should direct the School District Superintendent to contact all schools in their district at the start of each school calendar year to confirm that they are compliant with the requirements of SB 1266.
- R4. Each of the School District Boards should direct their School District Superintendent to report to the Board at the start of each school calendar year that the School District is compliant with the requirements of SB 1266.
- R5. The Contra Costa County Superintendent of Schools should contact his or her schools at the start of each school year to confirm that the schools are compliant with the requirements of SB 1266.
- R6. Contra Costa County Superintendent of Schools should consider reporting to the Board of the Contra Costa Office of Education at the beginning of each school calendar year the status of compliance of the County to SB 1266.
- R7. The Contra Costa Office of Education should consider recommending to the California Preschool Instructional Network that preschools within its network first evaluate the practical and legal considerations of administering Pens to students and, if permissible, follow the mandate set forth in SB 1266 as closely as reasonably possible.
- R8. The School Districts should consider the practical and legal issues of supplying Pens for field trips and other off-site school events, and working with school nurses to develop policies and procedures for their use at these events.
- R9. The Contra Costa Office of Education should consider the practical and legal issues of supplying Pens for field trips and other off-site school events, and working with school nurses to develop policies and procedures for their use at these events.
- R10. The School Districts should consider working with school nurses to develop policies and procedures for reporting the use of Pens.
- R11. The Contra Costa Office of Education should consider working with the Contra Costa Superintendent of Schools and school nurses to develop policies and procedures for reporting use of the Pens.
- R12. The School Districts should consider helping parents understand the risks of anaphylaxis and the protocols in place for emergency administration of epinephrine. The School Districts should consider “identifying funds” to carry out these activities.
- R13. The Contra Costa Office of Education should consider helping parents understand the risks of anaphylaxis and the protocols in place for emergency administration of epinephrine. The Contra Costa Office of Education should consider “identifying funds” to carry out these activities.

REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
Contra Costa Office of Education Board	F3 – F7	R7, R9, R11, R13
Contra Costa County Superintendent of Schools	F1 – F7	R5, R6, R11
Acalanes Union High School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Antioch Unified School Board	F1 – F3, F5, F7, F8	R2 – R4, R8, R10, R12
Brentwood Union School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Byron Union School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Canyon School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
John Swett Unified School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Knightsen Elementary School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Lafayette School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Liberty Union High School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Martinez Unified School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Moraga School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Mt. Diablo Unified School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Oakley Union Elementary School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Orinda Union School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Pittsburg Unified School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
San Ramon Valley Unified School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
Walnut Creek School Board	F1 – F3, F5, F7	R3, R4, R8, R10, R12
West Contra Costa Unified School Board	F1 – F3, F5, F7, F9	R1, R3, R4, R8, R10, R12

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to epant@contracosta.courts.ca.gov and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson

725 Court Street

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