



## Central Region School Insurance Group

4101 Tully Road, Suite 501  
Modesto, CA 95356

Phone (209) 579-7535  
FAX (209) 579-7530

**TO: Property & Liability Members**

**FROM: Susan Adams, Executive Director**

**DATE: September 9, 2015**

**SUBJECT: \* HEADS UP \***  
**AEDs (Automated External Defibrillators)**

CRSIG originally issued a Heads Up on AED's in 2009. Recently we had a training session on this topic and have updated the information on AED's to assist our members who have inquired about the use of AEDs on school sites. We hope that the following discussion and recommendation offer you the information needed to appropriately evaluate the use of the devices at your school site should you be approached. Please keep in mind that although vendors may suggest that there is a great deal of pressure to institute the use of AEDs, they are not particularly prevalent.

School districts face the continuing question of whether to purchase or accept donations of Automated External Defibrillators (AEDs).

### **I. CONTINUING LACK OF OBLIGATION TO PURCHASE/ACCEPT AEDs**

No court or other authority has suggested or concluded that a school district would be negligent in caring for its students, employees, or guests if it did not have one or more AEDs on campus. While the California Assembly adopted a non-binding resolution in 2005 encouraging school districts to implement AED programs, California law does not require school districts to purchase or accept donations of AEDs.<sup>1</sup> See, e.g. *Health and Safety Code Section 1797.1960* negating such an obligation by property owners and *Rotolo v. San Jose Sports and Ent. LLC*, 151 Cal.App.4<sup>th</sup> 307 (2007) [the Legislature has preempted this area of law, with no affirmative obligation imposed on property owners other than health clubs to purchase AEDs]. The CDE has not addressed this subject in any published materials.

### **II. INDIVIDUAL EMPLOYEE/VOLUNTEER LIABILITY**

California Health and Safety Code Section 1714.21(b) (one of the Good Samaritan statutes) states that an individual who is not compensated as a medical professional (i.e., a nurse, doctor, EMT) is immune from civil liability for using an AED (1) to provide emergency care (2) at the emergency site, unless the individual causes harm through the use of the AED in a grossly negligent manner or in a manner constituting willful or wanton misconduct. While potential AED users should receive training regarding the use of such equipment, California does not require an individual to successfully complete a CPR/AED training class before using such a device. Consequently, an individual who has no training, and who commits injury through the "grossly negligent" use of an AED, could face potential personal liability.

<sup>1</sup>

New York, Nevada, and Ohio require certain schools on a statewide basis to implement AED programs. Other states, such as Illinois, New Hampshire, and Pennsylvania, encourage or provide funding for schools to develop AED programs.

AED manufacturers and distributors are addressing such liability concerns in two ways. First, AEDs sold in the United States have become far more sophisticated over the last few years. They now include verbal prompts regarding proper use of the device. The AED's "automatic" or semi-automatic electrical impulses can also be administered only when the device, properly attached to the individual, determines there to be a need for actual defibrillation. Current marketing literature states that in most instances the user cannot override the AED's determination, making the machines safer and more user friendly. If the literature is accurate, claims for "gross negligence" or "willful misconduct" should largely be eliminated due to these built in safety precautions. If the AED's controls or directions are disregarded without proper medical authorization or direction, however, the individual could still face personal liability.

Second, promotional materials for AEDs suggest that certain manufacturers and/or distributors are offering indemnity and/or "additional insured" protections to purchasers and users of their devices. Such protections, if they exist in a written contract or agreement, and if they provide primary liability protection, would be important in lessening liability concerns arising from the ownership or use of such devices. Owners and users of AEDs must understand, however, that if they willfully or intentionally disregard the AED's directions, protective warnings, or training instructions, their indemnity/coverage rights will likely be lost due to their failure to use the device in a proper and intended manner.

### **III. SCHOOL DISTRICT LIABILITY**

If a school district employee acts in a grossly negligent or willful or wanton manner, the school district will lose its statutory immunities. *Section 1797.196(e)*. Even in the absence of such employee misconduct, the school district may lose its statutory immunity if it fails to comply with all of the obligations of Section 1797.196.

#### **As to the school district, Section 1797.196 mandates the following:**

- Compliance with all regulations governing the training, use, and placement of and AED
- Notification of an agent of the local EMS agency of the existence, location and type of AED
- Specific training (compliance with regulations adopted by the EMS authority and standards of the AHA-American Heart Association or Red Cross) for all individuals who would use an AED
- Maintenance and regular testing that complies with manufacturer, AHA, Red Cross and FDA as well as any other applicable state and federal authorities
- Recordkeeping of and performance of readiness checks after each use and at least every 30 days.
- Requirement for the activation of the EMS system as soon as possible by the individual that uses the device and requirement that the individual reports any use to the licensed physician and local EMS agency.
- Requirement that there be involvement by a licensed physician in developing a compliance program that ensures compliance with regulations, requirements for training, notification and maintenance.

Individual school sites must also comply with the following additional burdens:

When an AED is placed in a public or private K-12 school, the principal shall ensure that the school administrators and staff annually receive a brochure, approved as to contents and style by the American Heart Association or the American Red Cross that describes the proper use of an AED. The principal shall also ensure that similar information is posted next to every AED. The principal shall, at least annually, notify school employees as to the location of all AED units on the campus. The principal shall designate the trained employees who shall be available to respond to an emergency that may involve the use of an AED during normal operating hours. As used in this paragraph, "normal operating hours" means during the hours of classroom instruction and any school-sponsored activity occurring on school grounds.

School site obligations, budgetary constraints, and/or turnover of employees responsible for these statutory requirements can result in a failure to meet all of these obligations on a daily/yearly basis. If the school district's statutory immunity is lost due to noncompliance with these obligations (even if the involved employee(s) is immune because he/she acted reasonably under the circumstances), the school district may face liability unless such risks are transferred to the AED's distributor/manufacturer in keeping with the indemnity and/or "additional insured" coverage issues discussed above. The school district must still recognize, however, that the protections afforded under the manufacturer's or distributor's indemnity or insurance agreements will likely be lost if it is shown that a failure of maintenance or compliance with other AED instructions/requirements led to the resulting claim of injury.

### **III. CONCLUSION**

While there remains no legal obligation to install such units in schools, school districts may choose to purchase or accept donations of AEDs as long as they:

- (a) evaluate and implement appropriate procedures complying with placement, training and maintenance obligations,
- (b) implement risk transfer possibilities through negotiated indemnity and/or "additional insured" programs whenever possible,
- (c) continue to implement and train employees with respect to alternative emergency care programs (traditional CPR, etc.) that should be undertaken in cases in which an AED fails to function or when an AED indicates that it will provide no benefit to a particular individual, ensuring that the school district still provides a reasonable and appropriate level of emergency care and treatment.

Finally, school districts purchasing or accepting donations of AEDs should adopt an appropriate Board Policy regarding their ownership, maintenance and use of these devices. CSBA has issued suggested language for such a Policy as part of its school safety series. Suggested language for such a Board Policy is attached to this Member Advisory. This draft policy, partially based on the CSBA standard, can be adopted separately or as part of an existing safety policy.

#### **IV. CRSIG RECOMMENDATION& GUIDELINES:**

While AEDs are popular, the requirements surrounding their use are not simple and must receive dedicated commitment by a school district that considers their installation. Even though vendors and service groups are willing to donate the devices, it is important for the district to recognize their responsibility for administering the use of the device and protect students and staff from the potential for misuse. In addition, the district must protect itself from allegations of negligence that can arise out of training, maintenance, testing and application.

CRSIG's recommendation is that defibrillators should be made available **only** to the properly trained and authorized EMTs or other first responders at CRSIG school sites. This would include school nurses and other emergency specifically trained personnel such as coaches. In addition, if AEDs are instituted, one administrator at the school district should be charged with the responsibility for ensuring complete compliance with current regulations and reporting compliance to the school board on an annual basis.

Keep in mind, the application of an AED is only protected if the user and agency meet ALL of the requirements for immunity.

- Ensure AEDs are properly maintained and regularly tested per the manufacture's guidelines, American Heart Association, American Red Cross and all rules and regulation under state and federal authorities.
- AEDs are checked for readiness every 30 days and a record of these checks are maintained.
- Require designated employees to undergo CPR and AED training on an ongoing basis (at least every 2 years)
  - One employee/unit up to 5 units, one additional employee for each additional 5 units
  - Trained employees "should" be available to respond to an emergency that may involve the use of an AED unit during normal school hours and during school-sponsored activities on school grounds
- Have a written plan describing the procedures to be followed when an AED may be needed
  - Enact a BP/AR
  - Activate the emergency medical services system as soon as possible when an AED is used, report the use to a licensed physician and to the local EMS agency
  - Comply with regulations regarding the placement of AEDs
  - School administrators and staff annually receive a brochure that describes the proper use of an AED as approved by the American Heart Association or the American Red Cross, and such information is posted next to each AED

DRAFT BOARD POLICY

**AUTOMATED EXTERNAL DEFIBRILLATORS**

Automated External Defibrillators

The Board authorizes the voluntary placement of automated external defibrillators (AEDs) at designated school sites for use by employees or volunteers who have been trained in the proper use of the type of AED(s) located at the site.

The Superintendent or designee shall develop and adopt administrative regulations ensuring the district's compliance with California law and regulations applicable to the placement, maintenance, and use of AEDs within California schools. Such administrative regulations may also allow for the use of portable AEDs by district personnel when participating in off-campus district-sponsored events.

The Board's authorization of the voluntary placement of AEDs at district sites does not create a guarantee or obligation that an AED will be used in the case of an emergency or that an employee or volunteer trained in the use of an AED will be available and willing to use the AED in an emergency situation. This authorization also does not create a guarantee that the AED will properly operate or that it will correct any particular health or medical condition.