

# School Nursing Practice in the Current Legal Environment

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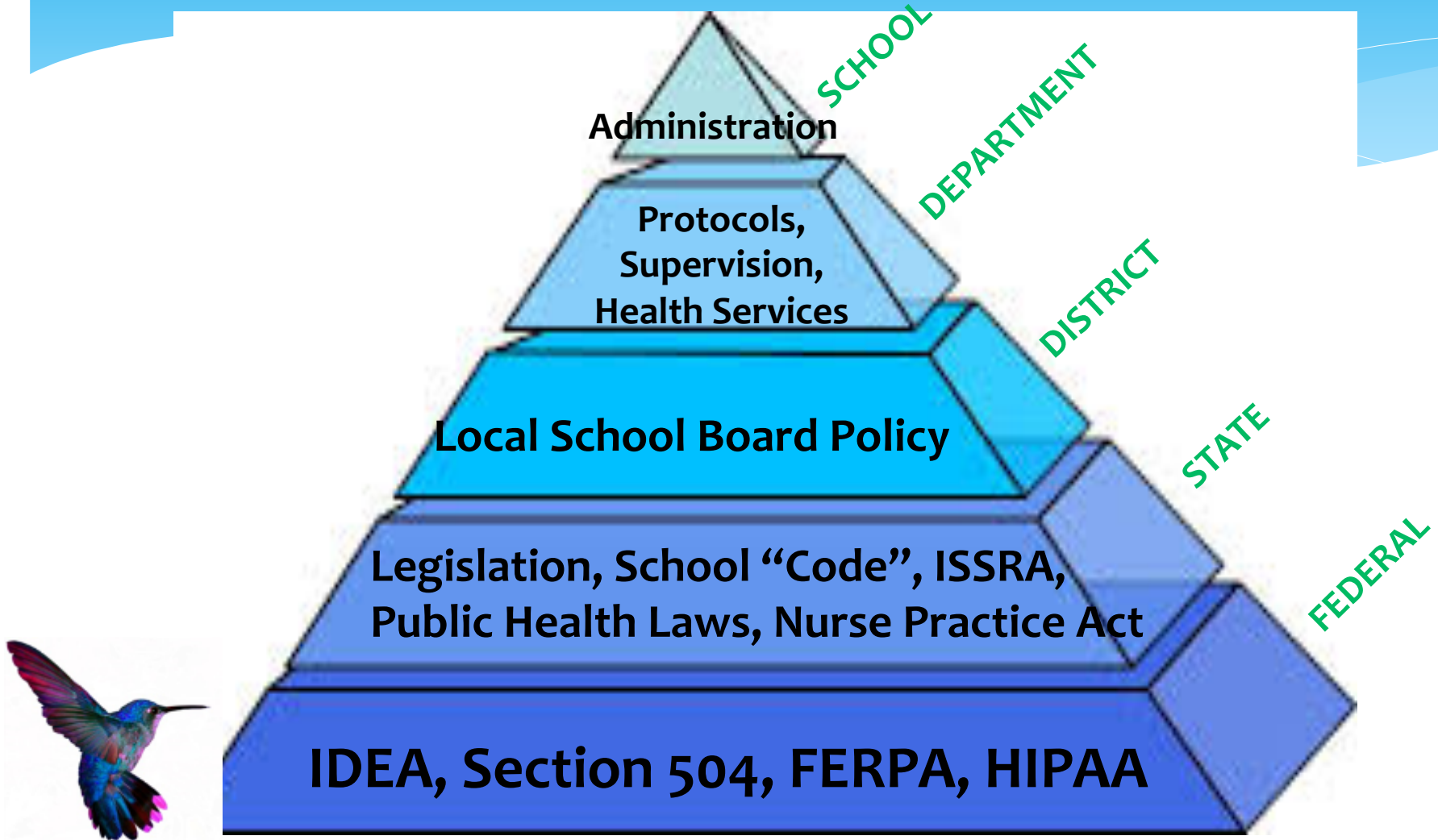
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- \* This presentation contains information on “current legal environment” insofar as it covers information on existing state and federal laws and state policies and practice. Any guidance on “best practice” is based on resources and is not intended to provide any legal advice.

# Hierarchy of Legal Environment



(Shannon & Gerdes, 2015)

# IDEA, Section 504

## IDEA (Individuals with Disabilities in Education Act)

Many rules related to rights of parents and students, timelines, appeals

Involvement of nurse:

- In the initial health evaluation and re-evaluations

- In the present level of functioning

- In the treatment plan

- In the educational plan

- In the transition plan (for ages 14 ½ and older)

- Who decides

Consider first evaluating and reporting on health strengths

Assess health impairments compared to adequate function

Section 504

Few specific rules compared to IDEA

Legal environment most directly related to opinions, findings, lawsuits

ISBE does not directly monitor nor enforce

# FERPA, HIPAA

## \* FERPA

- \* Exceptions for serious and imminent threats to health and safety
- \* Education agency holds the cards
- \* Written parental permission required for most release of information outside the school / education agency

## HIPAA

- \* Definition of HIPAA covered entity does not include schools
- \* Different rules related to release of information outside the covered entity

# ISSRA

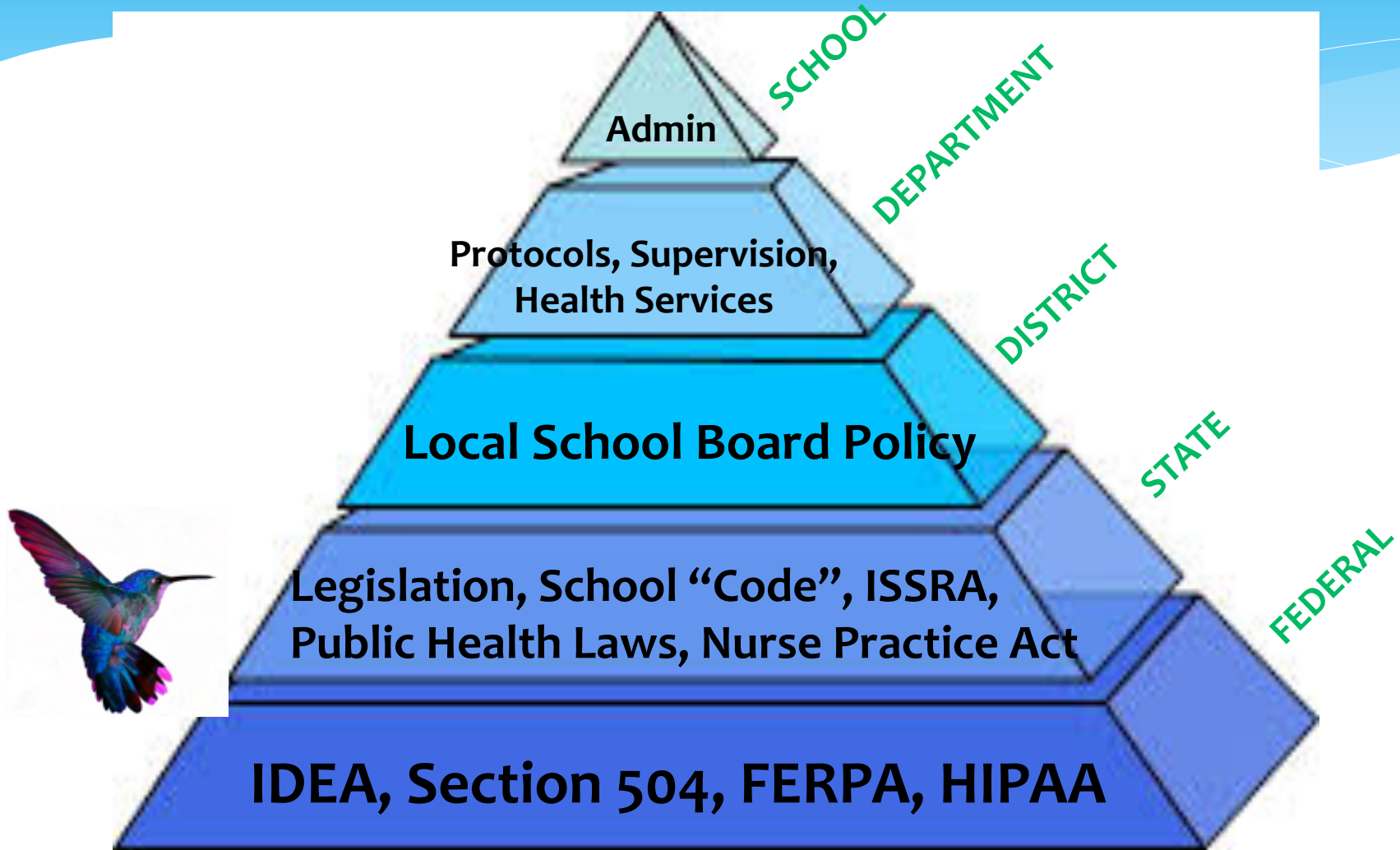
## Illinois School Students Records Act

- \* Student privacy, similar to FERPA
- \* School records
  - \* Permanent record –
    - \* What is required to contain, how long it is to be maintained
  - \* Temporary record –
    - \* What it is required to contain, how long it is to be maintained
- \* Memory aids – all those little pieces of paper, lists, notes
- \* Transfers –
  - \* What, when (within 14 days)
  - \* Transfer form (in-state)

# Monitoring Disease while Preserving FERPA and ISSRA

- \* Monitoring of ILI (Influenza-like Illness)
- \* Charts with initials should not be used outside of temporary school need
- \* No initials or other identification may be released outside of school
- \* Mandate to Report “Reportable Diseases”
- \* “Immediate” (i.e. “within three hours”) reports
- \* Within 24 hours reports
- \* Justifiable to release without parental permission
- \* Parental notice is recommended

# State



(Shannon & Gerdes, 2015)

# State Law

## ❖ ISSRA

- ❖ Maintenance – length, destruction
- ❖ Permanent, temporary, personal notes/logs/drafts

## \* **State Nurse Practice Act**

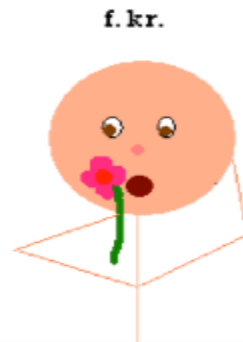
- \* Scope of practice: RN, LPN
- \* Delegation
- \* Differ from state to state

## \* **State Legislation**

- \* minor's rights to health care
- \* school attendance requirements
- \* medication laws (state policy, self-carry policies, emergency meds, diabetic care)

# Public Act 99.0249

- \* Also known as Senate Bill 4510
- \* Revised Child Health Examination Requirements on Religious Objections
- \* Form is required for religious objection requests received beginning October 16, 2015
- \* Form is also required with new physical exams
- \* Rules promulgated by IDPH



# Other recently enacted laws

- \* Implementation of vaccine against meningitis
- \* Teach students about dangers of powdered caffeine
- \* Establish concussion policy, protocols and procedures
- \* Require ISBE to develop state suicide prevention policy
- \* Require training for selected school staff on suicide and mental health
  - \* Resources at ISBE and elsewhere
  - \* IDPH Suicide Prevention Program
  - \* IL-AWARE program

# Health Education – include special education

- \* State laws require these selected topics:
  - \* Sexual assault awareness – age appropriate, developmentally appropriate, culturally appropriate
  - \* Daily physical education – student with adapted sports activity outside of school can petition for waiver from daily PE
  - \* Teen dating violence policy
  - \* Sex education: if taught, follow law on content
  - \* CPR: can waive participation in this class; consider cognition as well as physical skills

# Physical Fitness Assessment in Schools

- \* Current state law: all students in K - 12 public schools to be offered daily, high-quality physical education in order to promote academic achievement and realize the lifetime benefits of fitness
- \* Public Act 98-0859 requires fitness testing of students
- \* Indicators to be reported to ISBE on aerobic capacity (grades 4 - 12), body composition, muscular strength, endurance and flexibility and other data including demographic information (grade, gender)
- \* Development of protocols to protect students' confidentiality and individual identifiers
- \* Established Task Force; Report & Recommendations available at: <http://www.isbe.net/EPE/pdf/setfpe-report-040115.pdf>

# Epinephrine – P.A. 98-0795

- \* Guidance document available at <http://www.isbe.net/spec-ed/pdfs/guidance-15-02-self-admin-epi.pdf>
- \* Rule pending board approval August 19
- \* Authorizes *but does not require* undesignated epinephrine to be available in Illinois schools
- \* Allows administration of undesignated epinephrine to any person not previously known to have severe allergy and/or not previously given a prescription for epinephrine
- \* Requires a report to ISBE within three days of the administration of undesignated epinephrine to one not previously known or not with a previous medical order
- \* Required reporting form at <http://www.isbe.net/spec-ed/pdfs/34-20-undesignated-epinephrine-rptg.pdf>
- \* Summary of reports 2014-15 school year coming October

# Compassionate Use of Medical Cannabis Pilot Program Act

- \* Prohibited to possess cannabis
  - \* In a school bus
  - \* On the grounds of any preschool or primary or secondary school
  - \* In a private residence used at any time to provide licensed child care or other similar social service care on the premises
- Prohibited to use cannabis
  - \* in a school bus
  - \* on the grounds of any preschool or primary or secondary school
  - \* in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises;
  - \* in any public place.
- \* “user” may not be under age 18 except for seizures or epilepsy
- \* IDPH establishing rules

# Public Act 99-0443 “Ann Marie’s Law”

- \* Youth Suicide Awareness and Prevention
- \* ISBE:
  - \* Develop a model youth suicide awareness and prevention policy
  - \* Compile, develop and post guidelines, educational materials, and resources
  - \* Work group began meeting 10-20-15
- \* Local school boards:
  - \* Develop new or revise existing suicide awareness and prevention, inform staff and parents, and post on website

# Public Act 99-0480

## “An Act concerning health”

### “Lali’s Law”

- \* Among other changes in established law, provides for obtaining and using a supply of opioid antagonist (i.e., Narcan®) by school
- \* Requirements in the law related to schools mirror those of undesignated epinephrine
- \* “School nurse” or “trained personnel” authorized
- \* Training similar to undesignated epinephrine: annual, have CPR/AED, competency test, school maintains record
- \* Report required to ISBE within 3 days of use

# Comprehensive Sexual Health Education

- \* Public Act 98-0441, effective January 1, 2014, requires schools that teach sex education in any of grades 6 - 12 to include instruction in both abstinence and contraception, and to teach with materials that are evidence-based and medically accurate.
- \* CDC Award to ISBE to carry out exemplary sexual health education and improve policy and practice statewide.
- \* Contact Dr. Reginald Patterson, Ed.D, for more information and resources

# Nurse Practice Act

Scope of Practice: RN

Scope of Practice: LPN

Scope of Practice: CNA

Certified by IDPH to carry out some nursing tasks under supervision;  
tasks are limited to the so-called “21 Tasks of the CNA” including such personal care tasks as:

Obtain vital signs

Meal preparation

Meal set-up

Oral feeding

Oral care

Nail care

Basic hygiene

Bathing

Dressing

Toileting

Ambulation assistance

Catheter: changing of bags and charting amounts

Ostomy care: empty, clean, change appliance

Turn and position

Changing bed clothes

Charting requested information

Recreation activities

# Nurse Extenders

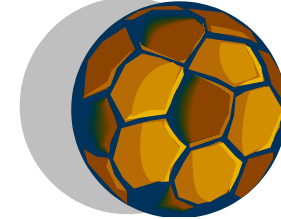


What constitutes a “nursing activity”  
vs a “nursing task”  
(Illinois Nurse Practice Act)

- \* The duty to provide registered professional nursing practices, as defined in Section 50-10 of the Nurse Practice Act, shall not be included among the functions assigned to any school district personnel not covered by the job description required for school nurses (ISBE 23 Illinois Administrative Code 1.760 Subtitle A Subchapter Section 1.760 **Standards for School Support Personnel Services**; Amended at 38 Ill. Reg. 6127, effective February 27, 2014)

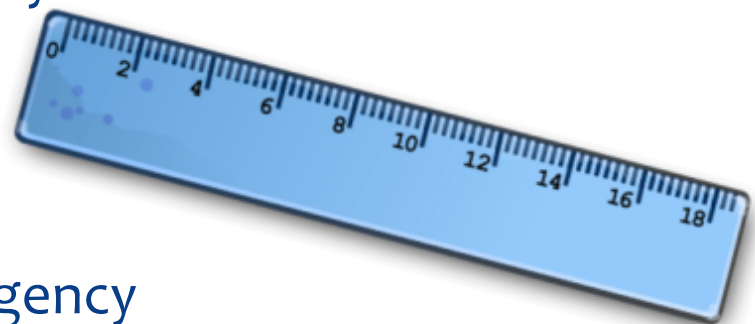
# Public Act 99-0245 (Senate Bill 7) Youth Sports Concussion Safety Act

- \* Schools establish a concussion oversight team and establish return-to-play [and practice] protocol
- \* Shall also establish return-to-learn protocol
- \* Applies to any public, charter or private school
- \* Defines interscholastic athletic activity
- \* Lists members of concussion oversight team.
- \* Explicit requirements on prevention and management of a concussion
- \* Effective “upon becoming law” – 8-3-15
- \* SB 219 passed by both houses on 10-20-15 delays implementation for one year, to 2016-17 school year
- \* Letter to schools prepared by Lurie Children’s Hospital and IHSA



# Public Health Rules, ISBE Rules

- \* Public Health Rules on Child Health Exams and Immunizations:
  - \* Medical Schedule
  - \* Medical Contraindications
  - \* Physician Statement of Immunity
- \* ISBE Rule:
  - \* Monitoring for compliance
  - \* Enforcement measures
  - \* Reporting to state education agency



# Home and Hospital Instruction

- \* Suggested medical certification form developed by ISBE
- \* Does not require a 504 plan
- \* Special Education credentials if IEP
- \* Q&A on ISBE website:  
[http://www.isbe.net/funding/pdf/home\\_hospital\\_qa.pdf](http://www.isbe.net/funding/pdf/home_hospital_qa.pdf)
- \* Form at [http://www.isbe.net/school\\_health.htm](http://www.isbe.net/school_health.htm)



# Immunization Data IWAS Reports 2015

- \* IWAS opened Oct. 16 and continues to accept data through Nov. 16
- \* Worksheet, instructions available at:
  - \* <http://www.isbe.net/research/htmls/immunization.htm?col5=open#CollapsiblePanel5>
- \* By December 1 of each year, schools must make publicly available the immunization data they are required to submit to the Illinois State Board of Education (P.A. 097-0910)
  - \* How are your schools making the data “publicly available”?
  - \* Compliance checks (ISBE audits, ROE audits)

# Health Evaluation for Special Education

- \* IDEA requirement to rule out medical issues (among others) for students determined to have learning disability
- \* Personnel qualified to perform Medical Review
- \* Components of Medical Review
- \* Not “just a health history”
- \* No other personnel qualified to perform

# Medical Review – Evaluation for Special Education

- \* 381 RNs have completed the course
  - \* 80 spring 2014
  - \* 71 summer 2014
  - \* 76 fall 2014
  - \* 74 winter 2015
  - \* 80 spring 2015
- \* 2 RNs have indicated completed test option
- \* Classes scheduled through Spring 2016
- \* Significance of July 1, 2016
- \* Components of medical review
  - \* Qualifications of persons to conduct medical review
  - \* Role of RN on IEP teams
  - \* Form on which to document designation for IEP for non-ISBE school nurses coming soon

# Performance Evaluation of Student Support Personnel

- \* School Code states that “to improve the educational services of the elementary and secondary public schools of Illinois” . . . “all certified school district employees be evaluated on a periodic basis”
- \* "teacher" means any and all school district employees regularly required to be certified under laws relating to the certification of teachers
- \* consideration of student growth is to be considered a significant factor in the rating of the teacher's performance
- \* Student Support Personnel (SSP) in non-teaching roles are not required to show student growth as part of their professional evaluation
- \* ISBE guidance related to professional evaluation of SSP is under development

# Recently Final Rules

- \* Final: Part 1, section 1.540, undesignated epinephrine
- \* Final: Part 1, section 1.660, employee tuberculosis screening
- \* Final: Part 25, educator licensure, removed 10-year limit on age of TAP, ACT, SAT
- \* <http://www.isbe.net/rules/default.htm>

# Pending Rules and Amendments

- \* Part 375, Student Records, public comment ended Oct. 19; board adoption pending; revises definition of health records
- \* Part 226, Special Education, adopted by board Oct. 21, JCAR review pending
  - \* Defined “qualified professionals”
  - \* Duties of paraprofessionals
  - \* Each program assistant/aide or aide, whether providing instructional or noninstructional services, as well as each nonemployee providing any service in the context of special education, shall function under the direct supervision of a professional staff member.
  - \* A) Nothing in this subsection (k) authorizes individual student aides or others who do not hold an appropriate professional license to perform any nursing activity, as nursing activity may be defined in the Nurse Practice Act [225 ILCS 65] and rules governing the Act (68 Ill. Adm. Code 1300), including any procedures and duties requiring a medical order (e.g., tube feedings, catheterizations, administration of medications, tracheal suctioning, tube insertions, blood draws, dressing changes).

# Rules Open for Public Comment

- \* Fitness testing: public comment due by Nov. 30
- \* Opioid rules: public comment due by Dec. 21
- \* <http://www.isbe.net/rules/default.htm>

# ISBE Rules Page

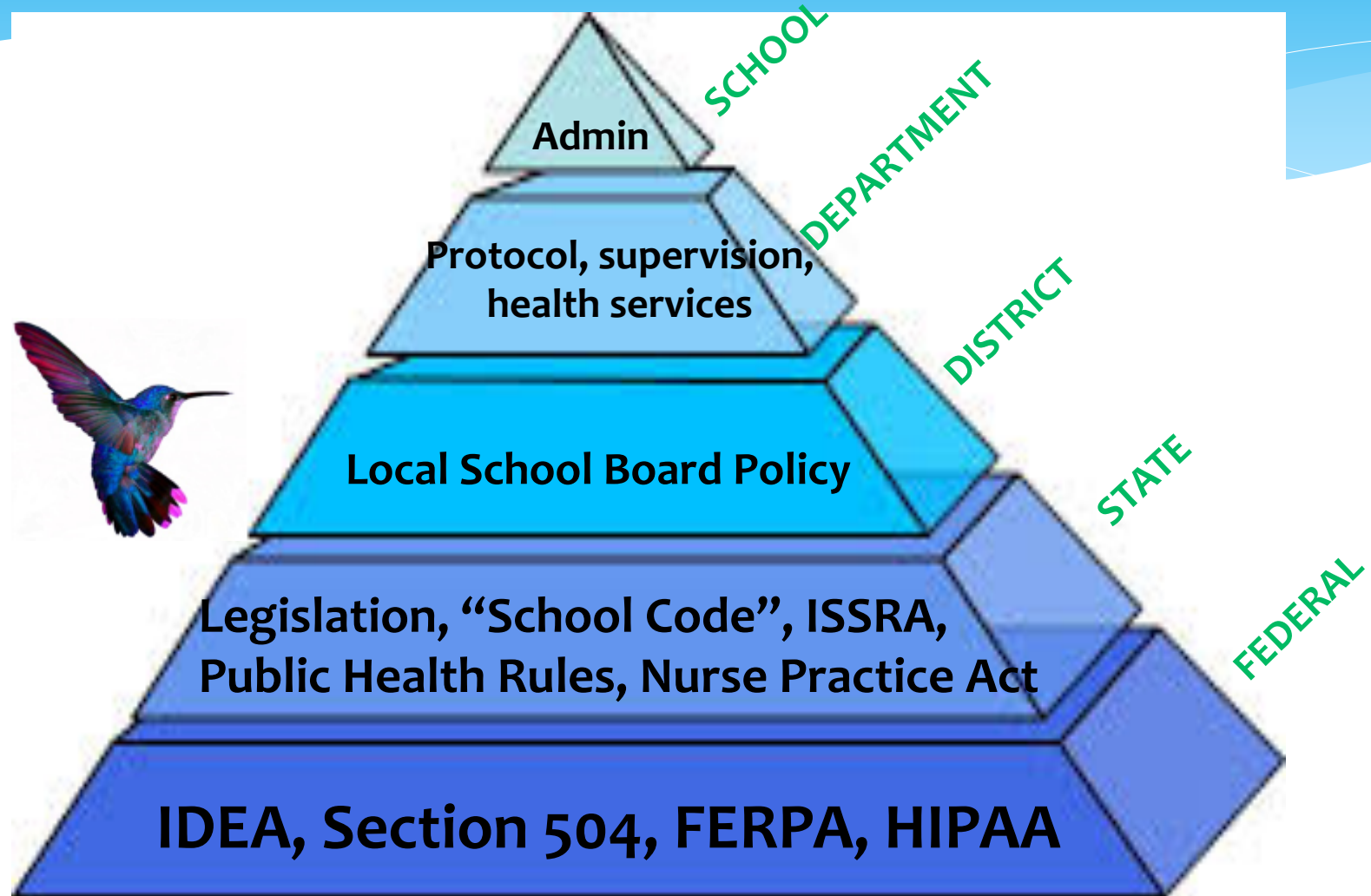
The screenshot shows the Illinois State Board of Education (ISBE) website. The header includes the ISBE logo, the name of the board, and its leadership: James T. Meeks, Chairman, and Tony Smith, Ph.D., State Superintendent of Education. There are social media links for Facebook and Twitter, and a navigation menu with items like 'ISBE Home', 'Site Map', 'Funding Opps', 'IWAS', 'ELIS', 'FRIS Inquiry', and 'Programs'.

The main content area is titled 'Rules' and contains a section for 'Proposed Rules and Amendments'. A paragraph explains that the following chart shows rules undergoing change. It provides instructions on how to review changes, submit public comment, and check the status of rules.

Title and Number of the Part	Status
<p>Proposed Amendments for Part 226 (Special Education)</p> <p><i>To review changes made in response to public comment and the rationale for those changes, click here. Please note that any changes subsequently made in response to the Joint Committee on Administrative Rules will not be included in that comment.</i></p> <p><a href="#">Summary of Action</a>    <a href="#">Text of Rulemaking</a></p>	Adopted by the Board October 21, 2015; JCAR review is pending.
<p>Proposed Amendments for Part 401 (Special Education Facilities under Section 14-7.02 of the School Code)</p> <p><i>The version of the amendments adopted by the Board is identical to the version that the Board initially reviewed in June 2015 and can be viewed here.</i></p> <p><a href="#">Summary of Action</a>    <a href="#">Text of Rulemaking</a></p>	JCAR review is complete; filing is imminent.
<p>Proposed Amendments for Part 1 (Public Schools Evaluation, Recognition and Supervision)</p> <p><a href="#">Summary of Action</a>    <a href="#">Text of Rulemaking</a></p>	The public comment period has ended; Board adoption pending.

The bottom of the screenshot shows the Windows taskbar with the Start button, several application icons, and the system tray displaying the time as 2:41 AM on 10/24/2015.

# Your District



(Shannon & Gerdes, 2015)

# Reimbursement for Nursing Services

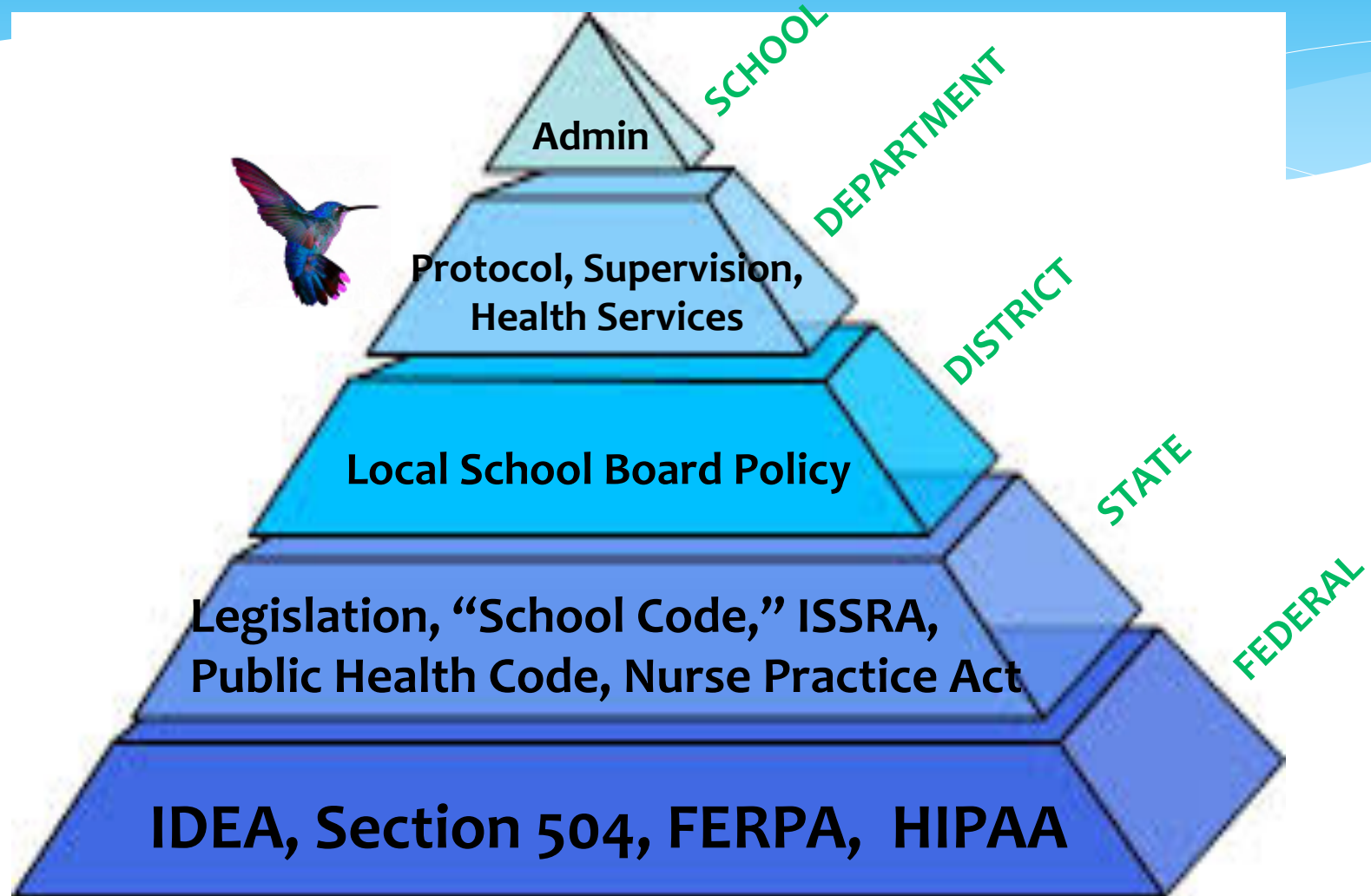
- \* Special education: guidance issued May 20, 2015
  - \* Fully licensed School Nurse
  - \* Noncertified Health Aide
  - \* Individual Student Aide
- \* Medicaid
  - \* “free care rule” letter and follow-up
  - \* HFS website: **Medicare/Medicaid Services**
  - \* The Centers for Medicare and Medicaid (CMS) recently released the ["Medicaid School Based Administrative Claiming Guide"](#) . The Guide offers instructions on submitting claims for school based administrative costs and implementing and managing administrative claiming programs in accordance with statutory and regulatory requirements.
  - \* The Illinois Department of Public Aid is currently reviewing the new Guide in the context of the approved Illinois program and will be notifying school districts of any changes in the program via the School Based Health Services website <http://www.sbhsillinois.com/>, provider notices and training opportunities.
  - \* Further information about the School-Based Health Services program is available by [E-mail](#) or by calling the SBHS office at 217-782-3953

# Reimbursement for School Nursing Services:

11.2 Really!

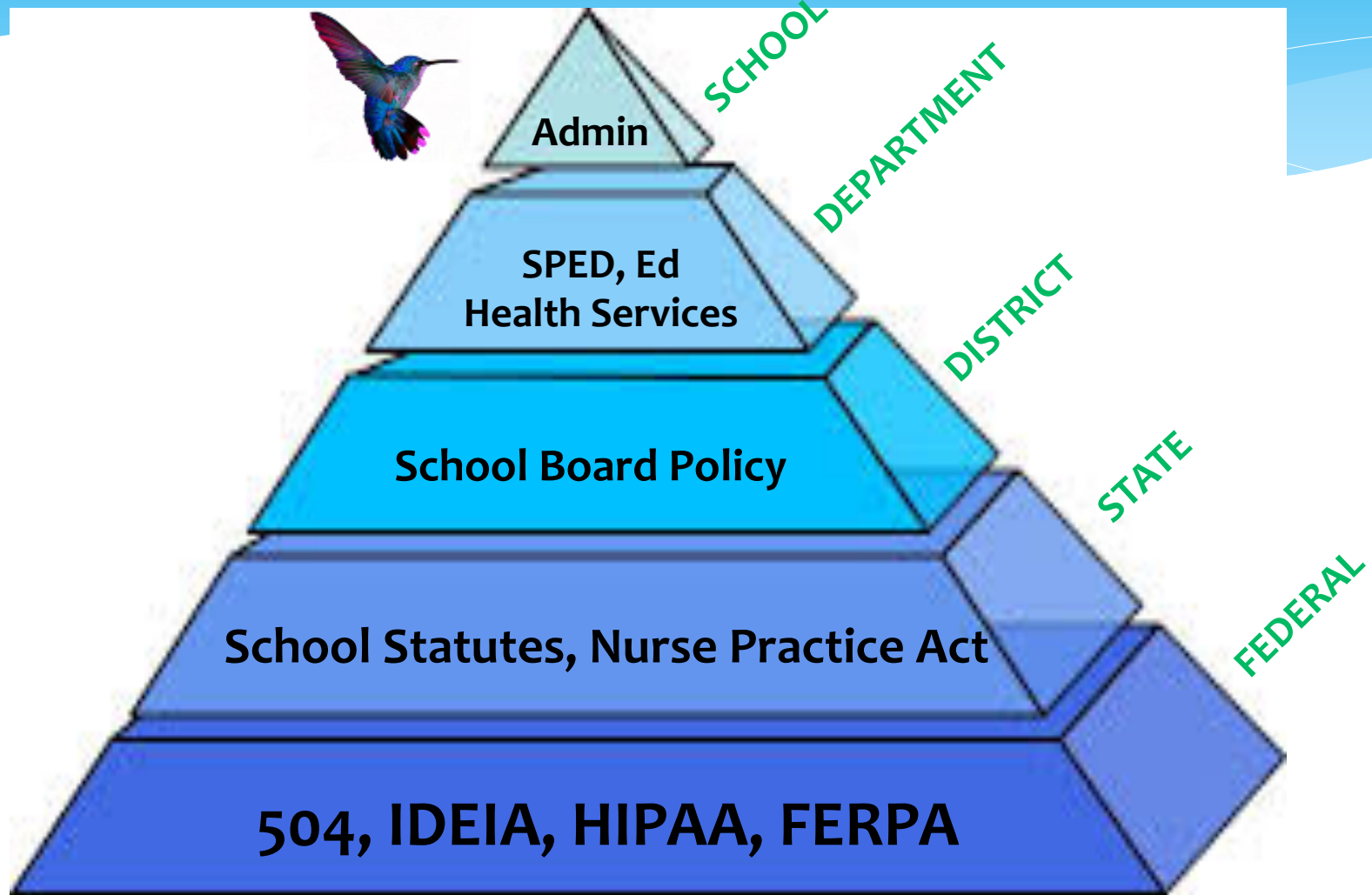


# Your Department



(Shannon & Gerdes, 2015)

# Your School



(Shannon & Gerdes, 2015)



# The “no nit” police



Illinois State  
Board of Education

# Head lice: Treatment, not Isolation



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**“Yes, I am the school nurse, but I can’t  
heal an ailing public education system.”**



**Illinois  
State Board  
of Education**

# Contact Information

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DIVISION OF SPECIAL EDUCATION SERVICES

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\* Also may contact school nurse consultant at Illinois Department of Public Health:  
Victoria Jackson, IDPH, [Victoria.Jackson@illinois.gov](mailto:Victoria.Jackson@illinois.gov)

Questions?

