

Legal Rights of Students with Diabetes

Prepared By

James A. Rapp

*Attorney, Hutmacher & Rapp, P.C.
Quincy, Illinois*

Shereen Arent

*Managing Director of Legal Advocacy
American Diabetes Association*

Brian L. Dimmick

*Associate Director and Staff Attorney, Legal Advocacy
American Diabetes Association*

Crystal Jackson

*Associate Director, Legal Advocacy
American Diabetes Association*

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About the Authors

James A. Rapp is one of the United States' foremost authors in the area of law and education. His works include a seven-volume treatise, *Education Law*, published by the Lexis/Nexis (Matthew Bender & Co.), as well as numerous publications on subjects ranging from school crime and violence, record sharing, victims' litigation, medical malpractice, and tax law. As the father of three daughters, Jim takes a personal interest in education. He is a strong advocate of safe schools, effective discipline, agency cooperation, the critical role of parents in their children's education, and the rights of students with disabilities. Bridging the chasm between scholarly theory and real-world application, he is an attorney with a private general practice in the Midwest town of Quincy, Illinois. Jim serves on the American Diabetes Association Legal Advocacy Subcommittee and Safe at School Task Force. He is a graduate of the University of Illinois and Washington University School of Law.

Shereen Arent is the Managing Director of Legal Advocacy at the American Diabetes Association. In this position, Shereen coordinates a nationwide campaign to eliminate discrimination against people with diabetes at the workplace, school, and throughout their lives through education to prevent discrimination, litigation, legislation, and regulatory reform. Prior to coming to the Association in 1999, Shereen established the first Equal Employment Opportunity office for the Architect of the Capitol, an agency of Congress, and was a partner at two public interest law firms, Youngdahl & Youngdahl in Little Rock, Arkansas and Newman & Newell in Washington, D.C. While in private practice, she focused on union-side labor law and employment discrimination litigation, often combining the two to represent unions as plaintiffs in employment discrimination class actions. Shereen also served as law clerk to Hon. Phyllis A. Kravitch, United States Court of Appeals for the Eleventh Circuit. She is a graduate of Stanford University and Harvard Law School.

Brian L. Dimmick is an Associate Director and Staff Attorney at the American Diabetes Association. In this position, he focuses on the Association's efforts to provide assistance to attorneys working to protect the rights of people with diabetes and to end discrimination in employment, education, correctional institutions and other areas. Prior to coming to ADA in 2004, he was a Skadden Fellow and attorney with Disability Rights Advocates, a non-profit law firm in Oakland, California dedicated to protecting and advancing the rights of people with disabilities. He is a graduate of Wake Forest University and Stanford Law School.

Crystal Jackson is Associate Director of Legal Advocacy at the American Diabetes Association, where her primary responsibility is managing the Association's Safe at School Campaign. Crystal, a former litigation paralegal, is a parent of a child with diabetes and a long-time ADA volunteer who joined the legal advocacy staff in 1999 after she successfully lobbied the Virginia General Assembly for passage of school diabetes care legislation that has resulted in improved standards of care for students with diabetes. Advocating on behalf of her daughter, Crystal achieved a model OCR resolution agreement for the care of student's with diabetes in the Loudon County (VA) School District. Crystal has contributed to many diabetes publications including the National Diabetes Education Program's *Helping the Student with Diabetes Succeed: A Guide for School Personnel* and is a frequent guest speaker at diabetes conferences and camps. Crystal is a member of the Virginia Diabetes Council, the U.S. DAWN Youth Advisory Board, and serves on a number of diabetes and youth panels.

List of Abbreviations

ADA	Americans with Disabilities Act
ADCP	Authorized Diabetes Care Provider
Association	American Diabetes Association
CFR	Code of Federal Regulations
DKA	Diabetic ketoacidosis
DMMP	Diabetes Medical Management Plan
DOJ	U.S. Department of Justice
IDDM	Insulin-dependent diabetes mellitus
IDEA	Individuals with Disabilities Education Act
IDELR	Individuals with Disabilities Education Law Reporter
IEP	Individualized Education Program
NDEP	National Diabetes Education Program
NIDDM	Non-insulin-dependent diabetes mellitus
OCR	U.S. Department of Education Office for Civil Rights
SEA	State Educational Agency
Section 504	Section 504 of the Rehabilitation Act

Introduction

The American Diabetes Association considers the protection of the rights of students with diabetes a vital part of its mission. This publication continues the effort of the Association to assist advocates who work to ensure that children with diabetes are educated in a medically safe environment and are provided with equal access to all school-related opportunities. Advocates are truly heroes. No work is more important than to ensure that those who are vulnerable receive equal educational opportunity in America's schools. We hope that *Legal Rights of Students with Diabetes* assists you in this important work.

Helping protect the rights of children can be a truly rewarding experience. Approximately one out of every 400 to 500 school children in the United States has type 1 diabetes and, although the exact number of children with type 2 diabetes is unclear, the numbers are increasing. Each of these children faces daily the challenge of managing and overcoming a chronic disease that impacts many aspects of their lives. Many of these children are treated with the dignity and accommodations they deserve. However, other children experience discrimination at school because of their diabetes; their rights are ignored and their health and safety are compromised.

Advocates have a valuable and necessary role to play in ensuring that these acts of discrimination are confronted and corrected. The Association is committed to helping advocates fulfill this role by providing information and resources needed to advocate effectively. This publication has been designed to give advocates information drawn from a variety of sources that will be helpful in advocating for children with diabetes.

1. What is this Notebook and How Should it Be Used?

This notebook is a tool designed to provide advocates with information and resources that will be helpful in working for the rights of students with diabetes. It contains sections discussing the legal rights of these students, strategies for securing these rights, and procedures to be followed when disputes cannot be resolved informally. The notebook also contains useful forms and a list of resources that can be consulted for further information. This notebook is only one component of the extensive assistance that the American Diabetes Association provides to support advocates for those with diabetes.

1.1 What is this notebook?

Legal Rights of Students with Diabetes is an authoritative and comprehensive notebook designed to assist advocates throughout the process of working with schools to secure appropriate care for students with diabetes. More detailed information about the topics covered and the organization of this notebook can be found in Question 1.4. Although the purpose of the notebook is not to steer advocates immediately toward litigation as a means of resolving disputes, it does provide the information lawyers need should legal action become necessary. Finally, the notebook provides extensive resources that advocates can use during the process of working with school personnel, including forms, web sites, and information about state laws.

1.2 Who should use this notebook?

This notebook is designed to assist advocates who need detailed information on the legal rights of students with diabetes and on how those rights can be enforced. It will be most useful to attorneys who are representing or assisting parents or guardians, since it contains many references to statutes, court opinions and administrative agency letters of finding. However, this notebook can still be useful to advocates without legal training, including parents or guardians, so long as they understand that this notebook is not legal advice and cannot substitute for the advice of a licensed attorney in situations where legal advice is needed. Advocates who are not attorneys may want to become familiar with some of the types of legal documents referenced in this notebook, which are discussed in the next question. The information in this notebook is quite detailed; advocates who need more general information about diabetes or about the legal rights of students with diabetes are encouraged to consult some of the other resources available from the Association (see Question 1.5). Schools, as well as their health care providers and attorneys, may also find this notebook useful to better understand the responsibilities they have to students with diabetes.

1.3 How should this notebook be used?

The notebook is meant to be a resource for answering specific questions during the process of advocating for the rights of a student with diabetes. Therefore, while this notebook can be read as a “textbook”, from cover to cover, individual parts can also be consulted as the need arises. The text is organized in a question and answer format; by consulting the detailed table of contents, advocates can quickly and easily find the topic they are seeking and turn directly to that part or question. For a more detailed description of the notebook’s organization, see the next question.

Many of the answers to the questions in the text are followed by a section of “Notes” which provides more detailed information on the topic. Many of these Notes contain references to statutes, regulations, court cases, or administrative decisions. While the notebook can be successfully used without consulting these references, some understanding of the differences between these sources is helpful. While the sources referenced (statutes, regulations, agency decisions, and cases) all are important parts of the legal framework governing the responsibilities of schools to students with diabetes, some types of legal sources are more persuasive and more binding on school districts than others. Recognizing the differences between these sources can be important:

- Statutes (or laws) are passed by federal and state governments and are binding on the schools, districts, or individuals they cover. The major federal laws relevant to students with diabetes are discussed in Question 4.1. Some relevant state statutes are listed in the Supplemental Information section. Federal statutes are cited by the chapter and section in the U. S. Code (U.S.C.); for example, 42 U.S.C. § 12133.
- Regulations are developed by government agencies to clarify the law and give more detail about what it means. Most of the regulations discussed in this notebook are issued by the U. S. Department of Education to implement the federal civil rights laws that give rights to students with diabetes (discussed in Question 4.1), although many states also have regulations that may need to be considered. Regulations are also binding on those to whom they apply, unless they are clearly in conflict with the laws they were issued to implement (which happens infrequently). Federal regulations are cited by the chapter and section in the Code of Federal Regulations (C.F.R.); for example, 34 C.F.R. § 104.7(a).
- Court cases can affect the rights of students with diabetes if they result in published opinions. Courts are organized hierarchically, and decisions from higher courts are more likely to be persuasive than decisions from lower courts. For example, the federal court system has three levels: the U. S. Supreme Court, circuit courts of appeal (which are generally numbered and each of which covers a different geographic region of the country), and district courts (trial courts) in each state. Court opinions are legally binding on courts which are lower in the hierarchy than the deciding court. For example, a decision by the federal 9th Circuit Court of Appeals would be binding on federal district courts in the region covered by the 9th Circuit (much of the western U.S.) but not on district courts in other regions. Even when not binding, however, often a court’s interpretation of the law will be

persuasive to another court. The way court cases are cited differs depending on which court the opinion is from, but all case citations in this notebook include the abbreviated name of the court and the year of the decision in parentheses.

- Administrative decisions are issued by government agencies which have responsibility for investigating individual cases of discrimination. These decisions are only legally binding on the parties involved in the case, and the same agency investigating similar facts in a different case may come to a different conclusion. Administrative decisions may be persuasive to a court, but generally hold less weight than the other types of legal documents discussed in this question. Most of the administrative decisions cited in this notebook are issued by the U. S. Department of Education's Office for Civil Rights, but some are issued by state agencies hearing appeals from due process hearings. (For more information on OCR procedures as well as due process hearings, see Part 14). OCR agreements are only binding upon the subject school district. However, they might be used as a negotiation tool by the diabetes advocate. Many administrative decisions cited in this notebook are published in the *Individuals with Disabilities Education Law Reporter*[®] (IDELR), published by LRP Publications, and are cited by the volume and section number from that publication; for example 34 IDELR 102. These citations also include, in parentheses, the agency that issued the decision (typically OCR) and the year the decision was issued.

Although it is not necessary to read these documents in order to effectively use this notebook, the text of the statutes and regulations cited is generally available on the Internet. A helpful link to statutes and regulations is provided through Cornell University Law School's Legal Information Institute at: <http://www.law.cornell.edu>. Although some are available on the Internet or through the American Diabetes Association's web site, the usual source for copies of cases and administrative decisions is a local law library.

1.4 How is this notebook organized?

The notebook is divided into sections, each of which focuses on a particular topic of concern and contains specific questions and answers related to that topic. The notebook begins with general information on the medical aspects of diabetes, on the legal obligations of schools, and on the process by which needed services and accommodations are determined and documented. The middle sections address what schools are required to do in specific settings, including diabetes care at school, academics, extracurricular activities, and discipline. The final sections address the process for resolving disputes and briefly discuss several alternative legal theories that may be available.

More specifically, the parts of this notebook are as follows:

- Part 1 (this section) describes the notebook and its organization, as well as the other services the American Diabetes Association provides to advocates.
- Part 2 provides background information on diabetes, including information about the symptoms and treatment of the condition and how it can affect students in

school. This information can be useful as background for advocates or for educating school officials.

- Part 3 contains definitions of a number of terms which are important to an understanding of diabetes care or of the legal rights of students with diabetes.
- Part 4 introduces the three main federal laws that protect students with diabetes: the Rehabilitation Act, the Americans with Disabilities Act, and the Individuals with Disabilities Education Act. The section discusses which individuals and which schools are covered by each law, and also briefly discusses state antidiscrimination laws.
- Part 5 addresses how the process for requesting accommodations and services should be initiated, including how requests should be made, what they should contain, and a school district's duty to evaluate students who may need services.
- Part 6 discusses the process by which the school district develops plans to accommodate the health and educational needs of students with diabetes. This section explains how parents or guardians participate in this process and issues surrounding the release of medical information.
- Part 7 addresses how accommodations and services should be documented, including what should be included in a written plan and when and how these plans should be revised.
- Part 8 discusses specific services and accommodations that may be needed to ensure that students get appropriate diabetes care. This section covers medication administration, emergency situations, and food in the school setting.
- Part 9 addresses the key question of who should provide diabetes care services to students. It discusses both permitting self-care and the need for trained personnel to provide care when needed.
- Part 10 addresses whether non-health care professionals can and should be trained to provide diabetes care, and emphasizes the Association's position that such personnel are a crucial part of effective diabetes care in schools.
- Part 11 discusses academic modifications that may be required for students because of their diabetes, including issues that arise on standardized and classroom tests and absences related to diabetes care.
- Part 12 discusses a school's obligation to provide services to students outside of the classroom, including coverage for field trips, extracurricular activities, athletic events and school bus rides.
- Part 13 addresses disciplinary issues that can arise when a student's conduct may be related to diabetes.
- Part 14 outlines the procedures to be followed when disputes cannot be resolved informally. The section covers procedures under the three federal laws that protect students with diabetes, including complaint procedures, deadlines, and prerequisites to litigation.
- Part 15 discusses state tort law remedies that may be available to students with diabetes for injuries suffered in the school setting.

- The Supplemental Information found at the end of this notebook includes brief descriptions of state statutes, court cases and administrative decisions, as well as forms that may be useful to advocates and a list of general and state-specific resources.

1.5 How does the American Diabetes Association assist advocates?

Founded in 1940, the American Diabetes Association is the nation's premier nonprofit voluntary health organization. The Association's mission is to prevent and cure diabetes and to improve the lives of all people affected by diabetes through diabetes research, information, education, and advocacy. While maintaining its leadership in research and education, in recent years it has also become active in eliminating discrimination against people with diabetes through the use of education and negotiation, federal and state litigation, legislation and regulatory reform.

Protecting the rights of school children with diabetes is an area of special interest to the American Diabetes Association. As a result, the Association provides considerable assistance to advocates representing the interests of children, including:

- The Association maintains a website providing advocacy and legal resources. The site is at: <http://www.diabetes.org/advocacy-and-legalresources/discrimination/school.jsp>, and can also be accessed by going to the Association's home page at <http://www.diabetes.org/> and clicking on "Advocacy and Legal Resources" and then "Discrimination". The website also contains extensive information about diabetes and diabetes care that can be useful to advocates and others who need to educate school personnel about diabetes. Go to the home page and click on the "All About Diabetes" link. A school discrimination packet is also available by calling 1-800-DIABETES.
- The Association provides publications and written materials to assist advocates. Key materials in the area of diabetes care at school include:

A library of research materials for attorneys), including cases, court briefs, and administrative documents (available at <http://www.diabetes.org/advocacy-and-legalresources/attorneymaterials.jsp>.

Becoming a Diabetes Advocate in the Schools (April 2004), available at http://www.diabetes.org/Advocacy/school_brochur.pdf, a brochure that provides an outline of the Association's advocacy strategies for addressing the issue of diabetes care for children in school using the Association's four-step approach of educate, negotiate, litigate, and legislate.

Helping the Student with Diabetes Succeed: A Guide for School Personnel (June 2003), available at http://www.ndep.nih.gov/diabetes/pubs/Youth_SchoolGuide.pdf, a guide by the National Diabetes Education Program (NDEP), a federally sponsored partnership of the National Institutes of Health, the Centers for Disease Control and Prevention, and more than 200 partner organizations, including the American Diabetes Association. The purpose of the guide is to educate and inform school personnel about how diabetes is managed and

how each member of the school staff can help meet the needs of students with diabetes. It is highly recommended that all diabetes school advocates obtain a copy of this guide.

Diabetes Care Tasks at School: What Key Personnel Need to Know, available at <http://www.diabetes.org/advocacy-and-legalresources/discrimination/school/schooltraining.jsp>, a series of downloadable PowerPoint training modules developed by the Association that can be used by a school nurse or other health care professionals to train school staff members on performing diabetes care tasks.

For the latest resources available from the American Diabetes Association, advocates should check the Association's web site.

- The Association's legal advocacy staff includes attorneys and other legal professionals who are available to discuss issues important to protecting the rights of school children. Association staff regularly work with attorneys to help formulate strategy, review legal pleadings, and locate expert medical consultants.
- The Association participates in important litigation having a broad impact on the lives of people with diabetes. This participation often takes the form of submitting amicus (friend of the court) briefs. The Association's Legal Advocacy Subcommittee, whose membership includes attorneys and health care professionals, supervises these efforts.
- The Association maintains a network of attorneys interested in protecting the rights of people with diabetes. These attorneys are often willing to serve as advocates for students or assist parents in advocating for their children.

The Association has many resources available to help advocates succeed, and encourages advocates to take advantage of these resources by contacting the Association or consulting its web site.

2. What Should Advocates Know About Diabetes?

Often a school district's failure to properly address the needs of a student with diabetes is due not to bad faith, but to ignorance or a lack of accurate information about diabetes. Advocates therefore may need to educate district personnel about the disease and its treatment. This section can serve as a starting point for educating advocates or school personnel. It provides only basic information about diabetes; advocates who need more detailed information should consult the Association's web site or the materials referenced in the Supplemental Information section.

2.1 What is diabetes?

Diabetes is a serious chronic disease that impairs the body's ability to use food for energy and results in high levels of glucose (or sugar) in the blood. Diabetes can lead to both short-term and long-term complications. Short-term problems can include high (hyperglycemia) or low (hypoglycemia) blood glucose levels that significantly affect the student's ability to concentrate and learn, and can cause serious immediate consequences such as brain damage or death if not treated. In addition, diabetes can cause serious complications that develop over time (such as vision problems and kidney disease), but people with diabetes can take steps to control the disease and lower the risk of complications.

More information about diabetes can be found on page 6 of *Helping the Student with Diabetes Succeed: A Guide for School Personnel*, published by the National Diabetes Education Program NDEP) (see Question 1.5). Advocates can also consult the Association's web site or call 1-800-DIABETES for more information. However, it is very important for an advocate to be familiar with the child's own diabetes and treatment regimen. This information is best obtained from the child, the child's parents or guardians, and the child's health care provider. Because many aspects of advocacy require an individualized evaluation of the child and circumstances, a thorough familiarity with the child's specific situation is essential.

2.2 What are the types of diabetes?

There are two main types of diabetes that can affect children. Type 1 diabetes was previously called insulin-dependent diabetes mellitus (IDDM) or juvenile-onset diabetes. Type 1 develops when the body's immune system destroys pancreatic beta cells, the only cells in the body that make insulin. Insulin is the hormone that allows glucose in the bloodstream to enter the cells of the body, where it can be converted into energy. This form of diabetes usually strikes children and young adults, although the disease can develop at any age. In order to survive, people with type 1 diabetes must have insulin delivered by injections or a pump and this insulin must be carefully balanced with food intake and physical activity.

Type 2 diabetes was previously called non-insulin-dependent diabetes mellitus (NIDDM) or adult-onset diabetes. It usually begins as insulin resistance, a disorder in which the cells

do not use insulin properly. Type 2 diabetes is increasingly being diagnosed in children and adolescents. Some people with type 2 diabetes may control their blood glucose levels through diet and exercise. Others are required to take oral medications, insulin, or both.

Gestational diabetes is a form of glucose intolerance that is diagnosed in some women during pregnancy. During pregnancy, gestational diabetes requires treatment to normalize maternal blood glucose levels to avoid complications in the infant. After pregnancy, gestational diabetes generally disappears, although women who have had it are more likely to develop type 2 diabetes later in life.

The term “brittle” diabetes is sometimes used, although its use is no longer preferred. “Brittle” diabetes refers to unpredictable highs and lows, often within very short periods of time, as a result of even small changes in activity, nutrition, or insulin usage.

More information on the types of diabetes can be found on pages 7-8 of *Helping the Student with Diabetes Succeed* (see Question 2.1).

2.3 How does diabetes affect a student?

It is important to understand the effect diabetes has on a particular student and how that student’s diabetes is treated. Diabetes can be a disability and can have substantial impacts on a student’s academic performance and safety at school, but it does not affect all students in the same ways. Diabetes can affect students in several ways:

First, diabetes must be managed 24 hours a day, 7 days a week. Diabetes care requires an ongoing treatment regimen, as discussed in the next two questions. The treatment regimen affects the child’s daily schedule and, if appropriate provisions are not made, may impact the ability of the child to have equal access to all school-related activities.

Second, blood glucose levels that are not kept in target range may result in hypoglycemia (see Question 2.7) or hyperglycemia (see Question 2.8). Hypoglycemia is the most common and immediate concern for school-aged children. Severe hypoglycemia can result in loss of consciousness and is life-threatening. Both hyperglycemia and hypoglycemia can affect a student’s cognitive functioning and, thus, school performance.

Finally, even where blood glucose levels are maintained within reasonably acceptable ranges fluctuations can affect a student’s ability to concentrate and learn. In addition, diabetes may have an adverse impact upon the ability of a student to provide self-care or to engage in daily living tasks such as eating, communicating, or even walking. Effective diabetes care is essential for a student’s immediate safety and ensures a student will be able to participate in all school activities.

2.4 What are the typical regimens for treating type 1 diabetes?

Type 1 diabetes requires the daily balancing of insulin, nutrition, and physical activity. Each impacts a child’s blood glucose levels.

Insulin comes in several types and can be administered in different ways (see Question 2.6). Some children take predetermined doses of insulin at specific times; these children often must maintain rather strict eating schedules and amounts, regularly eat snacks, monitor activities, and make adjustments when any of these change to avoid hyperglycemia or hypoglycemia. Other children are now treated with an insulin regimen, which attempts to

maintain a steady level of insulin throughout the day through a continuous delivery of basal insulin. These regimens may reduce the need for snacks and provide greater flexibility as to when meals must be consumed.

Where a student's diabetes is treated with insulin, it is extremely important to check blood glucose levels at set times and whenever hypoglycemia or hyperglycemia are suspected, and to respond to levels that are too high or too low as quickly as possible. More frequent checking of blood glucose levels may be needed for students using an insulin pump.

More information on diabetes treatment and management (type 1 and type 2) can be found on pages 15-24 of *Helping the Student with Diabetes Succeed* (see Question 1.5).

2.5 Does the treatment for type 2 diabetes differ from type 1 diabetes?

Type 2 diabetes can have a wide variety of effects on different individuals, depending on the severity of insulin resistance and the length of time the person has had diabetes. Sometimes it can be treated with proper diet and exercise, without the need for medications. Other students may need to take oral medications to control their diabetes, and some require insulin injections. Children with type 2 diabetes, particularly those using insulin, need to closely monitor blood glucose levels and treat symptoms of high or low blood glucose, just as students with type 1 diabetes do. Some types of oral medications other than insulin used to treat type 2 diabetes (called insulin secretagogues) may cause hypoglycemia, while other oral medications generally do not. Knowing a type 2 child's medication regimen is important to understanding the impact of his or her diabetes.

More information on diabetes treatment and management (type 1 and type 2) can be found on pages 15-24 of *Helping the Student with Diabetes Succeed* (see Question 1.5).

2.6 How is insulin administered?

Insulin must be injected into the body so that it reaches the bloodstream; it currently cannot be ingested or taken in pill form. There are different types of insulin, which vary in the speed with which they begin to lower blood glucose and the length of time they are effective. Individuals may take only one type of insulin, or a combination of several types, based on a doctor's instructions.

There are a number of ways that insulin can be administered, including injections with a lancet, insulin pens, and insulin pumps. The administration method used by a child may depend on that child's age, health needs, and preferences.

More information on insulin can be found on pages 21-22 of *Helping the Student with Diabetes Succeed* (see Question 1.5).

2.7 What is hypoglycemia and how is it treated?

Hypoglycemia, also called "low blood glucose" or "low blood sugar," occurs when a student's blood glucose level falls too low. Hypoglycemia is typically caused by administering too much insulin, skipping or delaying meals or snacks, eating too little food, exercising too long or too intensely. Hypoglycemia is the most common and immediate concern for school-aged children.

Hypoglycemia usually can be treated easily and effectively. If it is not treated promptly, however, hypoglycemia can lead to unconsciousness and convulsions and can be life threatening. Symptoms of mild to moderate hypoglycemia include tremors, sweating, lightheadedness, irritability, confusion, and drowsiness. If not treated, moderate hypoglycemia can become severe and potentially life-threatening. Symptoms of severe hypoglycemia include inability to swallow, convulsions or unconsciousness.

Mild to moderate hypoglycemia can be treated by promptly ingesting a quick-acting source of carbohydrates (such as hard candy, juice, or glucose tablets). After treatment, blood glucose levels should be rechecked in 10-15 minutes, and more carbohydrates administered until the student's blood glucose levels return to target levels.

When severe hypoglycemia occurs, the person cannot ingest or swallow anything and should never be given food or drink. Instead, glucagon should be administered and emergency personnel contacted. Glucagon is a hormone that raises blood glucose levels by causing the release of glycogen (a form of stored carbohydrate) from the liver. Although it may cause nausea and vomiting when the student regains consciousness, glucagon can be a lifesaving treatment that cannot harm a student.

More information on hypoglycemia and its treatment can be found on pages 17-19 of *Helping the Student with Diabetes Succeed* (see Question 1.5).

2.8 What is hyperglycemia and how is it treated?

Hyperglycemia, also called “high blood glucose” or “high blood sugar,” occurs when the body gets too little insulin, food is not covered by insulin, or too little exercise; it may also be caused by stress, menses, injury or an illness such as a cold. The most common symptoms of hyperglycemia are thirst, frequent urination, fatigue, and blurry vision. If left untreated, hyperglycemia can lead to a serious condition called diabetic ketoacidosis (DKA); characterized by nausea, vomiting, and a high level of ketones in the urine. DKA can be life-threatening and, thus, requires immediate medical attention.

Treatment of hyperglycemia may involve drinking extra water or diet drinks or administering supplemental insulin. The student's blood glucose level should be monitored closely until it returns to the target range.

More information on diabetes treatment and management (type 1 and type 2) can be found on pages 19-20 of *Helping the Student with Diabetes Succeed* (see Question 1.5).

2.9 What are the dietary needs of children with diabetes?

The nutritional needs of a student with diabetes do not differ from the needs of a student without diabetes. Both should eat a variety of foods to maintain normal growth and development. The major difference for children who use insulin is that the timing, amount, and content of the food that the student with diabetes eats are carefully matched to the dosage and peak action of the insulin. The student's meal plan is designed to balance nutritional needs with the insulin regimen and physical activity level. There are usually no forbidden foods for people with diabetes.

More information on nutrition and diet can be found on pages 23-24 of *Helping the Student with Diabetes Succeed* (see Question 1.5).

3. What Are Key Terms and Concepts for Diabetes Advocates?

This section lists a number of terms used in connection with diabetes care and the legal rights of students with diabetes with which advocates will want to be familiar.

3.1 What are some common terms related to diabetes care?

Blood glucose level: The amount of glucose in the blood. The recommended blood glucose levels for most people with diabetes are from about 80 to 120 before a meal, 180 or less after a meal, and between 100 and 140 at bedtime.

Blood glucose meter: A device that measures how much glucose is in the blood. A specially coated test strip containing a fresh sample of blood (obtained by pricking the skin, usually the finger, with a lancet) is inserted in the meter, which then measures the amount of glucose in the blood.

Blood glucose monitoring: The act of checking the amount of glucose in the blood. When done by the individual with diabetes, it is also called self-monitoring of blood glucose. For more information on the importance of blood glucose monitoring, see Question 2.3.

Carbohydrates: One of the three main classes of foods and a source of energy for the body. Carbohydrates are mainly sugars and starches that the body breaks down into glucose.

Glucagon: A hormone that raises blood glucose. Glucagon, given by injection, is used to treat severe hypoglycemia. For more information on glucagon and its use, see Question 2.7.

Glucose: A simple sugar found in the blood. It is the body's main source of energy.

Hyperglycemia: A high level of glucose in the blood. High blood glucose can be due to a too little insulin, food is not covered by insulin, or too little exercise. Symptoms include thirst, frequent urination, blurred vision, and fatigue. For more information on hyperglycemia, see Question 2.8.

Hypoglycemia: A low level of glucose in the blood. Low blood glucose is most likely to occur during or after exercise, if too much insulin is present, or not enough food is consumed. Symptoms include feeling shaky, having a headache, or being sweaty, pale, hungry, or tired. If not treated with a source of sugar, hypoglycemia can lead to a loss of consciousness, which can be life threatening. For more information on hypoglycemia, see Question 2.7.

Insulin: A hormone produced by the pancreas that helps the body use glucose for growth and energy. When the body cannot make enough insulin, it is taken by injection using a syringe or pen, or through use of an insulin pump, and there are several different types of man-made insulin that can be injected. These types differ in how long they take to begin working and how long their effects last, and are used separately or in combination to treat people with diabetes. For more information on insulin administration, see Question 2.6.

Insulin injections: The process of administering insulin into the body with a syringe or pen.

Insulin pen: A pen-like device used to administer insulin into the body.

Insulin pump: A device that delivers a continuous supply of insulin. The pump is often programmed to deliver small, steady doses of insulin throughout the day. This steady dosage is known as the basal rate. Additional doses, called boluses, are given to cover food or high blood glucose levels. The pump holds a reservoir of insulin which is delivered through a system of plastic tubing (infusion set). Most infusion sets are started with a guide needle, then the plastic cannula (a tiny, flexible plastic tube) is left in place, taped with dressing, and the needle is removed.

Ketoacidosis: A serious condition that occurs due to insufficient insulin in the body because of illness, incorrect doses of insulin, or omitting insulin injections. The lack of insulin causes acids known as ketones to build up in the blood and to be discharged in the urine. The acidic state that follows causes fruity smelling breath, deep and rapid breathing, stomach pain, nausea, vomiting, and sleepiness, and can lead to diabetic coma or even death if not properly treated. Also known as diabetic ketoacidosis or DKA.

Lancet: A fine, sharp-pointed needle used to prick the skin of a person with diabetes to obtain a sample of blood for blood glucose monitoring.

Pancreas: The organ behind the lower part of the stomach that makes insulin.

Quick-acting glucose. Foods containing simple sugar that are used to raise blood glucose levels quickly during a hypoglycemic episode.

Target range: A selected level for blood glucose values that the person with diabetes tries to maintain. The target range is usually determined by the physician in consultation with the patient or parents/guardians of the child with diabetes.

3.2 What are some common terms related to the legal rights of students with diabetes?

Accommodations: The term “accommodations” is often used to refer to the related aids and services provided to elementary and secondary school children or to the academic adjustments and auxiliary services provided those in higher education pursuant to laws such as Section 504, the Americans with Disabilities Act or the Individuals with Disabilities Education Act. When so used, accommodations involve adjustments or modifications in programs or related services to ensure that a child can participate equally and fully in an educational program. The more appropriate term in this context is “related aids and services.” The term “accommodations” is more properly used only in the employment context, where “reasonable accommodations” refers to the modifications or adjustments employers make that enable an employee with a disability to enjoy equal benefits and privileges of employment. Using this phrase can incorrectly suggest that “accommodations” in the education context need not be provided if they would result in an “undue burden”. While the concept of “undue burden” limits the duty to provide accommodations in the employment context, it does not apply in education. Thus, while the term “accommodations” has become common in the elementary and secondary school setting, and appears in this notebook, it should be seen as a shorthand for “related aids and services” and should not be understood as requiring the same showing as in the employment context..

Americans with Disabilities Act (or “ADA”): A federal law enacted in 1990 that prohibits discrimination against people with disabilities. As it relates to public schools, the requirements of the ADA are almost identical to those of Section 504 of the Rehabilitation Act. The ADA applies to all public schools and to all private schools except those controlled by religious organizations. The ADA is codified at 42 U.S.C. § 12101 *et seq.*

Diabetes Medical Management Plan: Describes the medical orders or diabetes treatment regimen developed by the student’s health care provider and family. The phrase Diabetes Medical Management Plan (or “DMMP”) is growing in use, but other terms are also used, such as “Diabetes Care Plan,” and “Health Care Plan.”

Individualized Education Program (IEP): A plan describing the special education and related services that will be provided to a student with a disability under the Individuals with Disabilities Education Act. Some school districts also use IEPs to meet the requirements of Section 504.

Individuals with Disabilities Education Act (IDEA): A federal law that provides funds to states to support special education and related services for children with disabilities, administered by the Office of Special Education Programs in the U.S. Department of Education. Unlike the ADA or Section 504, to be eligible for services under IDEA, a student’s diabetes must impair his or her ability to learn so that he or she requires special education. The ADA is codified at 20 U.S.C. § 1400 *et seq.*

Office of Civil Rights (OCR): Agency within the U.S. Department of Education responsible for enforcing Section 504 and, by agreement with the U.S. Department of Justice, Title II of the Americans with Disabilities Act as they apply to educational institutions. OCR’s duties include investigating complaints and conducting compliance reviews of states and local school districts.

Related Aids and Services: A phrase used in the elementary and secondary school context to describe the developmental, corrective, and other supportive services provided to give equal access to the educational curriculum for students with disabilities

Section 504: Section of the Rehabilitation Act (a federal law passed by Congress in 1973) that prohibits recipients of federal funds from discriminating against individuals on the basis of disability. Section 504 requires schools to provide students with disabilities appropriate accommodations and educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. Section 504 is codified at 29 U.S.C. § 794.

Section 504 Plan (or 504 Plan): A plan describing the accommodations, special education, and/or related services that a student with a disability will be provided in order to have equal access to education, as required by Section 504 of the Rehabilitation Act.

3.3 Is there a difference between “handicap” and “disability?”

No. The two terms are interchangeable, although the term “disability” is preferred today. Although early state and federal laws use the term “handicap”, and some of the regulations implementing Section 504 still use that term, more recent statutes like the Americans with Disabilities Act use the term “disability.”

3.4 What is the relationship between a Diabetes Medical Management Plan and a 504 Plan?

A Diabetes Medical Management Plan and a Section 504 Plan contain different information, even though they are sometimes confused. The DMMP, in effect, is a physician's order. It outlines a child's treatment regimen and is prepared by a child's health care provider in consultation with the child's family. School officials might well ask questions about or offer suggestions regarding the DMMP to a physician or family, but they do not prepare these directions. A Section 504 Plan is coordinated with and must be consistent with the DMMP. However, the Section 504 Plan specifies the who, what, where, and when to implement the DMMP in the school setting. The DMMP, for example, might say that the child should glucose test each day at ten o'clock, and the Section 504 Plan will provide whether the student self-checks or whether the check is performed by school personnel. The 504 Plan is prepared by the school but must ensure that decisions are made by a group of persons knowledgeable about the child and that the child's parents or guardians are given an opportunity to participate in the process.

4. What Legal Protections are Available for Students?

Federal laws and many state laws require a school district to provide access to educational opportunities in a medically safe environment without discrimination. Schools covered under these laws are required to provide certain services, related aids, and special education as needed to qualifying children.

4.1 What disability laws may apply to students with diabetes?

There are three important federal laws relating to children with disabilities. They are:

- Americans with Disabilities Act (ADA).
- Section 504 of the Rehabilitation Act (Section 504).
- Individuals with Disabilities Education Act (IDEA).

The ADA applies broadly to public and private schools except those operated by or as religious institutions. Section 504 applies to any schools that receive federal funds. IDEA applies to public education agencies that provide services to students who need special education.

Anti-discrimination laws provide the most extensive protections for children with diabetes. Students may also have rights under various sections of the Constitution, such as the Equal Protection and Due Process Clauses of the Fourteenth Amendment that may be violated by the actions of school officials. Constitutional claims are generally brought under 42 U.S.C. § 1983, the federal statute which authorizes lawsuits to redress constitutional violations. Constitutional claims are not frequently raised with respect to diabetes care because of the protections available by statute and because courts that have ruled on similar claims have applied extremely difficult standards for demonstrating constitutional violations. Accordingly, constitutional claims are beyond the scope of this notebook.

Notes

The ADA is codified at 42 U.S.C. §§ 12101-12213. It provides protections in employment (Title I), in state and local government programs (Title II), and in places of public accommodation operated by private entities (Title III). Title II applies to public schools. 42 U.S.C. § 12131(1). Title III applies to private schools except those run by religious entities. 42 U.S.C. § 12181(7)(J).

Section 504 is codified at 29 U.S.C. § 794. This statute served as the model for many of the provisions of the ADA and, so, the requirements imposed by the two statutes are similar. What is different is that Section 504 applies only to schools that receive federal financial assistance. Public schools receive federal assistance through various federal education programs. Some private schools also receive federal funds; see Question 4.9 for a more detailed discussion of the federal funding requirement. Because the ADA generally provides no greater rights to students with diabetes than Section 504, the more specific Section 504 implementing regulations are ordinarily followed by the Office for Civil Rights when determining compliance.

The IDEA is codified at 21 U.S.C. §§ 1400-1487. It has gone through a variety of name changes, including the Education for Handicapped Children Act (EHA) and the Education for All Handicapped Children Act (EAHCA), and is even sometimes referred to by its original statutory number (Public Law 94-142). This statute establishes a federal program (implemented in all states) in which the federal government provides funds for special education services and requires, in return, that states meet the requirements for providing special education contained in the law. The law requires the states to have a plan in place to provide special education services and to make sure that local school districts are actually providing these services. This program requires that students with disabilities be provided a free appropriate public education in accordance with an individualized education program or “IEP.”

4.2 What are the differences among the Americans with Disabilities Act, the Rehabilitation Act, and the Individuals with Disabilities Education Act?

The Americans with Disabilities Act and Section 504 of the Rehabilitation Act are anti-discrimination laws. They prohibit discrimination against those with disabilities. This prohibition requires that otherwise qualified students be provided accommodations to allow participation in programs or activities. The idea is to “level the playing field” and to give students with disabilities the same kinds of opportunities as non-disabled students.

The Individuals with Disabilities Education Act is not an anti-discrimination statute. It affirmatively requires states and school districts to provide certain specific benefits (special education and related services) to certain categories of students with disabilities as a condition for receiving some federal funding used to provide these services.

Advocates should understand that these three laws cover different (although often overlapping) groups of students (as is discussed in Questions 4.4-4.7). The laws also impose different legal requirements in some circumstances. Most students with diabetes will be covered by Section 504 and the ADA; some may also be covered by the IDEA, particularly if the child has other disabilities.

4.3 What generally must a school do to comply with its non-discrimination requirement?

Under Section 504 and the Americans with Disabilities Act (ADA) schools may not discriminate against students with disabilities. Broadly stated, this means that schools may not deny a person who has a disability, as defined by federal law, the opportunity to participate in or benefit from an aid, benefit or service that is afforded to non-disabled students. A student with a disability must be given equal opportunity to participate in school programs or activities, and must be provided reasonable modifications or accommodations as necessary to allow participation.

Notes

The cornerstone right of students with diabetes is the right to receive related aids and services needed to provide equal educational opportunity, as well as reasonable modifications to policies and procedures. What is required is determined on a case by case basis.

Title II of the ADA (covering public schools) states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. A “qualified individual with a disability” under the ADA is “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, ... or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2).

Title III of the ADA applies to most private schools (see Question 4.9) and contains similar provisions: “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation” 42 U.S.C. § 12182(a). The ADA states that discrimination by a place of public accommodation includes “a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless ... such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations” 42 U.S.C. § 12182(b)(2)(A)(ii). Title III also provides that discrimination includes “a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services , unless taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation or would result in an undue burden” 42 U.S.C. § 12182(b)(2)(A)(iii).

Section 504 establishes the same requirements by providing that at a school receiving federal financial assistance, “[n]o otherwise qualified individual with a disability” may be discriminated against. 29 U.S.C. § 794(a). Many provisions of the ADA are modeled on those of Section 504, and the two laws are construed to establish “nearly identical” rights. *Rothman v. Emory Univ.*, 123 F.3d 446, 451 (7th Cir. 1997). Section 504 implementing regulations provide that no qualified handicapped person may, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity. 34 C.F.R. § 104.4(a). These regulations also specifically prohibit a recipient of federal financial assistance from, on the basis of handicap, denying a qualified handicapped person the opportunity to participate in any aid, benefit, or service. 34 C.F.R. § 104.4(b)(1)(i). The Department of Education’s regulations require that a recipient of financial assistance operating a public elementary or secondary program must provide a free appropriate public education to each qualified handicapped person in its jurisdiction. 34 C.F.R. § 104.33(a). An “appropriate education” is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and are based upon adherence to a variety of specified procedures. 34 C.F.R. §§ 104.33(b)(1), 104.34, 104.35, 104.36.

Section 504 does not impose all of these obligations on private, as opposed to public, schools. A private school is required to provide an appropriate education only if this can be done “with minor adjustments.” 34 C.F.R. § 104.39(a). See *Boston (MA) Public Schs.*, Complaint No. 01-06-1177, 48 IDELR 167 (OCR 2006). (private school was not required to hire a full time nurse to administer emergency medication to a student with asthma, and did not violate Section 504 by denying the student admission when it reasonably believed that the student required a nurse to perform this service). However, most of the adjustments typically required by a student with diabetes will be “minor” by Section 504 standards.

Section 504 and the ADA impose a number of more specific requirements designed to ensure that students with disabilities receive an adequate education, many of which are discussed elsewhere in this notebook. Schools must designate an employee to coordinate compliance with Section 504 and the ADA (see Question 5.4), provide notice to students and parents/guardians that the school does not discriminate (see Question 5.2), attempt to identify and locate all Section 504 qualified children in its boundaries (see Question 5.1), and provide procedures to resolve complaints of discrimination (see Questions 14.4, 14.8).

4.4 Are students with diabetes covered by the Americans with Disabilities Act and Section 504?

Students are covered by the ADA and Section 504 if they have a physical or mental impairment that substantially limits one or more major life activities. Students with diabetes have been found to fit this definition, but whether a particular student is covered must be determined on a case-by-case basis. Whether diabetes is a disability depends primarily on whether the effects of diabetes and its treatment are substantially limiting in the life of the individual, an issue which is discussed in the next question.

Notes

The discussion in the next two sections applies to claims under the Americans with Disabilities Act and Section 504. The Individuals with Disabilities Education Act adopts a different definition of disability (see Question 4.7).

Section 504 and the ADA protect only individuals who meet the legal definition of having a disability. Whether someone has a disability focuses on the effect of a physical impairment. A medical diagnosis does not itself result in a finding of a disability. This information must be considered along with other relevant information to determine whether the disability substantially limits a major life activity. U.S. Dept. of Educ., Office for Civil Rights, Chicago Office, *Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, Question 24.

The Americans with Disabilities Act defines “disability” to include “a physical or mental impairment that substantially limits one or more of the major life activities of such individual.” 42 U.S.C. § 12102. This creates two requirements, first, that there be a physical or mental impairment, and second, that this impairment substantially limit a major life activity.

Even if an individual cannot meet this definition, and therefore does not have an actual disability, that person is considered to have a disability if he or she has a record of an impairment that substantially limits one or more major life activities, or is regarded as having such an impairment. See *Nyack (NY) Unified School Dist.*, Complaint No. 02-04-1065, 43 IDELR 169, (OCR 2004) (finding that a school regarded a student with diabetes as disabled even though the student had not formally been identified as having a disability under Section 504, based on evidence that the school excluded the student from a field trip because of concerns about her diabetes). ADA regulations expressly provide that diabetes is a “physical impairment.” 28 C.F.R. §§ 35.104 (Title II), 36.104 (Title III). Major life activities recognized by regulations and the courts include eating, caring for one’s self, walking, seeing, learning, reading, and thinking. 28 C.F.R. § 35.104 (walking, seeing); *Lawson v. CSX Transportation*, 245 F. 3d 916, 923 (7th Cir. 2001) (eating, caring for one’s self); *Bartlett v. New York State Bd. of Law Examiners*, 2000 U.S. App. LEXIS 22212 (2d Cir. 2000) (reading); *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296 (3d Cir. 1999) (thinking). Section 504 has a similar definition of “disability” which extends protection to those with a physical impairment,

including the endocrine system (which is affected by diabetes) that “substantially limits one or more major life activities.” 34 C.F.R. § 104.3(j).

4.5 Doesn’t the availability of mitigating measures, such as insulin, prevent a student with diabetes from being considered “disabled” under the ADA and Section 504?

No. Measures needed by students in the school setting to treat and control diabetes (such as insulin injections, snacks or other forms of treatment) are not considered in determining whether a student has a disability. The Supreme Court has held that certain “mitigating measures” used by people with disabilities must be considered in determining whether an individual’s impairment is substantially limiting and therefore covered by the ADA and Section 504. However, because schools usually exercise ultimate control over whether and when students can treat their diabetes, such mitigating measures should not be considered in the school setting. Only those mitigating measures that students may use without any action or assistance by the school are to be considered.

Notes

Whether an impairment “substantially limit[s]” a major life activity has been much debated in the employment context. The Supreme Court has held that the effect of “mitigating measures,” must be taken into account when deciding whether a person’s limitation is substantial. Where these mitigating measures correct an impairment so that it does not affect a person (for example, when glasses are worn to correct myopia), that impairment would not be a disability because, when corrected, it is not substantially limiting. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 119 S. Ct. 2139, 144 L. Ed. 2d 450 (1999). Whether a person has a disability requires an evaluation of an individual’s actual condition. Thus, those with diabetes must be individually evaluated. In *Sutton*, the Supreme Court observed that without consideration of an individual’s actual condition, including corrective measures, “courts would almost certainly find all diabetics to be disabled, because if they failed to monitor their blood sugar levels and administer insulin, they would almost certainly be substantially limited in one or more major life activities,” and therefore a “diabetic whose illness does not impair his or her daily activities would therefore be considered disabled simply because he or she has diabetes.” 527 U.S. at 483.

Although people with diabetes are not automatically covered under Section 504 and the ADA simply because of their diagnosis, diabetes will often meet the definition of a disability because of the way it affects individuals. In determining whether a person with diabetes is covered, both that individual’s medical condition and the extent of his or her treatment program must be considered. Not only is a person with diabetes subject to risks of hypoglycemia, hyperglycemia, and their consequences, but the regimen of treatment itself is significant (*e.g.*, monitoring blood glucose levels, snacks to avoid hypoglycemia, injecting insulin). In the employment context, type 1 diabetes has been considered a disability when the interaction of the disease and its management are considered. *See, e.g., Branham v. Snow*, 392 F.3d 896 (7th Cir. 2004) (taking into account “any negative side effects” that person with insulin treated diabetes has “from the use of mitigating measures” such as significant restrictions “as to the manner in which he can eat as compared to the average person in the general population” and necessity to “adjust his diet to compensate for any greater exertion, stress, or illness that he experiences” summary judgment precluded on question whether illness substantially limits the major life activity of eating); *Lawson v. CSX Transportation, Inc.*, 245 F.3d 916 (7th Cir. 2001) (reversing grant of summary judgment; noting that the plaintiff

“must endure the discomfort of multiple blood tests to monitor his blood glucose levels,” “must adjust his food intake and level of exertion to take into account fluctuations in blood sugar,” and “[w]hen his blood sugar drops, he must stop all other activities and find the kinds of food that will bring his levels back to normal or he will experience disabling episodes of dizziness, weakness, loss of mentation and concentration, and a deterioration of bodily functions”; *Fraser v. Goodale*, 342 F. 3d 1032 (9th Cir. 2003) (bank employee whose diabetes was difficult to control due to frequent, rapid, and unpredictable blood sugar fluctuations, considered disabled).

The argument that a student with diabetes is protected despite mitigating measures is often even stronger than that for an employee. This is because school personnel have a great deal of control over the behavior and activities of students while they attend school; thus, a student is not free to manage or mitigate diabetes as he or she sees fit. Rather, the student must abide by whatever rules the school has in place about insulin or medicine administration or other treatment issues. Similarly, students who are not able to self-manage the disease will receive appropriate care only if provided for by the school.

The Office for Civil Rights issued a Guidance to its staff following *Sutton*, in which it explained the critical distinction between circumstances faced by employees and students. This Guidance is important to advocates because *Sutton* is sometimes erroneously used as a justification for denying accommodations to students with diabetes. The Guidance makes clear that *Sutton* actually has rather limited application in the usual school setting.

In the Guidance, OCR noted the difference between mitigating measures which the student may use without any action or assistance by the school, on the one hand, and those reasonable modifications, academic adjustments, auxiliary aids and services, or related aids and services that schools are required to provide, on the other. See *Sutton* Investigative Guidance: Consideration of “Mitigating Measures” in OCR Disability Cases, U.S. Department of Education Office for Civil Rights (September 29, 2000). OCR finds that “permission to monitor diabetes or inject insulin” belongs to the latter category. The distinction is significant.

OCR explains:

Mitigating measures should not be confused with reasonable modifications, academic adjustments, auxiliary aids and services, or related aids and services, all of which are provided by, or are under the control of, the educational institution. Examples of these are computers adapted for use by blind students, sign language interpreters, and permission to monitor diabetes or inject insulin. When some action or permission on the part of the school would be required before a student could use a measure, the effects of the measure will not be considered as “mitigating” because the measure is effectively unavailable to the student unless the school takes some action. Therefore, OCR will not consider the impact of reasonable modifications, academic adjustments, auxiliary aids and services, or related aids and services when evaluating whether a student’s impairment substantially limits a major life activity.

OCR further explains:

If there is a mitigating measure involved, determine if the student can use the mitigating measure independently in the school setting. Does the student need the school to take some action (such as provide a related aid or service, or modify a policy, including giving permission to use the mitigating measure during school hours, on school grounds) in order to use the mitigating

measure? If the student needs the school to take some action, do not consider the effect of the measure (positive or negative) in determining if the student has an impairment that substantially limits him or her in any major life activity.

OCR notes other pertinent considerations to be evaluated. For example, there may be side effects to mitigating measures a student uses. Also, mitigating measures may not fully correct the effects of the disability. Both affect the determination of whether a disability for purposes of Section 504 or ADA is involved.

OCR's Guidance specifically recognizes the need to consider the possible side effects of the use of insulin. The Guidance states:

Determine if the mitigating measure is effective all of the time for this student. If there is a risk of failure of the mitigating measure(s), or a risk that the effect of the mitigating measure(s) may not be consistent, then the student may still be substantially limited in a major life activity, despite the use of the measure(s). If that is the case, the school should be prepared to deal with emergency situations that might arise if the mitigating measure fails. For instance, a student with diabetes who injects insulin at home may still need an insulin injection, on an emergency basis, at school.

Decisions from OCR have also found students with diabetes to be disabled, based on an analysis of their condition. *See, e.g., New York City (NY) Bd. of Educ.*, Complaint No. 02-89-1128, 16 EHLR 455 (OCR 1989) (student had type 1 diabetes and, therefore, "OCR determined that the student is a qualified handicapped person"); *Bement (IL.) Community Unit Sch. Dist. #5*, Complaint No. 05-89-1087, EHLR 353:383 (OCR 1989) (insulin-dependent diabetes was a handicapping condition because impairment necessitated restrictions in diet and close monitoring of diet, behavior and activities at all times and illness posed the immediate possibility of severe consequences if such monitoring was not carried out and/or emergency medical treatment was not available); *Maine Sch. Admin. Dist. #25*, Complaint No. 01-93-1170, 20 IDELR 1354 (OCR 1993) ("OCR established that the Student is a person with a disability because he has a health impairment, diabetes, the management and control of which affects a major life activity, learning).

Despite the clear intent of the OCR *Sutton* guidance, one district court considered a student to be "using" a mitigating measure, and thus potentially not disabled, even when the measure is not available to that student at a particular time. For example, in *Garcia v. Northside Indep. Sch. Dist.*, 2007 U.S. Dist. LEXIS 103 (W. D. Tex. 2007), a student with severe asthma died when he had difficulty breathing during physical education class and did not have access to his inhaler (because it was locked in the gym with his other belongings). Although the court cited the *Sutton* guidance for the proposition that mitigating measures should not be considered if they were not used, it held that the student was "using" his inhaler at the time of his death, even though it was not available to him at that time. Since the plaintiffs admitted that the child's asthma did not affect him when using his inhaler, the court found that he was not disabled. There were no allegations in that case that the school actively prevented the student from having access to his inhaler. It should be noted that even if a child with diabetes were considered to be "using" insulin under these circumstances, the insulin would not mitigate the effects of diabetes.

Schools often do not question that students with diabetes are covered under Section 504 and the ADA. *See, e.g., Lisbon School Dept.*, 33 IDELR 172 (Maine State Educational Agency 2000) (observing there was no dispute that student with type 1 diabetes was a child with a disability).

Diabetes, even when treated, can affect a number of major life activities, such as caring for oneself and eating. As pointed out in one decision, “all individuals who take insulin are subject to insulin reactions” including “insulin shock which, when it happens, substantially limits a major life activity by impairing a person’s ability to walk, see, hear, speak, breathe, learn, and/or work.” *Gasconade County (MO) R-I Sch. Dist.*, Complaint No. 07-91-1061, 18 IDELR 313 (OCR 1991). Diabetes can also substantially limit the ability to learn because, when glucose levels are high or low, the ability of a student to concentrate, to pay attention, to study can be seriously affected.

Children with type 1 diabetes have been covered under the ADA and Section 504. Indeed, the American Diabetes Association is aware of no situation in which a child with type 1 diabetes has been found not to be covered by these laws. Some students with type 2 diabetes face similar limitations, while others do not use insulin or oral medications. *Northeastern Junior College*, Complaint No. 08-97-2073 (OCR 1997) (student who controlled his type 2 diabetes through diet and exercise was not disabled for purposes of Section 504 or ADA). A person who experiences no substantial limitation in any major life activity when using a mitigating measure, such as medication, does not meet the definition of a person with a disability. U.S. Dept. of Educ., Office for Civil Rights, Chicago Office, *Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, Question 21. However, a case-by-case evaluation of a child must be made to determine whether there is a substantial limitation of a major life activity as a result of the disability. *Id.*, Question 22. Accordingly, those with type 2 diabetes also may be considered disabled.

4.6 Must a student with diabetes perform unsatisfactorily in school to receive modifications or accommodations?

No. Modifications and accommodations under the Americans with Disabilities Act and Section 504 are provided because of a student’s disability to assure equal educational opportunity. It is not necessary that the student be performing unsatisfactorily in school or have any need for special education. On the other hand, the Individuals with Disabilities Education Act does require that a child’s performance in school be affected by his or her disability and that there be a need for special education, but does not require that the student be failing or doing poorly in school (see Question 4.7).

Notes

A student with diabetes is entitled to be evaluated and provided with the accommodations and school health services the student requires even if the student attends the regular school program and does not require special education. *Elizabeth S. v. Gilhool*, EHLR 558:461 (M.D. Pa. 1987). A child with diabetes is entitled to accommodations even if the child’s disability does not affect his or her ability to learn and the student cannot meet the higher standard of eligibility under IDEA. *Vipperman v. Hanover County Sch. Bd.*, 22 IDELR 796 (E.D. Va. 1995) (school agreed to monitor student’s blood glucose levels although student was not eligible for services under IDEA). A student with diabetes is entitled to modifications or accommodations even if one of the top students in school. *Lisbon School Dept.*, 33 IDELR 172 (Maine State Educational Agency 2000). This is because disability protections are also designed to provide extra help to those students who may need it to access learning due to a disability. *Letter to McKethan*, 23 IDELR 504 (OCR 1994) (child with asthma was entitled to accommodations even though the disability did not itself affect child’s ability to learn because without regular administration of medication and use of inhaler while at school, child could not remain in school).

School districts sometimes argue that students must be substantially limited in learning to be eligible under section 504. However, there is no requirement that the major life activity at issue be learning in order to qualify a student as disabled in the educational setting. See *Weixel v. Board of Education*, 283 F. 3d 138 (2d Cir. 2002) (district court erred in requiring student to show that her impairment limited her learning or school performance in order to establish disability under Section 504); *San Diego (CA) City Unified School Dist.*, Complaint No. 09-04-1150, 44 IDELR 135 (OCR 2005) (district failed to initiate Section 504 evaluation process because it believed that only students limited in learning were eligible under Section 504); *Garfield Heights City Schs.*, Complaint No. 15-04-1045, 42 IDELR 42 (OCR 2004) (by limiting its focus during a Section 504 evaluation to the major life activity of learning, district failed to consider other major life activities that might be substantially limited by a student's disabilities); *Bibb County Sch. Dist.*, Complaint No. 04-98-1089, 30 IDELR 549 (OCR 1998) (district's Section 504 plan improperly excluded students whose disabilities impact major life activities other than ability to learn).

In *Rock Hill Local Schools*, the Office for Civil Rights made clear that a Section 504 plan for a student with diabetes need not include academic services or accommodations and may only need to include health care assistance:

In cases of students whose disabling condition is diabetes and where the major life activity that is substantially limited is breathing or something else other than learning, the plan may consist solely of a medical plan that addresses the related services, such as insulin, humalog, or glucagon, that must be administered to the student during the course of the school day to ensure the student has an equal opportunity to participate in the school's programs and activities.

37 IDELR 222 (OCR 2002) (evaluating complaint by parents of a student with diabetes).

In summary, so long as a student with diabetes has a substantial limitation in a single major life activity (which can include many activities besides learning), that student is qualified under Section 504 and entitled to receive the health related services needed, without the student needing to show any existing impairment regarding learning.

4.7 Are students with diabetes covered by the Individuals with Disabilities Education Act?

Unlike Section 504 and the ADA, IDEA's protections only apply to students who require special education and related services. The student's diabetes (or another condition) must affect his or her ability to learn and causes that student to need special education services. As a result, some students who are covered under Section 504 and the Americans with Disabilities Act (ADA) will not be covered under IDEA.

Advocates should be sensitive to the possibility that IDEA applies to a child with diabetes. The procedures and protections under IDEA are more elaborate and extensive than those that exist under Section 504 or the ADA. Although this publication focuses on the requirements of Section 504 and the ADA, it also makes note of the requirements of IDEA in order to assist advocates for students who may be eligible under IDEA.

IDEA requires both that a student have a physical or mental impairment and that this impairment negatively impacts the student's ability to learn. Diabetes clearly qualifies as an impairment, to satisfy the first part of this test. The IDEA regulations define an impairment to include "having limited strength, vitality or alertness" that "[i]s due to chronic or acute health problems such as ... diabetes." 34 C.F.R. § 300.8(c)(9). Nonetheless, under IDEA it is also necessary that the child, "by reason thereof, needs special education and related services." 20 U.S.C. § 1401(3); 34 C.F.R. § 300.8(a)(1). IDEA eligibility requires that a "condition must cause an adverse effect on [a] student's educational performance and [the] student must be in need of special education services in order to progress educationally." *Lisbon School Dept.*, 33 IDELR 172 (Maine State Educational Agency 2000). A number of effects of diabetes and its treatment regimen may have an adverse impact on a student's educational performance and necessitate changes to the educational environment that would lead to IDEA eligibility. According to the California Department of Education:

For example, an IEP team could determine that a child who meets the criteria for eligibility under the category of OHI based upon chronic or acute health problems arising from diabetes would need to have his/her curriculum adapted in ways such as changes in the physical education instruction, in the regular school day schedule (such as various breaks required by abnormal blood sugar levels involving medical treatment), in allowed time for taking tests, in the regular schedule for eating, drinking and toileting, in assignment due dates, and in various other academic adaptations.

See California Department of Education, "Legal Advisory On Rights Of Students With Diabetes In California's K-12 Public Schools" (August 2007) (reprinted in supplemental information section and available at <http://www.diabetes.org/uedocuments/cde-legal-advisory-rights-2007.pdf> at part III.C

Other students with diabetes require modifications or accommodations (such as those to which they are entitled under the ADA or Section 504), but do not need special education services. "In the absence of evidence of an adverse effect on [the] student's educational performance, which cannot be addressed through modifications and accommodations under Section 504 [or the ADA], [a] student has not demonstrated a need for special educational services [under IDEA]." *Lisbon School Dept.*, 33 IDELR 172 (Maine State Educational Agency 2000). *See also Santa Ana (CA) Unified Sch. Dist.*, Complaint No. 09-92-1185, 19 IDELR 501 (OCR 1992) ("a student with a physical disability, such as diabetes ..., may be handicapped under Section 504 but, if the student needs no special education or related services, that student might not meet the definition of a disabled student under IDEA"); *Perry Local Sch. Dist.*, Case No. SE-1180-2002 (Ohio State Educational Agency 2003) (student with diabetes no longer had "other health impairment" for purposes of IDEA where student's condition became more stable; eligibility under Section 504 or ADA not considered). A student with diabetes may have other disabilities, however, that entitled the student to services under IDEA. *See, e.g., Jay School Corp.*, 39 IDELR 202 (Indiana State Educational Agency 2003) (autism and a communication disorder contributed to student's escalating aggressiveness and difficulties in school, not diabetes). Where diabetes is only one of several impairments that affect the student, IDEA eligibility may be even more likely.

The definition of a "child with a disability" for purposes of IDEA is subject to some variation and expansion under state law. A state, for example, may provide that a related service is itself special education. "[I]f a State considers a particular service that could be encompassed by the definition of *related services* also to be special education, then the child would be determined to be a child with a disability under the [IDEA] Act." 71 Fed. Reg. 46549 (2006). Where a state adopts this approach, a child needing only what would generally

be considered a related service could be considered to also need special education. The child would be a “child with a disability” under IDEA. *See also* 34 C.F.R. §§ 300.34 (defining related services, among them school health services and school nurse services), 300.39 (defining special education).

4.8 May a school subject to Section 504 or the Americans with Disabilities Act assist organizations that discriminate against those with diabetes?

A school subject to Section 504 and the American with Disabilities Act (ADA) may not provide significant assistance to any agency, organization, or individual that discriminates on the basis of disability.

Notes

Section 504 and Title II of the ADA prohibit a school subject to these statutes from providing significant assistance to any agency, organization, or person that discriminates on the basis of disability. This is the case even where the assisted organization is not itself a recipient of federal financial assistance and is not a public entity. Also, where services are provided to the public, the assisted organization might itself be subject to Title III of the ADA.

Section 504 regulations prohibit schools from aiding or perpetuating discrimination against a qualified disabled person “by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program or activity.” 34 C.F.R. § 104.4(b)(1)(v); *see also Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-93-1043, 19 IDELR 883 (OCR 1993) (describing factors to be considered in determining whether assistance provided is significant).

Where a private school receives significant assistance from a public school district, the district must ensure that the private school does not discriminate against students with disabilities, even though the private school is not itself subject to Section 504. In *Boston (MA) Public Schs.*, Complaint No. 01-06-1177, 48 IDELR 167 (OCR 2006), computer-based instruction was provided to some students at a parochial school using computers purchased by the public school district with federal financial assistance. OCR found that if the private school discriminated against students with diabetes, the district was required to take steps to remedy the discrimination or to terminate the assistance provided to the private school.

The Office for Civil Rights has held that a parent-teacher organization (or PTA) received significant assistance. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-93-1043, 19 IDELR 883 (OCR 1993). The PTA sponsored an after-school program of enrichment classes, including recreational classes, arts and crafts classes, computer classes, and English as a Second Language classes. OCR found evidence of significant indirect assistance, including allowing the program in public school buildings on a permanent and long-term basis without charge or even reimbursement for utility and maintenance costs. The PTA also advertised its program by furnishing leaflets to students at school. The program was also closely identified with the school district and benefited from that identification.

Where significant assistance is provided, schools must insist that the assisted agency, organization, or individual provide qualified individuals with disabilities an equal opportunity to participate, and reasonably modify programs to provide supplementary services and aids as necessary for individuals with disabilities to effectively participate without increased cost

to the individuals with disabilities. A school, for example, must require that a PTA provide reasonable modification and services to a child with diabetes that are necessary for the child to participate in a PTA-sponsored after-school enrichment program. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-93-1043, 19 IDELR 883 (OCR 1993) (finding violation and imposing requirement). If the PTA refuses to provide the services, the school district must cease providing assistance to the program unless the organization can demonstrate that providing the services would result in a fundamental change in the program or an undue burden. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-93-1043, 19 IDELR 883 (OCR 1993).

4.9 Are students with diabetes who attend private schools operated by religious organizations entitled to any legal protection?

The Americans with Disabilities Act (ADA) does not apply to private schools operated by religious organizations. Such a school is subject to Section 504 only if it receives federal funding. Therefore, schools operated by religious organizations that do not receive federal funding are not covered by either law. However, in these circumstances contract or tort law may impose similar obligations on a private school operated by a religious organization.

Notes

Title III of the ADA does not apply to “religious organizations or entities controlled by religious organizations, including places of worship.” 42 U.S.C. § 12187. Where such a school is a recipient of federal funding, however, Section 504 applies even if the school is operated by a religious organization (although, as noted in Question 4.3, private schools do not have the same obligation to accommodate students with disabilities under Section 504 as do public schools).

Because nearly all public schools and private non-religious schools are subject to the ADA, determining whether a school receives federal funding is primarily important where that school is religious, since if Section 504 does not apply there may be no protection against discrimination at such a school. For purposes of Section 504:

Recipient [of federal financial assistance] means ... any private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. 34 C.F.R. § 104.3(f).

Section 504 regulations also provide:

Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department [of Education] provides or otherwise makes available assistance in the form of: (1) Funds; (2) Services of Federal personnel; or (3) Real and personal property or any interest in or use of such property 34 C.F.R. § 104.3(h).

Where some specific program within a school receives federal funding Section 504 applies not only to that program but to the entire school. *See generally* Annot., 160 A.L.R.

Fed. 297 (who is recipient of, and what constitutes program or activity receiving federal financial assistance for purposes of Section 504).

Federal funding may be received directly or indirectly. Examples of direct funding include school food and nutrition programs, assistance for at-risk students, and grants for technology, school improvement, or other purposes. These programs usually require participants to comply with civil rights laws including Section 504. *See, e.g.*, 7 C.F.R. § 210.23(b) (providing for compliance with Section 504 in the National School Lunch program). States that administer such programs are required to obtain assurances of civil rights compliance by participating schools. Indirect funding occurs, for example, where a federal grant is made to the state which, in turn, allocates funds to local agencies that then provide funds to individual schools. A parochial school within a Roman Catholic diocese was found to be a recipient of federal funds although the funds were disbursed by the state through a local public school. *See Dupre v. The Roman Catholic Church of the Diocese of Houma-Thibodaux*, 1999 U.S. Dist. LEXIS 13799, 31 IDELR 129 (E.D. La. 1999). *But see Boston (MA) Public Schs.*, Complaint No. 01-06-1177, 48 IDELR 167 (OCR 2006) (parochial school was not subject to Section 504 merely because computers purchased by the local school district with federal financial assistance were used to provide instruction to some students at the parochial school).

There is some authority that federal financial assistance may be so *de minimis* or too little to subject a school to Section 504. *See, e.g., Marshall v. Sisters of the Holy Family of Nazareth*, 399 F. Supp. 2d 597 (E.D. Pa. 2005) (Section 504 inapplicable where only one student received a free lunch and the school received no proceeds from the sale). But the scope of such an exception, even if it exists, is quite narrow. *K.H. v. Vincent Smith Sch.*, 2006 U.S. Dist. LEXIS 22412 (E.D.N.Y. 2006) (rejecting application of a *de minimis* exception).

Section 504 obligations are enforced by the government agency that administers the federal funding the school receives. For programs administered by the U.S. Department of Education, these obligations are enforced by the Office for Civil Rights. If a program is administered by another federal agency, that agency will be responsible for enforcement. The U.S. Department of Agriculture would enforce Section 504 where the only federal funds a school receives are for the school lunch program.

Even if Section 504 does not apply, it is important to examine a private school's policies and handbooks. They often include statements that the school will not discriminate that may be enforced as a matter of contract. Another basis to seek proper treatment is tort law. Schools may have a common law duty to assure care to its students in some situations. *See Part 15.*

Another basis for providing assistance to a child attending a private school would be state law provisions or services. *See Question 4.11.* Some states, for example, require that public schools provide nursing services to private school children that are the equivalent of those that would have been available had they attended public school. *See In re. Richard K.*, 31 A.D.3d 181, 815 N.Y.S.2d 270 (2006) (holding that under statute public schools must provide equivalent health and welfare services to private school children, but allowing school officials to determine where and how such services would be provided).

4.10 Does coverage under Section 504 and the Americans with Disabilities Act differ for those students in elementary or secondary as compared with those in postsecondary education?

Yes. At the elementary or secondary education level, all students with a disability may be protected while in higher education they must meet the prerequisites for admission or participation in the program or activity.

Notes

This notebook considers the rights of children with diabetes in elementary and secondary education. Some, though not all, of these rights also apply in postsecondary and vocational education programs. Any elementary or secondary student of school age with a disability is entitled to protection. 34 C.F.R. § 104.3(l)(2). With respect to postsecondary and vocational education services, a person with a disability must meet the academic and technical standards requisite to admission or participation in the education program or activity involved. 34 C.F.R. § 104.3(l)(3). Diabetes will seldom preclude admission or participation in postsecondary programs, and many issues (*e.g.*, self-care or possession of supplies) are unlikely to arise in these settings.

4.11 Do state laws protect the rights of students with diabetes?

Many states have laws that protect the rights of students with disabilities from discrimination, but these laws vary from state to state. A number of these laws essentially follow the requirements of the Americans with Disabilities Act or Section 504. Others go beyond the general prohibition against discrimination. Some of these specifically address responsibilities for diabetes care tasks in the school setting. State law also may include broad requirements that organizations open to the public be prepared to deal with health emergencies. Advocates need to be aware of rights that may be guaranteed by state anti-discrimination or other laws, which are not discussed in detail in this publication.

Notes

A growing number of states have adopted statutes that specifically relate to diabetes care. Current versions of these statutes and recently adopted legislation in other states should be consulted.

It is important to recognize as well that other pertinent statutes or regulations may be adopted regarding such issues as the administration of medications in schools, the delegation of health care responsibilities, immunity, and other matters relevant to diabetes care. The American Diabetes Association maintains information regarding other statutes and may be contacted for further information.

In addition, links to school diabetes care specific state laws may be accessed from www.diabetes.org/advocacy-and-legalresources/discrimination/school/legislation.jsp States with school diabetes care laws are: CA, CT, HI, MA, MT, NC, OR, SC, TN, TX, VA, WA, and WI.

5. How Should Needed Services and Accommodations Be Requested?

The process of deciding what services and accommodations will be provided to a student with diabetes cannot begin until the school is aware that the student may have a disability and may need such services. This Part discusses what is required to begin this process. Typically this process begins when parents or guardians inform school officials that their child has diabetes and request (often informally) that services be provided. However, schools also have an obligation under certain circumstances to independently identify and evaluate students who may have a disability

5.1 What obligation does a school have to identify students who may need modifications or accommodations?

The process for developing an accommodation plan for a student cannot begin until that student has been identified by or to the school as potentially having a disability that requires accommodation. In many cases, the parents or guardians will bring the fact of the student's diabetes to the attention of school officials, but schools must take some steps to locate and evaluate children with disabilities. Public schools must attempt to identify and locate those students who are not receiving a public education but who may need modifications or accommodations (an obligation known as the "child-find" requirement). Schools must also initiate the evaluation process for a student, even one already attending the school, where it has reason to believe, based on information or observation, that the student may have a disability requiring aids or services. Students with diabetes may come to the attention of school personnel based on the initial diagnosis and the accompanying absences from school, or through other means. When a student is identified, schools should promptly initiate the process to determine and provide appropriate modifications or accommodations to the child with diabetes.

Notes

Section 504 and the Individuals with Disabilities Education Act require that public elementary or secondary schools undertake to identify and locate children with disabilities who are not receiving a public education and inform parents or guardians of those children of the public schools' obligation toward those who have disabilities. 34 C.F.R. § 104.32 (Section 504); 20 U.S.C. § 1412(a)(3) (IDEA state requirements); 34 C.F.R. § 300.111 (IDEA child find regulations).

However, schools are not required to screen students for diabetes or undertake outreach efforts targeted at diabetes or other specific diseases. *Akers v. Bolton*, 531 F. Supp. 300 (D. Kan. 1981) (district had no obligation to make specific efforts to identify children with epilepsy). The Supreme Court in *Vernonia School District 47J v. Acton*, 515 U.S. 646, 658, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995), suggested (without deciding the question) that conducting random urine tests to identify which students had diabetes might violate a student's right to privacy. Nevertheless, every state requires that students undergo school

health examinations and screening for diabetes may be required as part of a school health examination. *See, e.g.*, 105 ILCS 5/27-8.1 (Illinois requirement).

Districts must also evaluate children to determine eligibility for special education or related services where the district knows or should know that the child may have a disability and may need such services. This amounts to a requirement that a district “find” particular children where there is reason to think they may be eligible for services. IDEA requires the district to ensure that all children with disabilities who need special education and related services are evaluated. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(1). Section 504 requires that “[a] recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation ... of any person who, because of handicap, needs or is believed to need special education or related services ... ” 34 C.F.R. § 104.35(a). School officials should seek out those students who may need accommodations, rather than waiting to be contacted by parents or guardians. Teachers, nurses, and counselors must be prepared to make referrals for possible services based on personal observations of a student’s behavior and performance or information received from parents or others. *Fayette County (KY) School Dist.*, Complaint No. 03-05-1061, 45 IDELR 67 (OCR 2005) (district violated Section 504 by failing to evaluate student with diabetes who had recently transferred into the district because, even though student received some health care services under a school health care plan, he was experiencing depression and behavior problems and had attempted suicide); *Hamilton Heights (IN) Sch. Corp.*, Complaint No. 05-02-1048, 37 IDELR 130 (OCR 2002) (finding that Section 504 satisfied where referrals were made by teachers, nurses, and counselors, based on “those individuals’ personal observations of the students’ behaviors and requests from parents, and information from physicians”).

5.2 Are schools required to notify parents of the availability of services under Section 504 and the Americans with Disabilities Act?

Yes. Schools must make efforts to inform parents/guardians and students of the school’s obligation to provide services under Section 504 and the Americans with Disabilities Act (ADA). Notice must be given of the schools’ obligation to provide a free, appropriate public education to students with disabilities and to provide related aids and services needed by those students. However, schools need only make efforts to provide public notice of these rights and obligations; schools are not required to ensure that every parent/guardian and student actually is aware of them.

Notes

Schools are required to provide appropriate notice to parents or guardians of all students enrolled of the availability of services pursuant to Section 504 and the ADA. 34 C.F.R. § 104.32 (Section 504); 28 C.F.R. § 35.106 (ADA Title II). The notice must include information regarding the parents’ or guardians’ right to request an individual evaluation of their children to determine a student’s eligibility for services. *See Elkhart (IN) Community Sch. Corp.*, Complaint No. 05-00-1026, 34 IDELR 13 (OCR 2000) (requiring that notices be given as part of voluntary resolution; specific notice required of all students with diabetes at time of resolution).

5.3 Must a parent or student make a formal request to trigger a school's obligation to provide accommodations?

No. As discussed earlier (see Question 5.1), Section 504 requires that an evaluation be initiated where a school knows a child's need for or believes a child may need special education or related services. No formal request is required, and in fact a child may be evaluated and services provided even if the parent or guardian objects. However, it is a good idea for the parent/guardian or student to make a formal request for accommodations and services, rather than waiting for the school to act, especially for disabilities like diabetes which may not be readily observable by others.

5.4 To whom are requests for modifications or accommodations made?

As a practical matter, initial requests for modifications or accommodations are often directed to the school's principal or school nurse. However, school districts (except those which are very small) must designate individuals to coordinate efforts to comply with Section 504, the ADA, and IDEA. School districts frequently designate the same individual to coordinate compliance efforts under all three laws, although this is not always the case. Frequently these individuals are responsible for processing requests for modifications. While teachers, principals, or nurses should forward such requests to these individuals where appropriate, it can be helpful for parents or guardians to make the request directly to the person who is responsible for processing it. The school's student handbook should include contact information for individuals who are responsible for compliance with anti-discrimination laws.

Notes

Section 504 regulations require that a recipient that employs 15 or more persons must designate at least one person to coordinate its efforts to comply with the law's requirements. 34 C.F.R. § 104.7(a). Section 504 regulations also require that a recipient take appropriate initial and continuing steps to notify participants in school programs and activities and other interested persons of the identity of the recipient's Section 504 coordinator. 34 C.F.R. § 104.8. Sometimes the person who is designated as the Section 504 coordinator holds another primary job title.

Most school districts also have a special education coordinator who can be contacted about issues relating to students who are eligible for special education under the Individuals with Disabilities Education Act.

5.5 How should an accommodation request be initiated?

Parents or guardians are not required to suggest modifications or accommodations to begin the process for determining what services will be provided. It is enough to bring to the attention of school officials that the child has diabetes; school officials then have the duty to find appropriate accommodations. However, it is strongly recommended that parents or guardians request specific modifications and accommodations. This can eliminate confusion about what the child needs and wants, and can speed the process of determining what should be provided. Indeed, without specific accommodation requests and documentation to support them, schools have no reliable information on which to base

health-related accommodation decisions for students with diabetes. An accommodation request may be submitted orally, and need not mention “modifications,” “Section 504,” or any other specific legal terminology. However, it is best to submit the request in writing. The request should include:

- Purpose of the request.

For example: I am the parent of [name], whose date of birth is [date] and am submitting this request to obtain accommodations under Section 504 of the Rehabilitation Act and the American with Disabilities Act. My child attends [school] and has type 1 diabetes.

- The limitations caused by the disability.

For example: As a result of my child’s diabetes, she is required to monitor blood glucose levels, take insulin, eat snacks, and have access to the restroom.

- How the condition will affect the skills and abilities expected of the student – including both life and academic skills and abilities.

For example: My daughter may at times have high or low blood glucose levels that may affect her concentration or ability to do school work, to eat, to walk or to care for herself.

- The types of accommodations requested.

For example: I am seeking for my daughter appropriate accommodations. Among others, she should be permitted to carry and use blood glucose monitoring supplies, snacks, water, and insulin as per her Diabetes Medical Management Plan (DMMP).

- Provide medical documentation of the disability.

For example: Enclosed is a letter from my daughter’s physician confirming her diagnosis of diabetes. Also provided is the Diabetes Medical Management Plan developed for my daughter.

- Offer to participate in any needed evaluation or meeting to discuss accommodations.

For example: Because of the immediate and chronic needs my daughter has, I ask that you promptly consider this request. My daughter is available for any further evaluation you may need. Also, I am prepared to meet at your earliest convenience to discuss her situation.

6. What is the Process for Deciding Which Services and Accommodations Will Be Provided?

Deciding which services and accommodations will be provided to a student with diabetes requires parents or guardians and school officials to exchange information about the child's health-related and academic needs and the resources available to the school, and can involve a "give and take" process between parents or guardians and school officials designed to determine what services will best meet the child's needs. While the school makes the ultimate decision about what will be provided, parents and their advocates can and should play an active role in this process. This Part discusses the process of deciding on services and accommodations, including issues such as who must be involved in the process and what medical information can be required. Part 7 discusses how accommodation decisions should be documented.

6.1 What is the process for deciding how a student's needs will be accommodated?

The process for evaluating the needs of a student with a disability and determining what accommodations and services will be provided involves contributions by both school officials and parents or guardians. Medical information about the student's diabetes and treatment regimen (typically in the form of a Diabetes Medical Management Plan (DMMP) developed by the student's physician and which is discussed further in Question 7.1) serves as a basis for determining what health care accommodations will be provided. Once this information is presented, parents or guardians and school officials discuss (and perhaps negotiate) what accommodations will be provided. The student may also participate in the process if he or she has the desire and maturity to contribute to the process. To help direct the process, parents or guardians should request specific, reasonable, necessary, and appropriate accommodations from school officials, making clear early on exactly what the parents or guardians feel is necessary for their child.

Although this process often takes place informally, Section 504 requires that people who are knowledgeable about diabetes and the student's particular health care needs must be involved in the decision-making process, and also requires that decisions be based on accurate, current medical and educational information. The responsibility for evaluating the needs of students and making appropriate accommodations rests with the school. School officials are expected to undertake an interactive approach beginning with a determination of the precise limitations imposed by the child's disability and how those limitations might be overcome with reasonable accommodations. In consultation with the child's parents or guardians, the school should identify potential accommodations and assess their effectiveness in enabling the child to fully participate in the school's programs. Of course, this process need not be elaborate in practice, and many schools will quickly put in place appropriate accommodations upon receiving documentation specifying what accommodations are required.

As discussed in Question 6.9, school officials are ultimately responsible for deciding on and implementing accommodations, after considering the preference of the child's parents or guardians and documented health care needs.

Notes

Section 504 prescribes procedures for the evaluation and placement of students with disabilities. Specifically, schools must conduct an individual evaluation of a student with a disability before taking any action with respect to the initial placement of the student and any subsequent significant change in the student's placement. 34 C.F.R. § 104.35(a). Procedures apply to "ensure that children are not misclassified, unnecessarily labeled as handicapped, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials." *Cabell County Sch. Dist.*, Docket No. 03-92-1062 (OCR 1992). In interpreting evaluation data and in making placement decisions, a school must: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement is with persons who are not disabled to the maximum extent appropriate to the child's needs. 34 C.F.R. §§ 104.34, 104.35(c). Title II of the ADA places similar requirements on schools. *See* 28 C.F.R. § 35.130. Schools have the option of attempting to address needs prior to conducting an evaluation. *See Karnes City (TX) ISD*, Complaint No. 06-98-1180, 31 IDELR 64 (OCR 1999).

The evaluation process may require a medical assessment. If a medical assessment is necessary to make an appropriate evaluation of a student with diabetes, the school district must ensure that the student is assessed at no cost to the child's parents or guardians. *Yuba City (CA) Unified Sch. Dist.*, Complaint No. 09-94-1170, 22 IDELR 1148 (OCR 1995). Failure to obtain a medical assessment where required, or to at least invite a parent or guardian to produce one, violates Section 504 and the ADA by not procuring a proper evaluation prior to placement. *Yuba City (CA) Unified Sch. Dist.*, Complaint No. 09-94-1170, 22 IDELR 1148 (OCR 1995) (finding violation in case involving child with diabetes). Because diabetes care is constantly improving, the medical assessment must use only the most current information available and not rely on outdated assumptions regarding care. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995) (directing that current information be considered in determining whether in-class testing would be permitted).

The evaluation and accommodation process, along with the other substantive and procedural rights of students with disabilities, requires that "they receive the kind of decent and thoughtful consideration and resolve which concerned adults—parents/guardians, teachers, principals, and other concerned personnel alike—can be expected to give them." *Elizabeth S. v. Gilbool*, EHLR 558:461 (M.D. Pa. 1987). What the law "requires is simply that parents or guardians and teachers, principals, and others, whose advice and participation are valued because of their knowledge of the child, or the school, or of the disability or health condition, should sit down together, together [inform] themselves and think out loud together about the child's circumstances ... and about the arrangements and undertakings which will support and assist the child to participate effectively in school" *Elizabeth S. v. Gilbool*, EHLR 558:461 (M.D. Pa. 1987). Failure to hold meetings with parents or guardians at which school officials respond to parent concerns and requests denies the rights of

students with diabetes. *Bement (IL) Community Unit Sch. Dist. #5*, Complaint No. 05-89-1087, EHLR 353:383 (OCR 1989) (record did not show meetings were held).

6.2 Are the procedures for determining modifications or accommodations different under the Individuals with Disabilities Education Act?

This notebook focuses mostly on Section 504 (and thereby the ADA). It is important to keep in mind that a particular child also may be covered by the Individuals with Disabilities Education Act, especially where a child has multiple disabilities. See Question 4.7. In general, the procedures under IDEA are similar to those under Section 504, although certain time limitations and other requirements are specified in more detail under IDEA than under 504.

Notes

A school complies with Section 504 by meeting the IDEA requirements for providing a free appropriate public education. 34 C.F.R. § 104.33(b)(2). The procedures followed under IDEA are usually more elaborate than those under Section 504. Section 504 and IDEA are similar in that each provides for evaluation, accommodation, related services, and due process procedures. However, certain procedural protections are found in IDEA but not in Section 504, including additional reporting requirements and additional protections for students facing discipline. Some specific differences between IDEA and Section 504 are noted in the sections that follow, but advocates for a child covered by IDEA should consult that statute and its regulations for further details.

6.3 What medical or other information and authorizations should the student's family be prepared to provide to school officials?

Parents or guardians must be prepared to provide school districts any medical or other information and authorizations required to establish a child's need for accommodations and how to meet those needs. Typical requirements include:

- Information establishing the child's diabetes.
- Description of the health care services required at school.
- Physician and parent or guardian confirmation as to the student's ability to self-test blood glucose or self-administer insulin, if appropriate.
- Parent or guardian medical authorization for administering medication and providing other diabetes care services to their child.
- Physician's order (which may be in the Diabetes Medical Management Plan).
- Consent to disclose information, both medical and educational, to the student's physician.

Notes

Parents or guardians must be prepared to provide schools the necessary information required to develop a plan to accommodate a child. The assessment of a student's needs by his or her physician is especially important because the physician is the person best suited to

assess the child's health care needs. *Hawaii State Educational Agency*, Case No. 01-34 (Hawaii Dept. of Educ. 2001). If a parent or guardian fails to provide written instructions from the student's doctor on how and when to administer insulin or glucagon, for example, school officials do not violate Section 504 or the ADA when they do not provide the services. *Rock Hill (OH) Local Schs.*, Complaint No. 15-02-1034, 37 IDELR 222 (OCR 2002). Similarly, parents or guardians can't legitimately complain about the school's selection of a back-up supply of fast acting sugar where they fail to respond to a questionnaire seeking that information. *In re School Admin. Dist. #25*, Case No. 93.114, 20 IDELR 1316 (Maine Hearing Officer Decision 1994) (parents failed to complete questionnaire although submitted twice). The best place to put this information is in a health care plan signed by the treating health care professional, which is often called a Diabetes Medical Management Plan. See Question 7.1

6.4 Are school officials entitled to confirm the appropriateness of a student's treatment routine?

A student's treatment routine should be determined by the student's physician and health care team. However, where there are questions about the student's treatment, school officials may confirm the treatment program. Neither Section 504 nor the Americans with Disabilities Act are violated by confirming the correct treatment of a student with diabetes.

Notes

A school may legitimately confirm the appropriateness of medication dosages. A school may refuse to administer a child's medication where the prescribed dosage is contrary to established protocols because of concerns about the student's health and the school's own liability. *See, e.g., Davis v. Francis Howell Sch. Dist.*, 138 F.3d 754, 124 Educ. L. R. 840 (8th Cir. 1998) (ADA not violated where school refused to administer Ritalin to child whose dosages exceed the Physician's Desk Reference recommendation).

This situation should not arise regarding the administration of insulin, since there are no established limits on insulin dosages (although there may be such limits for some oral diabetes medication). Still, failing to take sufficient insulin or taking too much can result in hyperglycemia or hypoglycemia. Therefore, schools are entitled to confirm that proper dosage information has been furnished before providing insulin. Where dosage information provided by a physician or parent/guardian is not clear, school officials may contact parents or guardians for assistance in determining the correct dosage and may confirm with the school nurse that the parent-advised dosage is appropriate. *Union County (SC) Sch. Dist.*, Complaint No. 04-00-1420, 34 IDELR 210 (OCR 2000) (Section 504 not violated by 10 to 15 minute delay in insulin administration caused by school's efforts to confirm dosages with parent and physician; dosage information provided by physician did not contain specific information on what dosage should be given at very high blood glucose levels such as those experienced by the student in this incident). It is important for parents and guardians to ensure that physicians supply complete and clear dosage information to schools as part of the Diabetes Medical Management Plan.

School officials should not wait until a problem arises to determine whether physician or parent/guardian instructions are adequate. If the information received from the physician or parents is inadequate, a school district should promptly contact the student's physician and parents or guardians, preferably in writing, to specify what additional information is necessary. *Wayne-Westland (MI) Community Schs*, Complaint No. 15-00-1130, 35 IDELR 14 (OCR 2000) (complaint resolved, in part, by establishing requirement).

6.5 Should parents of students with diabetes or students themselves be required to sign a medical authorization or a release?

Parents or guardians must provide an appropriate medical authorization to school officials. A release of liability should not be required but is sometimes provided.

Notes

Schools may require necessary medical or physician authorizations or orders as a prerequisite to administering medications, such as insulin and/or glucagon. *See, e.g., Amarillo Indep. Sch. Dist.*, Complaint No. 06-02-1181 (OCR 2002) (school agreed to administer medications, including insulin and/or glucagon, to the student, providing necessary authorizations and physician's orders are received). On the other hand, a student who is entitled to accommodations should not be required to provide a release of liability as a prerequisite to receive what the law entitles the student to receive. Parents or guardians are not required to sign a release to allow their children to attend school. *Berlin Brothersvalley (PA) School Dist.*, EHLR 353:124 (OCR 1988) (district policy of giving school officials discretion in whether to administer needed medication and conditioning the provision of services required by Section 504 or IDEA on parents signing a waiver of liability is prohibited). *See also* California Department of Education, "Legal Advisory On Rights Of Students With Diabetes In California's K-12 Public Schools" (August 2007) (reprinted in supplemental information section and available at <http://www.diabetes.org/uedocuments/cde-legal-advisory-rights-2007.pdf>) at part I.C (school district may not condition provision of services on parent signing a waiver of liability). Nevertheless, many parents will provide a release. A special release may be required of all students participating in selected activities (e.g., athletic programs or field trips).

6.6 What rules apply to the release or exchange of medical and educational information?

The confidentiality and privacy of student medical records should be protected during the accommodations process. Health care providers and schools may and should require appropriate consents to release or exchange medical and educational information not only during the process of developing an accommodations plan, but also during its implementation.

Notes

Health care providers and schools will require that appropriate consents to release or exchange information be provided. These consents are required by several different laws.

Physicians and other health care providers are subject to the Health Insurance Portability and Accountability Act or HIPAA. Pub. L. 104-191 (1996), 110 Stat. 1936 (codified at 42 U.S.C. § 1320d-2 (note)) (statute); 45 C.F.R. Parts 160 and 164 (regulations). Under HIPAA, physicians and other health care providers are expected to obtain consent from a parent/guardian or the student (if an adult) to release information.

Schools are also subject to privacy laws. Schools that receive federal funds are subject to the Family Educational Rights and Privacy Act or FERPA. 20 U.S.C. § 1232g (statute); 34

C.F.R. Part 99 (regulations). Similar requirements are provided under the Individuals with Disabilities Education Act (IDEA). 34 C.F.R. §§ 300.611-300.627.

State statutes may be applicable as well. While these laws provide some exceptions, FERPA requires that a school obtain written consent to the disclosure of education records even to a student's own physician. *Irvine (CA) Unified Sch. Dist.*, No. 0613, 23 IDELR 1077 (FERPA Office 1996) (FERPA required written consent to disclosure of education records regarding student with diabetes to student's physician). Education records covered by FERPA can include medical or treatment records if those records are create by the school or in its possession.

HIPAA regulations exclude education records covered by FERPA or IDEA from those records subject to HIPAA's consent requirements. *See, e.g.*, 45 C.F.R. § 164.501 (providing that "protected health information" excludes individually identifiable health information in "[e]ducation records covered by" FERPA). Most records relating to a student will be subject to FERPA or IDEA privacy standards. However, if not, HIPAA would apply.

It should be recognized that some exceptions to the consent requirement may apply with respect to students with diabetes. Consent is not required where educational records are disclosed to other school officials, including teachers, "who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required." 20 U.S.C. § 1232g(b)(1)(A). Accordingly, a school may disclose information to a child's teachers or others who are expected to provide accommodations. Another exception to the consent requirement applies to health and safety emergencies. 20 U.S.C. § 1232g(b)(1)(I). Under this exception, information may be disclosed to meet a health emergency involving a student with diabetes.

6.7 What disclosures should be made to teachers or others about the student's health?

Once modifications or accommodations are determined, teachers and other school personnel who have responsibility for a student need to be informed of the student's diabetes and what responsibilities they may have. Without such knowledge, they will be unable to provide services needed. The school should obtain appropriate consent for the release of this information if required, although as discussed previously such consent may not be required when school personnel need the information as part of their educational duties. See Question 6.6. It is sometimes also helpful for students to be educated about diabetes where a student in their class has diabetes. See Question 9.12.

6.8 How is it decided whether a modification or accommodation is reasonable?

Under the Americans with Disabilities Act, modifications or accommodations are only required if they are reasonable. Whether a modification or accommodation is reasonable is decided on a case-by-case basis. Modifications need not be made if they would fundamentally alter the nature of the school's program, but as the purpose of school is to safely educate its students it is hard to imagine fundamental alteration being an impediment to students with diabetes obtaining needed services.. At private schools, modifications are also not required if providing the modification would be unduly burdensome to the district. Section 504 (and, also, the Individuals with Disabilities Education Act), on the other hand,

do not specifically require modifications to be reasonable. Instead, modifications may be required as part of the school's duty to provide "related aids and services" needed to provide a student with a free appropriate public education.

Notes

"[T]he obligation to provide related aids and services necessary to the provision of FAPE [under Section 504] is not subject to the limitations regarding undue financial and administrative burdens or fundamental alteration of the program." California Department of Education, "Legal Advisory On Rights Of Students With Diabetes In California's K-12 Public Schools" (August 2007) (reprinted in supplemental information section and available at <http://www.diabetes.org/uedocuments/cde-legal-advisory-rights-2007.pdf>) at part I.C. See also *id.* at I.D; (quoting *Compliance With The Americans With Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools*, United States Department of Education Office for Civil Rights, (1995) (available at: <http://www.dlrp.org/html/publications/schools/general/guidcont.html>)

6.9 Who makes the final decision about what services will be provided?

School officials are to consider information provided by and the preference of the child's parents or guardians during the process, and to select and implement an accommodation that is appropriate for the child. If there are several equally effective accommodations appropriate to the student's individual needs, the school has the authority to determine the accommodation that will be provided. Both Section 504 and the Americans with Disabilities Act, as well as the Individuals with Disabilities Education Act, provide procedures to have any disagreements resolved.

Notes

As discussed in Question 6.1, under Section 504, school officials are required to carefully consider information from a variety of sources, including the child's parents or guardians. The school is not required to follow parent/guardian recommendations, however. Indeed, unlike the Individuals with Disabilities Education Act, there is no requirement that parents or guardians be a part of the group. Cf. 20 U.S.C. § 1414(d)(1)(B)(i) (parents or guardians required to be included in IEP Team under IDEA). Where an agreement cannot be reached, the school must make a final determination. *In re School Admin. Dist. #25*, Case No. 93.114, 20 IDELR 1316 (Maine Hearing Officer Decision 1994).

While school officials may make a final determination if there is disagreement, the determination is always subject to the right of parents or guardians to seek a due process hearing or file a discrimination complaint. *In re School Admin. Dist. #25*, Case No. 93.114, 20 IDELR 1316 (Maine Hearing Officer Decision 1994). See Part 14 for information on the procedures available for resolving disputes.

6.10 How often must accommodation decisions be reviewed?

Accommodations must be periodically reviewed to ensure that they remain correct and appropriate, although Section 504 does not specify precisely how often. In addition, a review may be initiated by either school officials or the child's parents or guardians if the child's circumstances have changed.

Notes

Section 504 requires that schools provide for “periodic reevaluation of students” with disabilities who receive services. 34 C.F.R. § 104.35(d). Although not specifically required to follow the reevaluation procedures of the Individuals with Disabilities Education Act, following IDEA is one means of meeting this requirement. 34 C.F.R. § 104.35(d). IDEA requires that review occur “periodically, but not less frequently than annually.” 20 U.S.C. § 1414(d)(4). IDEA, under some circumstances, allows long-term plans up to three years. 20 U.S.C. § 1414(d)(5).

Parents/guardians, teachers, or other school officials may request a review of accommodation decisions at any time if the child’s circumstances have changed. If a student with accommodations performs poorly in school, for example, parents or teachers should suggest an evaluation to determine whether other accommodations or services may be required. *See, e.g., Hernando (FL) County Sch.*, Complaint No. 04-98-1412, 31 IDELR 89 (OCR 1999) (student with diabetes referred for evaluation because of poor school performance). A review may also be requested if the child’s diabetes treatment regimen changes significantly.

7. How Should Needed Services and Accommodations Be Documented?

While accommodations for students with diabetes can be handled informally by schools with parent/guardian and physician authorizations and directions, written plans outlining each student's diabetes management and needed accommodations are highly recommended. As discussed further below, most students with diabetes should have two separate planning documents. One (often called the Diabetes Medical Management Plan) lays out the student's treatment regimen, while the other (often called a Section 504 Plan) outlines how the needed diabetes care will be provided at school. This Part discusses the development and contents of both types of plans.

7.1 What types of documents should be prepared regarding accommodations for students with diabetes?

Accommodating students with diabetes requires an assessment both of the health care needs of the student and of how those needs will be met in the school setting. It is helpful to develop two different types of documents to specify the services a student with diabetes will be provided. Typically, these documents are known as a Diabetes Medical Management Plan (DMMP) and a Section 504 Plan, although schools may use different names for one or both of them. Most students with diabetes should have both documents, and they are described below.

An individualized medical plan, developed by the student's personal health care team (including the treating physician) and family, contains the prescribed diabetes health care regimen tailored for that student. For example, this plan would include the times at which insulin should be given and the proper dose to be given for a specified blood glucose value. While this plan is often called a DMMP, it can also be known by other names (such as a diabetes care plan or health care plan). See Question 7.6 for more information on the plan's contents.

An education plan explains what accommodations, education aids, and services are needed for each student with diabetes in order to ensure the child is safe at school and receives the proper treatment that is outlined in the DMMP or other health care plan. Depending on the law under which the student is covered and the preferences of the school, this plan can be known as a Section 504 plan, Individualized Education Program (IEP), or by another name. See Question 7.7 for more information on the plan's contents.

Together, these two plans provide the school and the parents or guardians with a comprehensive picture of the student's health care needs and how those needs will be met at school. While this information can be combined into one document, it is better to keep treatment information in a separate health care plan like a DMMP. Separate documents make clear that it is the responsibility of the treating physician and parents/guardians, rather than the school, to decide on the treatment regimen appropriate for the child. This

approach also ensures that the school has the most up-to-date and accurate information on the student's health care needs when making accommodation decisions.

Notes

In addition to DMMPs and written accommodation plans such as Section 504 plans, advocates should also be familiar with the concept of Individualized Health Care Plans (IHPs). These documents are typically developed by school nurses to describe how care will be provided, and are analogous to nursing care plans developed in other health care settings. See National Association of School Nurses, Position Statement on *Individualized Health Care Plans* (November 2003), available at <http://www.nasn.org/Default.aspx?tabid=226>. Although they may be developed in collaboration with parents/guardians or treating physicians, often they are internal documents that are not shown to parents. It is important that an IHP accurately reflect the treatment called for in a student's DMMP. Where a student with diabetes is eligible for services under Section 504, an IHP is not in and of itself an adequate substitute for a properly developed Section 504 plan. See *Fayette County (KY) School Dist.*, Complaint No. 03-05-1061, 45 IDELR 67 (OCR 2005) (even though student was receiving some health care services under an IHP, district was required to evaluate him for eligibility under Section 504); *San Diego (CA) City Unified School Dist.*, Complaint No. 09-04-1150, 44 IDELR 135 (OCR 2005) (student's ISHP was not an adequate substitute for a Section 504 plan adopted in accordance with proper procedures).

7.2 Are there differences in documentation depending on whether a student is covered by Section 504, the Americans with Disabilities Act, or the Individuals with Disabilities Education Act?

Yes. The documentation required under Section 504 and the IDEA differs. Children covered by IDEA are required to have a written individualized education program (or IEP). On the other hand, a written plan is not necessary to comply with Section 504 (or the ADA), but schools can (and sometimes do) use IEPs developed using the IDEA process to comply with these laws. Even where an IEP is not developed, most schools will develop a written Section 504 Plan describing the accommodations to be provided to students with diabetes and other disabilities covered by Section 504.

Notes

As discussed at Questions 4.4-4.7, most students with diabetes are covered by Section 504 and the ADA while some, but not all, may be covered by IDEA. It is important to understand the documentation required by each of these laws.

The IDEA contains extensive requirements about what must be documented in a student's accommodation plan. Under the IDEA, each child with a disability must have developed a written "individualized education program" or IEP. See 20 U.S.C. § 1414(d). Among other requirements, the IEP must provide: a statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals, both academic and functional; a description of how the child's progress toward meeting the annual goals will be measured and reported; a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child; an explanation of the extent to which the child will not participate with non-disabled children in the regular class and in school activities;

and a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state or district-wide assessments. The IEP is developed after an evaluation by an IEP Team following detailed procedures and requirements.

While Section 504 sets standards for how evaluations of a student's service and placement needs should be evaluated, it does not require that services be specified in a written plan. 34 C.F.R. § 104.35. If a school does develop a written accommodation plan, it can use the IDEA process of developing an IEP to comply with Section 504's evaluation requirements, but it is also free to adopt less detailed procedures. 34 C.F.R. § 104.33(b)(2). In fact, much of the information described above which must be in an IEP is not necessary in a plan for a student who needs only related services for diabetes care.

7.3 Do students with diabetes always require a written Section 504 or accommodations plan?

No. School officials and teachers often make accommodations for students, including those with disabilities such as diabetes, without a written plan. However, a written plan is desirable, and it is recommended that one be developed for each student with diabetes covered by Section 504. One benefit of a written plan is that it formally identifies the child as having a disability that entitles him or her to services under Section 504 or another anti-discrimination law. A written plan also assures parents/guardians and school personnel that everyone involved with diabetes care knows what his or her role is and what accommodations will be provided. Whether a written plan is critical, nonetheless, depends very much on how diabetes care is handled with respect to a child.

Notes

OCR has held, in a case not related to diabetes, that Section 504 allows schools to attempt school-based interventions and/or modifications prior to conducting a formal evaluation of a child. If these interventions and/or modifications are successful, a school is not obligated to evaluate a student or develop a written accommodation plan. *See Karnes City (TX) ISD*, Complaint No. 06-98-1180, 31 IDELR 64 (OCR 1999). While such "interventions" might be appropriate as an alternative to Section 504 services for certain other disabilities (such as dyslexia, the condition at issue in *Karnes City*), it would be inappropriate for a school to attempt "interventions" for a student with diabetes short of what is medically required by the student's treating physician. In addition, at the request of the parents or guardians of the child, school officials should evaluate the student.

7.4 Who prepares the Section 504 or accommodations plan?

It is the responsibility of school officials to prepare a written education plan. This plan should take into account the health care needs of the child and should be based on the Diabetes Medical Management Plan for the child, if one has been prepared. Of course, the parents or guardians of the student may make whatever proposals for the plan they consider appropriate, and it is often helpful for them to prepare and present a proposed plan to the district. The district may adopt this plan or may use it as an aid in drafting the final plan.

7.5 Who should sign the Section 504 or accommodations plan?

Since there is no requirement that a Section 504 plan be in writing (see Question 7.2), there is no requirement that it be signed by any particular person. Ideally a school official authorized to bind the school (such as the 504 coordinator) and the parents or guardian of the student with diabetes will sign the education plan. However, parents need not sign the plan, and it can be implemented even if the parents object and refuse to sign it.

Notes

OCR has held that there is no requirement that parents or guardians sign a 504 Plan. *See Bradley County (TN) School Dist.*, Complaint No. 04-04-1247, 43 IDELR 44 (OCR 2004) (school did not violate Section 504 by implementing plan where a group of knowledgeable individuals developed and signed the plan, even though parent disagreed with the plan and refused to sign it). While such a plan can be implemented over a parent or guardian's objections, the parent or guardian has the right to challenge the adequacy of the plan through informal or formal procedures. See Part 14 for a discussion of how disputes about the content of plans can be resolved.

Some schools have all of a child's teachers sign the accommodations plan so that it is clear they are aware of the plan. Schools may also take other steps to ensure that all teachers are aware of their obligations under the plan. *Hamilton Heights (IN) Sch. Corp.*, Complaint No. 05-02-1048, 37 IDELR 130 (OCR 2002) (teachers ultimately signed plan or at least received instructions regarding diabetes). This is a good idea to ensure that a student's teachers are all well-informed as to their responsibilities under the plan.

An individualized education program (or IEP) under the Individuals with Disabilities Education Act is required to be written and signed by the members of the IEP Team. Parents or guardians also sign the IEP if they approve it.

7.6 What should be included in the Diabetes Medical Management Plan?

The American Diabetes Association suggests that a DMMP or other medical plan address the specific health care needs of a child and provide specific instructions for each of the following:

- Blood glucose monitoring, including frequency and circumstances.
- Insulin administration, including doses/injection times prescribed for specific blood glucose values and the storage of insulin.
- Meals and snacks, including food content, amounts, and timing.
- Symptoms and treatment of hypoglycemia (low blood glucose), including the administration of glucagon, if authorized by the student's treating physician.
- Symptoms and treatment of hyperglycemia (high blood glucose).
- Testing for ketones and appropriate actions to take for abnormal ketone levels.

Of course, in any specific situation, other information may be appropriate. This listing is not exhaustive.

Notes

The suggested list is taken from a Position Statement of the American Diabetes Association, *Diabetes Care in the School and Day Care Setting*, Diabetes Care 29:SS49-S55 (2006). Other suggestions can be found in the OCR complaint resolution agreements included in the Supplemental Information section.

7.7 What should be included in a Section 504 or other accommodation plan?

An accommodation plan should include information about how the student's diabetes will be managed at school, based on the treatment regimen outlined in the Diabetes Medical Management Plan. The plan should specify what accommodations and modification in school policies will be allowed to provide diabetes care, who will provide diabetes care tasks, and who is responsible for supervising the provision of care. Some things that are fundamental to most plans are:

- When and where insulin will be administered.
- Who will administer insulin.
- Who is responsible for monitoring the student for possible signs of hypoglycemia or hyperglycemia.
- Who will administer glucagon in emergency situations.
- How care will be provided on field trips, during extracurricular activities, and on the school bus.
- Access to food, water and restrooms.
- How medications and syringes will be stored and disposed of at school.
- The circumstances under which parents/guardians and the child's treating physician will be contacted regarding care issues.

As necessary the accommodation plan should also address other issues besides diabetes health care, such as the need for academic modifications:

- Alternate time to take academic exams if blood glucose levels are out of target range.
- No penalty for diabetes-related absences or tardiness.
- Reasonable time to make up missed assignments and exams.
- Opportunity to receive missed classroom instruction.
- Access to water, bathroom, supplies, health care upon request.
- Full-participation in all school-sponsored activities such as field trips and extracurricular events.

Notes

Other suggestions for things to include can be found in the sample accommodation plan found in the Supplemental Information section (and in the other resources referenced in the introduction to that plan).

One example from a complaint resolution provides:

Each plan will provide those services required by Section 504 and Title II [of the ADA]. For example, each plan will, when appropriate, permit a student to: see school ADCPs [or Authorized Diabetes Care Providers] or medical personnel upon request; self-test, self-treat and self-monitor in the classroom and during all school sponsored activities, field trips and programs; eat snacks and drink beverages to prevent hypoglycemia; miss school without consequences for diabetes-related care, provided the absence is medically documented; and be excused to use a restroom, as necessary.

Buchanan County (VA) Public Schs., Case No. 11-03-1051 (OCR 2003).

It is important that the 504 plan or other accommodation plan contain specific instructions about what diabetes care services will be provided and how and when they will be provided. Failure to specify these details may make it difficult for parents to enforce their rights to needed services. For example, in *Lee County (FL) School Dist.*, Complaint No. 04-06-1178, 47 IDELR 18 (OCR 2006), the parents and the school nurse disagreed about how often the insulin cartridge in the student's insulin pen should be changed. OCR found that, since the issue was not addressed in the student's 504 plan, the district had not violated Section 504 by failing to change the insulin cartridge when requested. OCR suggested that the 504 team be reconvened to address this issue.

7.8 Should school nurse services be specified?

Services to be provided by the school nurse or other trained personnel should be included in a child's accommodations plan. If the child has an individualized education program (or IEP) it is particularly important to incorporate reference to school nurse services to be provided.

Notes

Where a child has an individualized education program (or IEP) detailed mention of school nurse services is important. School health services have always been considered a "related service" under regulations implementing the Individuals with Disabilities Education Act. 34 C.F.R. § 300.34(a) (term "related services" also includes "school health services and school nurse services"). The Individuals with Disabilities Education Improvement Act of 2004 amended the IDEA to specifically provide that such services are included. However, IDEA provides that "related services" includes "school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child." 20 U.S.C. § 1401(26)(A). Because the "as described" language does not modify other services included in the definition, the change suggests that it may be necessary to be more specific with respect to school nurse services to be furnished the child under the IEP.

7.9 What are the time limitations for developing a plan?

No specific time limits are prescribed under Section 504 or the Americans with Disabilities Act. Schools must, however, plan for and implement accommodations within a reasonable period of time. The Individuals with Disabilities Education Act, on the other hand, contains specific time limitations for the development of an Individualized Education Program (IEP), which can provide a helpful standard for determining a reasonable timetable even for students covered only by Section 504 or the ADA.

Notes

While written plans are not required to be developed within any given period of time under Section 504 and the ADA, schools must accommodate students with diabetes within a reasonable period of time. Just what is reasonable depends on the facts and circumstances.

Where the Office for Civil Rights reaches an Agreement to resolve a complaint, 45 school days is often fixed as the time to evaluate the specific areas of the student's academic and nonacademic needs, obtain all necessary medical evaluations regarding the student's disability-related needs, carefully consider all medication evaluations, review academic accommodations, and develop an accommodation plan for the student. The plan is expected to be implemented within 60 school days. *See, e.g., San Diego (CA) City Unified School Dist.*, Complaint No. 09-04-1150, 44 IDELR 135 (OCR 2005) (delay of 3-4 months in initiating evaluation unreasonable where it resulted from erroneous beliefs about Section 504 eligibility and procedures and where evaluation did not begin until after expulsion proceedings had been initiated against student for conduct related to his disability); *Evergreen (WA) School Dist. No. 114*, Complaint No. 10-00-1139, 36 IDELR 9 (OCR 2001) (setting schedule where claim submitted by student with diabetes). The Office for Civil Rights has concluded that a six month delay in evaluating a student is not timely. *Cabell County Sch. Dist.*, Docket No. 03-92-1062 (OCR 1992) (delay of six months in acting on parent notification of disability untimely; also, actual evaluation was delayed even longer and actual determination of eligibility for services followed more than a year later).

Every effort should be made to avoid delaying or interrupting a student's attendance at school. Where necessary to allow the evaluation of a student's needs and determination of appropriate accommodations, it has been held that a ten-day exclusion from school was not excessive. A change in a student's health care plan was considered after the student was treated in a hospital emergency room for a diabetes-related seizure. *Seattle (WA) Pub. Sch.*, Complaint No. 10-98-1264, 31 IDELR 193 (OCR 1999) (district found to have timely developed new health care plan upon notice that her school health needs had changed). If a student is excluded from school, it may be appropriate not only to accelerate the evaluation process but also provide compensatory education if the student suffers any deficit relating to the lapse in attendance. *Addison Sch. Dist.*, Complaint No. 02-01-1110 (OCR 2001) (where student was excluded from school, process placed under stricter time lines and consideration of compensatory education required); *Ware Pub. Schs.*, Complaint No. 01-00-1046 (OCR 2000) (resolution agreement required provision for in-school tutoring to assist student in making up missed class work).

The Individuals with Disabilities Education Act requires that written plans (IEPs) be developed within specified time limits. While not strictly applicable under Section 504 and the ADA, these limitations provide some guidance. Where an initial evaluation is requested by a parent or guardian, the evaluation process and determination of whether a child has a disability is to be completed within 60 calendar days of receiving parental consent for the evaluation. 20 U.S.C. § 1414(a)(1)(C). An IEP meeting must be held within 30 calendar days

of a determination that a child needs special education and related services. 34 C.F.R. § 300.323(c)(1). The IEP must then be implemented as soon as possible. 34 C.F.R. § 300.323(c)(2). These timelines are longer than would ordinarily be needed for students with diabetes; it is reasonable to expect that a meeting would be held within 30 calendar days after parents or guardians provide school officials the child’s Diabetes Medical Management Plan.

Some schools characterize accommodation plans as “drafts” when initially developed, and begin implementing the plans before they are finalized. There is nothing wrong with describing a plan as a draft, provided the student is receiving appropriate services and accommodations. *See Bradley County (TN) School Dist.*, Complaint No. 04-04-1247, 43 IDELR 44 (OCR 2004) (no violation found where school had implemented a “draft” 504 plan at the beginning of the school year and had not finalized the plan until several weeks later).

Delay in developing a plan is not reason to deprive a child of an education. During the process, the child should not be denied meaningful access to school.

7.10 What should be done if the Section 504 or accommodations plan is not being followed?

If an agreed-upon accommodations plan is not being followed, advocates should begin by presenting concerns to the appropriate school official. If the plan continues to be ignored, complaint procedures should be considered.

Notes

When a plan is not being followed, sometimes it is simply the result of lower-level staff failing to recognize the importance of implementing the plan. *See, e.g., Northwestern (OH) Local Schs.*, Case No. 15-03-1202 (OCR 2004) (OCR dismissed complaint where school had already addressed failure to implement Section 504 Plan including, among other things, emphasizing to food service staff the importance of following the plan). Where this is the case, tactfully complaining to responsible school officials should lead to resolution of the problem. If problems persist, the formal and informal procedures discussed in Part 14 should be considered.

8. What Diabetes Care Services and Accommodations Should Be Provided?

Most students with diabetes will require some services and accommodations from the school in order to successfully manage the condition and participate fully in the educational program. Negotiations between advocates and schools will frequently focus on what diabetes care services the school is required to provide and how they will be provided. This Part begins with a discussion of the American Diabetes Association’s position on diabetes care in schools and of key points in its model state legislation, and then addresses the crucial need for accommodation decisions to be based on the needs of the individual child, not on blanket rules. It then addresses issues surrounding what care must be provided, including insulin administration, emergency care, and meals and snacks. The question of who should provide care is discussed in more detail in Part 9.

8.1 May a school be required to provide diabetes health care services to a student with diabetes?

Schools can be required to provide aids and services related to the health care needs of a student with a disability. Health services, such as those provided by a school nurse or other trained personnel, are services that the school can be required to provide under Section 504, the Americans with Disabilities Act (ADA) and the Individuals with Disabilities Education Act (IDEA). Schools are not required to provide “medical services”, which are defined as services which must be provided by a physician (as opposed to a school nurse or other trained personnel). Since diabetes care tasks such as insulin and glucagon administration can be provided by nurses or other personnel, they are not “medical services” under this definition.

Notes

Section 504 provides that health services are included among those services that may be required to be provided to a student with a disability. 34 C.F.R. § 104.37(a)(2). The IDEA also states that school health services can be provided but does not require the provision of “medical services”. See 20 U.S.C. § 1401(26). The Supreme Court has narrowly defined the scope of “medical services” that schools need not provide under IDEA. The Court has held that services that may be provided by a qualified school nurse or other qualified person are related services, which must be provided, rather than a medical service, which is not required. *Cedar Rapids Community Sch. Dist. v. Garret F.*, 526 U.S. 66, 119 S. Ct. 992, 143 L. Ed. 2d 154 (1999). Excluded medical services generally are those which must be provided by a licensed physician. Providing a supply of medication for a student is considered a medical service. See 34 C.F.R. Part 300, Attachment 1, Analysis of Comments and Changes, 64 Fed. Reg. 12540 (1999) (considering IDEA). However, while a district is therefore not required to provide medication, it may be required to provide the related service of administering the

medication provided by the student or his or her parents or guardians. While Section 504 and the ADA do not provide for an explicit “medical services” exception, it is likely that medical services not required under IDEA would also not be required under these laws.

8.2 What is the position of the American Diabetes Association on the provision of diabetes care in the school setting?

The views of the American Diabetes Association on diabetes care in the school setting are embodied in the Association’s Position Statement on Diabetes Care in the School and Day Care Setting. This position statement emphasizes the need to assess the needs of each child individually and to provide appropriate care in the school based on the student’s Diabetes Medical Management Plan (DMMP) or other health care plan. The Association opposes blanket rules that would exclude students with diabetes from participating in school activities or would restrict the services school personnel provide. Diabetes care should be provided in a way that encourages self-management of diabetes by the student whenever appropriate and which ensures that adequate numbers of trained personnel are available to protect the student’s health and safety whenever the student is in school or participating in school-sponsored activities.

The position statement contains a number of specific recommendations regarding diabetes care services to be provided at school. Many of these recommendations are incorporated into model legislation that the Association has developed regarding diabetes care in schools. Legislation based on this model has been passed in a number of states. Key features of the Association’s model legislation are:

- Assuring that trained school personnel are available to provide routine and emergency diabetes care at school and school-related activities.
- Requiring development of diabetes care training guidelines by various government agencies and organizations and the training of school personnel.
- Permitting independent monitoring and treatment by students who are capable of doing so.
- Assuring that school choice is not restricted because of diabetes.
- Requiring development and implementation by the school of a Diabetes Medical Management Plan (DMMP) approved by the child’s health care provider.

Notes

The Position Statement is published at Diabetes Care, Volume 29, Supp. 1, S43-49 (Jan. 2006), and is available at http://care.diabetesjournals.org/cgi/content/full/29/suppl_1/s49.

8.3 Should all students with diabetes be provided with the same modifications or accommodations?

No. Across-the-board, “one-size-fits-all” accommodation plans are not appropriate because they may not take into account each child’s individual needs. Accommodations for students with diabetes are often similar, but diabetes affects each individual differently and it

is essential that individual needs be considered. Every child is entitled to an individualized assessment.

Notes

Section 504 requires the development of an individualized, appropriate educational program for each student with a disability. That program must be developed through a process that meets certain requirements. 34 C.F.R. §§ 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards). Title II of the Americans with Disabilities Act is similarly construed. 28 C.F.R. § 35.130(b). Because of this, under both Section 504 and the ADA, the individual needs of students must be considered. *Conejo Valley (CA) Unified Sch. Dist.*, Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993) (home bound instruction for child with Down Syndrome and diabetes could not be limited to one hour per day without regard to student’s individual needs). General policies applicable to all students with diabetes violate these requirements. *See, e.g., Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995) (rejecting rule prohibiting in-class blood glucose testing); *Conejo Valley (CA) Unified Sch. Dist.*, Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993) (Section 504 and ADA violated where school failed to consider individual needs of student with diabetes and, instead, proposed options that were based on the district’s refusal to allow non-licensed personnel to administer injections even in emergency situations).

8.4 Can schools apply blanket rules based on safety concerns?

Blanket rules that do not take into account individual circumstances are not appropriate, even when safety concerns are raised to justify them. These concerns must be considered as part of the assessment of a child’s individual needs.

Notes

Students’ needs must be assessed on an individual basis. See Question 8.3. Health and safety concerns may be considered, but only as part of the individualized determination. *Santa Maria-Bonita (CA) Sch. Dist.*, Complaint No. 09-97-1449, 30 IDELR 547 (OCR 1998) (school adopted agreement for individual assessment); *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995) (issues arising from guidelines under the federal Occupational Safety and Health Act, the disruptiveness to the overall class caused by testing, and the safety of other students, must be considered as part of individualized evaluation).

8.5 May students with diabetes be assigned to a separate school other than the one they would attend if not disabled?

It might be argued that diabetes care could be provided more efficiently to students if all students with diabetes attended one school. However, it is the Association’s position that this unnecessarily and improperly segregates students with diabetes from their non-disabled peers. If a student requires accommodations and services, they should be furnished at the student’s regular school. The typical accommodations required of students with diabetes may easily be provided at all schools. In addition, if a school district were to require a student to attend another school because services are not available at the student’s regular

school, it would need to provide many of these same services during transportation to and from this school. See Question 12.8.

Notes

In determining a school placement, districts must consider a student's individual needs and may not make an assignment decision based purely on the student's need for diabetes-related services. As the California Department of Education has stated, "An LEA may not have a blanket policy or general practice that insulin or glucagon administration, or other diabetes-related health care services, will only be provided by district personnel at one school in the district or will always require removal from the classroom in order to receive diabetes related health care services." California Department of Education, "Legal Advisory On Rights Of Students With Diabetes In California's K-12 Public Schools" (August 2007) (reprinted in the supplemental information section and available at <http://www.diabetes.org/uedocuments/cde-legal-advisory-rights-2007.pdf> at part I.C. See also *id.* at III.F ("School placement decisions may not be based upon the unwillingness of a district to provide needed related services to a child with OHI-diabetes disability at the school that the child would otherwise attend."))

A policy prohibiting non-licensed individuals from giving students with diabetes injections may not be the exclusive controlling factor in making a placement, without consideration of the nature of the proposed placement in terms of curriculum, educational setting, opportunity to interact with non-disabled students, and other factors. *Conejo Valley (CA) Unified Sch. Dist.*, Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993) (application of blanket policy in placement process violated Section 504 and ADA although several different options had been offered). The placement must be designed to meet the needs of the student. *McWbirt v. Williamson County Schs.*, 23 IDELR 509 (6th Cir. 1994) (although mother believed that she was the only person capable of handling her child's diabetes and, therefore, insisted that child be placed as close to home as possible, education needs require placement at another school and such placement was appropriate where there was no reason to believe the school personnel could not be trained to care for her).

Section 504, Title III of the Americans with Disabilities Act, and the Individuals with Disabilities Education Act require that students be educated with persons who are not disabled and in the least restrictive environment. 34 C.F.R. § 104.34 (Section 504); 42 U.S.C. § 12182(b)(1)(B), (C) (ADA), 20 U.S.C. § 1412(5) (IDEA). However, in cases involving disabilities other than diabetes, several courts have stated that this does not automatically mean that all students with disabilities end up being assigned to their neighborhood school. *A.W. v. Fairfax County Board of Education*, 372 F. 3d 674, 681 (4th Cir. 2004) (under IDEA, "least restrictive environment" requirement means only that students should not unreasonably be segregated from non-disabled students and does not mandate any particular school placement or override school discretion in student assignment decisions); *Urban v. Jefferson County School Dist. R-1*, 89 F. 3d 720 (10th Cir. 1996) (reaching a similar conclusion under IDEA, and holding that 504 and the ADA confer no more rights than IDEA in this regard).

OCR has indicated that if a particular student's diabetes requires that a school nurse be available to provide services, it may be appropriate to assign a child to a school that has such services available rather than a school with only periodic coverage. *Seattle (WA) Pub. Schs.*, Complaint No. 10-98-1264, 31 IDELR 193 (OCR 1999) (assignment to school with a nurse on site daily approved for student with diabetes; unclear whether parent supported or opposed the requirement that care be provided by a nurse); *Calcasieu Parish (LA) Sch. Bd.*, Complaint No. 06041354, 44 IDELR 49 (OCR 2005) (district's offer to transfer student to a

school with a full time nurse was reasonable where state nursing regulations prohibited delegating insulin administration to unlicensed personnel and where the school the child attended had only a part time nurse).

8.6 What are typical examples of health care modifications or accommodations for students with diabetes?

Examples of accommodations frequently requested include allowing blood glucose self-monitoring and medication administration by students who are capable of doing it themselves (see Question 9.1), administration of blood glucose checks and medications such as insulin and glucagon by school personnel when assistance is needed (see Questions 8.9, 8.11), and modification of food and bathroom usage policies (see Questions 8.15-8.17).

Notes

Numerous cases and OCR agreements have discussed these kinds of health care accommodations. Several rather comprehensive agreements to resolve discrimination complaints exist and can serve as guides to the kinds of accommodations that many children with diabetes will need. For example, one agreement requires that each plan for a student with diabetes permit a student to: “see school ADCPs [Authorized Diabetes Care Providers] or medical personnel upon request; self-test, self-treat and self-monitor in the classroom and during all school sponsored activities, field trips and programs; eat snacks and drink beverages to prevent hypoglycemia; miss school without consequences for diabetes-related care, provided the absence is medically documented; and be excused to use a restroom, as necessary.” *Onslow County (NC) Pub. Schs.*, Complaint No. 11-02-1035, 37 IDELR 161 (OCR 2002); *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999). See also *Springboro (OH) Community City Sch. Dist.*, Complaint No. 15-02-1194, 39 IDELR 41 (OCR 2003) (blood glucose monitoring, relaxation of snack policies, providing food serving size and carbohydrate information, and administration of medication).

8.7 Must schools monitor a student’s blood glucose levels?

Monitoring of a child’s blood glucose levels may be required if the child cannot monitor his or her levels independently. Younger students typically require assistance with taking blood glucose readings, reading and interpreting the results, and taking appropriate steps to respond to particular blood glucose values. Most older students, on the other hand, are capable of testing their blood glucose levels independently. Even for these students, monitoring may be required in emergency situations.

Notes

Since blood glucose monitoring is perceived as less complicated than administering insulin or other medications, it is often more readily provided by schools, and many cases and OCR decisions have included blood glucose monitoring as a needed service. *Elizabeth S. v. Gilbool*, EHLR 558:461 (M.D. Pa. 1987).

8.8 Are schools required to provide diabetes care supplies for students?

No. Schools need not provide diabetes supplies to a student. Parents or guardians are required to provide glucose testing equipment, insulin, glucagon, snacks, and other supplies necessary for students. However, it is a good idea for a school to have certain backup supplies available.

Notes

Diabetes care supplies such as blood glucose monitoring equipment and medications are considered medical supplies, which districts are not required to provide or pay for as an accommodation. While schools are required in appropriate circumstances to administer needed medications where those medications are provided by the child's parents or guardians, schools are not required to provide medications or other items which are individually prescribed for the student, especially where those items are used by the student at home as well. *In re School Admin. Dist. #25*, Case No. 93.114, 20 IDELR 1316 (Maine Hearing Officer Decision 1994) (parents were to provide a supply of fast acting sugar as a medical supply). See Question 8.1 (medications are considered to be medical services schools are not obligated to provide).

Parents or guardians also may be expected to provide sodas or snacks if needed for diabetes care. *Maine Sch. Admin. Dist. #25*, Complaint No. 01-93-1170, 20 IDELR 1354 (OCR 1993) (school did not retaliate by expecting parents to buy or provide sodas to student with diabetes; school did provide storage and refrigerator space). Many schools wisely provide a backup source of some supplies, such as a glucose meter, snacks, and glucose tablets. The choice of backup supplies must meet the recommendations of the student's diabetes medical providers, but the source does not need to be exactly what the student or parent/guardian might prefer. *In re School Admin. Dist. #25*, Case No. 93.114, 20 IDELR 1316 (Maine Hearing Officer Decision 1994) (school expected to provide a backup supply of fast acting sugar; parent complaint about the choice rejected where they failed to respond to requests for student's preferences).

8.9 May a school prohibit the administration of insulin during the school day?

No. Schools must provide for the administration of insulin to students with diabetes who need it. If a student needs insulin to be administered during the school day, such a policy would effectively exclude the student from school, by making it unsafe for him or her to attend.

Notes

While in the past many people had treatment regimens that required only one or two insulin shots a day (and therefore would not necessarily require administration during school hours), recent advances in the field of diabetes treatment have shown that a regimen including more frequent insulin dosages is much more effective at managing diabetes and avoiding long term complications. As a result, most students with diabetes require insulin administration during school hours. A student's need for insulin administration at school, including timing and amount of doses, should be specified in detail in the student's Diabetes Medical Management Plan or other medical plan. Where the need for insulin is not

documented, a school may not be required to administer insulin. *Eastmont (WA) School Dist. No. 206*, Complaint No. 10-05-1030, 44 IDELR 258 (OCR 2005) (where no medical documentation indicated that student needed insulin to be administered during the school day, district did not violate Section 504 by failing to administer it, even where parent claimed that she had been told by district officials not to request insulin because it would not be provided).

A policy that prohibits qualified staff from giving injectables to students with diabetes, even if needed and even in emergency situations, may have the effect of denying needed services to students with disabilities. *Prince George's (MD) County Schools*, Complaint No. 03-02-1258, 39 IDELR 103 (OCR 2003); *see also Amarillo Indep. Sch. Dist.*, Complaint No. 06-02-1181 (OCR 2002) (school agreed to administer medications, including insulin and/or glucagon).

If a student is able to self-administer insulin, no intervention or assistance from school personnel is necessary except in emergency situations. However, most younger children will not be capable of self-administering insulin and will require assistance, and some older students may continue to need assistance (particularly where other disabilities are involved that make self-administration difficult). Insulin should be administered to a student until such time as the student is able to self-administer. *Wayne-Westland (MI) Community Schs.*, Complaint No. 15-00-1130, 35 IDELR 14 (OCR 2000) (complaint resolution provided that school would administer insulin to student who was eight years old until she acquired the skill and comfort level to self-administer insulin). Whether a student is able to self-administer insulin should be determined by the student's parents or guardians and physician in collaboration with school officials.

8.10 Do accommodation needs differ for students using an insulin pump?

Students using an insulin pump require accommodations just as do other children with diabetes. However, the accommodations might vary because of the pump. Assistance may be required to operate the pump and, so, trained diabetes personnel must be available to perform basic insulin pump operations such as changing infusion sets, changing batteries, and trouble-shooting alarms. There also may be times when the pump malfunctions and insulin injections must be used. Schools should also be responsible for securing and storing a student's insulin pump if a student disconnects it for physical education or for some other reason.

Notes

For an example of an OCR agreement addressing insulin pump issues, *see Henderson County (NC) Pub. Schs.*, Complaint No. 11-00-1008, 34 IDELR 43 (OCR 2000) (school agreed to train school personnel in the use of pump and also have an individual trained to operate the pump accompany the student to school-sponsored events off campus).

8.11 Must a school be prepared to administer glucagon to students?

Yes. Accommodation of students with diabetes requires that school personnel be prepared to administer glucagon to students if needed.

Notes

Glucagon cannot be self-administered; it is administered by injection when a person is unconscious or semi-conscious due to severe hypoglycemia and cannot take glucose orally. Although a child may vomit, he or she is not injured from receiving glucagon when it is not actually required. For more information on glucagon, see Question 2.7.

A life threatening situation may result if glucagon is not administered promptly when circumstances warrant. It has therefore been held that a student with diabetes who is at risk of hypoglycemia must be placed where a nurse or other qualified individual is available on site to administer glucagon in case of any emergency. *Hawaii State Educational Agency*, Case No. 01-34 (Hawaii Dept. of Educ. 2001).

The administration of glucagon has been frequently addressed in resolutions of discrimination complaints. See, e.g., *Jamestown Area (PA) Sch. Dist.*, Complaint No. 03-02-1117, 37 IDELR 260 (OCR 2002) (school district agreement to implement a procedure including a designated back-up person for the school nurse to administer glucagon to student as needed); *Wayne-Westland (MI) Community Schs.*, Complaint No. 15-00-1130, 35 IDELR 14 (OCR 2000) (school agreed that glucagon would be administered to student by district nurse as needed in emergency situations); *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999). A specific written order of the student's physician may be required before school personnel will agree to administer glucagon. *Wayne-Westland (MI) Community Schs.*, Complaint No. 15-00-1130, 35 IDELR 14 (OCR 2000).

8.12 Is a 911 call a substitute for providing diabetes care to students?

No. It is the Association's position that failing to administer glucagon or provide other needed treatment while 911 is called unnecessarily delays needed health care and may result in death or serious brain damage. Normally, the proper response to an emergency situation is to call 911 and administer glucagon while waiting for emergency personnel to arrive.

Notes

The argument is sometimes made that there is no obligation to provide glucagon in cases of severe hypoglycemia because a call to 911 is sufficient. This argument is appealing for school districts because it would relieve them of the responsibility for planning for diabetes emergencies by shifting all of the responsibility onto local emergency services. However, the administration of glucagon is not an unanticipated situation, and districts need to have a plan in place to respond to such emergencies. Delay in administering glucagon for the time it takes emergency personnel to arrive could result in a child's death or cause serious brain damage. Given the unpredictability of emergency response times and the fact that school personnel can be successfully trained to administer glucagon immediately in an emergency situation, there is no justification for doing nothing while waiting for emergency personnel to arrive. In the related context of emergency treatment for a seizure disorder, it was held that calling 911 was not an appropriate response because there was no guarantee an ambulance would arrive within any particular time frame, despite the fact that a hospital was nearby. *Silsbee Independent School Dist.*, 25 IDELR 1023 (Tex. SEA 1997).

8.13 How should emergency evacuation procedures be modified to accommodate students with diabetes?

Emergency procedures should consider the need for students to have medication, food, and diabetes supplies available to them wherever they happen to be within the school day. This may require school personnel to take steps to make sure that these items are available for a student. One way that this could be accomplished is to allow students who are mature enough to carry with them items needed for self-care (see Questions 8.14, 9.7-9.9), in addition to designating a school staff member who is responsible for securing and transporting supplies to an emergency evacuation site.

8.14 Should students carry glucagon kits during school?

Students with diabetes should be allowed to carry glucagon. A student will not, of course, self-administer glucagon. However, carrying glucagon on the student's person will give trained personnel quick access should the need for it arise. In addition, it is preferable to store a back-up glucagon kit in the nurse's office, athletic trainer's kit, or some other location where school personnel will have easy access. Whether to carry glucagon is an individual decision, and many students with diabetes choose not to carry it.

8.15 Should students with diabetes be given unrestricted access to water and restrooms?

Because of the increased need students with diabetes may have for water and for use of the restroom, a student's Section 504 Plan or other education plan may need to provide unrestricted access to these facilities.

Notes

Children with diabetes have an increased need for drinking water, when experiencing a high blood glucose level. For this reason, students with diabetes should have unrestricted access to water. This does not mean, however, that the student must be allowed to leave the classroom and go to a drinking fountain. To assure that the student stays on task and in order to minimize interruptions in the educational process, allowing the student to have bottled water in the classroom might be an equally appropriate accommodation. *North Lawrence (IN) Community Schs.*, Complaint No. 05-02-1235, 38 IDELR 194 (OCR 2002) (noting resolution of complaint).

Where greater amounts of water are consumed, a student with diabetes may also require frequent restroom breaks. See *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999) (where appropriate, accommodation plans must provide for students to be excused to use the restroom).

8.16 Is the school required to provide a student with carbohydrate counts or other nutritional information?

Nutrition management is essential for proper diabetes care. Carbohydrate information must be made available to individual students when needed. Where children are unable to properly calculate carbohydrates or portion sizes, the student may need assistance doing so.

Notes

Carbohydrate counting is very important for many students with diabetes. Therefore, providing information on carbohydrates and serving sizes can be essential. *Hamilton Heights (IN) Sch. Corp.*, Complaint No. 05-02-1048, 37 IDELR 130 (OCR 2002).

Most schools participate in the National School Lunch Program. This program is administered by the U.S. Department of Agriculture. The Department prohibits discrimination in programs that it administers. 7 C.F.R. § 15b. Discrimination is specifically prohibited in the National School Lunch Program and those with disabilities must be accommodated. 7 C.F.R. § 10.10(d). Accommodations may require substitutions to regular meals where that need is medically required. See U.S. Department of Agriculture Food and Nutrition Service, *Accommodating Children with Special Dietary Needs in the School Nutrition Programs: Guidance for School Food Service Staff*, available at: http://www.fns.usda.gov/cnd/Guidance/special_dietary_needs.pdf.

The National School Lunch Program also requires that nutrition of meals be analyzed. 7 C.F.R. § 10.10. Therefore, schools are required to have nutrition information available.

Because of the need for carbohydrate information, food vendors often make this available to schools. It is important, however, for schools to make a clear distinction between “as prepared” and “as purchased” carbohydrate counts. Schools should provide students with diabetes information on the “as prepared” counts. *Hamilton Heights (IN) Sch. Corp.*, Complaint No. 05-02-1048, 37 IDELR 130 (OCR 2002) (school voluntarily corrected errors in mistakenly providing “as purchased” rather than “as prepared” carbohydrate information).

8.17 Should a student with diabetes be denied candy or “treats” given during school parties and activities or as part of a reward program?

There are no forbidden foods for a student with diabetes. With advance planning and notice to parents or guardians so that insulin dosages may be adjusted, a student with diabetes may enjoy treats at school parties, activities, or programs.

Notes

Despite misconceptions to the contrary, there are no forbidden foods for most students with diabetes. These students may eat candy or other treats provided they make appropriate adjustments in their diabetes care regimen. While making such adjustments can be difficult in the school setting, it is inappropriate to exclude these students from having candy or treats unless there is a valid health-related reason.

Children on the insulin pump may conveniently inject insulin (a bolus) where additional food is consumed. If a student is unable to calculate the insulin required for candy or treats, the school must be prepared to assist the student to do so.

If a child receives insulin injections, less flexibility exists in food consumption unless there is pre-planning. For this reason, schools should provide parents or guardians advance notice when there will be candy or treats at school. Under one such procedure established for a child on daily injections, the teacher sent a letter home at the beginning of the school year, notifying the parents in the child’s classroom that they are to inform the teacher at least two days in advance of bringing food treats to school. When this happened, the procedure also required the teacher to call the parent of the child with diabetes. If the teacher was

unable to reach the parent, or if the parent stated that the child's food schedule could not be rearranged that day, the child's treat was placed in the refrigerator until he could have it, usually the following day. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995) (finding procedure adequate and finding that neither Section 504 nor the ADA were violated where policy was not followed on one occasion where a parent brought treats without advance notice and, as a result, denied the child the treat).

A school may be required to monitor the provision of snacks to a student with diabetes. *Renton (WA) Sch. Dist.*, Complaint No. 10-93-1079, 21 IDELR 859 (OCR 1994) (monitoring of snacks provided for 9-year-old student with diabetes and other impairments). If a student's blood glucose level is high, a teacher may withhold food that might aggravate the high. This does not violate Section 504 or the ADA because there would be "a legitimate, nondiscriminatory reason (i.e., the nature of the student's disability and concern for the student's health and safety) for treating the student differently on these occasions." At these times, the teacher may offer to give the candy or "treat" to the parent or guardian so that the child may enjoy it when glucose levels are within the proper range. *Rock Hill (OH) Local Schs.*, Complaint No. 15-02-1034, 37 IDELR 222 (OCR 2002).

Schools might consider making sugar-free candy available to students with diabetes. This may be appropriate, for example, where candy is given to students as part of a good-behavior reward system. *Southern Lyon County U.S.D. #252*, Complaint No. 07-97-1022 (OCR 1997) (resolving complaint that student with diabetes was discriminated against by not allowing child to participate in teacher's reward system known as "Fun Friday Candy Party" by providing sugar-free candy to child).

8.18 Are schools required to have emergency response plans that address diabetes?

State law may require that schools adopt emergency response plans. These laws may be specific to schools or apply more broadly to other public facilities, such as those providing recreational opportunities. Although these plans are often prompted by concern about cardiac emergencies, state laws may require that other health emergencies be addressed as well, including those relating to diabetes. Advocates for students with diabetes should consider whether these laws require emergency plans to address and make available emergency diabetes care.

Notes

The American Heart Association promotes legislation that require automated external defibrillators (AEDs) in public facilities. These laws, however, may not be restricted to cardiac emergencies and may require that more general emergency plans be adopted. The AHA's Medical Emergency Response Plan for Schools (available at [http://www.americanheart.org/downloadable/heart/1073488003519MERPS Reprint Article.pdf](http://www.americanheart.org/downloadable/heart/1073488003519MERPS_Reprint_Article.pdf)) is a broad public health initiative that supports state laws requiring schools (and often other public facilities) to be prepared to respond to life-threatening medical emergencies (such as diabetes and low blood glucose) in the first minutes before the arrival of emergency medical services. .

The AHA initiative urges that teachers, staff and even students be trained to deal with life-threatening emergencies, and that available First Aid Kits include a source of glucose.

9. Who Should Provide Diabetes Care to Students?

Deciding who will provide diabetes care in the school setting is an important part of the process of developing an accommodation plan. Often, the best care providers are the students themselves; by their teenage years most students with diabetes are quite self-reliant in providing for their own care. However, even the most self-reliant and independent student will need help in the event of a diabetes emergency. Other students, because of age, developmental level, or inexperience, will need help from school staff. This Part first discusses accommodations that may be needed to allow self-care, including when and where students may perform care tasks and whether students may carry diabetes supplies. Next, the need for school personnel to provide care is discussed, including how personnel should be trained.

9.1 Should students with diabetes be permitted to perform diabetes self-care tasks in the classroom or where activities take place?

Students must be allowed to perform diabetes self-care in the classroom (or at other locations where school activities occur) where the child's individual evaluation shows this is appropriate. It is inappropriate to require these students to go to another location, such as the school nurse's office, school clinic, or an administrator's office, when care can safely and quickly be performed in the classroom. Common self-care tasks that occur in the classroom are blood glucose monitoring, administering insulin, treating hypoglycemia, eating snacks, and drinking water. It is important that self-care be performed in the classroom when possible for the student's health and safety, and also to minimize the amount of instructional time that students must miss while traveling to another location to perform routine self-care.

Notes

School officials must consider whether concerns they may have about self-care can be accommodated in some way. If, for example, self-care is thought to create disruption to the classroom, school officials are "required to consider whether, through repetition, through education and training or by other adjustments, the disruption could be minimized." *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995). Any perceived disruption must be weighed against the right of students with disabilities to be educated with non-disabled students to the maximum extent appropriate. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995).

A frequent issue involving classroom self-care is blood glucose monitoring. According to OCR, once school officials become aware of a child's need to have blood glucose monitoring during school hours and the child's parents or guardians maintain that monitoring could and should take place in the classroom, the school must ensure that a decision is made by a group of knowledgeable persons, using current information, and fully and carefully considering the matter. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-

1251, 23 IDELR 1144 (OCR 1995). The individualized assessment required with respect to each student requesting to self-check in the classroom should take into consideration all relevant factors. These might include, for example, each student's age, capabilities, willingness to self-test, maturity level and experience with self-monitoring. *Buchanan County (VA) Public Schs.*, Case No. 11-03-1051 (OCR 2003) (resolution agreement).

9.2 Are blood glucose testing and the presence of sharps (e.g., lancets and syringes) in the classroom safe?

Yes. Medical professionals confirm that blood glucose monitoring, insulin administration, and sharps are safe in the classroom. There is no risk of transmitting disease or blood-borne pathogens through conducting diabetes care tasks in the classroom. It is the position of the American Diabetes Association that self-care, including blood glucose testing and insulin administration, can safely and effectively be performed by many students in the classroom, and that safety concerns do not justify prohibiting self-care in class.

Notes

While the Office for Civil Rights recognizes that health and safety concerns and disruption in the classroom are matters of importance and may be considered, decisions about whether to allow testing in the classroom must be based on an individualized assessment rather than blanket rules. A fixed rule based on such matters "expressed using generalized expectations rather than based on an assessment and evaluation of the needs of the specific disabled student and the requirement to ensure that services are administered in the most integrated setting appropriate to the needs of the individual with disabilities" is prohibited. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995).

9.3 Does the Occupational Safety and Health Act (or OSHA) prohibit blood glucose monitoring and sharps (e.g., lancets and syringes) in the classroom?

No. The Occupational Safety and Health Act is sometimes raised as a reason for denying students the opportunity to perform diabetes self-care in the classroom or at other locations. However, no OSHA rule prohibits blood glucose monitoring, insulin administration, or the presence of sharps in the classroom.

Notes

OSHA actually applies only to private employees – not students. 29 U.S.C. §§ 652(5), 654. Even if OSHA guidelines did apply, they do not preclude self-care. The guidelines, along with any other relevant considerations, are to be considered as part of individualized evaluation and assessment of the child's needs. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995). The American Diabetes Association is unaware of any situation where such guidelines have been found to support a prohibition against self-care in the classroom or other school locations.

9.4 What measures should be taken to make certain syringes, lancets, or blood glucose monitoring materials are properly disposed of?

Most schools will have proper containers for students to dispose of sharps and other medical waste materials. Other schools may work out individual agreements for students to retain sharps and testing materials and take them home for disposal at the end of the day. The procedure to be used should be specified in the student's accommodation plan, and students should be made aware of the importance of proper disposal of sharps.

9.5 Should students with diabetes be permitted to leave class whenever necessary for diabetes care?

A student's Section 504 Plan or other written education plan should address the circumstances under which the student is allowed to leave class. A Plan should allow students to leave class for diabetes care if they wish to do so. When allowing the child to leave is appropriate will depend on why the child is leaving, whether he or she is able to perform self-care tasks, and whether he or she needs to be accompanied when leaving. In no circumstances should a child be permitted to leave the classroom unaccompanied during an emergency situation (see Question 9.6).

9.6 Is it sometimes appropriate to require students to go to the school nurse's office or other location for diabetes care?

Some children (usually those who are younger or less mature) are unable or unwilling to perform self-care tasks independently or require supervision or assistance when doing so. In these cases, it may be appropriate to require that students go to the school nurse's office or clinic or another place in the school for diabetes care. However, this decision only may be made as part of the individualized evaluation and assessment of the child; schools may not have a blanket policy requiring all students to go to a certain location for diabetes care.

Notes

A student should never be required to go alone to the school nurse's office or clinic when an emergency situation exists, such as hypoglycemia or other circumstances where a student's health might be at risk while in route to the office or clinic. Where diabetes-related symptoms exist, a specific person should be responsible for getting the child to the nurse's office or clinic. *Abington Sch. Dist.*, Case No. 812, 28 IDELR 890 (Pa. Appellate Officer 1998) (observing importance of requirement that student be accompanied by another person); *Lee County (FL) School Dist.*, Complaint No. 04-06-1178, 47 IDELR 18 (OCR 2006) (student's 504 plan provided that she should not be permitted to walk alone to the school clinic when she was weak or not feeling well).

If a child's Section 504 Plan provides that the student is to go to the nurse's office, school clinic, or other location, teachers need to ensure that the student goes to this location when necessary (even if the student forgets to go). *Sierra Vista (AZ) Unified Sch. Dist.*, Complaint No. 08-99-1039, 31 IDELR 169 (OCR 1999) (complaint resolution reached where it was alleged district discriminated against child where staff failed to send child to nurse's office at specified times for a blood glucose check).

9.7 If a student is required to miss class or activities because of diabetes care, should additional accommodations be considered?

Yes. When a student misses instruction or other activities because of diabetes, other services or modifications may be needed to ensure the child has full educational opportunity.

Notes

If a student is required to be out of class for diabetes care, even briefly, school officials must consider whether modifications or additional aids and services are necessary to accommodate the absence. This might include, as an example, counseling to reduce the amount of time the student spends away from the instructional environment. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995).

9.8 Should students be permitted to carry and eat food at any time and any place during school?

Students should be permitted to carry and eat snacks at any time and any place during school if it is determined that this accommodation is needed. See Question 9.1. Snacks are important in diabetes management for many students, and many students will benefit from having immediate access to them to more easily manage diabetes and more quickly treat hypoglycemia.

Notes

Snacks are important because diabetes care requires a continual balance of insulin, nutrition, and physical activity. Many forms of insulin do not work at a steady rate, and hypoglycemia can be frequent between meals. To avoid hypoglycemia, many students with diabetes regularly need a snack several times a day. A snack also may be needed at unexpected times. Therefore, students must have food readily available at all times. More information on snacks and nutrition is available in *Helping the Student with Diabetes Succeed: A Guide for School Personnel* (June 2003) (see Question 1.5), at pp. 23-24. OCR resolution agreements have required that a student's accommodation plan permit the student, where appropriate, to eat snacks and drink beverages to treat and prevent hypoglycemia. *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999).

9.9 Should students be permitted to carry diabetes testing supplies and test at any time and any place during school?

With parent/guardian and health care team consent, students with diabetes should be allowed to carry testing supplies where they demonstrate sufficient maturity and responsibility. Although general rules may serve as a guide, an individual determination should be made as to whether a student will carry testing supplies.

Notes

The Diabetes Medical Management Plan for a student with diabetes may specify that the student be allowed to carry testing supplies, such as a glucose meter, test strips, and lancets, at all times where medically necessary. This is the case even where a school has a general

policy requiring that all medications be housed in an administrative or nursing office. *Huntsville City (AL) Sch. Dist.*, Complaint No. 04-96-1096, 25 IDELR 70 (OCR 1996) (district made exception for student with diabetes after student’s physician verified that it was medically necessary for her to have her glucose meter with her at all times). See Question 13.3 (discussing the possibility that students may be disciplined for carrying medications or supplies based on laws or policies designed to prevent drug use in schools).

Schools should develop a policy to address the needs of students who must monitor their blood glucose levels during the school day. *Palm Beach County (FL) Sch. Dist.*, Complaint No. 04-02-1275, 38 IDELR 105 (OCR 2002) (school committed to develop and publish policy). Such a policy must take into consideration the student’s level of maturity, capabilities, and responsibility. School policies vary as to which students may carry supplies. See, e.g., *Sumner County (TN) Sch. Dist.*, Complaint No. 04-01-1122, 36 IDELR 136 (OCR 2001) (district did not permit middle school student to carry diabetes supplies but did allow high school students to do so; appropriateness of policy not questioned); *Santa Maria-Bonita (CA) Sch. Dist.*, Complaint No. 09-97-1449, 30 IDELR 547 (OCR 1998) (sixth grader and eighth grader permitted to possess testing kit, including sharps, in classroom and perform regular testing as needed and at designated times in classroom).

A student’s use of a glucose meter might be restricted where circumstances establish that the student is not capable of using the meter unsupervised or acting on the results. See, e.g., *Wells (ME) Pub. Schs.*, Complaint No. 01-01-1227, 36 IDELR 244 (OCR 2002) (supervised access to testing supplies appropriate in view of student’s “low average general cognitive skills with specific processing deficits in auditory concentration and memory”).

9.10 May the student’s written education plan require that a child’s parent go to school to provide diabetes care?

Schools are obligated to provide services to students with diabetes, and may not require a student’s parent or guardian to assume this obligation. Parents or guardians may not be required to provide services at school, but a child’s parents or guardians and school officials may agree that the parent or guardian will do so.

Notes

According to the Office for Civil Rights, “under normal circumstances, it is not appropriate for a school district to require a student’s parent or guardian to come to school to provide medication that is a related service that the student needs during the school day in order to participate in the District’s programs and services.” *Rock Hill (OH) Local Schs.*, Complaint No. 15-02-1034, 37 IDELR 222 (OCR 2002). As discussed in Question 8.1, administration of medication and other diabetes care tasks is generally a service that schools are required to provide. OCR also cautions that schools may not condition the provision of nonacademic services on a parent’s attendance or provision of a surrogate. *OCR Senior Staff Memorandum*, 17 EHLR 1233 (OCR 1990) (Guidance on the Application of Section 504 to Noneducational Programs of Recipients of Federal Financial Assistance). However, neither Section 504 nor the ADA precludes parents or guardians and schools from agreeing that parents or guardians will provide services. Schools, for example, may agree to this where a parent or guardian insists that he or she provide medication. *Rock Hill (OH) Local Schs.*, Complaint No. 15-02-1034, 37 IDELR 222 (OCR 2002). See also *Valle Lindo Elem. Sch. Dist.*, Complaint No. 09-06-1079, 47 IDELR 170 (OCR 2006) (parents and district agreed that parent would come to school to administer insulin temporarily until district staff were trained; even though a “miscommunication” subsequently led parent to believe she was still

required to come to school long after staff were trained, no 504 violation because school did eventually assign staff to administer insulin to the student).

School district requirements that parents come to school to administer insulin to their children were a key issue in a lawsuit filed by the American Diabetes Association against the California Department of Education. *K.C., et al. v. O'Connell, et al.*, Case No. C-05-4077 MMC (N. D. Cal., filed October 11, 2005). A number of districts' were refusing to make any school district personnel (including school nurses) available to administer insulin to students who could not self-administer, and as a result parents were having to come to school every day to provide this care or the students were being put on medically inferior insulin regimens which would require less administration of insulin at school. The legal advisory adopted as part of the settlement of this lawsuit makes clear that, for students who are eligible for services under Section 504 or IDEA, districts must provide insulin administration as a related service where it is required by the child's treating physician:

What is not valid is for [a school district] to adopt a general policy or practice that a Section 504 Plan or IEP need not be developed or followed because the LEA is not able to comply with the student's federal rights based upon the express provisions of state law. When federal and state laws are reconciled, it is clear that it is unlawful for [a school district] to have a general practice or policy that asserts that it need not comply with the IDEA or Section 504 rights of a student to have insulin administered at school simply because a licensed professional is unavailable.

California Department of Education, "Legal Advisory On Rights Of Students With Diabetes In California's K-12 Public Schools" (August 2007) (reprinted in supplemental information section and available at <http://www.diabetes.org/uedocuments/cde-legal-advisory-rights-2007.pdf> at part IV.B.

9.11 Must students with diabetes be provided a one-on-one aide?

Although each child's situation must be evaluated individually, providing a one-on-one aide for a child with diabetes is generally not necessary to provide routine diabetes care, unless the student has other disabilities that require a personal aide. It is usually sufficient for teachers and other school personnel to be familiar with the needs of a child with diabetes and able to provide or obtain prompt care when necessary.

Notes

Where a child with diabetes has appropriate accommodations that may be provided without the need of a personal health aide, a school is not obligated to provide one. *See Bradley County (TN) School Dist.*, Complaint No. 04-04-1247, 43 IDELR 44 (OCR 2004) ("Neither the ADA nor the Section 504 regulation requires that the District employ or assign a full-time nurse or aide to diabetic students, as long as the District maintains a sufficient number of trained staff persons to provide the related aids and services to students with diabetes.") There are, however, circumstances where an aide has been found to be appropriate. *See, e.g., Monterey Peninsula Sch. Dist.*, Case No. SN02-02753, 38 IDELR 223 (Cal. St. Educational Agency 2003) (noting that student with diabetes who used pump while in fifth grade had one-on-one health aide apparently because of the student's inability to independently monitor blood glucose levels). This might not always be a full time aide, of course. *Northwestern (OH) Local Schs.*, Case No. 15-03-1202 (OCR 2004) (Section 504 team provided for a part-time but not full time aide).

Generalized apprehension over whether the school staff will provide proper monitoring or assistance in the absence of an aide does not warrant assignment of an aide. *Abington Sch. Dist.*, Case No. 812, 28 IDELR 890 (Pa. Appellate Officer 1998). However, if it is subsequently determined that the accommodations are not being provided, it may be appropriate to require a one-on-one aide to assure compliance. *Abington Sch. Dist.*, Case No. 812, 28 IDELR 890 (Pa. Appellate Officer 1998) (declining to order personal aide, but recommending that state compliance officer incorporate the requirement if required accommodations for child with diabetes and mental retardation were not provided).

A school which assigns an aide to accompany the student with diabetes must make certain that the aide is able to meet the individual needs of the student. Providing an aide who has no authority to provide emergency injections, for example, may not be an appropriate accommodation where emergency response needs exist. *Conejo Valley (CA) Unified Sch. Dist.*, Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993).

9.12 Should the teachers of students with diabetes or staff who work with or supervise the student receive training or instruction regarding diabetes?

Yes. While the level of instruction may vary depending on the position or role of the teacher or staff, all school personnel having regular contact with a student with diabetes should be trained to recognize problems relating to diabetes and know who to contact when problems arise. A few school staff members should receive training in specific diabetes care tasks in order to assist students who cannot self-manage these tasks and to provide needed emergency care to any student with diabetes.

Notes

Teachers and staff who are in contact with a student with diabetes should be trained. Different levels of training may be appropriate depending on the level of responsibility the individual will have for the student's care. Basic training for all staff that interact regularly with the student include information about diabetes and instructions on the signs and symptoms of hypoglycemia and hyperglycemia and what should be done when these situations are encountered. If the individual will not be responsible for performing routine or emergency diabetes care tasks, he or she should be told who is responsible for providing that care and how they can be contacted. Some schools provide basic training to all school staff. *Henderson County (NC) Pub. Schs.*, Complaint No. 11-00-1008, 34 IDELR 43 (OCR 2000); *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999). The "staff needs to be trained to recognize problems relating to [a child's] diabetes, as they are truly the first line of defense against problems." Indeed, "[t]hey are the ones who can prevent problems or at least mitigate the extent of the severity of the problem" that might result if prompt action is not taken. *Gettysburg Area School District*, Case 1984/02-03 (Pa. State Educational Agency, January 2, 2003). Basic diabetes education for other students may also be a good idea and is the practice at some schools. *Santa Maria-Bonita (CA) Sch. Dist.*, Complaint No. 09-97-1449, 30 IDELR 547 (OCR 1998) (providing for training of all students in classes with students with diabetes).

More detailed training is needed for those staff members who will directly perform diabetes care tasks and should include areas such as insulin administration, glucagon administration, blood glucose monitoring, and carbohydrate counting for meals and snacks. For example, where a child uses an insulin pump, it is important that some staff be trained on the use of the pump and be available to assist when needed. *Henderson County (NC) Pub.*

Schs., Complaint No. 11-00-1008, 34 IDELR 43 (OCR 2000) (school agreed to train school personnel in the use of an insulin pump and also have a trained individual to accompany the student to school-sponsored events off campus).

One recent OCR decision described in some detail a training program which OCR indicated was adequate and appropriate. In *Bradley County (TN) School Dist.*, Complaint No. 04-04-1247, 43 IDELR 44 (OCR 2004), the district designated school personnel as primary and secondary care providers, who were trained by the school nurse in collaboration with the student's parent. All providers were trained in diabetes care management and basic diabetes knowledge. In addition, primary care providers (the student's classroom teacher and teaching assistant) "received additional instruction in the signs and symptoms of hypoglycemia and hyperglycemia, the offsets of the highs and lows of blood sugar, glucose testing, monitoring glucose checks performed by the Student and recording the results and understanding the action(s) that needs to be taken for specific blood sugar readings" Ten school staff members were trained to assist the student with insulin pump administration and monitoring.

In *Lee County (FL) School Dist.*, Complaint No. 04-06-1178, 47 IDELR 18 (OCR 2006), OCR addressed allegations that a district had failed to adequately train teachers, classroom aides and clinic staff in how to properly manage a student's diabetes and in implementing the student's 504 plan. For example, the parent presented evidence that teachers and aides allowed the student to walk unaccompanied to the clinic when she felt weak and pressured her to complete tests when she did not feel well (both contradicting provisions of the student's 504 plan), and that the school nurse and clinic staff had difficulty in properly selecting injection sites for the student and made medication errors. Based on this evidence and the fact that the school nurse, who was responsible for training staff, lacked current diabetes training herself, OCR concluded that the district had failed to provide adequate training. The school resolved the complaint by hiring a new school nurse who was a certified diabetes instructor and agreeing to provide training to "all teachers, administrators, support staff and clinic personnel at the School regarding the care of students with diabetes."

Trained personnel should also have access (through radio, telephone or other means) to medical personnel such as the school nurse, and to information on emergency procedures. *See, e.g., North Kitsap (WA) Sch. Dist. No. 400*, Complaint No. 10-99-1230, 33 IDELR 109 (OCR 1999) (student's PE teacher carried a 2-way radio so that the main office could be immediately contacted in the event of an emergency). Another helpful practice is providing a summary of the student's emergency plan on the back of radios or mobile phones. *See, e.g., East Allen (IN) County Schs.*, Complaint No. 05-02-1163, 38 IDELR 75 (OCR 2002) (abbreviated version used contained emergency telephone numbers, described symptoms of low and high blood glucose levels, and indicated what actions to take if levels were too high or too low).

There are many resources available to schools to provide training for teachers and staff. A good starting point is the publication *Helping the Student with Diabetes Succeed: A Guide for School Personnel* (June 2003) (see Question 1.5). The Association has also developed *Diabetes Care Tasks at School: What Key Personnel Need to Know*, a series of training modules that can be used to train school personnel and which are available online (see Question 1.5). Schools frequently agree to provide training that meets the recommendations of the American Diabetes Association. *Henderson County (NC) Pub. Schs.*, Complaint No. 11-00-1008, 34 IDELR 43 (OCR 2000).

9.13 May the school nurse or other trained diabetes personnel be permitted to administer insulin upon the direction of a parent?

Insulin must be prescribed by a student's physician, and directions on how to administer insulin should ordinarily come from the physician. Nevertheless, parents or guardians are usually well-versed in their child's care and can provide input, guidance, and explanations of the physician's directions. A physician can authorize a parent's or guardian's adjustment of insulin dosages in a student's Diabetes Medical Management Plan, and this is often a good idea.

9.14 Are parents entitled to select a diabetes care provider or require a school to replace the school-selected provider?

No. Schools have the authority to select the individual who will provide care to a student with diabetes. Parents or guardians are not entitled to require that a specific provider be selected or that a designated provider be replaced or changed. However, parents or guardians are entitled to make such a request and detail their concerns.

Notes

It is well established that so long as a school provides a child with a disability with an appropriate education, the methodology (including the selection of personnel), is left to the school's discretion. *Board of Educ. v. Rowley*, 458 U.S. 176, 200 and 208, 102 S. Ct. 3034, 73 L. Ed. 2d 690, 5 Educ. L. R. 34 (1982). Accordingly, a parent or guardian of a student with diabetes generally has no "veto power" over the district's personnel selection even where there are supposed communication problems or an "erosion of trust." *Monterey Peninsula Sch. Dist.*, Case No. SN02-02753, 38 IDELR 223 (Cal. St. Educational Agency 2003) (also observing that there was no evidence that the student failed to effectively communicate with or did not trust the assigned nurse). Stated otherwise, "a student and his parents simply do not have the right to dictate to a school who should provide services to the student" and, instead, "[t]hat decision is the prerogative of the school." *In re School Admin. Dist. #25*, Case No. 93.114, 20 IDELR 1316 (Maine Hearing Officer Decision 1994).

The diabetes care provider selected by the school must be qualified to provide the services to the child. *Monterey Peninsula Sch. Dist.*, Case No. SN02-02753, 38 IDELR 223 (Cal. St. Educational Agency 2003); *Lee County (FL) School Dist.*, Complaint No. 04-06-1178, 47 IDELR 18 (OCR 2006) (district had violated Section 504 because school nurse lacked current training in diabetes and nurse and clinic staff had made numerous medication errors in caring for student). Further, in exercising its prerogative, the school "needs to make the best match possible and "[i]f there is a high probability of failure with one service provider (even if that probability is based on an antipathy by the student or parent/guardian to a particular teacher), the School will want to make a selection which offers the best chance of success for the student." *In re School Admin. Dist. #25*, Case No. 93.114, 20 IDELR 1316 (Maine Hearing Officer Decision 1994).

Where there are concerns about the qualifications of personnel providing care or about the care being provided, it is often a good idea to institute procedures for increased monitoring of staff performance and communication with the parent. For example, in *Lee County (FL) School Dist.*, Complaint No. 04-06-1178, 47 IDELR 18 (OCR 2006), because of medication errors and lack of diabetes knowledge by clinic staff, the district agreed to contact the parent daily before giving the student insulin to verify dosage, and to maintain a log for the student and designate a person responsible for monitoring compliance.

10. May Diabetes Care Tasks Be Performed by Non-Medical or Non-Nursing Personnel?

Disputes sometimes arise about whether diabetes care can be provided to students by school personnel who are not nurses. Diabetes health care professionals agree that the diabetes care tasks needed at school can be performed by non-nurses who receive appropriate training. Personnel must be available to students with diabetes at all times. Because a school nurse will not always be available, this requires that trained non-nursing personnel provide care. The extent to which care may be provided by non-health care professionals varies based on state law.

10.1 What, if any, medical license is required to perform blood glucose checks upon students or to administer insulin or glucagon?

It is sometimes assumed that only a nurse may administer insulin or glucagon, or perform certain other diabetes care tasks. Although a school nurse is the most appropriate person to regularly provide diabetes care, many schools do not have a school nurse. Even if a full-time nurse is present, additional personnel should be trained to provide routine and emergency diabetes care including tasks such as checking blood glucose levels and insulin and glucagon administration during the school day and during extracurricular activities and field trips when the nurse is unavailable. School personnel, parents, guardians, and others are routinely trained to administer insulin or glucagon.

Diabetes health care professionals agree that non-medical personnel (sometimes referred to as “trained diabetes personnel”) can and should be trained to provide diabetes care to students. It is important that these non-medical school staff members be trained and monitored by a school nurse or other health care professional. The provider of diabetes care must take relevant state laws into account (see Questions 10.4, 10.5). However, the absence of a licensed health care professional does not diminish a school’s obligation to accommodate a student (see Question 10.6).

Notes

Some school districts argue that only licensed health care professionals may provide diabetes care. This position may be based on state law; in some states, only school nurses can perform certain diabetes-related care tasks, such as glucagon injections, in the school setting. However, many states place no restrictions on who may provide care, and in other states the law is unclear. The Office for Civil Rights has declined to take a position on whether schools are required to authorize non-licensed school personnel to administer injections to students with disabilities, even where allowed under state law. *Conejo Valley (CA) Unified Sch. Dist.*, Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993). However, OCR has recognized that, where staff can be trained to provide diabetes care, a nurse or other licensed staff person is not required. *Bradley County (TN) School Dist.*, Complaint No. 04-04-1247, 43 IDELR 44 (OCR 2004) (“Neither the ADA nor the Section 504 regulation

requires that the District employ or assign a full-time nurse or aide to diabetic students, as long as the District maintains a sufficient number of trained staff persons to provide the related aids and services to students with diabetes.”)

Many complaint resolutions approved by OCR contemplate that other trained staff persons may be used. *See, e.g., Wayne-Westland (MI) Community Schs.*, Complaint No. 15-00-1130, 35 IDELR 14 (OCR 2000) (nurse or “trained staff person” to be responsible for administering insulin and glucagon); *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999). Further, according to OCR, the medical profession has recognized that lay people are easily trained to perform this care. *Conejo Valley (CA) Unified Sch. Dist.*, Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993). State administrative hearings considering the issue have concluded that although a nurse may be the preferable choice to administer medications, any individual properly trained could do so. *Hawaii State Educational Agency*, Case No. 01-34 (Hawaii Dept. of Educ. 2001) (so holding with respect to glucagon injections).

10.2 What is the position of the American Diabetes Association regarding non-medical and non-nursing personnel providing diabetes care?

The position of the American Diabetes Association is that diabetes care tasks may be safely and appropriately delegated to non-medical and non-nursing personnel in the school setting. It would be ideal for all health care services required by children with diabetes to be performed by a health care professional, such as a school nurse. The reality, however, is that not every school has a school nurse and, even where a school has a school nurse assigned full time the nurse will not always be available (e.g., at field trips and extracurricular activities). Therefore, proper diabetes care in the school setting requires delegation.

Notes

The position taken by the Association on delegation of diabetes care tasks is based on a peer-reviewed position statement from specialists in the area of pediatric endocrinology. This statement is referenced in Question 8.2. This position is also set forth in a Statement of Principles adopted as part of the Association’s Safe at Schools Campaign, which has been endorsed by key diabetes and other health care organizations (see Question 10.3). This position statement is available through the web page for the safe at Schools campaign at <http://www.diabetes.org/advocacy-and-legalresources/discrimination/school/safeschool.jsp>.

10.3 What is the position of leading health organizations on delegation of diabetes care?

The National Diabetes Education Program (a federally sponsored partnership of the National Institutes of Health, the Centers for Disease Control, and more than 200 partner organizations) has taken the view that delegation of diabetes care can be safe. The program’s publication *Helping the Student with Diabetes Succeed: A Guide for School Personnel* (see Question 1.5) states:

The diabetes medical community has found that non-medical personnel (called “trained diabetes personnel” in this guide) can be trained and supervised to safely provide and assist with diabetes care tasks in the school setting, including blood

glucose monitoring, insulin and glucagon administration, and urine ketone testing. These non-medical school staff members should be trained and monitored by the school nurse or a qualified health professional. Assignment of diabetes care tasks must take into account state laws that may be relevant in determining what tasks may be performed by non-medical personnel.

This statement represents not simply the view of the American Diabetes Association, but that of a wide range of other organizations, including medical, research, professional, educational, and other groups.

In addition, a number of major diabetes health professional and patient organizations, as well as other health care organizations, have endorsed the Association's statement of principles adopted as part of its Safe at Schools campaign, which provides that non-medical personnel can provide diabetes care. These organizations include: American Association of Diabetes Educators, American Dietetic Association, Lawson Wilkins Pediatric Endocrine Society, Pediatric Endocrine Nurses Society, Children with Diabetes, and Juvenile Diabetes Research Foundation

10.4 May diabetes care tasks be delegated to non-medical school personnel?

Whether diabetes care tasks can be performed by non-medical school personnel depends in large part on state law. (See Question 10.5). Delegation of diabetes care tasks is acceptable and appropriate in most states. General practice recognizes that delegation can be a safe and fiscally responsible way to meet the health needs of school children. It is important, of course, that non-medical school personnel to whom tasks are delegated are properly trained to provide those services (see Question 9.12).

Notes

“Delegation” in the health care context has been defined as the “transfer of responsibility for the performance of an activity from one individual to another while retaining accountability for the outcome.” American Nurses Association, Position Statement on *Registered Nurse Utilization of Unlicensed Assistive Personnel*, Attachment I Definitions (December 11, 1992), available at: <http://www.nursingworld.org/readroom/position/uap/uapuse.htm>. It is widely accepted by schools and health care providers that delegation is necessary.

Delegation should be approached cautiously and professionally. While a simple “yes” or “no” answer is often desired, the reality is that the answer is most often “it depends.” See W. Va. Board of Examiners of Registered Professional Nurses, *Guidelines for Determining Acts That May Be Delegated or Assigned By Licensed Nurses* (2001), available at: <http://www.lpnboard.state.wv.us/scope.pdf>.

Schools and health care professionals should establish and follow an appropriate protocol in the delegation process. See generally National Council of State Boards of Nursing, *Delegation: Concepts and Decision-Making Process National Council Position Paper*, 1995, available at: http://www.ncsbn.org/regulation/uap_delegation_documents_delegation.asp.

Summarizing what is appropriate, the National Council of State Boards of Nursing gives these “Five Rights of Delegation”:

- Right Task
One that is delegable for a specific patient.
- Right Circumstances
Appropriate patient setting, available resources, and other relevant factors considered.
- Right Person
Right person is delegating the right task to the right person to be performed on the right person.
- Right Direction/Communication
Clear, concise description of the task, including its objective, limits and expectations.
- Right Supervision
Appropriate monitoring, evaluation, intervention, as needed, and feedback..

10.5 Do state laws provide for delegation of diabetes care tasks?

State law may regulate who may perform diabetes care tasks and whether a given task is something that must be delegated by a nurse or other health care professional before a non-licensed person may perform it. If it is a task that must be delegated, the question becomes whether state law allows the task to be delegated to non-medical or non-nursing personnel. What tasks these personnel can perform can and do vary from one state to another.

Notes

A number of states expressly contemplate delegation of diabetes care. *See, e.g.*, Indiana Code §§ 34-30-14-2, 34-30-14-4. Others are not specific but define by statute or regulation that the practice of a health care profession such as medicine or nursing includes “delegation” of tasks. *See, e.g.*, 225 Ill. Comp. Stat. 65/5-10(l). As such, some form of delegation is generally recognized and permitted under state law.

Nearly all states have adopted statutes or regulations regulating what kinds of health care tasks may be delegated to non-medical personnel. While a state-by-state review of laws on delegation is beyond the scope of this notebook, advocates need to be aware of state law when addressing this issue. A review of various state laws and regulations leads to some general conclusions:

First, statutes and regulations addressing delegation generally do not specifically reference diabetes care tasks in particular. Rather, these laws address delegation of health care or nursing tasks in general. All states regulate the practice of nursing and other health care professions by specifying that certain tasks may only be performed by a licensed nurse or other professional. If a task is defined by the state as being part of the practice of nursing, then it cannot be performed by a non-licensed person unless the state also permits delegation of that task by a licensed professional to that person. State laws typically define the scope of nursing practice and the scope of authority to delegate in general terms. Where health care or nursing tasks may be delegated, it usually may be assumed that at least some

diabetes care tasks also may be delegated. General authorizations of delegation may include some specific limitations, such as prohibiting subcutaneous injections.

Second, most states recognize that some delegation of nursing care tasks is permitted. The nurse or other professional maintains supervisory responsibility and must be confident that the person to whom a task is delegated is properly trained and capable of providing the service.

Third, some diabetes care tasks are not necessarily within the scope of what are considered nursing tasks for the purpose of delegation in the school setting. For example, blood glucose monitoring is usually not considered a nursing task. Tasks which are not part of the practice of nursing may be performed by non-licensed personnel designated by the district without the need for the task to be delegated by a nurse.

Fourth, while some states have specific statutes or rules with regard to delegation, others do not. Those that have specific statutes or rules often apply them to nurses in general and not precisely to school nurses. A school nurse will usually be subject to the general laws pertaining to nurses and to those rules specific to the school setting.

Fifth, many states appear to accept that assistance may be provided by unlicensed individuals in cases of emergencies. Some states make this clear by statute or rule, while others do not.

Finally, states vary on whether insulin and/or syringes require a prescription. A distinction on delegation is sometimes made with regard to the administration of an over-the-counter medication (which is allowed) and those that require a prescription (which may allow for only limited delegation). Prescriptions are frequently obtained, but this is often done for health insurance reasons and not because it is actually required.

10.6 Do state restrictions on delegation of diabetes care tasks, if any, limit a school's obligation to provide such services?

No. Where delegation is not permitted, the school must provide appropriately licensed personnel to provide services.

Notes

The lack of a school nurse is not an appropriate reason for failing to provide services required by a student with diabetes. *Prince George's (MD) County Schools*, Complaint No. 03-02-1258, 39 IDELR 103 (OCR 2003). A student with diabetes may not be excluded from school when a nurse is not present. *Hasbrouck Heights Sch. Dist.*, Complaint No. 02-01-1121 (OCR 2001) (assurances made to resolve complaint that school denied student a free appropriate public education by requiring parent to remove student with diabetes from school when nurse was not present). Where the school nurse or other trained person is absent or unavailable, a back-up is required. *Lee County (FL) School Dist.*, 4Complaint No. 04-06-1300, 46 IDELR 228 (OCR 2006) (district had resolved allegation that there was no provision for care when nursing staff were not present by "develop[ing] a Clinic Back-up Plan to address provision of services to diabetic students in the absence of nursing personnel and/or in the event of an emergency."); *Wayne-Westland (MI) Community Schs.*, Complaint No. 15-00-1130, 35 IDELR 14 (OCR 2000) (complaint resolution required designation of a nurse or trained staff person as having primary responsibility for administration of insulin and glucagon, but also designation of a back-up); *Northeastern Clinton Central Sch. Dist.*, Complaint No. 02-01-1131 (OCR 2001) (complaint resolved, in part, by commitment that school would adopt "a protocol that provides for the Student's diabetes care needs during field trips or

participation in any other extracurricular activities or when a nurse is not present at the School”); *Pnyallup Sch. Dist. No. 3*, Complaint No. 10-02-1104 (OCR 2002) (voluntary resolution agreement stipulated that school would adopt “procedures for the student’s health and diabetes care needs during field trips, participation in any other extracurricular activities, or when a nurse is not present at school”); *Jamestown Area (PA) Sch. Dist.*, Complaint No. 03-02-1117, 37 IDELR 260 (OCR 2002) (school district agreed to implement a procedure including designating a back-up person for the school nurse to administer glucagon to student as needed).

The legal advisory issued by the California Department of education as part of the settlement in *K.C. v. O’Connell* (see Question 9.10) addresses the question of what a district is required to do where state law does not permit delegation. The advisory, at part IV.A, sets out the state’s position (disputed by the American Diabetes Association and the other plaintiffs) that non-licensed school personnel are not authorized under state law to administer insulin to students. However, at part IV.B the advisory makes clear that this interpretation of state law is not a justification for districts failing to provide needed services, because federal law (Section, 504, the ADA, and IDEA) require such services to be provided. The advisory states:

Clearly the first set of personnel who are authorized to administer insulin pursuant to a Section 504 Plan or an IEP are those persons who are expressly so authorized under California law, as set forth in Part IV.A, supra. ... In CDE’s view, the list cannot be taken as exhaustive because [school districts] must also meet federal requirements -- even if the personnel expressly authorized by California are not available. In practical terms, this means that the methodology followed by some [school districts] of training unlicensed school employees to administer insulin during the school day to a student whose Section 504 Plan or IEP so requires it is a valid practice pursuant to federal law. If the [school district] determines that insulin administration by [licensed health care professionals] are not available or feasible, then unlicensed school employees with appropriate training would be authorized under federal law to administer insulin in accordance with the student’s Section 504 Plan or IEP. ... When federal and state laws are reconciled, it is clear that it is unlawful for [a school district] to have a general practice or policy that asserts that it need not comply with the IDEA or Section 504 rights of a student to have insulin administered at school simply because a licensed professional is unavailable.

California Department of Education, “Legal Advisory On Rights Of Students With Diabetes In California’s K-12 Public Schools” (August 2007) (reprinted in supplemental information section and available at <http://www.diabetes.org/uedocuments/cde-legal-advisory-rights-2007.pdf>

Where a school district chooses, either based on law or district policy, not to allow appropriately trained non-licensed school personnel to administer insulin and/or glucagon, the school must still provide the needed care, either by having a nurse or other licensed medical professional available to do so or through alternative response systems that do not have a negative impact on a student’s otherwise appropriate placement. *Conejo Valley (CA) Unified Sch. Dist.*, Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993); *Gettysburg Area School District*, Case 1984/02-03 (Pa. State Educational Agency 2003). Moreover, a policy providing that only school nurses may administer injections cannot be the exclusive or controlling factor in determining a child’s placement. See Question 8.5.

11. What Academic Modifications Should Be Provided?

Supplementary aids, services and modifications to the school's academic program may be required in order to allow students with diabetes to participate in the regular educational environment. For example, students may need to take additional breaks during standardized tests or may need to have diabetes-related absences excused. These accommodations should also be documented in a Section 504 Plan or other written education plan.

11.1 Under Section 504 and the Americans with Disabilities Act, what obligation does a school have to provide supplementary aids and services to students with diabetes in the academic program?

Schools may not discriminate against students with disabilities in academic programs and therefore must provide academic accommodations to students who need them because of diabetes.

Notes

Section 504 regulations require that school “place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 104.34(a). This requires that supplementary aids and services be allowed to students with diabetes.

11.2 Should schools allow alternate times for academic tests and exams if blood glucose levels are significantly out of target range?

Yes. Students who experience high or low blood glucose levels at school should not be penalized academically because of the incident. These students should not be required to take tests when their academic performance would be significantly impaired because of diabetes-related problems. If it is clear that a student is significantly out of his or her target range, the student should be allowed an alternate time to take academic tests or exams just as a student would in case of illness.

Notes

It is important for educators to recognize that both hyperglycemia and hypoglycemia affect cognitive performance. Studies confirm this although the impact is often individualized and varied. *See, e.g.,* Cox DJ, Kovatchev BP, Gonder-Frederick LA, Summers KH, McCall A, Grimm KJ, Clarke WL: *Relationships Between Hyperglycemia and Cognitive Performance Among Adults With Type 1 and Type 2 Diabetes*, *Diabetes Care* 28: 71-77 (2005) (and articles cited therein). A student's deviation from a usual standard of work should alert teachers that performance may well be impacted. An academic test given to a student

experiencing severe hyperglycemia or hypoglycemia will not reflect the student's true knowledge level.

11.3 Should students have access to diabetes supplies, snacks, water, and the restroom, during the administration of standardized or other tests?

Yes. Students should have access to supplies, snacks, water, and the restroom if necessary to treat the student's diabetes throughout the school day, including during academic or standardized tests. See Questions 8.15, 9.8.

11.4 Are students with diabetes entitled to extra time to complete standardized or similar tests?

If required to afford equal opportunity, elementary and secondary school students with disabilities may be entitled to extra time to complete standardized or similar tests. While most students with diabetes will not need additional time to take these tests, some students may need to take extra breaks during the test to treat symptoms of hypoglycemia or perform other diabetes care tasks and will need to have their test times adjusted to cover these breaks. Where modifications may be required, it is important to make this request in writing in advance. Such a request must be made to the testing agency or school, as appropriate.

Notes

Students are required to take a variety of standardized or similar tests. These include state standardized tests and, for college-bound students, the SAT and ACT. They also may include minimum competency tests, sometimes referred to as "high stakes" exams.

Where accommodations are required on standardized or similar tests, they should be requested in advance. Information may be obtained about accommodations on the web sites for the SAT (<http://www.collegeboard.com>) and the ACT (<http://www.act.org/aap>). School officials should be consulted regarding accommodations on state or school required tests.

Most students with diabetes will not require additional time to work on a test solely due to diabetes. However, one accommodation often requested by students is for an adjustment in the time to take a test to compensate for breaks needed to manage diabetes. This adjustment does not increase the overall time a student has to work on the test, but can provide additional breaks if needed to perform diabetes care tasks. According to the SAT standards:

This accommodation is recommended for students who have attention, concentration or distractibility problems need medication, snacks for health reasons such as diabetes, etc. These breaks which may take 5-10 minutes are not counted as part of the testing time and are offered between test sections. However, the students are not allowed to break anytime while completing a test section. They can only take the break after a test section and before moving on to the next one. They cannot go back to the previous test section as well. During break time, the timing stops and resumes when the students are ready to take the test again.

Similar accommodations are available for the ACT.

11.5 Are teachers required to provide students with instruction missed due to absence to care for diabetes or an illness that is exacerbated because of diabetes?

Students who miss school because of diabetes should not be penalized academically for these absences. These students should be provided assistance in making up assignments, including tutoring. Such accommodations, if needed, should be specified in the student’s written accommodations plan. At a minimum, students with diabetes should be provided the same level of assistance as is provided as a matter of policy or practice to non-disabled students who are ill.

11.6 May a student with diabetes be subject to academic or other penalties for an absence or tardiness related to diabetes care needs?

Students with diabetes may not be penalized educationally for absences required for medical appointments or because of illness. In some circumstances, students may be excluded from participation in extracurricular activities due to diabetes-related absences, pursuant to an attendance policy that applies to all students.

Notes

Diabetes may result in a student being absent or tardy. Where due to a student’s diabetes, the absence or tardiness should be excused. The student or the student’s parent or guardian may be required to confirm that the reason for the absence or tardiness was diabetes. *Fayette County (GA) School Dist.*, Complaint No. 04-05-1037, 44 IDELR 221 (OCR 2005) (district was not required to automatically excuse absences related to diabetes care; district agreed to evaluate each absence individually and to excuse those for which a doctor’s note was provided, and OCR found this policy to be reasonable); *Prince George’s County (MD) Schs.*, Complaint No. 03991098, 33 IDELR 70 (OCR 1999) (commitment to resolve complaint included obligation to mark student “tardy excused” if tardiness was result of diabetes and written note from parents stating the reason for the tardiness is provided school); *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999) (providing that accommodation plans would, where appropriate, permit a student to “miss school without consequences for appointments to monitor the student’s diabetes management.”) While diabetes-related absences should be excused, OCR has held that students may be penalized based on facially neutral attendance policies governing participation in extracurricular activities. *Houghton Lake (MI) Community Schs.*, Complaint No. 15-05-1050, 45 IDELR 199 (OCR 2005) (student could be excluded from playing in basketball game because he missed school that day due to a doctor’s appointment).

11.7 Where a student with diabetes has received appropriate academic accommodations, may the school take measures with respect to the student for academic deficiencies as would be applied to other students?

Students with diabetes are entitled to academic accommodations. Where appropriate accommodations are provided, academic measures and sanctions may be imposed upon such

students as would be applied to any other student. So long as accommodations are provided, students with diabetes can be required to meet the same academic standards and requirements as non-disabled students.

Notes

If a student with diabetes fails to satisfactorily perform in school the student may be denied promotion. In one example, *Hernando (FL) County Sch.*, Complaint No. 04-98-1412, 31 IDELR 89 (OCR 1999), a student who had diabetes was held back in sixth grade after failing five classes and receiving grades of “C” and “D” in two other classes. The student was intellectually within the average range, but had some processing weaknesses and exhibited behaviors that affected learning. The student also had 36 unexcused absences, apparently failed to turn in homework assignments, and did not have his student planner signed by a parent. Although school officials had considered holding the student back previously, they acceded to parental insistence that he be promoted. A Section 504 accommodation plan was not challenged as being inadequate. The plan included adjustments in the arrangement of the classroom, assignments, and responses to positively re-enforce student behavior, presentation of lessons, personal organization skills, and test-taking skills. The plan also allowed for make-up work after prolonged absences. A discrimination claim made after the school declined to promote him was rejected. According to the Office of Civil Rights, the school properly declined to promote the student based on the failure of the student to master the subject matter. It concluded that the student was not hampered by a failure of the school to accommodate his needs.

11.8 Must the requirements for academic honors or other recognition programs be modified to take into account a student’s diabetes?

Many schools recognize academic excellence through awards, honor societies or other means. While students may be excused from certain recognition requirements that are impacted by their diabetes (e.g., attendance requirements), these students must meet the other requirements of these programs that are not impacted by diabetes.

Notes

Schools may not discriminate against persons with disabilities in the application of criteria for honors or other recognition programs. See *Hornstine v. Moorestown Board of Educ.*, 263 F. Supp. 2d 887 (D. N.J. 2003) (restraining order granted against school district preventing it from changing policies on determining who would be valedictorian when policies were clearly designed to prevent student with chronic fatigue syndrome from becoming valedictorian because of unfounded concerns about the fairness of her grades). However, students with disabilities must meet the academic and other requirements of these programs unless prevented from doing so by their disability. For example, in one case a student with diabetes was denied admission to the National Honor Society and claimed that her rejection was because of disability-related absences. The school waived the NHS’s school attendance requirement because of the student’s disability, but found that she had not met the requirement for participation in an extracurricular activity and that her lack of participation was not related to her disability. OCR therefore denied the complaint. *Perry (OH) Public Sch. Dist.*, Complaint No. 15-03-1148, 41 IDELR 72 (OCR 2003).

12. What Accommodations Should Be Provided Outside the Classroom or the School?

Accommodations need to be provided not only in the academic setting, but in nonacademic settings that are part of the school environment as well. This includes extracurricular activities, field trips, or similar activities. These accommodations should also be documented in a Section 504 Plan or other written education plan.

12.1 Are students with diabetes entitled to participate in extracurricular activities, field trips, or similar activities?

Yes. The non-discrimination obligation under Section 504 and the Americans with Disabilities Act applies to all school programs and activities.

Notes

All programs or activities of a school are subject to Section 504 and the Americans with Disabilities Act. A student with diabetes may not be excluded from extracurricular activities, field trips, or similar activities due to the student's disability. 34 C.F.R. § 104.37(a) (Section 504 regulation requiring equal opportunity for nonacademic and extracurricular services and activities). Students with diabetes who are eligible for services pursuant to Section 504 or the ADA must "be allowed to participate in non-academic and extracurricular activities, including field trips and other activities, to the maximum extent appropriate to the needs of that student." *Elkhart (IN) Community Sch. Corp.*, Complaint No. 05-00-1026, 34 IDELR 13 (OCR 2000). Students must be equally and equitably treated. *Plymouth-Canton Community Schs.*, Complaint No. 15-99-1113 (OCR 1999) (complaint that student was not allowed to treat herself for low blood sugar during cheerleading practice resolved by requirement that cheerleaders be treated equally and equitably with respect to standards governing tryouts, practice attendance, and summer camp attendance).

Where all students are eligible to participate in an activity (as, for example, with many school field trips), the student must be given accommodations needed to participate. Where the school imposes rules or standards for who can participate in an activity (such as with most athletic teams), a student with diabetes desiring to participate must be able, with or without accommodations, to meet these requirements. While anti-discrimination laws forbid unequal treatment of people with disabilities, they do not guarantee the right to play a particular sport. Where a district imposes attendance requirements that students must meet in order to participate in extracurricular activities, OCR found in one case that a student with diabetes must meet these requirements, even if attendance problems are caused by diabetes. *Houghton Lake (MI) Community Schs.*, Complaint No. 15-05-1050, 45 IDELR 199 (OCR 2005) (school did not violate Section 504 by enforcing facially neutral policy that students could not participate in extracurricular activities on days they were absent from school, even where student missed school due to a diabetes-related appointment). Whether a child is or is not qualified to participate in an activity must be determined through a proper individualized evaluation. *New York City (NY) Bd. of Educ.*, Complaint No. 02-89-1128, 16 EHLR 455 (OCR 1989) (Section 504 violation found where school, without evaluation, excluded student with diabetes from participating in field trips).

12.2 Must a school provide coverage by trained diabetes personnel while students participate in extracurricular activities, field trips, or similar activities?

Failure to provide coverage by trained diabetes personnel at extracurricular activities will exclude many students with diabetes from participating in these activities for safety reasons, just as failure to provide coverage during the school day would exclude these students from school. Therefore, it is the Association's position that schools should provide coverage at those extracurricular activities in which a student participates.

Notes

At least one state decision has required personnel to be trained where required by a student's individual needs. In *Gettysburg Area School District*, Case 1984/02-03 (Pa. State Educational Agency 2003), teachers and staff who were to be with the child when away from the school building were required to be trained to recognize problems relating to diabetes "as they are truly the first line of defense against problems" and "are the ones who can prevent problems or at least mitigate the extent of the severity of the problem." According to the hearing officer, "reliance on direct communication with a trained medical professional is very good, but does not take the place of the knowledge required by the staff that worked directly with" the child. That decision was based largely on the student's specific circumstances, including hypoglycemic unawareness. See also *Bradley County (TN) School Dist.*, Complaint No. 04-04-1247, 43 IDELR 44 (OCR 2004) (school had "committed to providing the Student with a diabetes care provider during lunchtime, outside activities and field trips"); *Calcasieu Parish (LA) Sch. Bd.*, Complaint No. 06041354, 44 IDELR 49 (OCR 2005) (school district agreed that insulin administration is a related service that must be provided during field trips if necessary); *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999) (resolution agreement requiring that trained personnel be provided at all extracurricular activities or field trips attended by students with diabetes). Cf. *Half Hollow Hills (NY) Central School Dist.*, Complaint No. 02-04-1136, 44 IDELR 131 (OCR 2005) (district's efforts were reasonable where student was able to attend four of five field trips with appropriate care present, and for the fifth trip where regular nurse was unavailable district attempted to find a substitute nurse and ultimately offered to send a trained paraprofessional with the student, an offer the parents refused).

See Question 9.12 for additional information about training for school personnel.

12.3 Is the school required to provide coverage by trained diabetes personnel if a student is a spectator rather than a participant?

No distinction is made under Section 504 or the Americans with Disabilities Act between whether a student is involved in an activity as a participant rather than as a spectator. Being a student spectator is an important and valuable activity for students. However, a settlement approved by the Office for Civil Rights suggest that it may not consider the provision of trained diabetes personnel for student spectators to be required. Of course, it is still a good idea for schools to have such care available.

Notes

OCR has approved a complaint resolution where school officials agreed to provide an authorized diabetes care provider when a student with diabetes "is a direct participant, but

not when that student is solely an observer or an audience member.” *Buchanan County (VA) Public Schs.*, Case No. 11-03-1051 (OCR 2003).

12.4 May schools require parents to attend an extracurricular activity, field trip, or similar activity as a requirement for a child’s participation?

No. Districts may not condition student participation on parent or guardian attendance, unless the parents or guardians of non-disabled children are also required to attend.

Notes

The Department of Education’s Office for Civil Rights cautions that schools may not condition the provision of nonacademic services on a parent’s attendance or provision of a surrogate. *OCR Senior Staff Memorandum*, 17 EHLR 1233 (OCR 1990) (Guidance on the Application of Section 504 to Noneducational Programs of Recipients of Federal Financial Assistance); *Nyack (NY) Unified School Dist.*, Complaint No. 02-04-1065, 43 IDELR 169 (OCR 2004) (agreement to resolve complaint where evidence, though disputed, suggested that district required parent to attend class trip with student to provide diabetes care).

12.5 Can additional charges be imposed with respect to students with diabetes to cover any additional costs associated with their participation in extracurricular activities, field trips, or similar activities?

No. Additional costs may not be imposed beyond those which are charged to non-disabled students.

Notes

Section 504 regulations make clear that services provided to students with disabilities must be without cost, except for those fees that are imposed on non-disabled persons or their parents or guardian. 34 C.F.R. § 104.33(c)(1). The Department of Education’s Office for Civil Rights has also advised that students with disabilities may not be charged a higher cost of participating in nonacademic activities than is charged to non-disabled students. *OCR Senior Staff Memorandum*, 17 EHLR 1233 (OCR 1990) (Guidance on the Application of Section 504 to Noneducational Programs of Recipients of Federal Financial Assistance).

Although an additional cost may not be imposed, this does not mean that children with disabilities may refuse to participate in fundraising or similar activities that are expected of all students. Some schools, for example, require participation in sales activities, car washes, and the like. Assuming there is no disability-related reason that a student cannot participate, they may be expected and required to participate just as any other student.

The general rule that no charges may be imposed is subject to an exception for private schools. Private schools may adopt an additional charge if “justified by a substantial increase in cost” to the school. 34 C.F.R. § 104.39(b).

12.6 Does providing extra supervision for a child with a disability warrant exclusion from extracurricular activities, field trips, or similar activities?

The need to provide extra supervision for a child with a disability generally will not warrant exclusion from extracurricular activities, field trips, or similar activities.

Notes

The Department of Education’s Office for Civil Rights has stated that “[p]roviding extra supervision to a handicapped child ordinarily will neither change the fundamental nature of the program or unduly burden a recipient.” *OCR Senior Staff Memorandum*, 17 EHLR 1233 (OCR 1990) (Guidance on the Application of Section 504 to Noneducational Programs of Recipients of Federal Financial Assistance). Therefore, the need for supervision or assistance simply is not justification to exclude a student from extracurricular activities, field trips, or similar activities. Nevertheless, a school has “considerable discretion ... in determining what supplemental services are necessary in a particular case, since the Section 504 regulation provides no specific guidance.” *OCR Senior Staff Memorandum*, 17 EHLR 1233 (OCR 1990) (Guidance on the Application of Section 504 to Noneducational Programs of Recipients of Federal Financial Assistance).

12.7 Are schools required to maintain direct communications between school personnel and a trained medical professional when away from the school grounds?

A student’s accommodation plan should include a means for direct communication between school personnel and qualified health care personnel, such as the school nurse, when the student leaves the school building or campus if the child’s condition warrants this accommodation.

Notes

In *Gettysburg Area School District*, Case 1984/02-03 (Pa. State Educational Agency 2003), an accommodation was approved involving use of walkie-talkies when a student with diabetes left the school building. The particular student involved suffered from hypoglycemic unawareness and, as a result, it was “abundantly clear ... that he has very specific needs and that a school nurse needs to be available and in contact at all times.” Therefore, a hearing officer required that whenever the child left the school building that the teacher or staff member must have a direct connection with the school nurse. The hearing officer also held that direct communication with the nurse by itself was not enough to meet this student’s needs, and that trained personnel were also required to be present (see Question 12.2).

12.8 Are accommodations required on school buses?

The same right to accommodations exists while on school buses just as it does as in school. It is particularly important that students who have a long bus ride to school each day have access to diabetes care supplies and to emergency care while riding the bus. However, accommodations may be required even on short bus rides.

Notes

Accommodations are required in transportation services provided to students under both Section 504 and the ADA. Schools have an obligation to ensure that students receive adequate transportation to and from the aid, benefits, or services provided to them. 34 C.F.R. § 104.33(c)(2) (Section 504); 20 U.S.C. § 1401(26)(B) (IDEA). Permitting students with diabetes to have snacks while riding on the school bus may be a reasonable accommodation, depending on the circumstances. *Jamestown Area (PA) Sch. Dist.*, Complaint No. 03-02-1117, 37 IDELR 260 (OCR 2002) (school district agreed to require school bus company to inform its bus drivers that student with diabetes must be permitted snacks while ride on bus); *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999).

13. How Does Diabetes Affect Student Discipline?

Students may not be disciplined or punished because of diabetes. However, diabetes normally will not cause poor behavior or discipline problems, and where diabetes does not directly cause the behavior students with diabetes are required to meet the same disciplinary standards as other students.

13.1 Are students with diabetes subject to the same disciplinary rules as other students?

Students with diabetes are generally subject to the same disciplinary rules as other students. If a student's misconduct is the result of diabetes, however, a student may not be disciplined. Discrimination includes punishing a student because of the student's identified disability. Nevertheless, the fact that a student happens to have a disability is not an excuse for misconduct that is unrelated to the student's disability. Where the issue arises, schools are to evaluate whether there is a connection between the disability and the misconduct.

Notes

There are a number of cases confirming that students may be disciplined where misconduct is unrelated to a student's disability.

In *Brown v. Metropolitan Sch. Dist. of Lawrence Township*, 945 F. Supp. 1202 (S.D. Ind. 1996), *adopting magistrate's judgment*, 1996 U.S. Dist. LEXIS 17101, 25 IDELR 393 (S.D. Ind. 1996), a student with diabetes was expelled for "knowingly possessing, handling, or transmitting a knife" while on a field trip with her fourth grade class. The student had informed her teacher that she felt ill. After she ate a piece of fruit, the child's blood glucose reading rose from 28 mg/dL to 66 mg/dL. The student later threatened to use a small knife to harm two other students who had been harassing her. The expulsion was upheld because the student failed to present evidence that the behavior was likely to have been caused by her diabetes given her blood glucose level at the time. *See also Eureka (CA) City School Dist.*, Complaint No. 09-95-1020, 23 IDELR 238 (1995) (student with diabetes could be disciplined where there was a reasonable belief that he intentionally caused a teacher to fall into a swimming pool).

Students must meet generally applicable conduct standards in extra-curricular activities as well. In *Community (IL) Unit Sch. Dist. #300*, Complaint No. 05-98-1039, 30 IDELR 148 (OCR 1998), a student with diabetes was suspended from the soccer team and removed from the National Honor Society after an incident in which he swore at the coach and said he "should get a gun and kill" him after the coach reduced his playing time. Although there was some evidence that the misconduct was due to hypoglycemia, the Office for Civil Rights declined to find discrimination because this evidence was not conclusive and the incident was clearly a serious breach of conduct rules.

Where children with disabilities or suspected disabilities demonstrate patterns of behavior that may result in disciplinary action, school officials should consider whether the behavior is a manifestation of a disability. The Individuals with Disabilities Education Act contains elaborate procedures for such cases. 20 U.S.C. § 1415(k).

13.2 Are students entitled to present evidence of the possibility that misconduct was related to a disability before being disciplined or penalized?

Students may not be disciplined or penalized without being afforded the right to present evidence that misconduct was related to a disability. Although less formal procedures are permitted where a student's exclusion is ten or fewer days, the right to provide an explanation for the misconduct exists as a matter of due process regardless of the length of the suspension.

Notes

Students may not be disciplined without due process being afforded. *Goss v. Lopez*, 410 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975). Where there is a possibility that misconduct was related to a disability, school officials are obligated to consider whether the disability was a mitigating circumstance. See, e.g., *Gasconade County (MO) R-I Sch. Dist.*, Complaint No. 07-91-1061, 18 IDELR 313 (OCR 1991) (school considered issue but determined that student cursing at teacher was unrelated to diabetes before imposing three day suspension); *Community (IL) Unit Sch. Dist. #300*, Complaint No. 05-98-1039, 30 IDELR 148 (OCR 1998) (school considered whether diabetes resulted in misconduct, but found disability was not related).

The Individuals with Disabilities Education Act (IDEA) provides specific and detailed requirements when children with disabilities are disciplined. See 20 U.S.C. § 1415(k). Although these requirements are not expressly a part of Section 504 and the Americans with Disabilities Act, the Office for Civil Rights insists that the rights of students with disabilities who are being disciplined be similarly protected. *Santa Ana (CA) Unified Sch. Dist.*, Complaint No. 09-92-1185, 19 IDELR 501 (OCR 1992). Where a student with a disability is to be suspended for longer periods of time, ordinarily in excess of ten days, or is being expelled, schools must undertake an appropriate evaluation and afford due process in order to determine whether the misconduct is a manifestation of the student's disability and whether the child's placement remains appropriate. See *Santa Ana (CA) Unified Sch. Dist.*, Complaint No. 09-92-1185, 19 IDELR 501 (OCR 1992) (requiring IDEA-type protections under Section 504 and ADA); *Petaluma Unified Sch. Dist.*, Complaint No. 09-95-1158 (OCR 1996) (resolution provided that where a student with diabetes is disciplined for greater than 10 cumulative days during school year that manifestation determination must be made). Even where shorter suspensions or other discipline is contemplated, schools should have a procedure to determine whether disruptive behavior by a student is caused by the student's diabetes. *Gasconade County (MO) R-I Sch. Dist.*, Complaint No. 07-91-1061, 18 IDELR 313 (OCR 1991) (observing that school had established a procedure to determine whether any future disruptive behavior by student with diabetes was caused by his disability).

13.3 May students be disciplined or penalized for carrying diabetes care supplies at school?

Some state laws permit or require students to be disciplined or suspended if found to be carrying controlled substances on school grounds. While generally enacted to combat illegal drug use in schools, these laws are sometimes written broadly enough to cover diabetes supplies such as insulin and syringes. Some districts have adopted such rules as policies even in the absence of state law. Where such a law or policy is in place, its appropriateness should be challenged to prevent students with diabetes from being disciplined for violating the

policy. Some states also provide that diabetes care supplies are exempt from such “no carry” laws.

Notes

In one case, *Sumner County (TN) Sch. Dist.*, Complaint No.04-01-1122, 36 IDELR 136 (OCR 2001), it was found that a middle school student could be suspended for violating school district policy prohibiting carrying prescription or nonprescription drugs, including diabetes supplies. The appropriateness of the policy, which was not questioned, provided that younger students were to provide supplies to teachers, and such supplies were to be kept in a locker accessible to all the student’s teachers. The policy did allow high school students to carry supplies. Similarly, although a school may not inflexibly apply a policy prohibiting student possession of an unauthorized beeper, a student with diabetes is not entitled to carry a beeper where no medical condition required that the student carry a beeper. *Moreno Valley (CA) Unified Sch. Dist.*, Complaint No. 09-95-1032, 22 IDELR 902 (OCR 1995).

Insulin pumps can also present disciplinary issues. In one case a pump was mistaken for a beepers, which was prohibited at the school. *Palm Beach County (FL) Sch. Dist.*, Complaint No. 04-02-1275, 38 IDELR 105 (OCR 2002) (assistant principal upset but did not discipline student wearing a pump because it appeared to be a prohibited beeper). School personnel who enforce disciplinary rules should be aware of what an insulin pump is.

14. How are Disagreements Resolved?

Every reasonable effort should be made by school officials and parents or guardians to reach a consensus regarding the accommodations to be provided students with diabetes. If a consensus cannot be reached, a number of methods are available to resolve disagreements. The available options may differ depending on which law gives rise to the right being asserted; this part discusses the options available under each of the federal laws protecting students with diabetes.

14.1 How are anti-discrimination laws enforced?

A number of options are available to parents or guardians who believe a student may have been subjected to discrimination. Some of the options that may be available and should be considered include:

- Mediation (an informal process where the parties, often with the help of a neutral third party, attempt to negotiate a solution).
- Internal school or district grievance procedures (see Question 14.4).
- Impartial hearings (sometimes called due process hearings) (see Question 14.8).
- Complaints to federal or state enforcement agencies (Questions 14.10-14.13).
- Lawsuits in federal or state court (Question 14.14).

14.2 Do the procedures differ under Section 504, the Americans with Disabilities Act, and the Individuals with Disabilities Education Act?

Yes. These laws require different procedural steps to be followed, so it is important to be aware of which laws apply to a child's individual situation. The procedures under each law are described in detail below. In general, IDEA provides for more elaborate administrative procedures for resolving disputes, and these procedures must be followed where a child is covered by that law. Section 504 and the ADA require less elaborate administrative procedures but permit lawsuits to be filed regardless of whether available administrative procedures have been used.

14.3 Which school officials are responsible for receiving complaints and resolving disputes?

Most schools are required to designate an employee to oversee compliance with disability discrimination laws. Complaints or disagreements should be directed to this individual in the first instance. The name and contact information for this individual will usually be provided in student handbooks or publications. If not known, the chief officer of the school or the school district (generally the principal or superintendent) should be contacted.

Notes

Section 504 regulations require that districts employing 15 or more persons designate at least one person to coordinate their efforts to comply with Section 504. 34 C.F.R. § 104.7(a). The Americans with Disabilities Act also requires any public entity that employs 50 or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the act, including any investigation of any complaint communicated to it alleging its noncompliance with the act or alleging any actions that would be prohibited. 28 C.F.R. § 35.107(a).

14.4 Are school grievance procedures available?

Almost all schools have informal grievance procedures available to consider concerns regarding the accommodations provided students with diabetes. These procedures do not preclude filing a complaint with the federal or state agencies. School district grievance procedures are different from the impartial hearings which must be provided to resolve disputes under Section 504 and IDEA, which are discussed in Question 14.8. Decisions on grievances filed using these procedures are often made by school district personnel, such as the superintendent or the board of education.

Notes

Section 504 regulations require that recipients of federal funding (including school districts) employing 15 or more persons adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging action prohibited by that statute. 34 C.F.R. § 104.7(b). The Americans with Disabilities Act also requires any public entity that employs 50 or more persons to adopt and publish grievance procedures. 28 C.F.R. § 35.107(b). Following grievance procedures is not required before requesting a hearing or pursuing other remedies. *Sycamore (OH) Community City Sch. Dist.*, Complaint No. 15-01-1188, 36 IDELR 245 (OCR 2002) (resolution required school to omit any language in notices that suggested that parents must first follow an internal grievance or complaint procedure or any other procedures established by the district before requesting a due process hearing).

The Department of Education's Office for Civil Rights states in its case resolution manual that it may decline to process a complaint being addressed through a school's formal grievance procedure if OCR anticipates that the school will provide a resolution process comparable to OCR's. The affected individual has another 60 days after the grievance process is completed to file or refile a complaint with OCR. OCR will review the results of the grievance procedure and determine whether comparable process and legal standards were in fact applied. See U.S. Dept. of Educ., Office for Civil Rights, *OCR Case Resolution and Investigation Manual*, Section 109, available at: <http://www.ed.gov/about/offices/list/ocr/docs/ocrcrm.html>.

14.5 What are the procedures for resolving complaints under Section 504?

A student's rights under Section 504 may be enforced through administrative complaints to the Department of Education's Office for Civil Rights, through an impartial hearing at the district or state level, or through a private lawsuit in federal or state court.

The Office of Civil Rights accepts and investigates complaints of violations of Section 504 by schools which receive federal funding. OCR will only investigate complaints which are filed within 180 days of the discriminatory actions, unless certain conditions permit granting a waiver of this requirement. For more information on OCR complaints and procedures see Questions 14.10-14.13.

Schools that receive federal funding must have in place a procedure for impartial hearings (sometimes called “due process” hearings) to address violations of Section 504, and complaints may also be addressed through this hearing process. As noted below, IDEA also requires due process hearings, and sometimes states or districts use the same process for IDEA due process hearings as for 504 impartial hearings. For more information on hearing procedures see Question 14.9.

Litigation also may be filed in federal or state court, whether or not other possible processes have been utilized. However, if the lawsuit seeks relief available through IDEA, the IDEA due process procedures must be used before suit can be filed (see Question 14.14).

14.6 What are the procedures for resolving complaints under the Americans with Disabilities Act?

Like Section 504, the ADA provides for administrative complaints and for the filing of lawsuits. The procedures used to address violations of the ADA are similar to those available under Section 504, although the Department of Justice, rather than OCR, has authority to investigate ADA violations.

Notes

For public schools, the procedures for resolving administrative complaints under the ADA are the same as those under Section 504. 42 U.S.C. § 12133. While the Department of Justice has general jurisdiction over ADA complaints, it has designated the Department of Education to be responsible for investigating complaints of ADA violations against public schools. 28 C.F.R. § 35.190. In practice, this means that complaints alleging ADA violations against public schools, even if made to DOJ, will be investigated by OCR.

Where a private school does not receive federal funding but is subject to the ADA, complaints of ADA violations may be made to the Department of Justice, which will investigate these complaints using a procedure similar to that used by OCR.

14.7 What are the procedures for resolving complaints under the Individuals with Disabilities Education Act?

The primary means for enforcing rights provided by IDEA are administrative due process hearings and lawsuits in federal or state court. OCR does not have jurisdiction to investigate violations of IDEA rights. States must establish an impartial due process hearing system. A request for a hearing may be made if there is a disagreement about whether a child qualifies under IDEA, the content of the IEP, or the child’s placement. Requests should be made to the director of special education for the district or school; while many districts have a specific form for requesting a hearing, an informal request for a hearing is

sufficient. Most states have helpful handbooks to guide advocates and parents or guardians in the process.

In some states, the initial due process hearing is administered by a first tier hearing office and a second tier (appellate) review is available. In other states, only one level of due process hearings is available. Regardless, the process is to be impartial. At the hearing, parents or guardians have the right to be represented by an attorney or by an advocate who is not an attorney but who is knowledgeable about special education issues. While hearing procedures vary and are governed by state laws or policies, the hearing officer must allow for the introduction of evidence by the parties and must issue a written decision.

After a due process hearing (and any available appeal or review), a parent or guardian who remains dissatisfied may file a lawsuit in federal or state court. Due process hearing procedures must be complied with before a lawsuit can be filed (see Question 14.14).

States are required to provide and encourage mediation as an alternative to formal hearings. Further, before hearings occur resolution sessions must take place as a means to encourage agreement among the parties. Recent changes in IDEA are attempting to make the process less adversarial.

The procedures discussed in the remainder of this Part focus on Section 504 or the ADA. Advocates must keep in mind, however, that IDEA procedures must be followed if the child is covered by IDEA.

14.8 Is an impartial hearing available at the state level?

Yes. Schools are required to have an impartial hearing procedure available under Section 504. The hearing process may be administered by the district or by the state, but in either case the individual presiding at the hearing and making the final decision must be impartial and cannot be employed by or have a significant business relationship with the school district or the state education agency.

Notes

Section 504 requires that an impartial hearing and review procedure be available to those who are dissatisfied with the school's decisions. 34 C.F.R. § 104.36. The same standards apply under the Americans with Disabilities Act. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995). To assure the procedural safeguards, a school must issue a written decision. *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995).

As with school grievance procedures, the Department of Education's Office for Civil Rights may defer consideration of a complaint where a state due process hearing is pending. If a student or parent/guardian is dissatisfied, an OCR complaint may be filed within 60 days of completion of the separate action (see Question 14.4).

Schools must inform parents or guardians about their hearing rights. Failure to inform a parent or guardian of the right to request an impartial hearing can violate Section 504 and the Americans with Disabilities Act. *Yuba City (CA) Unified Sch. Dist.*, Complaint No. 09-94-1170, 22 IDELR 1148 (OCR 1995) (finding violation of requirement).

Impartial due process hearings must also be provided under IDEA, as described in the last question. IDEA imposes more specific requirements on the hearing process than does

Section 504. For example, the hearing officer must render a decision within 45 days after the hearing is requested. 34 C.F.R. § 300.515(a). However, in practice the hearing procedures are often very similar, and in some states the 504 hearing procedures are coordinated with or are identical to the IDEA due process hearing procedures.

14.9 Which federal agencies investigate disability law complaints involving schools?

Investigations of complaints under Section 504 and the Americans with Disabilities Act involving public schools are conducted by the U.S. Department of Education Office for Civil Rights (OCR). Complaints relating to private schools are within the jurisdiction of the U.S. Department of Justice (DOJ).

Notes

Complaints under Section 504 are investigated by the U.S. Department of Education Office for Civil Rights (OCR). Under a Memorandum of Understanding between the Department's Office of Special Education and Rehabilitative Services and OCR, OCR additionally investigates complaints alleging treatment that violates both Section 504 and the Individuals with Disabilities Education Act (IDEA). OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act over complaints alleging disability discrimination filed against public elementary and secondary education systems and institutions and public institutions of higher education (see Question 14.6).

OCR has jurisdiction over any school subject to Section 504 (public schools and private schools, including religious schools, that receive federal funding). The U.S. Department of Justice has jurisdiction of complaints under Title III of the Americans with Disabilities Act applicable to public accommodations, including private schools (whether or not they receive federal funding). *Canterbury (IN) School*, O.C.R. Complaint 05-03-1235 (August 12, 2003). The Department of Justice does not have jurisdiction over private religious schools, which, as discussed in Question 4.9, are exempt from Title III.

Some states also have procedures for filing complaints alleging violations of state anti-discrimination laws by students with disabilities. Advocates may want to be aware of these procedures.

14.10 How is a federal complaint filed?

An OCR complaint may be filed by mail, by fax, online, or in person at an OCR office. While no special form is required, the complaint must be in writing and should state what the person is complaining about, who has been discriminated against, when the discrimination occurred, and be signed, dated, and provide contact information. According to OCR, oral allegations, anonymous correspondence, courtesy copies of correspondence or complaints filed with other agencies, and inquiries that seek advice or information but do not seek action or intervention from OCR are not considered complaints and will not trigger an investigation.

Notes

Information on filing complaints with OCR is available at <http://www.ed.gov/about/offices/list/ocr/know.html>. The Department of Justice's web site on filing disability complaints is at: <http://www.usdoj.gov/crt/ada/t3compfm.htm>.

14.11 When can an OCR complaint be filed?

The usual time limit for filing complaints with the U.S. Department of Education's Office for Civil Rights is 180 days after the discriminatory action. This same time limit applies where the complaint is filed with the U.S. Department of Justice and referred to OCR for consideration. Waivers of the 180 day filing requirement may be granted under limited circumstances, such as where the complainant is ill or incapacitated or where the complaint was being addressed through a grievance procedure or a complaint with another state or federal agency.

Notes

OCR will take action only with respect to those complaint allegations that have been filed within 180 calendar days of the date of the last act of alleged discrimination unless a waiver is granted. The filing date of a complaint is the date the complaint was submitted (the postmark or the date of the e-mail, fax, or electronic submission), or the date the complaint is received by the government agency, whichever is earlier.

A complaint may address earlier matters where continuing discriminatory policies or practices are alleged. *See OCR Case Resolution and Investigation Manual*, Section 107 (see Question 14.4).

If a complaint is not filed in a timely manner, a waiver may be requested. A waiver of the 180-day filing requirement may be granted under any of the following circumstances:

- The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint was filed within 60 days after the complainant became aware of the alleged discrimination.
- The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint was filed with 60 days after the period of incapacitation ended.
- The complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another federal, state, or local civil rights enforcement agency, and filed a complaint with OCR within 60 days after the other agency had completed its investigation or notified the complainant that it would not take further action.
- The complainant filed, with the 180-day period, an internal grievance, including a due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded.
- Unique circumstances generated by OCR's action have adversely affected the complainant.

See OCR Case Resolution and Investigation Manual, Section 108 (see Question 14.4).

14.12 What should be included in an OCR complaint?

In order for the Office for Civil Rights to investigate a complaint, the complainant must provide OCR with sufficient information to support the factual basis for the complainant's belief that discrimination has occurred. If the person discriminated against is age 18 or older, that person's must sign the complaint; if the person is a minor, the signature of a parent or guardian is required. What information should be contained in a particular complaint will vary based on the type of discrimination alleged, but the complaint should be clear as to what happened and what resolution is sought. Here are some key elements to consider including in any complaint:

- Who is filing the complaint?
Provide the complainant's name, contact information (address, day and evening telephone numbers, fax number, and email address, if available), and relationship to the child.
- Who is the complainant's attorney or advocate?
Provide the attorney or other advocate's name, contact information, and relationship to the complainant or child, if any.
- Who was discriminated against?
If the person discriminated against is not the complainant, provide that person's name, contact information and relationship to the complainant.
- Who engaged in the discrimination?
Provide the name of the person or institution (*e.g.*, the school and school district), the name of the specific school or program attended by the child, and school or program contact information.
- What is the basis of the claim that the child's rights were violated?
State the type of violation that occurred (for example, discrimination on the basis of diabetes or retaliation for filing a complaint).
- What are the facts supporting the claim of discrimination?
Provide for each discriminatory action separately: the date(s) the action occurred; name(s) of individual(s) who took that action; what happened; witnesses (if any); and why the complainant believes the actions were discriminatory or retaliatory. If the allegations concern a failure to provide diabetes care to a student, include medical information showing that the care requested is appropriate and necessary for the child to safely attend school. This can include statements by the child's treating physician and position statements of the American Diabetes Association and other organizations. Also, state any basis for believing that the refusal to provide care or other discriminatory action was the result of a district policy. This will help to ensure that OCR will investigate the complaint rather than dismissing it as a dispute over individual educational placement (see Question 14.13).

- What written information or documentation is available?

Provide a description of the information or documentation. OCR will separately request this information, but if the complaint is mailed to OCR this material may be attached.

- When did the last act of discrimination occur?

Provide dates of discriminatory actions. If the discrimination is continuing (for example, if the school continues to refuse to provide appropriate diabetes care), make that clear. If the most recent action occurred more than 180 days ago, explain why the complaint was not filed sooner (see Question 14.11).

- What other efforts have been made to try to resolve the complaint through the institution's grievance process, due process hearing, with another agency, or otherwise?

Provide information on any grievance procedure, due process hearing, or other efforts made to resolve the issues, including the name of the agency with which these efforts were pursued, when they were pursued, what position was taken by the agency, the current status of the grievance or complaint, and information on any procedural or legal deficiencies in the process. Be quite clear if the process was not comparable to OCR or failed to follow proper legal standards. This is because OCR may decline to investigate a complaint if the same complaint allegations have been filed with another federal, state, or local agency, or through an internal grievance procedure or due process proceeding. If other procedures are used, OCR will only review the results of the other entity's action to determine whether it provided a comparable process and met appropriate legal standards (*i.e.*, all allegations were investigated, appropriate legal standards were applied, and any remedies secured met OCR's standards).

- What specific remedy is being sought?

Provide for each action of discrimination the remedy being sought. Be as specific as possible and provide a statement of why the remedy sought is necessary, appropriate, and reasonable. The OCR agreements provided in the Supplemental Information section can be used as examples of remedies that OCR has approved in the past.

Notes

Additional information on filing complaints with OCR is available at <http://www.ed.gov/about/offices/list/ocr/know.html> and in the *OCR Case Resolution and Investigation Manual* (see Question 14.4). The Department of Justice's web site on filing disability complaints is at: <http://www.usdoj.gov/crt/ada/t3compfm.htm>.

14.13 What will happen after an OCR complaint is filed?

After a complaint is filed, OCR will investigate the complaint by gathering information from the complaining party and the school district. If this investigation indicates that a violation may have occurred, OCR will attempt to work with the school district to achieve a voluntary resolution of the matter, generally by negotiating a resolution agreement. If an

agreement cannot be reached, OCR may initiate proceedings to cut off federal funding or may refer the matter for litigation, although neither outcome is common. Also, there are a number of reasons why OCR may decide not to continue an investigation, including lack of cooperation by the complaining party and a determination that the matter is more appropriately addressed through some other forum.

Notes

According to OCR, once the agency receives a complaint it will generally begin its investigation by contacting the school district within 15 days, and will make a determination as to whether a violation may have occurred within 105 days. When a violation is found, it is OCR's policy to seek, to the fullest extent practicable, the cooperation of the district in resolving the violation. For this reason violations generally are addressed through resolution agreements between OCR and the district, which can include general provisions about district policies or procedures as well as specific relief to address the situation of the child on whose behalf the complaint was filed. OCR only rarely seeks to terminate a district's funding, although this is the ultimate penalty available for violations of Section 504.

OCR may decline to investigate a complaint for a number of reasons. For example, OCR may decline to investigate a complaint if the allegations in the complaint have been the subject of a recent OCR decision or court case, if a complaint has been filed or an investigation made by another state or federal agency, or if the complaining party fails to cooperate or fails to provide enough information to allow the complaint to be investigated. *OCR Case Resolution and Investigation Manual*, Section 109 (see Question 14.4).

OCR sometimes declines to review cases that it believes concern individualized educational placement decisions. According to OCR:

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the "process" requirements of [the Section 504 regulations] (concerning identification and location, evaluation, and due process procedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

34 C.F.R. Part 104 App. Accordingly, OCR sometimes declines to evaluate the content of a Section 504 plan under the expectation that any disagreements should be resolved through a state or district due process hearing. Glendale (CA) Unified School Dist., Complaint No. 09-00-1434, 35 IDELR 131 (OCR 2000); see also Denver (CO) Public Schools, Complaint No. 08-01-1057, 36 IDELR 243 (OCR 2001).

In some cases OCR has used the regulatory language above to decline to investigate complaints alleging that a school had failed to provide adequate care and services to a student with diabetes. Advocates should therefore be prepared to address this issue should it arise during the OCR investigation process. Disputes about health care accommodations for a child with diabetes are very different from the disagreements over the proper academic and educational services to be provided to a child this policy was developed to address, and there are strong arguments that OCR should evaluate these cases on their merits:

- The regulations state that the policy should apply to “individual placement or other educational decisions.” While decisions about which related aids and services should be

provided might fall under the policy in situations where those aids and services are directly part of the educational process, much of school diabetes care is about safety and medical management. The justification for the policy (that members of the local IEP/504 team may have more expertise in deciding what educational services are appropriate than OCR) does not apply where the decisions are primarily related to health and safety rather than educational. Diabetes care decisions are therefore not “educational” (even if negotiated during the 504 or IEP processes) and therefore should not be subject to the policy.

- Situations where a student’s safety would be compromised by insufficient or inappropriate medical care should constitute “extraordinary circumstances” where the regulatory language says OCR will investigate complaints.
- The policy also applies only to “individualized” educational decisions. In many cases, a district’s refusal to provide appropriate care for a student with diabetes will be based on district policy (formal or informal). In these cases, OCR should examine the legality of the policy. The regulations explicitly state that OCR will investigate a policy or pattern of discriminatory placements. Advocates should take care to frame the issue as one of district policy when the facts support such an interpretation.
- The policy logically should only apply to complaints challenging the district’s failure to provide free, appropriate public education, rather than discrimination complaints alleging that the district has treated children with diabetes differently from children without disabilities. Claims that districts are denying adequate health care to students with diabetes and putting the students’ safety at risk are claims that the students are being excluded from participation in the school’s programs and activities. Therefore, they should be evaluated consistent with OCR’s duty to prevent discriminatory treatment against people with disabilities.

When OCR determines that the evidence supports a finding of a violation, OCR will seek to negotiate a voluntary agreement. The agreement will include the specific acts or steps that the school will take to resolve compliance issues, provide the dates for implementing each act or step, and specify dates for submission of reports and documentation verifying implementation. *OCR Case Resolution and Investigation Manual*, Section 302.

OCR provides a reconsideration process. Requests for reconsideration generally must be submitted within 60 days of the date of the decision. *OCR Case Resolution and Investigation Manual*, Section 303.

For additional information regarding OCR’s procedures the *OCR Case Resolution and Investigation Manual* should be reviewed.

14.14 When should litigation be considered?

Litigation is usually viewed as a last resort for discrimination complaints involving students with diabetes, partly because of the time required for a lawsuit to be resolved. However, litigation may always be considered, whether or not administrative complaints and other processes have been fully pursued (unless the IDEA exhaustion requirements discussed above apply).

Notes

Section 504 and both Title II and Title III of the Americans with Disabilities Act do not require that mediation, grievance procedures, state hearing, or even a complaint be filed with the Office for Civil Rights, before filing litigation. Where, however, remedies are also sought under the Individuals with Disabilities Education Act (IDEA) the due process hearing procedures must be exhausted before filing litigation. *Eads v. Unified Sch. Dist. No. 289*, 184 F. Supp. 2d 1122 (D. Kan. 2002) (claim brought by student with diabetes under IDEA and ADA rejected where IDEA procedures not followed). Moreover, before bringing claims under Section 504, ADA, or other statutes seeking relief which is also available under IDEA, the administrative procedures under IDEA must be exhausted to the same extent as would be required had the action been brought under IDEA. 20 U.S.C. § 1415(l).

The time within which a judicial claim must be filed can vary. This is because federal law frequently adopts the most analogous state statute of limitations and, therefore, the precise limitation applicable may differ from jurisdiction to jurisdiction. Some movement is being made to provide greater consistency. Federal law now provides a uniform limitations of four years for “civil actions arising under an Act of Congress enacted after” December 1, 1990, where a limitations is not otherwise prescribed. 28 U.S.C. § 1685. IDEA deviates from the uniform limitations by fixing a 90 day limitation for seeking judicial review of a hearing officer’s decision but, even then, allows states to provide a different explicit time limitations. 20 U.S.C. § 1415(i)(2)(B). It is very important to determine the time within which judicial review must be sought.

14.15 Are individuals who take action to protect their rights protected against retaliation?

Yes. Federal regulations prohibit schools from taking actions which intimidate, threaten, coerce, or discriminate against individuals who exercise their rights under anti-discrimination laws.

Notes

Section 504 regulations adopt and incorporate the procedural provisions of Title VI of the Civil Rights Act of 1964. 34 C.F.R. § 104.61. Title VI regulations prohibit a recipient of Federal funds from retaliating against persons for the purpose of interfering with any right or privilege secured by the regulations. 34 C.F.R. § 100.7(e). The Americans with Disabilities Act contains similar retaliation prohibitions in both Title II (28 C.F.R. § 35.134) and Title III (28 C.F.R. § 36.206).

In analyzing a complaint of retaliation under Section 504 or Title II of the ADA, the U.S. Department of Education’s Office for Civil Rights first examines the evidence to determine whether there is a *prima facie* showing of retaliation. A *prima facie* case of retaliation is made by showing that:

- 1.) The complainant engaged in a protected activity (e.g., asserted or defended a right or privilege secured by Section 504 or the ADA);
- 2.) The school was aware of the protected activity;
- 3.) The complainant was subjected to an adverse action contemporaneous with or subsequent to the adverse action; and,

- 4.) There is sufficient connection or causal relationship between the protected act and the adverse action to give rise to an inference of retaliation.

If these elements are established OCR asks school officials if there is a nonretaliatory reason for the adverse action. OCR then determines whether there is evidence that the stated reason is a pretext for retaliation. Courts hearing retaliation claims will generally take a similar analytical approach.

Retaliation may take a variety of forms. It may include, for example, actions to intimidate, threaten, coerce, or otherwise retaliate against anyone who asserts a right protected by the civil rights laws OCR enforces, or who cooperates in an investigation. Where there is a non-pretextual, non-retaliatory reason for the school's action, a claim of retaliation will be rejected. *See, e.g., Hamilton Heights (IN) Sch. Corp.*, Complaint No. 05-02-1048, 37 IDELR 130 (OCR 2002) (rejecting retaliation claim based on termination of volunteer services where parent of child with diabetes made excessive visits to nurse's clinic at school where her children were not enrolled). Similarly, where school officials apply a non-discriminatory practice retaliation is not established. *See, e.g., Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995) (rejecting retaliation complaint where child with diabetes was sent home with shingles under school nurse's practice of keeping students out of school until lesions cleared up consistent with the way other students were treated in similar circumstances).

Retaliation claims are sometimes made when school officials are alleged to have referred to a student to child welfare agencies or other government agencies. These claims will generally be rejected absent evidence that the district took the action, or evidence that the action was taken for a retaliatory purpose. *Mulkey v. Board of Education, Rock Hill Local Sch. Dist.*, 2006 U.S. Dist. LEXIS 85230 (S. D. Ohio 2006) (evidence showed that school nurse had contacted child welfare agency because child did not have insulin or supplies on several occasions and nurse was unable to contact parent); *Valle Lindo (CA) Elem. Sch. Dist.*, Complaint No. 09-06-1079, 47 IDELR 170 (OCR 2006) (no evidence that district, as opposed to a third party, had contacted immigration officials after the filing of an OCR complaint, resulting in the mother of a child with diabetes being detained for immigration violations); *Ardmore (OK) Public Schs.*, 46 IDELR 288 (OCR 2006) (complaint by father of student with diabetes that district had reported him to child welfare agency in retaliation for earlier OCR complaint was rejected because school officials had no knowledge of prior OCR complaint at the time the report was filed).

15. Are State Tort Remedies Available in the School Setting?

Failure to provide aid to or protect children may be the basis for state tort claims. However, many states recognize immunity precluding claims.

15.1 What state tort claims are available against school districts?

State tort remedies may be available where school officials had a duty to act and breached that duty, provided school officials do not have immunity from tort suits and other requirements for bringing a claim are met. The law of torts varies from state to state, especially with respect to whether a public or private school or its employees are immune from liability. Negligence claims may be asserted where schools fail to provide care and treatment for students. Unlike anti-discrimination law, tort claims are only available after a student has suffered actual harm (such as physical injury).

15.2 What is the duty to aid or protect?

Where a special relationship exists a duty to provide aid and protection arises. Such a duty exists between schools and students for state tort law purposes.

Notes

Tort law generally holds that there is no duty to provide aid or protection to another person. *See* Restatement (Second) of Torts §314 (“The fact that the actor realizes or should realize that action on his part is necessary for another’s aid or protection does not of itself impose upon him a duty to take such action.”). A duty to take some affirmative action to aid or protect may arise, however, where a special relationship exists between parties. Although the usual school-student relationship is not sufficient to give rise to a constitutional duty, this relationship ordinarily is sufficient to give rise to a duty to aid or protect under state tort law. *See Pirkle v. Oakdale Union Grammar Sch.*, 40 Cal. 2d 207, 253 P.2d 1 (1953); Prosser and Keeton on The Law of Torts 376-77 (5th ed. 1984) (noting that there “is now respectable authority” imposing an affirmative duty on a school to aid and protect its pupils).

The classic statement of the rule is provided by Restatement (Second) of Torts §314A. Under the Restatement, a duty to provide aid or protection is imposed on, among others: “One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection”

The duty imposed requires the person “to take reasonable action”:

- “(a) to protect them against unreasonable risk of physical harm, and”
- “(b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.”

The status of a person on property of another is frequently classified based on whether a trespasser, licensee, or invitee, with an “invitee” having the most favored status. It is the “invitee” to whom the Restatement’s duty to aid and protect extends. Students attending school or participating in school activities are usually considered invitees. *See, e.g., Jesik v. Maricopa County Community College Dist.*, 125 Ariz. 543, 611 P.2d 547 (1980); *Vreeland v. State of*

Arizona Bd. of Regents, 9 Ariz. App. 61, 449 P.2d 78 (1969); *Peterson v. San Francisco Community College Dist.*, 36 Cal. 3d 799, 685 P.2d 1193, 205 Cal. Rptr. 842 (1984); *Rehvea v. State*, 385 So. 2d 1378 (Fla. Dist. Ct. App. 1980); *Walker v. Daniels*, 407 S.E.2d 70 (Ga. Ct. App. 1991); *Schultz v. Gould Academy*, 332 A.2d 368 (Me. 1975); *McIntosh v. Omaha Pub. Schs.*, 249 Neb. 529, 544 N.W.2d 502 (1996); *Waltz v. Wake County Bd. of Educ.*, 409 S.E.2d 106 (N.C. Ct. App. 1991); *Eberle v. Benedictine Sisters of Mt. Angel*, 235 Or. 496, 385 P.2d 765 (1963); *McDonald v. University of W. Va.*, 444 S.E.2d 57 (W. Va. 1994).

The school-student relationship may itself establish the requisite special relationship for tort law purposes. As such, school officials have a duty to reasonably respond to a student's medical needs.

15.3 Must school officials know the need for aid or protection?

School officials must know or have reason to know the need for aid or protection. Therefore, school officials must be aware that a child has diabetes and the nature and extent of care that might be required.

Notes

The Restatement (Second) of Torts §314A provides these comments:

The defendant is not liable where he neither knows nor should know of the unreasonable risk, or of the illness or injury. (Comment e.)

The defendant is not required to take any action until he knows or has reason to know that the plaintiff is endangered, or is ill or injured. He is not required to take any action beyond that which is reasonable under the circumstances. (Comment f.)

15.4 What aid or protection must be provided?

There is no hard and fast rule as to what care is needed. What is required is that school officials exercise reasonable care under the circumstances. Of course, the nature of chronic illnesses is such that what aid or protection might be needed is quite predictable.

Notes

The Restatement (Second) of Torts §314A states:

In the case of an ill or injured person, [a person] will seldom be required to do more than give such first aid as he reasonably can, and take reasonable steps to turn the sick man over to a physician, or to those who will look after him and see that medical assistance is obtained. He is not required to give any aid to one who is in the hands of apparently competent persons who have taken charge of him, or whose friends are present and apparently in a position to give him all necessary assistance. (Comment f.)

The sorts of claims that may be alleged (and, thus, the duties violated) were summarized in *Czaplicki v. Gooding Joint Sch. Dist. No. 231*, 775 P.2d 640 (Idaho 1989) (factual issues precluded summary judgment on claim that district was negligent in treating otherwise

healthy student who developed an airway obstruction and subsequently died; listing a number of specific duties the district was alleged to have violated in relation to providing emergency medical care).

At a minimum, “[a] school is required to do whatever a reasonably prudent school would do in safeguarding the health of its students, providing emergency assistance to them when required and arranging for appropriate medical care if necessary.” *Federico v. Order of St. Benedict in Rhode Island*, 64 F.3d 1, 4 (1st Cir. 1995). Under tort law, schools are not expected to guarantee the health of students or assume roles for which they are not qualified. “[A] school must act as a reasonable school in responding to medical needs of the students.” *Federico*, 64 F.3d at 4 (holding that duty was met although there was no standing order to permit nurse to administer epinephrine subcutaneously in the event of allergic reaction to nuts; parent rejected advice to allow child to have epinephrine in a self-administered form to be immediately available to him and state law prohibited a nurse from administering epinephrine in the absence of a prescription or order).

15.5 Can a school district be liable if it fails to take preventive aid or protective measures?

It is reasonable to expect schools to anticipate and take measures to prevent avoidable harm to children with diabetes. However, because a school is not a guarantor or insurer of health and safety, it is not required to undertake preventive measures to address any and all emergencies that could arise.

Notes

Where a duty exists, preparation to prevent avoidable harm is required. Under the Restatement (Second) of Torts § 300, “want of preparation” is considered in evaluating negligence. It is obvious, for example, that a school maintaining an athletic program fails in its duty of care where it does not provide competent personnel, give sufficient training and instruction to participants, and ensure that athletes are provided safe equipment. So too, if reasonable under the circumstances schools must prepare so as to prevent harm to a child with a disability. On the other hand, reasonableness does not require that a school or others provide any and all medical care that they could conceivably be required. *See, e.g., Salte v. YMCA of Metropolitan Chicago Foundation*, 351 Ill. App. 3d 524, 286 Ill. Dec. 622, 814 N.E.2d 610 (2004) (YMCA was not required to have a defibrillator on premises).

15.6 Can a school district be liable if it prohibits a student’s immediate access to medication or items required for care?

A school may be found negligent where it has a policy prohibiting students from carrying medication where that medication is necessary for the child’s care.

Notes

In *Gonzalez v. Hanford Elementary School District*, 2002 Cal. App. Unpub. LEXIS 1341 (2002), a judgment for the plaintiff was upheld where a child died after a severe asthma attack. Under a written school policy, all student medication was required to be stored in a place inaccessible to other students. A fifth grader and his mother understood this to mean that the student could not carry his inhaler to treat his severe asthma. Pursuant to this policy, the student’s nebulizer (used to administer medication to treat asthma) was kept in

the school office and when it was needed the student had to be assisted by school staff. On the day the student died, he had left his classroom to use the restroom. Minutes later he appeared in the school office exhibiting symptoms of a severe asthma attack. A school secretary, trained in the use of a nebulizer, attempted to assist him, but before effective help could be rendered the student collapsed and died later that afternoon. Application of the policy was found negligent.

15.7 What tort immunities can protect schools from liability?

Traditionally, common law immunity for governmental and charitable institutions has been recognized by case law. Although these absolute immunities have been abrogated in many states, narrower immunities which apply in certain situations have been created in most states by statute or judicial decision. For example, immunity is often recognized for government officials performing discretionary functions (as opposed to functions mandated by state law). Immunity can be subject to a number of exceptions.

Notes

Immunity has been found to preclude claims that medical care was not timely or appropriately provided. See, e.g., *Lennon v. Petersen*, 624 So. 2d 171 (Ala. 1993) (discretionary function immunity barred claim following injury of athlete); *Teston v. Collins*, 217 Ga. App. 829, 459 S.E.2d 452 (1995) (decisions relating to medical care discretionary; immunity applied); *Montgomery v. City of Detroit*, 181 Mich. App. 298, 448 N.W.2d 822 (1989) (immunity and other considerations applied to reject claim where school and associated defendants failed to provide sufficiently prompt emergency care to student who died from heart attack while running during physical education class). However, there are exceptions to immunity that sometimes apply. See, e.g., *Trotter v. School District 218*, 315 Ill. App. 3d 1, 247 Ill. Dec. 899, 733 N.E.2d 363 (2000) (immunity did not apply to claim that district failed to train instructors to respond to emergency situations in swimming class); *Upton v. Clovis Municipal Sch. Dist.*, 141 P.3d 1259 (N.M. 2006) (immunity not applied where student died from asthma attack after being required to continue exercising in physical education class; district failed to follow through on its safety policies for students with special needs and students in acute medical distress and this constituted an act of negligence in the operation of the school district which resulted in waiver of immunity).

Many states expressly provide immunity with regard to the administration of medication in schools. This may include administration of medication by school personnel (e.g., Mich. Code § 380.1178) or self-administration by a student (e.g., Indiana Code § 34-30-14-6).

15.8 Do school personnel have immunity when providing emergency medical care to students?

Where emergency care is provided, states generally recognize immunity. This immunity is provided under what are known as “Good Samaritan” laws, as well as other school immunity or diabetes-specific laws.

Notes

A Good Samaritan law “exempts from liability a person (such as an off-duty physician) who voluntarily renders aid to another in imminent danger but negligently causes injury while rendering the aid.” *Black’s Law Dictionary* 702 (7th ed. 1999). Every state and the

District of Columbia have adopted some form of Good Samaritan law. Black's Law Dictionary at 702.

Good Samaritan statutes usually apply to teachers or other school personnel. Indeed, some statutes expressly reference school personnel. *See, e.g.*, Connecticut General Statutes §52-557(b) (“a teacher or other school personnel on the school grounds or in the school building or at a school function who renders emergency aid to a person in need thereof, shall not be liable to such person assisted for civil damages for any personal injury which results from acts or omissions by such person in rendering the emergency first aid, which may constitute ordinary negligence”).

A Good Samaritan law is in addition to general immunity applicable to schools. Therefore, other grounds for immunity might well exist.

15.9 Does refusing to provide health care services by school personnel constitute unprofessional conduct?

School personnel must perform competently and professionally. Where negligent or intentionally inconsistent with their expected duties and responsibilities, licensing, or certification boards may take disciplinary action.

Notes

Licensing and certification boards uniformly have standards which, if not followed, may warrant discipline. Proof of violation of these standards is less demanding than that required under tort law. A professional may be disciplined, for example, where he or she acts in a manner inconsistent with the health or safety of persons under the professional's charge or care. *See, e.g., Mississippi Bd. of Nursing v. Hanson*, 703 So. 2d 239 (Miss. 1997) (nurse's license revoked on various charges for unsafely caring for infants including carrying them around naked, washing them in sinks, flipping levers on their incubators to stimulate them, etc.).

Supplemental Information

Selected State Statutes

A growing number of states have adopted statutes that specifically relate to diabetes care tasks in schools. A selection of these statutes is provided below. Current versions of these statutes and recently adopted legislation in other states should be consulted. The Association maintains a list of state laws relating to school diabetes care on its website at www.diabetes.org/advocacy-and-legalresources/discrimination/school/legislation.jsp.

Other statutes or regulations relevant to diabetes care in schools may exist in areas such as the administration of medications in schools, the delegation of health care responsibilities, immunity, and other matters relevant to diabetes care.

California

Cal Ed Code § 49414.5 (2003)

- Authorizes school district to provide voluntary emergency training (hypoglycemia/glucagon) to school personnel (note: “authorizes”, does not “require”).
- School nurse or designated personnel, in the absence of a school nurse, may administer glucagon.
- Training developed by ADA, CA Department of Education, and others.
- Training components must include recognition and treatment of hypoglycemia, glucagon administration, basic emergency follow up procedures (911), training by health care professional.
- Permits students who are able to do so to provide self-care anywhere, anytime upon authorization of parent and health care provider.
- Notification requirements if non-nurse administers glucagon.

Cal. Bus. & Prof Code § 2058(b) (1997)

- Provides that: “Nothing in [the ‘Medicine’ Chapter of the Business & Professions Code] shall be construed to prohibit obtaining a blood specimen by skin puncture for the purpose of performing blood glucose testing for the purposes of monitoring a minor child in accordance with paragraph (6) of subdivision (b) of Section 1241.”

Cal. Bus. & Prof. Code § 1241(b)(6) (1997)

- Provides standards for blood glucose testing for the purposes of monitoring a minor child diagnosed with diabetes. Cal. Bus. & Prof. Code § 1241(c) provides for the registration of places where blood glucose testing is performed.

Connecticut

Conn. Gen. Stat. § 10-220j (2004)

- School board may not prohibit self administration of blood glucose checks by students who are capable of self-checking with physician authorization (note: language does not specify location of blood glucose checks).

Hawaii

Haw. Rev. Stat. § 302A-1164 (2005)

- Allows glucagon administration by trained volunteer non-medical school personnel.

Indiana

Indiana Code § 34-30-14 (1998)

- Provides immunity for the good faith administration of medications (specifically including injectable insulin and blood glucose testing) by a school administrator, teacher, or other school employee designated by the school administrator, after consultation with the school nurse. Requires that an unlicensed school employee administering injectable insulin or performing glucose tests receive training. Provides that a school and school board are not liable for civil damages as a result of a student's self-administration of medication for a chronic disease or medical condition.

Indiana Code § 20-34-5-1 through 24-30-5-18 (2007)

- For each student with diabetes, requires that a diabetes management and treatment plan be prepared by the treating health care provider and parents, and requires that the plan be implemented during school hours or at a school related activity.
- The diabetes management and treatment plan must identify the health care services student will receive and specify the student's ability to manage his or her diabetes.
- For each student with diabetes, the school nurse must develop an individualized health plan which incorporates the services required to be provided in the diabetes management and treatment plan.
- Permits school employees who volunteer to be designated as volunteer health aides and to perform diabetes care tasks for students, including administering insulin and glucagon. Volunteer health aides serve under the supervision of the principal and school nurse and must have access, in person or by telephone, to the school nurse. Volunteer health aides may be trained by a health care professional with expertise in diabetes or by a school nurse.
- School districts must seek out school employees to become volunteer health aides and must take all steps to ensure that adequate numbers of volunteer health aides are trained, but may not penalize any school employee for refusing to be a volunteer health aide.
- School assignments may not be restricted based on the need to provide diabetes care.
- Authorizes the state department of education to develop training programs for school nurses and for volunteer health aides.
- Where authorized by a student's diabetes management and treatment plan, a student shall be permitted to care for his or her diabetes, including testing blood glucose, self-administering insulin and glucagon, and carrying all needed diabetes supplies.
- Requires the school, with the consent of the parent, to provide information to school employees responsible for transporting the student about how to respond to diabetes-related emergencies.

Kentucky**Ky. Rev. Stat. § 158.838 (2005)**

- Public, private, and parochial schools must have one trained employee on duty during the school day who has been trained to administer glucagon
- Immunity for school district and school employees.

Massachusetts**Mass. Gen. Laws ch. 71, § 54B (2004)**

- School districts cannot prohibit students from possessing blood glucose meters to administer self-checks and insulin delivery supplies. (Note: Does not specify locations where self-care may occur).

Montana**Mont. Code Ann. § 20-5-412 (2004)**

- Parent/guardian may designate an adult to be trained to administer glucagon to a student.

North Carolina**N.C. Gen. Stat. § 115C-12 (31) (2002)**

- State Board of Education is required to adopt and disseminate guidelines for the development and implementation of individual diabetes care plans.
- Recommended that guidelines development be based upon American Diabetes Association school position statement.
- Individual diabetes care plans must include information about staff responsibilities, emergency care plan, allowable actions, self-care.
- Requires local school boards to implement guidelines.
- Requires local school boards to provide information and staff development to school personnel to support and assist students with diabetes.

Oklahoma**2007 Okla. Laws 164 (2007 H.B. 1051, enacted May 31, 2007, to be codified at 70 Okla. Stat. § 1210.196)**

- Requires that a diabetes medical management plan be developed for each student who needs diabetes care provided at school by the student's personal health care team (including the principal and school nurse).
- Permits school employees who volunteer to be designated as volunteer diabetes care assistants and to perform diabetes care tasks for students, including administering insulin and glucagon.
- School districts must seek out school employees to become volunteer diabetes care assistants and must take all steps to ensure that school nurses or volunteer diabetes care assistants are trained and available to provide care to a student with diabetes.

School districts may not penalize any school employee for refusing to be a volunteer diabetes care assistants.

- School assignments may not be restricted based on the unavailability of personnel to provide diabetes care.
- School nurses and volunteer diabetes care assistants must at all times have access to a physician.
- Requires the state Department of Health to develop guidelines for the training of volunteer diabetes care assistants.
- Volunteer diabetes care assistants shall be trained by a school nurse or a person designated by the state Department of Health with training in diabetes.
- Requires the school, with the consent of the parent, to provide information to school employees responsible for transporting the student about how to respond to diabetes-related emergencies.
- Where authorized by a student's diabetes medical management plan, a student shall be permitted to care for his or her diabetes, including testing blood glucose, self-administering insulin and glucagon, and carrying all needed diabetes supplies.
- School employees are not liable for actions taken in accordance with a student's diabetes medical management plan, and school nurses are not liable for actions of volunteer diabetes care assistants.

Oregon

Or. Rev. Stat. §§ 433.800 to 433.830 (1997)

- Allows administration of glucagon by trained non-medical personnel.
- Establishes training protocol and components.
- Immunity clause for trained personnel and schools.

South Carolina

S.C. Code Ann. § 59-63-80 (2005)

- Allows self-monitoring and self-treatment (including administration of medications) for all children with special needs in accordance with individualized health care plan.

Tennessee

Tenn. Code Ann. § 49-5-415 (2004, 2006)

- Authorizes glucagon administration by voluntary trained school personnel.
- Training to be "arranged" through TN Dept. of Health or TN Dept. of Education.
- School may (not must) permit voluntary trained non-medical school personnel to "assist" students with diabetes care in the absence of a school nurse.
- Development of medical management plan.
- Guidelines for diabetes care developed by Dept. of Ed and Dept Health.

- Guidelines must include recognition and treatment of hypoglycemia and hyperglycemia, understanding individualized health plan, performance of blood glucose monitoring and ketone checks.
- Specifically excludes insulin administration by non-medical personnel.
- Requires all school nurses to be educated in diabetes care and to have knowledge of the guidelines.
- Students shall be permitted to perform blood glucose checks, administer insulin, treat hypoglycemia and hyperglycemia, and otherwise provide self-care in any area of the school or school grounds and at any school-related activity, and shall be permitted to self-carry all necessary diabetes supplies, including sharps.
- Sharps may be stored in a secure but accessible location, including on the student's person. Disposal of sharps in accordance with Tennessee Department of Labor and Workforce Development Division of Occupational Safety and Health regulations.
- No restriction on school choice.
- Immunity clause for school nurse, trained non-medical school employee, board of education.

Texas

Tex. Health & Safety Code § 168.001-168.011 (2005)

- Requires diabetes management and treatment plan (DMTP) to be developed for each student with diabetes. Individualized health plan (IHP) is then developed by school with input from parent, principal, school nurse, and teachers.
- Principal to seek school employees who are not health care professionals to serve as “unlicensed diabetes care assistants” (UDCA).
- Principal to make sure at least one UDCA if a full time nurse is assigned to school.
- Principal to make sure at least three UDCA's if full time nurse is not assigned to school.
- Texas Diabetes Council to develop guidelines.
- Self-management permitted in accordance with individualized health care plan.

Utah

Utah Code Ann. §§ 53A-11-603, 53A-11-604 (2006)

- Requires a public school, when requested by parents, to train school personnel who volunteer to be trained in the administration of glucagon in an emergency.
- Within a reasonable time after receiving a request, school must train at least two volunteers to administer glucagon, with training provided by a school nurse or another qualified medical professional.
- School must assist in, and may not obstruct, efforts to find school personnel to volunteer to administer glucagon.
- Provides trained school personnel with the authority to administer glucagon in an emergency where a licensed health care professional is not available, and immunity

from liability for actions taken in good faith, and establishes training standards for the administration of glucagon.

- Schools must permit students to possess and self-administer diabetes medications with the authorization of the parent and the student's health care provider.

Virginia

Va. Code Ann. §§ 22.1-274, 8.01-225, 54.1-2901, 54.1-3001, 54.1-3408 (1999)

- School board must ensure that at every school attended by a student diabetes have at least two employees trained in insulin and glucagon administration.
- Permits insulin and glucagon administration by trained non-medical personnel in the absence of school nurse.
- Requires the development of training guidelines for insulin and glucagon administration by the VA Board of Medicine and Dept. of Education.
- Immunity for school employee and school board.
- No penalty for school employee refusal to be trained in insulin and glucagon administration.

Washington

Wash. Rev. Code Ann. § 28A.210.330 (2005)

- School districts must develop individual health plans for students with diabetes.
- School districts must develop policies for students with diabetes that must include self-care and carrying equipment and supplies when appropriate, access to food, water, bathroom (among other items).
- Allows trained volunteer "parent-designated adult" to provide diabetes care.
- Training by health care professional or expert in diabetes care selected by parent.
- School districts must designate a health care professional to coordinate student's care to develop in-service training for all school districts on symptoms, treatment and monitoring of students with diabetes.
- Immunity clause for school district, employee, parent-designated adult.

West Virginia

W. Va. Code Ann. §§ 18-2K-1 through 18-2K-4 (2006)

- State Board of Education is required to adopt and disseminate guidelines for the development and implementation of individual diabetes care plans.
- Recommended that guidelines development be based upon American Diabetes Association school position statement.
- Individual diabetes care plans must include information about staff responsibilities, emergency care plan, allowable actions, self-care.
- Requires local school boards to implement guidelines.

- Requires local school boards to provide information and staff development to school personnel to support and assist students with diabetes.

Wisconsin

Wis. Stat. § 118.29(2)(a)(2r) (2001)

- School employees may administer glucagon.

Selected Cases

This section contains summaries of many of the cases and administrative decisions addressing the rights of students with diabetes in the school setting. All cases and administrative decisions related to diabetes and published in the Individuals with Disabilities Education Law Reporter or another readily available source are included. Cases or administrative decisions which are not published or which do not specifically relate to students with diabetes generally are not listed here.

Abington Sch. Dist., Case No. 812, 28 IDELR 890 (Pa. Appellate Officer 1998)

A personal aide was not required to be furnished to assure compliance with placement accommodations for child with diabetes and mental retardation because of parental distrust that school would provide accommodations. However, hearing officer recommended that state compliance officer incorporate the requirement if required accommodations were not provided.

Brown v. Metropolitan Sch. Dist. of Lawrence Township, 945 F. Supp. 1202 (S.D. Ind. 1996), *adopting magistrate's judgment*, 1996 U.S. Dist. LEXIS 17101, 25 IDELR 393 (S.D. Ind. 1996)

In the absence of a relationship between a student's diabetes and misconduct, the student may be expelled for misconduct otherwise warranting expulsion. The fourth grade student threatened other students with an instrument containing a knife. The medical evidence did not establish that her disability caused or contributed to the misconduct.

Bradley County (TN) School Dist., Complaint No. 04-04-1247, 43 IDELR 44 (OCR 2004)

OCR held that district provided a kindergarten student with diabetes an appropriate Section 504 plan and a medically safe environment. The 504 plan was implemented when the student's began school even though it was still officially in draft form. The plan could be implemented even though the parent objected and refused to sign it. The plan provided for 5-10 persons trained in diabetes care and in assisting the student with his insulin pump. OCR found that the number of staff persons trained was sufficient. Neither the ADA nor Section 504 required the district to assign a full-time aide to the student if adequate personnel were trained.

Calcasieu Parish (LA) Sch. Bd., Complaint No. 06041354, 44 IDELR 49 (OCR 2005)

Parent alleged that there was no trained person at school to give her daughter, a first grader with type 1 diabetes, insulin. Although the physician's orders authorized insulin administration by unlicensed personnel, OCR concluded that state board of nursing policy prohibited delegation of insulin. The school offered to transfer the child to a nearby school with a full time nurse, and OCR indicated that was reasonable. The parent opted to administer insulin to the child herself, and therefore OCR found no violation of Section 504. Finally, the parent alleged that district policy required parents of students using insulin to attend field trips. OCR held that field trips are part of the academic program and suggesting that denying a child

access to them denies access to education. The district agreed to adopt a policy stating that insulin can be a related service that may be needed on field trips and to provide for insulin administration even if the parent is unable to go (how it will do this with nurses isn't specified). Finally, any past failure of the district to evaluate the child for Section 504 was moot because the daughter had eventually been evaluated and found eligible.

Canterbury (IN) School, Complaint 05-03-1235 (OCR 2003)

OCR did not have jurisdiction to investigate complaint alleging discrimination against student with diabetes brought against private school that did not receive federal financial assistance. Complaint was referred to the U.S. Department of Justice that has jurisdiction over Title III of the Americans with Disabilities Act.

Community (IL) Unit Sch. Dist. #300, Complaint No. 05-98-1039, 30 IDELR 148 (OCR 1998)

Student who was on soccer team failed to establish that misconduct, including threat made to coach, was caused by hypoglycemia. Accordingly, suspension from team and separate removal from National Honor Society did not constitute discrimination.

Conejo Valley (CA) Unified Sch. Dist., Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993)

The school district violated Section 504 and the ADA where it failed to make an individual determination of the student's needs and, instead, proposed placement options dictated solely by a district policy prohibiting non-licensed personnel from giving injections. The student was six years old and had Down Syndrome and diabetes. Alternative placements were considered because of the child's inability to reliably detect early warning symptoms. Rejected placements included home instruction, an assignment to a class for students with communication impairments located near a hospital, placement in a school outside the district where a full-time nurse is available, and assignment of an instructional aide to be accompany the student but without authority to give emergency injections. Each was rejected because they were based on the district's refusal to allow non-licensed personnel to administer injections rather than the individual needs of the student. The OCR also found that even if home instruction would have been proper, a daily limit of one hour of service without regard to the individual needs of the student was discriminatory.

East Allen (IN) County Schs., Complaint No. 05-02-1163, 38 IDELR 75 (OCR 2002)

OCR rejected a claim alleging the district failed to provide appropriate diabetes care training to school personnel. Each of the student's teachers received training as specified in the student's Section 504 plan, and, as part of this training, the parent provided specific information about the student's condition. The training called for in the 504 plan included information on how the student's insulin pump functioned, how her diabetes affected her, the signs of high and low blood glucose levels, and appropriate treatment in a medical emergency. Personnel who supervised the student at lunch were trained on calculating and balancing carbohydrates and insulin.

OCR also held the student was not penalized for missing a class because of her diabetes. She made up the missed work and received an "A" in the course. Finally, OCR held was permitted to deny the parent's request for a due process hearing because the request did not dispute the appropriateness of the student's identification, evaluation or placement. Disagreements about the implementation of a 504 plan could be addressed through district grievance procedures or through an OCR complaint.

Eastmont (WA) School Dist. No. 206, Complaint No. 10-05-1030, 44 IDELR 258 (OCR 2005)

A parent alleged that the district discriminated against her son, a kindergartner with type 1 diabetes, by refusing to administer insulin, failing to communicate with the parents about blood glucose levels, failing to adequately monitor snacks, and failing to give the parent notice of procedural rights. OCR found the first three allegations to be without merit based on the facts presented. The parent stated that she had been told by district personnel not to request insulin administration because it could not be provided. However, according to the district, if requested the school nurse could administer insulin, but the parent had never requested this and none of the documentation provided by the parent or the child's doctor indicated a need for insulin during the school day. As to the allegations about lack of communication and improper monitoring of snacks, OCR found that, while there were occasional problems, they were addressed, and in general communication was frequent and the paraprofessional assigned to assist the student full time monitored snacks and performed other needed care. The district did violate Section 504 by not giving proper notice of procedural rights, and entered into an agreement with OCR to resolve this issue.

Elizabeth S. v. Gilhool, EHLR 558:461 (M.D. Pa. 1987)

In order to attend school safely and productively, a child with diabetes' blood sugar level must be monitored and provision made for insulin injections, snacks during the course of the school day, the management of any medical emergencies which may arise, and perhaps for modification in scheduling and activities.

Elkhart (IN) Community Sch. Corp., Complaint No. 05-00-1026, 34 IDELR 13 (OCR 2000)

School entered into a resolution agreement to address parent's complaint about provision of services to students with diabetes. The parent alleged that the school failed to provide her child with appropriate services during a camping trip, failed to develop an appropriate individual plan to meet her known health needs, and failing to protect her privacy. The agreement required the district to follow the Section 504 process to provide appropriate aids and services, and to notify parents of their availability. The agreement also required the district to ensure the privacy of medical information.

Eureka (CA) City School Dist., Complaint No. 09-95-1020, 23 IDELR 238 (OCR 1995)

Student with diabetes could be disciplined where there was a reasonable belief that he intentionally caused a teacher to fall into a swimming pool.

Fayette County (GA) School Dist., Complaint No. 04-05-1037, 44 IDELR 221 (OCR 2005)

OCR found the district did not discriminate against a 14-year-old student with type 1 diabetes. The parent claimed the district refused to state in the student's Section 504 plan that it would automatically excuse him from absences due to medical needs. The district agreed to evaluate each absence individually and to excuse those for which he provided a doctor's note, OCR found this policy to be reasonable. Further, the district's policy of exempting students with no more than five absences, excused or unexcused, from final exams was facially neutral and did not violate Section 504.

Fayette County (KY) School Dist., Complaint No. 03-05-1061, 45 IDELR 67 (OCR 2005)

The mother of a 12 year old child with type 1 diabetes alleged that the district failed to evaluate the child for eligibility under Section 504. The child had been experiencing depression and behavioral problems, and after transferring into the district he attempted suicide and was admitted to a psychiatric hospital. When he returned to school, an individualized health care plan was put into place providing for school staff to monitor the student while he tested blood glucose and administered insulin, and for school staff to administer glucagon, although the details of how these treatments were not specified. The student's father later asked that the student be evaluated for Section 504 eligibility, but school staff refused on the grounds that there was no reason for an evaluation if the school was meeting the student's medical and educational needs. OCR found the district had violated Section 504 by not referring the student for evaluation. OCR stated that "while some students with diabetes may be adequately served under an individualized health care plan," the district was aware of particular circumstances regarding this student that justified referral for evaluation. These circumstances included the student's recent move, his depression and his attempted suicide. The school agreed to take steps to ensure the child was properly evaluated to resolve the complaint.

Gasconade County (MO) R-I Sch. Dist., Complaint No. 07-91-1061, 18 IDELR 313 (OCR 1991)

District did not discriminate by imposing three day suspension on student with diabetes. The district affirmed principal's decision to suspend the student for cursing at a teacher after weighing the medical evidence of a possible insulin reaction submitted by the parent against the testimony of the principal, who observed no symptoms of an insulin reaction in the student on the day of the incident.

Gettysburg Area School District, Case 1984/02-03 (Pa. State Educational Agency 2003)

Where specific needs so require, teachers and staff with a student outside school buildings are required to be trained to recognize child's problems relating to his diabetes and have a walkie-talkie to provide direct communication with a trained medical professional, such as the school nurse.

Half Hollow Hills (NY) Central School Dist., Complaint No. 02-04-1136, 44 IDELR 131 (OCR 2005)

The parent of a student with type 1 diabetes alleged that the district denied her child FAPE by failing to provide a nurse to provide care during field trips and extracurricular activities. OCR found that, while the district had failed to provide care during certain after-school activities during the prior school year, this was no longer the case. OCR also found no violation in the district's failure to provide coverage for field trips. The student was able to attend four of five field trips during the school year with either a nurse or parent present. For the fifth field trip, the district made reasonable efforts under the circumstances to locate a substitute nurse to cover for the regular nurse, who was unavailable, and when these proved unsuccessful the district offered to have a trained paraprofessional who worked with other children with diabetes in the district attend with the child, but the parent refused.

Hamilton Heights (IN) Sch. Corp., Complaint No. 05-02-1048, 37 IDELR 130 (OCR 2002)

Rejecting or finding resolved various allegations with regard to child with diabetes. Nurse's misreading of student's carbohydrate count resulted in a slight increase in the amount of insulin taken, but nurse followed appropriate protocol to address lower blood glucose level. Staff was provided proper method to administer glucose gel and tablets to child. Cafeteria manager corrected carbohydrate count to provide "as prepared" rather than "as purchased." All teachers were required to sign off on Section 504 plan. Retaliation claim was rejected where volunteer services were terminated because parent of child with diabetes made excessive visits to nurse's clinic at school where her children were not enrolled. Finally, Section 504 rights were to be included in student/parent handbooks.

Henderson County (NC) Pub. Schs., Complaint No. 11-00-1008, 34 IDELR 43 (OCR 2000)

To resolve a complaint by parents of a student with diabetes, district agreed to provide proper training to its faculty and staff on how to recognize signs and symptoms of hypoglycemia and hyperglycemia. Training would be provided by a registered nurse, and if possible a certified diabetic educator, to the entire faculty and staff at the student's school. The district also agreed to have at least three full-time staff trained in the use of an insulin pump, and to provide at least one person trained to operate the pump to accompany the student to school-sponsored events off campus. The parents alleged that the district failed to provide for the administration of insulin and glucagon and for other diabetes-related services.

Hernando (FL) County Sch., Complaint No. 04-98-1412, 31 IDELR 89 (OCR 1999)

School did not discriminate against student with diabetes by failing to promote him to seventh grade. The student's performance was not hampered by any failure of the school to accommodate the student's needs. Instead, the school declined to promote him based on the failure of the student to master the subject matter as evidenced by the student's failing five classes and receipt of poor grades in two other classes.

Houghton Lake (MI) Community Schs., Complaint No. 15-05-1050, 45 IDELR 199 (OCR 2005)

OCR found that a district did not violate Section 504 when it prohibited a student with type 1 diabetes from playing basketball because of a facially neutral attendance policy. The student had a medical appointment related to diabetes which required him to miss the entire school day, and the district had a policy that students could not participate in extracurricular activities on days when they were absent. The school refused to alter the policy even though the absence was related to diabetes, and OCR found this was not a violation because the policy was applied to all students regardless of disability.

Huntsville City (AL) Sch. Dist., Complaint No. 04-96-1096, 25 IDELR 70 (OCR 1996)

OCR held that a district policy requiring glucose meters to remain in the office, and requiring students with diabetes to come to the office to use the meters, was not discriminatory. Exceptions were made for a student who provided medical documentation that she was required to have her glucose meter with her at all times.

In re School Admin. Dist. #25, Case No. 93.114, 20 IDELR 1316 (Maine Hearing Officer Decision 1994)

Parents may not select diabetes care providers. Schools are entitled to make the selection, although schools should make a selection which offers the best chance of success for the student. Also finding that parents are required to provide diabetes supplies, but schools may be expected to provide appropriate backup supplies such as glucose tablets.

Irvine (CA) Unified Sch. Dist., Complaint No. 09-93-1043, 19 IDELR 883 (OCR 1993)

A school subject to Section 504 and the Americans with Disabilities Act may not provide significant assistance to any agency, organization, or individual that discriminates on the basis of disability. This includes a PTA providing an after-school program that discriminated against a student with diabetes.

Irvine (CA) Unified Sch. Dist., Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995)

Discrimination found where school failed to individually evaluate whether ten-year-old student with diabetes could perform blood glucose testing in classroom and, instead, applied uniform rule that testing was to be conducted outside the classroom. Approving protocol for dealing with “treats” at class parties involving advance notice to parent so that insulin amounts could be adjusted and rejecting retaliation claim where protocol was not followed on one occasion where a parent failed to provide advance notice to school. Also rejecting retaliation complaint where student with diabetes was kept out of school until lesions cleared up consistent with the way other students were treated under similar circumstances.

Irvine (CA) Unified Sch. Dist., No. 0613, 23 IDELR 1077 (FERPA Office 1996)

Family Educational Rights and Privacy Act requires written consent to disclosure of education records to student's physician in the absence of an actual health and safety emergency.

Jay School Corp., 39 IDELR 202 (Indiana State Education Agency 2003)

A state appellate panel affirmed a district's decision to discipline a student for behavior problems. The student also had autism spectrum disorder and communication disorder, which qualified him for services under IDEA. The panel found that the student's diabetes did not qualify him for services under IDEA because medical evidence did not support the parent's claim that blood glucose fluctuations affected his behavior. While blood glucose fluctuations can affect behavior, there was no medical evidence that this student's diabetes had caused his behavior problems.

Jamestown Area (PA) Sch. Dist., Complaint No. 03-02-1117, 37 IDELR 260 (OCR 2002)

District agreed to resolve parent's complaint that the district refused to administer her son necessary medication, refused him needed snacks in the classroom and on the school bus, searched him for snacks in front of his class, denied him lunch and segregated him from other students during lunch, and refused him necessary bathroom privileges. The district reached an agreement with the parent to resolve these issues. It agreed to develop an appropriate Section 504 plan for the student, and to implement a procedure to designate a back-up person to the school nurse for the administration of glucagon. Additionally, the district agreed to inform the school bus company that it was required to permit the student to eat snacks on the bus.

Lee County (FL) School Dist., Complaint No. 04-06-1178, 47 IDELR 18 (OCR 2006)

School district violated Section 504 in several respects due to a lack of appropriate training for school personnel and a lack of sensitivity to a young student's diabetes. Parent first alleged that school personnel lacked adequate training and knowledge of the provisions of student's 504 plan, which resulted in student being permitted to walk to the clinic unsupervised when she felt weak, student being required to complete tests when she did not feel well, and clinic staff being unable to properly give the student insulin injections and being impatient when her diabetes affected her ability to concentrate. While there were factual disagreements about whether some of the alleged incidents had actually happened, OCR found that training of school personnel had been insufficient, in part because the school nurse lacked current diabetes knowledge. The school had already replaced the school nurse with one who was more knowledgeable about diabetes, and as part of a resolution agreement agreed to provide diabetes training to all school personnel responsible for the child. The parent also alleged that the school had failed to monitor the care that the student was provided, resulting in multiple medication errors and poor documentation. OCR found that this allegation was supported by the evidence and the school agreed in a resolution agreement to institute a system to document what doses were being given and to communicate regularly with the parent. Finally, OCR

found that evidence supported the parent's allegation that the school had created a hostile environment for her and her daughter, based on multiple insensitive comments, regular medication errors, and a lack of response to numerous parent complaints.

Lee County (FL) School Dist., Complaint No. 04-06-1300, 46 IDELR 228 (OCR 2006)

OCR closed complaint against school district regarding district's failure to develop an appropriate 504 plan, failure to provide a backup plan for providing care when school nurses were not available, and failure to train school personnel based on actions the district had taken while the complaint was pending. OCR found that the district had developed a 504 plan addressing, snacks, meals, bathroom breaks, water, blood glucose testing, and emergency care. The district had also developed a backup plan, and OCR found that those allegations from the complaint were no longer appropriate for investigation. As to the parent's allegations regarding training, OCR found that the steps the district had agreed to take as part of its resolution agreement in a prior OCR complaint addressed this issue and made further investigation unnecessary.

Lisbon School Dept., 33 IDELR 172 (Maine State Educational Agency 2000)

Student, age six, with type 1 diabetes, was not disabled under IDEA where student did not demonstrate a need for special educational services. Although student with diabetes was clearly disabled, the student's educational needs were best met through the appropriate implementation of a Section 504 accommodation plan. Further, the appropriate means to address the student's special medical needs in the school setting was through ensuring necessary accommodations and modifications.

Loudoun County (VA) Public Schools, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (1999)

Parents filed complaints against the District for its refusal to administer glucagon. District and OCR entered into a resolution agreement that requires the District to train at least three school personnel at each school attended by a student with diabetes in diabetes care tasks including blood glucose monitoring, insulin administration, and glucagon administration and requires District to provide a trained adult at field trips and extracurricular activities where a student with diabetes is a participant.

Maine Sch. Admin. Dist. #25, Complaint No. 01-93-1170, 20 IDELR 1354 (OCR 1993)

School did not retaliate against student by supposedly discontinuing sodas and snacks. School could expect parents to provide sodas and snacks, although it provided storage and refrigerator space. Also, a school may select backup items, such as milk and cookies, rather than soda as student might prefer.

Monterey Peninsula Sch. Dist., Case No. SN02-02753, 38 IDELR 223 (Cal. St. Educational Agency 2003)

State hearing officer rejected parent's attempt to require district to replace school nurse assigned to provide diabetes care for the student. While the parent claimed she no longer trusted the nurse, the parent did not dispute that the nurse was qualified. The parent provided no convincing evidence that the nurse provided inadequate care, and the hearing officer held the district was not required to replace school personnel who were providing appropriate care.

Moreno Valley (CA) Unified Sch. Dist., Complaint No. 09-95-1032, 22 IDELR 902 (OCR 1995):

Although school may not inflexibly implement a policy prohibiting student possession of an unauthorized beeper, student with diabetes was not entitled to carry beeper where no medical condition required that student carry a beeper.

New York City (NY) Bd. of Educ., Complaint No. 02-89-1128, 16 EHLR 455 (OCR 1989)

Student with diabetes may not be excluded from participating in field trips or required to take examinations in a separate room because of bladder control and flatulence problems unless determined appropriate through an evaluation. Because no evaluation was conducted, Section 504 was violated.

North Kitsap (WA) Sch. Dist. No. 400, Complaint No. 10-99-1230, 33 IDELR 109 (OCR 1999)

OCR rejected parents' claims that the district nurse would not administer glucagon to a 13-year-old student with diabetes. The student's 504 plan provided for glucagon kits in various locations throughout the school, and authorized nurses to administer glucagon if necessary. Also, teachers were trained on handling hypoglycemia, and district nurses could be paged in an emergency. The parents did not trust the district to implement the plan, but produced no evidence that the district would not implement the 504 plan, and there was no evidence that any services had been denied.)

North Lawrence (IN) Community Schs., Complaint No. 05-02-1235, 38 IDELR 194 (OCR 2002)

Resolution agreement addressed parent's complaint that district failed to provide appropriate education for student with diabetes. The parents alleged that the student was denied the use of the drinking fountain on several occasions, despite the school's knowledge of his increased water needs. The parties agreed to permit the student to maintain a bottle on his desk to access water as needed and to minimize interruptions in his daily schedule. OCR rejected the parent's allegations that the student had been improperly denied permission to use the restroom, because the student's health care plan failed to specifically address unlimited access to the restroom.

Nyack (NY) Unified School Dist., Complaint No. 02-04-1065, 43 IDELR 169 (OCR 2004)

School agreed to resolve complaint that student with diabetes had been excluded from a class trip. The evidence was disputed, but suggested that the district had excluded the student from the trip because of concerns about her diabetes and the lack of medical staff and supplies on the trip and had refused to allow her to go unless accompanied by her mother. OCR found that the district regarded the student as disabled because of its concerns about her diabetes even though the student had not been identified as disabled and did not have a 504 plan.

Onslow County (NC) Public Schs., Complaint 11-02-1035, 37 IDELR 161 (OCR 2002)

Resolution agreement addressed complaint that district failed to develop and implement proper health care plans to address student's diabetes-related needs. Parent alleged that district failed to develop a policy for the administration of insulin and/or glucagon, failed to provide an adequate number of trained staff to administer insulin and glucagon; and refused to allow a student to carry his insulin kit at school. In resolution, the district agreed to designate and train at least two full-time authorized diabetes care providers for each school attended by students with diabetes, to train all staff who were responsible for immediate custodial care of students with diabetes, to train those bus drivers responsible for students with diabetes. The agreement required the district to maintain a location in each school to provide privacy for student diabetes care.

Perry (OH) Public Sch. Dist., Case No. 15-03-1148, 41 IDELR 72 (OCR 2003)

OCR rejected a complaint that a student with type 1 diabetes was rejected from membership in the National Honor Society because of her diabetes, and held in stead that the rejection was because she did not meet the society's eligibility criteria. The district waived the society's eligibility criteria related to attendance because of absences related to diabetes. However, the student was ultimately rejected because she did not actively participate in any extracurricular activities, another eligibility requirement, and this failure was not related to her diabetes. OCR also concluded that the tutoring and other accommodations provided to the student were adequate.

Prince George's County (MD) Schools, Complaint No. 03-02-1258, 39 IDELR 103 (OCR 2003)

A policy that prohibits health services staff (nurses, etc.) from giving injectable medications to students with diabetes, even if needed and even in emergency situations could have the effect of denying needed services to students with disabilities.

Renton (WA) Sch. Dist., Complaint No. 10-93-1079, 21 IDELR 859 (OCR 1994)

OCR held that district provided nine-year-old student with diabetes, Down Syndrome, a speech impairment with appropriate diabetes monitoring. OCR found that the district conducted diabetes training for staff and hired an aide to monitor the

student's diabetes and assist him with his snack schedule, and held that these services were sufficient.

Rock Hill (OH) Local Schs., Complaint No. 15-02-1034, 37 IDELR 222 (OCR 2002)

OCR rejected parent's claim that the district refused to provide related aids and services to a student with diabetes. District staff initially volunteered to administer insulin and glucagon, but the parent did not trust the staff to administer shots properly. The parent also failed to provide the requested prescription or other written instructions from a physician on how and when to administer insulin and glucagon. The district provided OCR with written assurances that, with appropriate written instructions from a medical doctor, it would provide medication, including injections, to students who require such services. The parent also alleged that the student was not given snacks in the same manner as other students. When treats were provided to students, the teacher would give the student's treat to her parent on those occasions when the student's blood glucose level was high. This was a legitimate nondiscriminatory reason that did not violate Section 504. Finally, OCR rejected the parent's claim that the district retaliated against her by making a referral for medical neglect, because it was not clear who had made the referral and there were good faith concerns about the student's health and medical needs.

San Diego (CA) City Unified School Dist., Complaint No. 09-04-1150 (CR 2005)

District denied FAPE to a student with diabetes by failing to timely evaluate him for Section 504 eligibility. The middle school student has type 1 diabetes and had an individualized student healthcare plan (IHP) in place to provide for his health care needs while at school. However, he experienced behavioral problems at school which his parents believed resulted from high blood glucose levels. As a result, the parent requested a Section 504 evaluation. The district responded to this request by telling the parent that Section 504 was only available to students who were limited in learning, and that administrators did not believe the student's diabetes limited any major life activities. Eventually, after the district had expelled the student for discipline problems, a hearing was held where the district determined that the student's behavioral problems were a manifestation of his disability. OCR found that erroneous assumptions about Section 504 eligibility and about proper procedures led to an unreasonable delay in conducting a 504 evaluation. OCR stated that students can be eligible under Section 504 even if not limited in learning, and that the student's IHP was not an adequate substitute for a Section 504 plan adopted in accordance with proper procedures. As part of a resolution agreement, the district agreed to provide training to staff, including specific examples of how the Section 504 process applies to students with diabetes.

Santa Ana (CA) Unified Sch. Dist., Complaint No. 09-92-1185, 19 IDELR 501 (OCR 1992)

Students with disabilities, including diabetes, who are to be suspended for a long term (i.e., in excess of ten days) or expelled are required under Section 504 and the Americans with Disabilities Act to be evaluated and provided the same due process rights as students under IDEA. This includes a determination of whether

misconduct is a manifestation of a disability or whether the child's placement remains appropriate.

Santa Maria-Bonita (CA) Sch. Dist., Complaint No. 09-97-1449, 30 IDELR 547 (OCR 1998)

District refused to allow self-monitoring of blood glucose in the classroom and prohibited the carrying of sharps to class. After the complaint was filed, the school district agreed to allow the students to carry their diabetes supplies, including sharps, to class and permitting them to conduct blood glucose tests while in class. The district further agreed to develop a policy to assess the needs of students with diabetes on an individual basis.

Seattle (WA) Pub. Sch., Complaint No. 10-98-1264, 31 IDELR 193 (OCR 1999)

OCR ruled that a two-week exclusion from school of a student with diabetes to evaluate her requirements following a seizure did not violate Section 504. The student had an individualized health care plan, but after her hospitalization for the seizure, the principal asked that the student be removed from school until updated medical information was received and a new health care plan were put in place. Following consultation with the student's physician, the district placed her at a new school where a nurse⁴ was available five days per week. OCR concluded that the student's changed health status required a significant change in her health care plan and school assignment.

Seminole County (FL) School District, Complaint No. 04-00-1346 (2000)

District and OCR entered into a resolution agreement that requires the District to train at least three school personnel at each school attended by a student with diabetes in diabetes care tasks including blood glucose monitoring, insulin administration, and glucagon administration and requires District to provide a trained adult at field trips and extracurricular activities where a student with diabetes is a participant.

Sierra Vista (AZ) Unified Sch. Dist., Complaint No. 08-99-1039, 31 IDELR 169 (OCR 1999)

Complaint resolution reached where parent alleged that district discriminated against student because staff failed to send the child to the nurse's office at specified times for a blood glucose test. The parties reached an agreement to resolve the issue, and therefore asked OCR to dismiss the complaint.

Springboro (OH) Community City Sch. Dist., Complaint No. 15-02-1194, 39 IDELR 41 (OCR 2003)

District and OCR entered into resolution agreement to address complaint by parents of second grade student with type 1 diabetes. The parents withdrew their son from the district claiming the district failed to address their concerns about implementation of the Section 504 plan. The district did not allow the student to

self-test in the classroom, school personnel were not properly trained in blood glucose monitoring or the administration of medication, and the school had no emergency plan for the student. The district also failed to provide nutritional information about lunches and snacks. The district agreed that blood glucose monitoring, administration of medication, and relaxation of snack policies were “related aids and services” under Section 504, and agreed that the 504 team would consider the appropriateness of these accommodations should the student be re-enrolled in the district.

Sumner County (TN) Sch. Dist., Complaint No. 04-01-1122, 36 IDELR 136 (OCR 2001)

Middle school student could be suspended for violating school district policy prohibiting carrying prescription or nonprescription drugs, including supplies for diabetes. Student could also be barred from school dance for this and other misconduct. The policy provided that younger students were to provide supplies to teachers and were to be kept in a locker accessible to all the student’s teachers. The policy did allow high school students to carry supplies. The appropriateness of the policy was not questioned.

Sycamore (OH) Community City Sch. Dist., Complaint No. 15-01-1188, 36 IDELR 245 (OCR 2002)

An agreement resolving allegations that a school district failed to provide adequate services to children with disabilities required that the district omit any language from its procedures or notices suggesting that certain categories of students (including students with diabetes) were ineligible for services. The school was also required to omit any language in notices that suggested that parents must first follow an internal grievance or complaint procedure or any other procedures established by the district before requesting a due process hearing.

Union County (SC) Sch. Dist., Complaint No. 04-00-1420, 34 IDELR 210 (OCR 2000)

School district did not violate Section 504 where there was a delay in administering insulin to a student with diabetes caused by inadequate information on a physician’s form and not by any inaction by the district. School district appropriately contacts the student’s parents for assistance and asked school nurse to confirm that the dosage recommended by the parent was appropriate.

Valle Lindo (CA) Elem. Sch. Dist., Complaint No. 09-06-1079, 47 IDELR 170 (OCR 2006)

OCR found insufficient evidence that a district had violated Section 504 by failing to administer insulin to a kindergarten student with diabetes. For the 2004-2005 school year, the district required the parent to come to school to administer insulin until school staff could be trained. Although school staff members were trained in early September, the parent continued to come to school to administer insulin for the remainder of the school year, and claimed that the district required her to do so. The district stated that the parent chose to come to school, and the following school year school staff began administered insulin to the student. Stating that a

“miscommunication” had resulted in the parent coming to school the prior year, and relying on the fact that the district was currently administering insulin to the child, OCR found no violation of Section 504. OCR also concluded that the parent’s allegation of retaliation failed because there was no evidence that the district had called immigration officials after the complaint was filed, as the parent alleged.

Wayne-Westland (MI) Community Schs, Complaint No. 15-00-1130, 35 IDELR 14 (OCR 2000)

Addressing a complaint that it failed to administer insulin to an eight year old student with diabetes, the district stated it would provide a nurse or trained staff member to do so in accordance with detailed instructions as to the student's need for insulin and/or glucagon during the school day provided by the student's physician. The agreement required the district to administer the student's insulin until her Section 504 team determines she has acquired the skill and comfort level for self-administration. A district nurse would administer glucagon in emergency situations with the specific written order of the student's physician.

Wells (ME) Pub. Schs., Complaint No. 01-01-1227, 36 IDELR 244 (OCR 2002)

School was entitled to require supervised access to testing supplies including glucometer in view of student’s “low average general cognitive skills with specific processing deficits in auditory concentration and memory” and inability to appropriately evaluate meter readings and take appropriate action should it be warranted.

Yuba City (CA) Unified Sch. Dist., Complaint No. 09-94-1170, 22 IDELR 1148 (OCR 1995)

The parent of a student with diabetes, vision deficiency, and other conditions alleged that the district failed to adequately identify and evaluate her son's disabilities and did not obtain sufficient information to enable it to provide the care necessary to allow the student to attend school. OCR found that the school district violated Section 504 and the Americans with Disabilities Act where it failed to obtain a sufficient medical assessment of the student prior to making a placement decision.

Sample Letters and Forms

Request for Evaluation and Accommodations

Introduction

This form may be used as a template by a parent to initially request accommodations for a student with diabetes. Like all of the forms in this section, it must be adjusted and customized to the needs and circumstances of the student.

Form

[Name and Address of School Superintendent, Principal, or Section 504 Coordinator.]

Dear _____:

Please be advised that I am the parent of [name], whose date of birth is [date]. I am submitting this request to obtain accommodations under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. My child attends [school], is currently in [grade], and has type __ diabetes.

As a result of my child's diabetes, she is required to monitor blood glucose levels, take insulin, eat snacks, and have access to the restroom during the school day. She also needs access to emergency care, including administration of glucagon in case of a very low blood glucose (sugar) level. This is necessary to manage her diabetes and avoid high or low blood glucose levels. If not managed, her health, concentration, and ability to do school work may be affected. Failure to respond to high or low blood glucose levels can be life threatening.

Because of my daughter's condition, I am seeking for her appropriate accommodations. Among others, she should be permitted to carry and use testing supplies, snacks, water, and insulin as needed, and there must always be trained adults present at school and school-related activities who can provide needed emergency care..

Enclosed is a letter from my daughter's physician confirming her diagnosis of diabetes. Also provided is the Diabetes Medical Management Plan developed for my daughter. I am seeking a Section 504 Plan to implement the Diabetes Medical Management Plan.

Because of the immediate and chronic needs my daughter has, I ask that you promptly consider this request. My daughter is available for any further evaluation you may need. Also, I am prepared to meet at your earliest convenience to discuss her situation.

Thank you for your consideration.

Very truly yours,

[Address and telephone number]

Diabetes Medical Management Plan

Introduction

A Diabetes Medical Management Plan outlines a student's specific health care needs as determined by his or her personal health care team (see Questions 7.1, 7.6). This is a sample plan developed by the American Diabetes Association and the Disability Rights Education & Defense Fund. The most current version of this form may be accessed and downloaded from: www.diabetes.org/uedocuments/DMMP-finalformatted.pdf. Some schools or states have their own model plans. As an example, Florida has available a general diabetes care plan (available at: <http://www.diabetes.org/uedocuments/FLDACCarePlan020303.pdf>) and one for those using pumps (available at: <http://www.diabetes.org/uedocuments/FLPumpDCP.pdf>). Where available, school or state forms should be used if all issues relevant to the child are addressed.

Diabetes Medical Management Plan

Date of Plan: _____

Diabetes Medical Management Plan

This plan should be completed by the student's personal health care team and parents/guardian. It should be reviewed with relevant school staff and copies should be kept in a place that is easily accessed by the school nurse, trained diabetes personnel, and other authorized personnel.

Effective Dates: _____

Student's Name: _____

Date of Birth: _____ Date of Diabetes Diagnosis: _____

Grade: _____ Homeroom Teacher: _____

Physical Condition: Diabetes type 1 Diabetes type 2

Contact Information

Mother/Guardian: _____

Address: _____

Telephone: Home _____ Work _____ Cell _____

Father/Guardian: _____

Address: _____

Telephone: Home _____ Work _____ Cell _____

Student's Doctor/Health Care Provider:

Name: _____

Address: _____

Telephone: _____ Emergency Number: _____

Other Emergency Contacts:

Name: _____

Relationship: _____

Telephone: Home _____ Work _____ Cell _____

Notify parents/guardian or emergency contact in the following situations: _____

Blood Glucose Monitoring

Target range for blood glucose is 70-150 70-180 Other _____

Usual times to check blood glucose _____

Times to do extra blood glucose checks (*check all that apply*)

before exercise

after exercise

when student exhibits symptoms of hyperglycemia

- when student exhibits symptoms of hypoglycemia
- other (explain): _____

Can student perform own blood glucose checks? Yes No

Exceptions: _____

Type of blood glucose meter student uses: _____

Insulin

Usual Lunchtime Dose

Base dose of Humalog/Novolog /Regular insulin at lunch (circle type of rapid-/short-acting insulin used) is _____ units or does flexible dosing using _____ units/ _____ grams carbohydrate.

Use of other insulin at lunch: (circle type of insulin used): intermediate/NPH/lente _____ units or basal/Lantus/Ultralente _____ units.

Insulin Correction Doses

Parental authorization should be obtained before administering a correction dose for high blood glucose levels. Yes No

- _____ units if blood glucose is _____ to _____ mg/dl
- _____ units if blood glucose is _____ to _____ mg/dl
- _____ units if blood glucose is _____ to _____ mg/dl
- _____ units if blood glucose is _____ to _____ mg/dl
- _____ units if blood glucose is _____ to _____ mg/dl

Can student give own injections? Yes No

Can student determine correct amount of insulin? Yes No

Can student draw correct dose of insulin? Yes No

_____ Parents are authorized to adjust the insulin dosage under the following circumstances:

For Students with Insulin Pumps

Type of pump: _____ Basal rates: _____ 12 am to _____
 _____ to _____
 _____ to _____

Type of insulin in pump: _____

Type of infusion set: _____

Insulin/carbohydrate ratio: _____ Correction factor: _____

Student Pump Abilities/Skills:

Needs Assistance

- Count carbohydrates Yes No
- Bolus correct amount for carbohydrates consumed Yes No
- Calculate and administer corrective bolus Yes No

- Calculate and set basal profiles Yes No
- Calculate and set temporary basal rate Yes No
- Disconnect pump Yes No
- Reconnect pump at infusion set Yes No
- Prepare reservoir and tubing Yes No
- Insert infusion set Yes No
- Troubleshoot alarms and malfunctions Yes No

For Students Taking Oral Diabetes Medications

Type of medication: _____ Timing: _____

Other medications: _____ Timing: _____

Meals and Snacks Eaten at School

Is student independent in carbohydrate calculations and management? Yes No

<i>Meal/Snack</i>	<i>Time</i>	<i>Food content/amount</i>
Breakfast	_____	_____
Mid-morning snack	_____	_____
Lunch	_____	_____
Mid-afternoon snack	_____	_____
Dinner	_____	_____

Snack before exercise? Yes No

Snack after exercise? Yes No

Other times to give snacks and content/amount:

Preferred snack foods:

Foods to avoid, if any:

Instructions for when food is provided to the class (e.g., as part of a class party or food sampling event):

Exercise and Sports

A fast-acting carbohydrate such as _____ should be available at the site of exercise or sports.

Restrictions on activity, if any: _____ student should not exercise if blood glucose level is below _____ mg/dl or above _____ mg/dl or if moderate to large urine ketones are present.

Hypoglycemia (Low Blood Sugar)

Legal Rights of Students with Diabetes

Student's Parent/Guardian

Date

Student's Parent/Guardian

Date

Section 504 Plan

Introduction:

A Section 504 Plan sets out an agreement for making sure a student with diabetes has the same access to educational opportunities as do other students. This is a sample plan developed by the American Diabetes Association and the Disability Rights Education & Defense Fund. The most current version of this form may be accessed and downloaded from: www.diabetes.org/uedocuments/504-plan-2007.pdf. **Not all parts of this Section 504 Plan will apply to all children; parents and schools should select the elements of the plan that are appropriate tot the individual child. Some students will need additional services and accommodations that have not been included in this model plan.**

Other forms of Section 504 Plans may be used for guidance. Some schools and states have developed model forms, among them those provided in materials referenced in the State Specific Resources section. Still other forms are provided on the Children with Diabetes web site at <http://www.childrenwithdiabetes.com/504>. What is important is to provide an individualized plan that meets the needs of the child.

More information on developing a Section 504 plan, or other written accommodation plan, can be found in Part 7.

Form

MODEL SECTION 504 PLAN FOR A STUDENT WITH DIABETES

[NOTE: This model 504 Plan lists a broad range of services and accommodations that might be needed by a child with diabetes in school. The plan should be individualized to meet the needs, abilities, and medical condition of each student and should *include only those items in the model that are relevant to that student*. Some students will need additional services and accommodations that have not been included in this model plan.]



Section 504 Plan for _____

School _____

School Year: _____

_____ _____ _____ type diabetes
Student's Name Birth Date Grade Disability

Homeroom Teacher: _____

Bus Number: _____

OBJECTIVES/GOALS OF THIS PLAN

Diabetes can cause blood glucose (sugar) levels to be too high or too low, both of which affect the student's ability to learn as well as seriously endangering the student's health both immediately and in the long term. The goal of this plan is to provide the special education and/or related aids and services needed to maintain blood glucose within this student's target range of _____ and to respond appropriately to levels outside of this range in accordance with the instructions provided by the student's personal health care team.

REFERENCES

School accommodations, diabetes care, and other services set out by this Plan will be consistent with the information and protocols contained in the following documents:

- American Diabetes Association Position Statement "Care of Children with Diabetes in the School and Day Care Setting," *Diabetes Care*, Volume 30, Supplement 1, January 2007.
- National Diabetes Education Program *Helping the Student with Diabetes Succeed: A Guide for School Personnel*, June 2003.

DEFINITIONS USED IN THIS PLAN

1. ***Diabetes Medical Management Plan (DMMP)***: A plan that describes the diabetes care regimen and identifies the health care needs of a student with diabetes. This plan is developed and approved by the student's personal health care team and family. Schools must do outreach to the parents and child's health care provider if a DMMP is not submitted by the family [Note: School districts may have other names for the plan. If so, substitute the appropriate terminology throughout.]

- 2. **Quick Reference Emergency Plan:** A plan that provides school personnel with essential information on how to recognize and treat hypoglycemia and hyperglycemia.
- 3. **Trained Diabetes Personnel (TDP):** Non-medical school personnel who have been identified by the school nurse, school administrator, and parent who are willing to be trained in basic diabetes knowledge and have received training coordinated by the school nurse in diabetes care, including the performance of blood glucose monitoring, insulin and glucagon administration, recognition and treatment of hypoglycemia and hyperglycemia, and performance of ketone checks, and who will perform these diabetes care tasks in the absence of a school nurse.

1. PROVISION OF DIABETES CARE

- 1.1 At least _____ staff members will receive training to be Trained Diabetes Personnel (TDP), and either a school nurse or TDP will be available at the site where the student is **at all times** during school hours, during extracurricular activities, and on field trips to provide diabetes care in accordance with this Plan and the student’s DMMP, including performing or overseeing administration of insulin or other diabetes medications (which, for pump users includes programming and troubleshooting the student’s insulin pump), blood glucose monitoring, ketone checks, and responding to hyperglycemia and hypoglycemia including administering glucagon.
- 1.2 Any staff member who is not a TDP and who has primary care for the student at any time during school hours, extracurricular activities, or during field trips shall receive training that will include a general overview of diabetes and typical health care needs of a student with diabetes, recognition of high and low blood glucose levels, and how and when to immediately contact either a school nurse or a TDP.
- 1.3 Any bus driver who transports the student must be informed of symptoms of high or low blood glucose levels and provided with a copy the student’s Quick Reference Emergency Plan and be prepared to act in accordance with that Plan.

2. TRAINED DIABETES PERSONNEL

The following school staff members will be trained to become TDPs by _____(date): _____

3. STUDENT’S LEVEL OF SELF-CARE AND LOCATION OF SUPPLIES AND EQUIPMENT

- 3.1 As stated in the attached DMMP:
 - (a) The student is able to perform the following diabetes care tasks without help or supervision:

and the student will be permitted to provide this self-care at any time and in any location at the school, at field trips, at sites of extracurricular activities, and on school buses.

(b) The student needs assistance or supervision with the following diabetes health care tasks:

(c) The student needs a school nurse or TDP to perform the following diabetes care tasks:

3.2 The student will be permitted to carry the following diabetes supplies and equipment with him/her at all times and in all locations:

3.3 Diabetes supplies and equipment that are not kept on the student and additional supplies and will be kept at:

4. SNACKS AND MEALS

4.1 The school nurse or TDP, if school nurse is not available, will work with the student and his/her parents/guardians to coordinate a meal and snack schedule in accordance with the attached DMMP that will coincide with the schedule of classmates to the closest extent possible. The student shall eat lunch at the same time each day, or earlier if experiencing hypoglycemia. The student shall have enough time to finish lunch. A snack and quick-acting source of glucose must always be immediately available to the student.

- 4.2 The attached DMMP sets out the regular time(s) for snacks, what constitutes a snack, and when the student should have additional snacks. The student will be permitted to eat a snack no matter where the student is.
- 4.3 The parent/guardian will supply snacks needed in addition to or instead of any snacks supplied to all students
- 4.4 The school nurse or TDP will ensure that the student takes snacks and meals at the specified time(s) each day.
- 4.5 Adjustments to snack and meal times will be permitted in response to changes in schedule upon request of parent/guardian.

5. EXERCISE AND PHYSICAL ACTIVITY

- 5.1 The student shall be permitted to participate fully in physical education classes and team sports except as set out in the student's DMMP.
- 5.2 Physical education instructors and sports coaches must be able to recognize and assist with the treatment of low blood glucose levels.
- 5.3 Responsible school staff members will make sure that the student's blood glucose meter, a quick-acting source of glucose, and water is always available at the site of physical education class and team sports practices and games.

6. WATER AND BATHROOM ACCESS

- 6.1 The student shall be permitted to have immediate access to water by keeping a water bottle in the student's possession and at the student's desk, and by permitting the student to use the drinking fountain without restriction.
- 6.2 The student shall be permitted to use the bathroom without restriction.

7. CHECKING BLOOD GLUCOSE LEVELS, INSULIN AND MEDICATION ADMINISTRATION, AND TREATING HIGH OR LOW BLOOD GLUCOSE LEVELS

- 7.1 The student's level of self care is set out in section 3 above including which tasks the student can do by himself/herself and which must be done with the assistance of, or wholly by, either a school nurse or a TDP.
- 7.2 Blood glucose monitoring will be done at the times designated in the student's DMMP, whenever the student feels her/his blood glucose level may be high or low, or when symptoms of high or low blood glucose levels are observed.
- 7.3 Insulin and/or other diabetes medication will be administered at the times and through the means (e.g., syringe, pen or pump) designated in the student's DMMP for both scheduled doses and doses needed to correct for high blood glucose levels.
- 7.4 The student's usual symptoms of high and low blood glucose levels and how to respond to these levels are set out in the attached DMMP.
- 7.5 When the student asks for assistance or any staff member believes the student is showing signs of high or low blood glucose levels, the staff member will

immediately seek assistance from the school nurse or TDP while making sure an adult stays with the student at all times. Never send a student with actual -- or suspected -- high or low blood glucose levels anywhere alone.

- 7.6 Any staff member who finds the student unconscious will immediately contact the school office. The office will immediately do the following in the order listed:
 1. Contact the school nurse or a TDP (if the school nurse is not on site and immediately available) who will confirm the blood glucose level with a monitor and immediately administer glucagon (glucagon should be administered if no monitor is available);
 2. Call 911 (office staff will do this without waiting for the school nurse or TDP to administer glucagon); and
 3. Contact the student's parent/guardian and physician at the emergency numbers provided below.
- 7.7 School staff including physical education instructors and coaches will provide a safe location for the storage of the student's insulin pump if the student chooses not to wear it during physical activity or any other activity.

8. FIELD TRIPS AND EXTRACURRICULAR ACTIVITIES

- 8.1 The student will be permitted to participate in all school-sponsored field trips and extracurricular activities (such as sports, clubs, and enrichment programs) without restriction and with all of the accommodations and modifications, including necessary supervision by identified school personnel, set out in this Plan. The student's parent/guardian will not be required to accompany the student on field trips or any other school activity.
- 8.2 The school nurse or TDP will be available on site at all school-sponsored field trips and extracurricular activities, will provide all usual aspects of diabetes care (including, but not limited to, blood glucose monitoring, responding to hyperglycemia and hypoglycemia, providing snacks and access to water and the bathroom, and administering insulin and glucagon), and will make sure that the student's diabetes supplies travel with the student.

9. TESTS AND CLASSROOM WORK

- 9.1 If the student is affected by high or low blood glucose levels at the time of regular testing, the student will be permitted to take the test at another time without penalty.
- 9.2 If the student needs to take breaks to use the water fountain or bathroom, check blood glucose, or to treat hypoglycemia or hyperglycemia during a test or other activity, the student will be given extra time to finish the test or other activity without penalty.
- 9.3 The student shall be given instruction to help him/her make up any classroom instruction missed due to diabetes care without penalty.
- 9.4 The student shall not be penalized for absences required for medical appointments and/or for illness. The parent will provide documentation from the treating health care professional if otherwise required by school policy.

10. DAILY INSTRUCTIONS

- 10.1 The teacher, school nurse or TDP will provide reasonable notice to parent/guardian when there will be a change in planned activities such as exercise, playground time, field trips, parties, or lunch schedule, so that the lunch, snack plan, and insulin dosage can be adjusted accordingly.
- 10.2 Each substitute teacher and substitute school nurse will be provided with written instructions regarding the student's diabetes care and a list of all school nurses and TDP at the school.

11. EMERGENCY EVACUATION AND SHELTER-IN-PLACE

- 11.1 In the event of emergency evacuation or shelter-in-place situation, the student's 504 Plan and DMMP will remain in full force and effect.
- 11.2 The school nurse or TDP will provide diabetes care to the student as outlined by this Plan and the student's DMMP, will be responsible for transporting the student's diabetes supplies, and equipment, will attempt to establish contact with the student's parents/guardians and provide updates, and will and receive orders and information from parents/guardians regarding the student's diabetes care.

12. EQUAL TREATMENT AND ENCOURAGEMENT

- 12.1 Encouragement is essential. The student must not be treated in a way that discourages the student from eating snacks on time, or from progressing in doing his/her own diabetes management.
- 12.2 The student shall be provided with privacy for blood glucose monitoring and insulin administration if the student desires.
- 12.3 The school nurse, TDP, and other staff will keep the student's diabetes confidential, except to the extent that the student decides to openly communicate about it with others.

13. PARENTAL NOTIFICATION

13.1 NOTIFY PARENTS/GUARDIANS IMMEDIATELY IN THE FOLLOWING SITUATIONS:

- Symptoms of severe low blood sugar such as continuous crying, extreme tiredness, seizure, or loss of consciousness.
 - The student's blood glucose test results are below _____ or are below _____ 15 minutes after consuming juice or glucose tablets.
 - Symptoms of severe high blood sugar such as frequent urination, presence of ketones, vomiting or blood glucose level above _____.
 - The student refuses to eat or take insulin injection or bolus.
 - Any injury.
 - Insulin pump malfunctions cannot be remedied.
 - **Other:** _____
-

13.2 EMERGENCY CONTACT INSTRUCTIONS

Call parent/guardian at numbers listed below. If unable to reach parent/guardian, call the other emergency contacts or student’s physician listed below.

14. DIABETES SUPPLIES

14.1 Parent is responsible for providing diabetes supplies and food to meet the needs of the student as prescribed in the DMMP.

EMERGENCY CONTACTS:

_____	_____	_____
Parent’s/Guardian’s Name	Home Phone Number	Work Phone Number
	Cell Phone Number	

_____	_____	_____
Parent’s/Guardian’s Name	Home Phone Number	Work Phone Number
	Cell Phone Number	

Other emergency contacts:

_____	_____	_____
Name	Home Phone Number	Work Phone Number
	Cell Phone Number	

_____	_____	_____
Name	Home Phone Number	Work Phone Number
	Cell Phone Number	

Student’s Physician(s):

_____	_____
Name	Phone Number

_____	_____
Name	Phone Number

This Plan shall be reviewed and amended at the beginning of each school year or more often if necessary.

Approved and received:

_____	_____
Parent/Guardian	Date

Approved and received:

_____	_____
School Administrator and Title	Date

_____	_____
School Nurse	Date

Letter Objecting to Elements of Section 504 Plan

Introduction

School officials may propose a Section 504 Plan with features that are acceptable and others that are not. It is important to advise school officials what features of the plan are objectionable and what would be acceptable. This is a sample letter than may be used as a template when writing to school officials.

Form

[Name and Address of School Superintendent, Principal, or Section 504 Coordinator.]

Dear _____:

Thank you for meeting with me on [date] regarding my child, [name]. Since that time, I have reviewed carefully the proposed Section 504 Plan which has been developed to accommodate her type __ diabetes.

There are a number of aspects of the Plan as presented about which I have objections or concerns. My purpose in this letter is to outline these objections or concerns so that we can work together to develop a plan that fully meets my child's needs.

The proposed plan provides [describe]. This proposal is of concern because [state objection or concern]. I feel that instead she should be accommodated by [describe accommodation]. This would be appropriate because [state why proposed accommodation is reasonable and appropriate].

[Repeat as to each objection.]

I request that the proposal be reviewed and reconsidered in light of these objections or concerns. Please contact me at [provide contact information] so that we can set up a time to discuss these objections or concerns further.

Thank you for your consideration.

Very truly yours,

[Address]

[Telephone Numbers]

Sample OCR Complaint Resolution Agreement

Introduction

On the following pages are four examples of settlement agreements that the U.S. Department of Education's Office for Civil Rights (OCR) has reached with school districts alleged to have failed to provide adequate diabetes care to students. They provide examples of what OCR has found appropriate in past situations and can be used as a guide when requesting accommodations and services from school officials or when requesting relief in an OCR complaint. These agreements are only examples; other agreements reached by OCR are discussed throughout this notebook and may also be consulted.

Resolution Agreement Loudoun County Public Schools (1999)

Loudoun County Public Schools (District) enters this Agreement to resolve Office for Civil Rights (OCR) Complaint Nos. 11-99-1003, 11-99-1064 and 11-99-1069.

A. GENERAL PROVISIONS

1. This Agreement does not constitute an admission by the District of any violation of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, or any other law enforced by OCR.
2. Full implementation of this Agreement by the District resolves the allegations in OCR Complaint Nos. 11-99-1003, 11-99-1064 and 11-99-1069.

B. DEFINITIONS

1. ***Authorized Diabetes Care Provider (ADCP) training*** – training that is either developed by the American Diabetes Association (ADA) or, once the Board of Nursing develops Guidelines, training that is consistent with these Guidelines, either of which training provides instruction in caring for individuals with diabetes, and which includes instruction in: the unassisted administration of glucagon and insulin shots and recording of results; ability to understand physician instructions concerning drug dosage, frequency, and manner of administration; Virginia Board of Pharmacy regulations concerning drug storage, security and recordkeeping; symptoms of hypoglycemia and hyperglycemia, the time within which glucagon or insulin shots are to be administered to prevent adverse consequences; performing fingerstick blood glucose testing and monitoring and recording the results of that testing and monitoring, and the appropriate steps to take when glucose level results are outside of the target ranges indicated in the student's Health Care Plan.
2. ***Adequate diabetes care*** – care of students with diabetes by individuals who have successfully completed ADCP training.
3. ***Authorized Diabetes Care Provider (ADCP)*** – an individual who has successfully completed ADCP training.
4. ***Assistive diabetes care*** – care of students with diabetes by individuals who have successfully completed DCAP training.
5. ***Bus Driver Diabetes Care Provider (BDDCP) training*** – training authorized by the District that provides instruction in: recognizing the symptoms indicating that there is a need for care for a student with diabetes, symptoms of hypoglycemia and hyperglycemia, and appropriate steps to take when glucagon levels are creating emergency conditions as described in the student's physician's order.
6. ***Diabetes Care Assistant Provider (DCAP) training*** – training authorized by the District that provides instruction in: recognizing the symptoms that there is a need for adequate care for a student with diabetes, proper methods for referring students who require adequate care to an ADCP, recommended schedules and menus for meals and snacks, and recommended frequency of and activities in exercise periods.

7. ***Diabetes Care Assistant Provider (DCAP)*** – an individual who has successfully completed DCAP training.
8. ***Health Care Plan*** – a plan developed under Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans With Disabilities Act of 1990 (Title II) and, as appropriate, the Individuals With Disabilities Education Act that identifies the needs of -- and services to be provided to -- a student with diabetes who has a medical order, which plan is developed by the participants and approved by the student's treating physician.
9. ***Regular School Hours*** – All school hours during which scheduled school classes take place.

C. SUBSTANTIVE PROVISIONS

1. Effective immediately, the District will:
 - a. Designate at least three full-time ADCPs on staff in each school attended by one or more students with a Health Care Plan to provide these students with adequate diabetes care.
 - b. Designate additional ADCPs as needed to provide students with Health Care Plans with adequate diabetes care.
 - c. Provide an ADCP at each school attended by one or more students with a Health Care Plan during all regular school hours that a student with a Health Care Plan is on the premises.
 - d. Provide an ADCP for each school-sponsored field trip in which a student with a Health Care Plan participates.
 - e. Provide an ADCP for each school-sponsored extracurricular activity or program -- and for each educational extracurricular activity or program that receives significant assistance from the District -- in which a student with a Health Care Plan is a direct participant, but not when that student is an observer or an audience member.
 - f. Complete BDDCP training for all District full- and part-time bus drivers, or provide an ADCP on board a District bus at any time that a student with a Health Care Plan is being transported on that bus and the bus driver has not completed BDDCP training.
 - g. Provide or arrange for the provision of DCAP training for all District staff (except ADCPs) who have responsibility for the immediate custodial supervision or care of students with Health Care Plans.
 - h. Maintain a location in each school attended by one or more students with a Health Care Plan to provide privacy during the care and testing of those students.
2. By October 31, 1999, the District will:
 - a. Complete the DCAP training referenced above in paragraph C.1.g.
 - b. Send a letter to the parents of all District students with diabetes of which the District is aware notifying them of the District's current policies and practices on the care of students with diabetes who have a medical order.
 - c. Develop and implement a Health Care Plan for each District student with diabetes who has a medical order when required by Section 504 or Title II. Each plan will

provide those services required by Section 504 and Title II. For example, each plan will, when appropriate, permit the student to: see school ADCPs or medical personnel upon request; eat snacks or drink beverages to prevent hypoglycemia; miss school without consequences for appointments to monitor the student's diabetes management; be excused to use a restroom, as necessary. District staff may take into account any previous abuse of these permitted activities in determining whether to grant future requests.

3. The District will provide or arrange for the provision of ongoing ADCP and DCAP training to maintain an adequate staff of ADCPs and DCAPs.

D. REPORTING PROVISIONS

By January 1, 2000, the District will provide OCR with a report containing:

1. A listing of each school at which ADCPs have been assigned and the number of ADCPs assigned to each school. If any school has yet to be assigned ADCPs, that school must be identified and an explanation of the reason no assignment has been made, together with the District's plans to make these assignments.
2. Descriptions of and all materials related to the provision of ADCP and DCAP training, and the names and titles of the individuals who provided the training.
3. A certification that the District has developed and implemented a Health Care Plan for every District student with diabetes that has a medical order or, if not, why not.
4. A sample of the letter the District sent to the parents of all District students with diabetes of which the District was aware pursuant to subsection C.2.b, above, and a certification that the District sent these letters to all of these parents or, if not, why not.

By: _____
Dr. Edgar Hartrick III
Superintendent
Loudoun County Public Schools

_____ Date

Resolution Agreement Buchanan County Public Schools (2003)

Buchanan County Public Schools (the Division) makes these commitments to resolve Office for Civil Rights (OCR) Complaint No. 11-03-1051.

A. GENERAL PROVISIONS

1. This Commitment to Resolve (Commitment) does not constitute an admission by the Division of any violation of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans With Disabilities Act of 1990 (Title II), or any other law enforced by OCR.
2. Full implementation of this Commitment by the Division resolves the allegations in OCR Complaint No. 11-03-1051.

B. DEFINITIONS

1. **Adequate diabetes care** – care of students with diabetes by individuals who have successfully completed ADCP training.
2. **Authorized Diabetes Care Provider (ADCP) training** – training that is either developed by the American Diabetes Association (ADA) or complies with Commonwealth of Virginia Board of Nursing Guidelines, which training provides instruction in caring for individuals with diabetes, and which includes instruction in: administering (without assistance) glucagon and insulin shots and recording results; operating an insulin pump; understanding physician instructions concerning drug dosage, frequency, and manner of administration; Commonwealth of Virginia Board of Pharmacy regulations concerning drug storage, security and recordkeeping; symptoms of hypoglycemia and hyperglycemia; the time within which glucagon or insulin shots are to be administered to prevent adverse consequences; performing fingerstick blood glucose testing and monitoring and recording the results of that testing and monitoring; and the appropriate steps to take when glucose level results are outside of the target ranges indicated in the student's Health Care Plan.
3. **Authorized Diabetes Care Provider (ADCP)** – an individual who has successfully completed ADCP training.
4. **Bus Driver Diabetes Care Provider (BDDCP) training** – training authorized by the Division that provides instruction in: recognizing the symptoms indicating that there is a need for care for a student with diabetes, symptoms of hypoglycemia and hyperglycemia, and appropriate steps to take when glucose levels are creating emergency conditions as described in the student's medical order.
5. **Bus Driver Diabetes Care Provider (BDDCP)** – an individual who has successfully completed BDDCP training.
6. **Diabetes Care Assistant Provider (DCAP) training** – training authorized by the Division that provides instruction in: recognizing the symptoms that there is a need for adequate care for a student with diabetes, proper methods for referring students who require adequate care to an ADCP, recommended schedules and menus for meals and snacks, and recommended frequency of and activities in exercise periods.

7. **Diabetes Care Assistant Provider (DCAP)** – an individual who has successfully completed DCAP training.
8. **Health Care Plan** – a plan developed under Section 504, Title II and, as appropriate, the Individuals With Disabilities Education Act, that identifies the needs of -- and services to be provided to -- a student with diabetes who has a medical order, which plan is developed by individuals who are responsible for implementing the plan.
9. **Regular School Hours** – All school hours during which scheduled academic classes take place.

C. SUBSTANTIVE PROVISIONS

1. By September 30, 2003, and continuously thereafter, the Division will:
 - a. Complete ADCP training for sufficient numbers of Division staff to comply with this Commitment;
 - b. Designate at least two full-time ADCPs (one to be “on-duty” and one to serve as a back-up) on staff in each school attended by one or more students with a Health Care Plan to provide these students with adequate diabetes care;
 - c. Designate additional ADCPs as needed to provide students with Health Care Plans with adequate diabetes care;
 - d. Complete DCAP training for all Division staff (except ADCPs and BDDCPs) who are or may be responsible for the immediate custodial supervision or care of students with Health Care Plans;
 - e. Complete BDDCP training for all Division staff who are or may be responsible for transporting Division students to or from school or school-sponsored field trips or extracurricular activities;
 - f. Maintain a location in each school attended by one or more students with a Health Care Plan to provide privacy during the diabetes-related care and testing of those students;
 - g. Ensure the presence of at least one ADCP at each school attended by one or more students with a Health Care Plan during all regular school hours that a student with a Health Care Plan is on the premises;
 - h. Upon reasonable advance request by the parent or guardian of a student with a Health Care Plan, provide an ADCP for each school-sponsored field trip in which such a student participates;
 - i. Upon reasonable advance request by the parent or guardian of a student with a Health Care Plan, provide an ADCP for each school-sponsored extracurricular activity or program -- and for each extracurricular activity or program that receives significant assistance from the Division -- in which such a student is a direct participant, but not when that student is solely an observer or an audience member;
 - j. Provide a BDDCP or a DCAP on board a Division bus at any time that a student with a Health Care Plan is being transported on that bus;
 - k. Ensure that all immediate custodial supervision or care of each student with a Health Care Plan be provided by a DCAP or ADCP;

- l. Provide or arrange for timely, ongoing ADCP, DCAP and BDDCP training necessary to meet the requirements of this Commitment; and
 - m. By the first day of each school year, send a letter to the parents of all Division students with diabetes of which the Division is aware notifying them of the Division's current policies and practices on the care of students with diabetes who have a medical order.
2. By September 5, 2003, the Division will develop and implement a Health Care Plan for each Division student with diabetes who has a medical order when required by Section 504 or Title II. Each plan will provide those services required by Section 504 and Title II. For example, each plan will, when appropriate, permit a student to: see school ADCPs or medical personnel upon request; self-test, self-treat and self-monitor in the classroom and during all school sponsored activities, field trips and programs; eat snacks and drink beverages to prevent hypoglycemia; miss school without consequences for diabetes-related care, provided the absence is medically documented; and be excused to use a restroom, as necessary. Division staff will evaluate each student requesting to self-test in the classroom, taking into consideration each student's age, capabilities, willingness to self-test, maturity level and experience with self-testing. Division staff may take into account any previous abuse of these permitted activities in determining whether to grant future requests.

D. REPORTING PROVISIONS

1. By October 31, 2003, the Division will provide OCR with a report on its compliance with Subsection C.1. of this Commitment containing:
 - a. With respect to each paragraph of Subsection C.1., a certificate of compliance with that paragraph;
 - b. Descriptions of -- and all materials related to -- the ADCP, DCAP and BDDCP training provided to Division staff, and the names, titles and telephone numbers of the individuals who provided the training;
 - c. A listing of each school for which sufficient ADCPs have been designated and the number of ADCPs designated for each school;
 - d. A listing of each school at which the Division maintains a location to provide privacy during the diabetes-related care and testing of students with Health Care Plans, and a description of each such location; and
 - e. A sample of the signed letter the Division sent to the parents of all Division students with diabetes of which the Division was aware pursuant to Paragraph C.1.m. of this Commitment, and a certification that the Division sent these letters to all of these parents.
2. By September 30, 2003, the Division will provide OCR with a report on its compliance with Subsection C.2. of this Commitment containing a certification that the Division has developed and implemented a Health Care Plan for every Division student with diabetes that has a medical order.
3. If the Division is not able to meet any of the dates in Section C, it will submit an explanation of why compliance was not achieved and a timetable for achieving compliance. Despite any failure to timely comply with Section C, the Division shall

nevertheless submit its reports to OCR by the dates set out in Subsections D1 and D2, as appropriate.

By: _____ Date _____
Mr. Tommy P. Justus
Superintendent
Buchanan County Public Schools

Resolution Agreement Puyallup School District No. 3 (2002)

I. INTRODUCTION

To resolve the allegations contained in a complaint filed with the Office for Civil Rights (OCR), OCR Reference No. 10021104, Puyallup School District No. 3 (district) enters into this Voluntary Resolution Agreement.

II. GENERAL PROVISIONS

- A. This agreement will become effective upon the district's receipt of notice from OCR that the actions agreed to by the district, when fully implemented, will resolve the allegations raised in the above-referenced case.
- B. This agreement represents a voluntary approach to address and resolve only the complaint allegation in OCR reference No. 10021104. This agreement does not constitute an admission by the district of any violation of section 504 of the Rehabilitation Act of 1973 (Section 504), title II of the Americans with Disabilities Act of 1990 (Title II), or any other law. By accepting the agreement, OCR finds that the agreed upon actions are sufficient, when implemented, to resolve the complaint allegations.

III. SUBSTANTIVE COMMITMENTS

- A. By August 30, 2002, the district will revise, with input from the student's parent, the student's individual health care plan to address his specific diabetes-related needs at school, consistent with the requirements of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 CFR 104.33 and 104.35(c). The revised plan will be implemented at the beginning of the 2002-2003 school year. The plan, at a minimum, will address the following:
 - 1. the specifics of the student's medical needs so that all parties understand: the nature and severity of the student's diabetes, the purpose and necessity of monitoring the student's glucose levels and administering medication, and the schedule and location for glucose testing and medication administration;
 - 2. procedures for all school staff likely to work with the student for handling medical emergencies;
 - 3. procedures for the student's health and medical needs during field trips, participation in any other extracurricular activities, or when a nurse is not present at the school;
 - 4. procedures to ensure that the student's individual health plan and emergency medical plan are fully implemented by substitute teachers and substitute health care staff;
 - 5. designate individuals responsible for each aspect of the student's individual health plan, and the person with the overall responsibility for ensuring that the student's individual health plan is consistently implemented by these individuals;

- training for those individuals designated to monitor the student's glucose levels and administer any medication to the student; and
6. training for all teachers and other school staff, including bus drivers and recess attendants, that interact with the student during the school day to ensure that they are familiar with the student's disability and diabetes-related needs.
- B. The district will ensure that a qualified person, with expertise in juvenile diabetes treatment and familiarity with the student's individual diabetes-related needs and individual health care plan, provides the training referenced at III.A.6. and 7., above.
1. By September 3, 2002, the district will provide the training referenced in III.A. 6., above. The student's regular education teacher will be included in this training.
 2. By September 18, 2002, the district will provide the school staff training referenced in III.A.7., above.

IV. REPORTING PROVISIONS

By September 30, 2002, the district will provide OCR with a report that will include:

- A. A copy the student's revised individual health care plan, developed in accordance with paragraph III.A., above; the names and titles of the persons who participated in revising the student's health care plan; notes of discussion during the meeting; and the name and title of the designee responsible for the daily implementation of the student's health care plan pursuant to III.A.5.
- B. Documentation that the training of school staff was provided pursuant to III.B., above. The documentation will include the name, title, and qualifications of the person who provided the trainings, the names and titles of staff who attended the trainings, copies of any materials disseminated to staff for the trainings, and the date and location where the trainings occurred.

Signed:

Dr. Susan E. Gorley, Superintendent
Puyallup School District No. 3

Date

Resolution Agreement Wayne-Westland Community School Dist. (2000)

The Wayne Westland Community School District (the District) voluntarily, and without making any admission of liability, submits the following agreement to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve OCR complaint #15-00-1130 and to ensure the District's compliance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 with respect to this complaint; accordingly, the District agrees to take the following actions.

1. If the parents submit to the District a signed and completed medical Authorization Form and Physician's Order, which includes detailed instructions as to the student's need for insulin and/or glucagon during the school day, the District will reconvene the student's Section 504/Individualized Health Care Team within five business days of receipt of this information. The purpose of this meeting will be to amend the student's Individualized Health Care Plan (IHCP) and/or Emergency Health Care Plan (EHCP) to include the following provisions:
 - a. that insulin will be administered to the student by a District nurse or trained District staff member in accordance with the specific written order of the student's physician referenced above;
 - b. that the District will administer the student's insulin until such time as the student, who is currently eight years of age, is determined by the Section 504/Individualized Health Care Team, including the student's parents and physician, to have acquired the skill and comfort level to self-administer her insulin medication; and
 - c. that glucagon will be administered to the student by a District nurse, as needed in emergency situations, in accordance with the specific written order of the student's physician referenced above.
2. If the information received by the parents and/or student's physician is inadequate, the District will promptly contact the student's physician and parents in writing to specify what additional information is necessary to reconvene the Section 504/Individualized Health Care Team and implement the actions outlined in paragraph #1 above.
3. The District will designate in the student's IHCP and/or EHCP one District nurse or trained staff person to be primarily responsible for the administration of insulin and glucagon to the student and at least one District nurse or trained staff person to serve as a back-up in the event the primary designee is unavailable.
4. By November 15, 2000, the District will submit documentation to OCR showing implementation of paragraphs #1-3 above.

California Legal Advisory

This legal advisory was issued in August 2007 by the California Department of education as part of the settlement of *K.C., et al. v. O'Connell, et al.*, a lawsuit filed by the American Diabetes Association and four individual plaintiffs to address the lack of adequate diabetes care being provided in California public schools. While the advisory was issued in California, it discusses federal law provisions which are applicable across the country and should have persuasive effect outside of California.

LEGAL ADVISORY ON RIGHTS OF STUDENTS WITH DIABETES IN CALIFORNIA'S K-12 PUBLIC SCHOOLS

Pursuant to the recent Settlement Agreement in *K.C. et al. v. Jack O'Connell, et al.*, Case No. C-05-4077 MMC, in the United States District Court for the Northern District of California, the California Department of Education (CDE) has agreed to remind all California school districts and charter schools of the following important legal rights involving students with diabetes who have been determined to be eligible for services under either the Individuals with Disabilities Education Act (IDEA) and related California law or Section 504 of the Rehabilitation Act of 1973 (Section 504) and related California law.

The CDE notes that this is a complex area of the law. Every effort has been made to be clear and concise in providing this advisory.

I. The Applicability of Two Federal Anti-Discrimination Statutes (Section 504 and the ADA) to those Public School Students with Diabetes Who Require Diabetes Health Related Services While Attending K-12 Schools in California.

Two federal anti-discrimination statutes, Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 (ADA), together establish rights for eligible students with diabetes in California's public schools. Together, they serve to protect such students from discrimination based upon their disability including the right to receive a free appropriate public education (FAPE). The two statutory schemes are treated synonymously. (*Wong v. Regents of University of California*, 192 F.3d 807, 816 n. 26.) Hence, in this Legal Advisory, Section 504 will mean both Section 504 as well as the ADA unless otherwise noted.

A. Eligibility

In general, a student will be determined to have a disability under Section 504 if he/she has a mental or physical impairment that substantially limits one or more major life activities, such as eating, breathing, caring for oneself, performing manual tasks, hearing, speaking, walking, and learning. (See 34 CFR sec. 104.4, subs. (j), (k), and (i).) Accordingly, learning is not the only major life activity that must be considered when determining eligibility under Section 504. (*Rock Hill (OH) Local Schools*, 37 IDELR 222 (OCR 2002).)

The Ninth Circuit Court of Appeals recently determined that diabetes is a “physical impairment” and then addressed whether that impairment substantially limited a major life activity under the facts of that case. (*Fraser v. Goodale*, 342 F.3d 1032 (9th Cir. 2003).) In finding that the plaintiff had presented evidence that she was substantially limited in eating, the court noted that the plaintiff was required to be vigilant about testing blood glucose levels and adjusting food intake, insulin and physical activity accordingly. *Id.* at 1040-1041.

Fluctuations in blood glucose levels can impact concentration and comprehension, as well as have significant and potentially life-threatening short and long term health implications. “Helping the Student with Diabetes Succeed- A Guide for School Personnel” U.S. Department of Health and Human Services (2003) at 1 (available at <http://www.cde.ca.gov/ls/he/hn/diabetesmgmt.asp>). To avoid these fluctuations in blood glucose levels, students with diabetes must be vigilant about balancing food consumption, exercise, and administration of medication. For these reasons, the Office for Civil Rights of the United States Department of Education (OCR) has found that students with diabetes to be “disabled” under Section 504. (See *Bement (IL) Community Unit School District #5*, 14 EHLR 353:383 (OCR 1989) (holding that a student with diabetes is disabled under Section 504 when she required close monitoring of her diet, behavior, and activities at all times in order for her to be able to attend school); *Irvine (CA) Unified Sch. Dist.*, 19 IDELR 883, 884 (OCR 1993) (determining that the student with type 1 diabetes was a “disabled person” as defined by the regulation implementing Section 504).

B. 504 Plans

Once a local education agency (LEA) determines that a student is entitled to Section 504 protections, this includes the provision of a free appropriate public education. (34 CFR sec. 104.35.) Services, and accommodations are determined through the 504 planning process, and documented in a 504 plan. *Henderson County (NC) Pub. Schs.*, 34 IDELR 43, 44 (OCR 2000) (voluntary resolution agreement reached to develop Section 504 plan providing for a broad range of diabetes-related aids and services, including training staff to monitor blood glucose, count carbohydrates, manage student's insulin pump, and establish procedures for the provision of appropriate emergency services); *Prince George's County (MD) Schools*, 39 IDELR 103, 104 (OCR 2003) (district required to develop a Section 504 Plan tailored to the individual needs of a student with type 1 diabetes).

Academic modifications may be necessary whether or not the major life activity of “learning” is affected. A student with diabetes may need to have his/her curriculum adapted in a variety of ways such as changes in physical education instruction, in the regular school day schedule (such as breaks required to test for and treat abnormal blood sugar levels), in additional breaks or other time modifications during tests, and in the regular schedule for eating, drinking and toileting. These accommodations should be documented in the 504 plan. Decisions about what health care services a student will receive, including treatment while at school, such as the timing and dosage of insulin to be administered, usually are based on the treating physician's written orders. (See Cal. Ed. Code sec. 49423.) In rare circumstances, the 504 team will question the doctor's treatment plan as being outside standards of care and will seek a second opinion at school district expense. (See section of this advisory discussing IDEA entitled *Related Services as Including Management/Administration of Insulin and Other Diabetes Care Tasks for Children With the Disability of OHI* below.)

C. Individualized Inquiries Required; Blanket Policies Prohibited

An LEA may not have a blanket policy or general practice that insulin or glucagon administration, or other diabetes-related health care services, will only be provided by district personnel at one school in the district or will always require removal from the classroom in order to receive diabetes related health care services. For example, in *Christopher S. v. Stanislaus County Office of Educ.*, 384 F.3d 1205, 1212 (9th Cir. 2004), the Ninth Circuit Court of Appeals noted that OCR has repeatedly held that blanket policies that preclude individual evaluation of a particular child's educational and health related services needs violate Section 504. (See also *Conejo Valley (CA) Unified Sch. Dist.*, 20 IDELR (LRP) 1276, 1280 (OCR 1993) (district violated Section 504 by failing to perform an evaluation that was individualized by proposing changes in placement based upon a generalized district policy regarding who could perform injections without regard to student's individual education needs); *Irvine (CA) Unified Sch. Dist.*, 23 IDELR 1144, 1146 (OCR 1995) (district's "unwritten policy" prohibiting blood glucose testing in classroom violated 34 CFR sec. 104.35(c)(3) requiring that a team of persons give careful consideration to all of the information available and makes determinations based upon the individual needs of the disabled student).) See further discussion below in the section of this advisory discussing IDEA entitled *Related Services May Include Management/Administration of Insulin and Other Diabetes Care Tasks for Children With the Disability of OHI*. In addition, a school or district may not require the parent or guardian to waive any rights or agree to any particular placement or related services as a condition of administering medications or assisting a student in the administration of medication at school. (*Berlin Brothersvalley (PA.) School Dist.*, EHLR 353:124 (OCR 1988) (district policy of giving school officials discretion in whether to administer needed medication and conditioning the provision of services required by Section 504 or IDEA on parents signing a waiver of liability is prohibited). See further discussion below in the section of this advisory discussing IDEA entitled *School Placement Decisions*.

D. FAPE Under Section 504

Pursuant to 34 CFR section 104.33, school districts must provide a free appropriate public education (FAPE) to all students with disabilities in public elementary and secondary schools. Under Section 504, "appropriate education" means "the provision of regular *or* special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 34 CFR sections 104.34, 104.35, and 104.36." (34 CFR section 104.33 (b)(emphasis added).)

The OCR has applied the FAPE obligation broadly to ensure nondiscrimination by providing individual accommodations that provide each disabled student with a FAPE. The requirement to provide FAPE under Section 504 has been applied in the context of the administration of medication in general and diabetes-based related services in particular. (See *Conejo Valley (CA) Unified Sch. Dist.*, *supra*; *Irvine (CA) Unified Sch. Dist.*, *supra*; and *Prince George's County (MD) Schools*, *supra*.) See also, Chapter 4 of *Compliance With The Americans With Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools*, Office for Civil Rights Department of Education, United States of America (1995) available at: <http://www.dlrp.org/html/publications/schools/general/guidcont.html> (last visited March 30, 2007) "Unlike the requirement to provide auxiliary aids in contexts other than FAPE ... the obligation to provide related aids and services necessary to the provision of FAPE is not subject to the limitations regarding undue financial and administrative burdens or fundamental alteration of the program." *Id.* at 73.

II. California's Anti-Discrimination Statutes and Students with Diabetes Who Require Diabetes Health Related Services During the Day In Order to Safely Attend K-12 Schools in California

California's anti-discrimination statutes prohibit discrimination on the basis of disability under any program or activity funded directly by the State. (Cal. Gov. Code sec. 11135(a).) "Disability" means any mental or physical disability as defined by Government Code section 12926. (Cal. Gov. Code sec. 11135(d)(1).) "Physical disability" is defined in Government Code section 12926(k)(1) and (2). It affords broader coverage than Section 504 because it requires a "limitation" rather than a "substantial limitation" of a major life activity. (Cal. Gov. Code secs. 12926(k)(1)(B); 12926.1(c), (d)(2); see generally *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1022-1032.)

In addition, whether a physical disability limits a major life activity under California's statutory scheme must "be determined without regard to mitigating measures such as medications...." (Cal. Gov. Code sec. 12926(k)(1)(B)(i).) This provision has made the Supreme Court's holding in *Sutton v. United Airlines*, 527 U.S. 471 (1999), which required consideration of such mitigating measures inapplicable under California law. Furthermore, section 12926(k)(2) of the Government Code provides that all students with diabetes who require special education or related services (*i.e.*, health-related services) are protected by state anti-discrimination laws.

Government Code section 11135 incorporates the rights under the ADA and thus Section 504. (See Gov. Code sec. 11135(b) and 42 USC sec. 12133; 28 CFR sec. 35.103(a)). Therefore, the discussion above regarding Section 504 and students with diabetes is applicable under the broad definitions of physical disability in California.

III. The IDEA and Students With Diabetes Who Require Diabetes Health Related Services During the Day In Order to Safely Attend K-12 Schools in California.

The primary purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." (20 USC secs. 1400(d)(1)(A), 1401(a).) California law sets the same standard for educating individuals with exceptional needs as the reauthorized IDEA. (Cal. Ed. Code secs. 56000, 56363(a).)

A. Eligibility

The IDEA requires LEAs to conduct "child find" activities to ensure that children with diabetes are identified, located, and evaluated. (20 USC sec. 1412(a)(3).) Under the IDEA, a child with diabetes is evaluated for eligibility under one of the 13 categories of disability, including the disability of "other health impaired" (OHI). (20 USC sec. 1401(3)(A); 34 CFR sec. 300.8; Cal. Ed. Code sec. 56026; Cal. Code Regs., Tit. 5, sec. 3030.) The reauthorized IDEA defines "child with a disability" in the following way:

The term "child with a disability" means a child --

- (i) with ... other health impairments and
- (ii) who, by reason thereof, needs special education and related services. (20 USC sec. 1401(3)(A).)

The term "other health impairments" (OHI) is further defined in the recently promulgated regulations as follows:

(c) *Definitions of disability terms.* The terms used in this definition of a child with a disability are defined as follows:

- (9) *Other health impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the education environment, that --
 - (i) is due to chronic or acute health problems such as diabetes ... and
 - (ii) adversely affects a child's educational performance.

Hence, an individualized education program (IEP) team can determine that a child with diabetes is eligible under the disability of OHI because high or low blood glucose levels can cause symptoms giving him/her limited strength, limited alertness, and creating chronic or acute health problems that adversely affect the student's educational performance. (See "Helping the Student with Diabetes Succeed -- A Guide for School Personnel" ("NDEP Guide") U.S. Department of Health and Human Services, 2003) available *via* CDE's web site at <http://www.cde.ca.gov/ls/he/hn/diabetesmgmt.asp>. Fluctuations in blood glucose levels may have an adverse effect on education in a variety of ways, including the effect on concentration, comprehension, and energy levels. It should be noted that the IEP team "must make an individual determination as to whether, notwithstanding the child's progress in a course or grade, he or she needs or continues to need special education and related services." (34 CFR sec. 300.101(c).)

B. Special Education Defined

The IDEA defines "special education" as meaning "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including --

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education." (20 USC section 1401(29).)

"Specially designed instruction" means "adapting, as appropriate to the needs of the eligible child under this part, the content, methodology, or delivery or instruction (i) to address the unique needs of the child that result from the child's disability and (ii) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." (34 CFR sec. 300.39(b)(3).)

For example, an IEP team could determine that a child who meets the criteria for eligibility under the category of OHI based upon chronic or acute health problems arising from diabetes would need to have his/her curriculum adapted in ways such as changes in the physical education instruction, in the regular school day schedule (such as various breaks required by abnormal blood sugar levels involving medical treatment), in allowed time for taking tests, in the regular schedule for eating, drinking and toileting, in assignment due dates, and in various other academic adaptations.

C. Individualized Education Program

Determinations about eligibility, special education and related services under the IDEA and relevant state statutes are made generally by the child's Individualized Education Program (IEP) team. (See generally Cal. Ed. Code secs. 56340-56347.) Such determinations are always based upon the unique needs of the individual child.

The term "individualized education program" (IEP) means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 USC section 1414(d). As a part of each IEP, there must be "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child...." (20 USC sec. 1414(d)(1)(A)(i)(IV)) in school and in extracurricular and other nonacademic activities. The 2006 implementing regulations are located at 34 CFR sections 300.320 through 300.328.

D. Related Services May Include Management/Administration of Insulin and Other Diabetes Care Tasks for Children With the Disability of OHI

In general, the reauthorized IDEA includes "school nurse services" as a "related service." (20 USC sec. 1401(26).) The statutory definition was expanded in the regulations to

include school health services. (34 CFR sec. 300.34.) California's definition of designated instruction and services/related services is located in Education Code section 56363 and is synonymous with related services in the reauthorized IDEA in 20 USC section 1401(26). California's designated instruction services thus do not deviate from the federal related services.

If a child needs both special education and health services, then, as determined by the child's IEP team, school nurse/health services should be made available to a child with the eligible disability of OHI as documented in the student's IEP. Services related to an OHI-eligible child's diabetes health care needs at school, including those involving the management and administration of insulin, are covered under the IDEA as nursing and health services rather than excluded from coverage as medical services requiring a physician to provide them. (See *Clovis Unified School Dist. v. Office of Administrative Hearings*, 903 F.3d 635, 641-643 (9th Cir. 1990) discussing and applying *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984).)

In California, by statute both a written statement from the child's physician as well as a written statement from the child's parent are required before either a school nurse or other designated school personnel may assist the child with the administration of medication. (Cal. Ed. Code sec. 49423.) Hence, decisions about what health care services a student will receive, including treatment while at school, such as the timing and dosage of insulin to be administered usually are based on the treating physician's written orders. (See Cal. Ed. Code sec. 49423.) In rare circumstances the IEP team will question the doctor's treatment plan as being outside the standard of care and then request clarification from the treating physician or a second opinion with the consent of the parent, at the district's expense. (See 34 CFR sec. 300.300; *Shelby S. ex rel. Kathleen T. v. Conroe Independent School Dist.*, 454 F.3d 450, 454-455 (5th Cir. 2006) (school district authorized to compel medical examination over parent objection and necessity demonstrated).) In addition, the IEP team is responsible for determining educational modifications. (See, *Special Education Defined*, above).

E. Individualized Inquiries Required; Blanket Policies Prohibited

As with Section 504 determinations discussed above in Part I.C., decisions by IEP teams must be based upon individualized inquiries. The IDEA and its implementing regulations are premised upon the fact that each child is "unique" (20 USC sec. 1400(d)(1)(A)) and must receive an "individualized education program" (20 USC sec. 1401(14); see generally *Porter v. Board of Trustees of Manhattan Beach Unified School Dist.*, 307 F.3d 1064, 1066 (9th Cir. 2002) quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 188-189 (1982) ("right to public education for students with disabilities 'consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction".) As a consequence, decisions about a specific child's eligibility for services under the IDEA must not be based upon the generalized or "blanket" policies of a local education agency rather than the unique needs of the individual child. (See Part I.C., *supra*.) Therefore, policies that restrict the availability of health related services across-

the-board would be out of compliance with the mandate to individualize decisions about special education and related services needs.

F. School Placement Decisions

School placement decisions may not be based upon the unwillingness of a district to provide needed related services to a child with OHI-diabetes disability at the school that the child would otherwise attend. A district may not require the parent to waive any rights, hold the district harmless, or agree to any particular placement or related services as a condition of administering medication or assisting a student in the administration of medication at school. (See Comment to IDEA regulations at p. 46587 (federal register) involving 34 CFR sec. 300.116(c): "Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.Public agenciesmust not make placement decisions based on a public agency's needs or available resources, including budgetary considerations and the ability of the public agency to hire and recruit qualified staff;" see also *Berlin Brothersvalley (PA.) School Dist.*, EHLR 353:124 (OCR 1988) (blanket waiver of liability as condition to provision of medical services prohibited). For example, a district may not have a blanket policy or general practice that insulin or glucagon administration or other diabetes-related health care service are only going to be provided by district personnel at one school in the district, or that a child will always need to be removed from the classroom in order to receive diabetes related health care services. An IEP developed in the legally-required manner, which takes into account all of the relevant medical and education factors under the IDEA for each disabled child, is the only way to ensure that such a student receives an individualized determination of what constitutes FAPE under the IDEA and relevant state statutes.

G. Administrative Procedures; Financial Burden Not a Defense

A parent of a child with the disability of OHI or an organization can file an administrative complaint with the CDE alleging that a school district is violating the IDEA or relevant state statutes by failing to identify, evaluate, or provide a FAPE to a student with diabetes or a group of students with diabetes, including challenging a district policy or practice that restricts the provision of related health services to students eligible for such services under the IDEA. (34 CFR secs. 300.151-300.153; Calif. Code Regs., Tit. 5, secs. 4600-4671.)

In the alternative, a parent who disagrees with the IEP decision regarding identification, evaluation, or the provision of FAPE and related services can file for an impartial due process hearing with the Office of Administrative Hearings. (20 USC sec. 1415 (e)-(i).) An OAH judge can order that the applicable required related school health services be provided by the district, including the administration of insulin during the school day. (20 USC sec. 1415(f)(3)(E).) Financial burden is not a valid defense available to the LEA under the *Garret F.* case. (*Cedar Rapids v. Garret F.*, 526 U.S. 66, 75, fn. 6, 78-79 (1999) (district required to fund related school health services under 34 CFR sec.

300.13(a) where necessary in order to provide student with meaningful access to public school).)

IV. Who May Administer Insulin in California to Students with Diabetes As a Related Service Under Section 504 and the IDEA

A. California Law

It is the position of the CDE that the Business and Professions Code section 2725(b)(2) and the California Code of Regulations, Title 5, section 604 authorize the following types of persons to administer insulin in California's public schools pursuant to a Section 504 Plan or an IEP:

1. self administration, with authorization of the student's licensed health care provide and parent/guardian;
2. school nurse or school physician employed by the LEA;
3. appropriately licensed school employee (*i.e.*, a registered nurse or a licensed vocational nurse) who is supervised by a school physician, school nurse, or other appropriate individual;
4. contracted registered nurse or licensed vocational nurse from a private agency or registry, or by contract with a public health nurse employed by the local county health department;
5. parent/guardian who so elect;
6. parent/guardian designee, if parent/guardian so elects, who shall be a volunteer who is not an employee of the LEA; and
7. unlicensed voluntary school employee with appropriate training, but only in emergencies as defined by Section 2727(d) of the Business and Professions Code (epidemics or public disasters).¹

B. Federal Law

As noted above in Parts I and III, federal law under Section 504 and the IDEA provides that the administration of insulin can be determined to be a related service that must be provided to a student pursuant to a Section 504 Plan or an IEP in order to ensure FAPE. CDE has recognized in the regulations which implement Education Code section 49423 regarding the administration of medication to students during the school day that they did

¹ In such emergency cases, an unlicensed voluntary school employee should have been trained to at least the standards specified by the American Diabetes Association's training slides entitled "Diabetes Care Tasks At School: What Key Personnel Need to know: Insulin Administration" available at <http://diabetes.org/advocacy-and-legalresources/discrimination/school/schooltraining.jsp>. Such a voluntary school employee should be regularly, and at least quarterly, supervised by a school nurse, physician, or other appropriate individual under contract with the LEA, providing the training, and with emergency communication access to the same school nurse or physician. Documentation of training, ongoing supervision, and annual written verification of competency are strongly recommended, and such documentation should be annually submitted to the LEA employing the unlicensed person by the school nurse or physician.

not affect "in any way" either the content or implementation of a student's Section 504 Plan or IEP. (Calif. Code Regs., Tit. 5, section 610(d).) Further, CDE's Program Advisory (required by Section 611 of the regulations) recognized that students' rights under Section 504 and the IDEA are distinct from state legal requirements. (See <http://www.cde.ca.gov/ls/he/hn/medadvisory.asp>.)

C. Reconciliation of State and Federal Law

The difficult issue in this area is reconciling state and federal requirements. Clearly the first set of personnel who are authorized to administer insulin pursuant to a Section 504 Plan or an IEP are those persons who are expressly so authorized under California law, as set forth in Part IV.A, *supra*. The question is what should occur when no expressly authorized school personnel are available.

In CDE's view, the list cannot be taken as exhaustive because LEAs must also meet federal requirements -- even if the personnel expressly authorized by California are not available. In practical terms, this means that the methodology followed by some LEAs of training unlicensed school employees to administer insulin during the school day to a student whose Section 504 Plan or IEP so requires it is a valid practice pursuant to federal law. If the LEA determines that insulin administration by the types of persons listed in categories 2-4 are not available or feasible, then unlicensed school employees with appropriate training would be authorized under federal law to administer insulin in accordance with the student's Section 504 Plan or IEP. What is not valid is for an LEA to adopt a general policy or practice that a Section 504 Plan or IEP need not be developed or followed because the LEA is not able to comply with the student's federal rights based upon the express provisions of state law. When federal and state laws are reconciled, it is clear that it is unlawful for an LEA to have a general practice or policy that asserts that it need not comply with the IDEA or Section 504 rights of a student to have insulin administered at school simply because a licensed professional is unavailable. In such situations, federal rights take precedence over strict adherence to state law so that the educational and health needs of the student protected by the Section 504 Plan or IEP are met.

V. Monitoring and Compliance by CDE

A. IDEA

Under the IDEA, the CDE monitors compliance with federal and state special education statutes and regulations with its Quality Assurance Process (QAP). That process is characterized by the gathering and evaluating of data in order to identify districts and areas within districts to aid in the inquiry, evaluation, and review of compliance issues. This enables the LEA and the CDE to develop corrective action plans, program improvement goals, and provide technical assistance to improve services to special education students throughout California.

Pursuant to the *K.C. Settlement Agreement*, the CDE has agreed to modify its QAP monitoring instruments and process to include special evaluation items related to students with the disability of OHI with chronic or acute health problems arising from diabetes.

The CDE also assures compliance under the IDEA by maintaining an administrative complaints system as required by federal regulation. (See 34 CFR sections 300.151-300.153.) Under 34 CFR section 300.153(a), a complainant can be either an organization or an individual who files a signed written complaint alleging any violation concerning identification, evaluation, placement, or the provision of a FAPE in the least restrictive environment including the provision related services. For example, a complaint may allege policies and/or practices that violated the child's right to receive an individualized assessment or eligibility and/or the provision of diabetes related health care services pursuant to the IEP process and/or any dispute arising out of the IEP process.

The required elements of a complaint are set forth in 34 CFR section 300.153(b). Of particular note is the requirement that a complaint alleging child-specific issues must contain the name and address of the residence of the child (34 CFR sec. 300.153(b)(4)(a).) Complaints of a systemic nature under the IDEA do not need to identify the individual student by name, although they still must provide facts of the alleged violation that are sufficient for the CDE or the district to conduct an effective investigation, and they must be signed.

B. Section 504/State Statutes

As required by the Uniform Complaints Procedure, CDE's Office of Equal Opportunity will continue to accept and investigate complaints pursuant to Section 504 and Government Code section 11135 which are filed by an organization or a student with a disability that alleges individual or systemic discrimination arising from an alleged non-compliant policy or practice or the failure to provide diabetes-related health services, reasonable accommodations or modifications to the student's educational program. (See Chapter 5.1, the Uniform Complaint Procedures (Sections 4600-4670) and Chapter 5.3, involving Nondiscrimination and Educational Equity, Sections 4900-4965.)

VI. Impartial Due Process Hearings

Parents who disagree with a school district's decisions regarding their child's eligibility and/or placement under the IDEA also have a federal right to request a due process mediation and/or hearing. (20 USC sec. 1415.) Procedural rights to an impartial hearing provided by the local district if a parent disagrees with a Section 504 team decision are also required by federal law. (34 CFR sec. 104.36.)

VII. Resources

CDE recommends that local education agencies and SELPAs use the following documents as guidelines for compliance: "Program Advisory on Medication Administration." (California State Board of Education, 2005) available *via* CDE's Web site at <http://www.cde.ca.gov/ls/he/hn/mediadvisory.asp>; "Sample Section 504 Plan" and "Diabetes Medical Management Plan" ("DMMP"), both available at <http://www.diabetes.org/advocacy-and-legalresources/discrimination/school/504plan.jsp> and "Helping the Student with Diabetes Succeed -- A Guide for School Personnel" ("NDEP Guide") U.S. Department of Health and Human Services, 2003) available *via* CDE's website at <http://www.cde.ca.gov/ls/he/hn/diabetesmgmt.asp>.

Checklist: Who May Administer Insulin in California's Schools Pursuant to An IEP or a Section 504 Plan

Business and Professions Code section 2725(b)(2) and the California Code of Regulations, Title 5, section 604 authorize the following types of persons to administer insulin in California's public schools pursuant to a Section 504 Plan or an IEP:

1. self administration, with authorization of the student's licensed health care provide and parent/guardian;
2. school nurse or school physician employed by the LEA;
3. appropriately licensed school employee (*i.e.*, a registered nurse or a licensed vocational nurse) who is supervised by a school physician, school nurse, or other appropriate individual;
4. contracted registered nurse or licensed vocational nurse from a private agency or registry, or by contract with a public health nurse employed by the local county health department;
5. parent/guardian who so elect;
6. parent/guardian designee, if parent/guardian so elects, who shall be a volunteer who is not an employee of the LEA; and
7. unlicensed voluntary school employee with appropriate training, but only in emergencies as defined by Section 2727(d) of the Business and Professions Code (epidemics or public disasters).²

When no expressly authorized person is available under categories 2-4, *supra*, federal law -- the Section 504 Plan or the IEP -- must still be honored and implemented. Thus, a category #8 is available under federal law:

8. voluntary school employee who is unlicensed but who has been adequately trained to administer insulin pursuant to the student's treating physician's orders as required by the Section 504 Plan or the IEP.

² In such emergency cases, an unlicensed voluntary school employee should have been trained to at least the standards specified by the American Diabetes Association's training slides entitled "Diabetes Care Tasks At School: What Key Personnel Need to Know: Insulin Administration" available at <http://diabetes.org/advocacy-and-legalresources/discrimination/school/schooltraining.jsp>. Such a voluntary school employee should be regularly, and at least quarterly, supervised by a school nurse, physician, or other appropriate individual under contract with the LEA, providing the training, and with emergency communication access to the same school nurse or physician. Documentation of training, ongoing supervision, and annual written verification of competency are strongly recommended, and such documentation should be annually submitted to the LEA employing the unlicensed person by the school nurse or physician.

General Resources

American Academy of Pediatrics Guidelines for the Administration of Medications in School, available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;112/3/697?fulltext=school>

American Diabetes Association school advocacy resources, available at: <http://www.diabetes.org/schooldiscrimination>

American Diabetes Association resources for attorneys, available at: <http://www.diabetes.org/advocacy-and-legalresources/lawyerswanted.jsp>

American Diabetes Association, Diabetes Care Tasks at School: What Key Personnel Need to Know, available at: www.diabetes.org/schooltraining

American Diabetes Association, *Position Statement: Diabetes Care in the School and Day Care Setting*, Diabetes Care 30:S66-S73 (2007), available at http://care.diabetesjournals.org/cgi/content/full/30/suppl_1/S66

American Diabetes Association, *Becoming a Diabetes Advocate in the Schools*, available at: http://www.diabetes.org/Advocacy/school_brochur.pdf

American Diabetes Association & School Health Coalition's statement on *Chronic Illness: Guidance for Families, Schools, and Students*, available at http://www.diabetes.org/advocacy/Chronic_Illness.pdf

Children with Diabetes, www.childrenwithdiabetes.com

Council of Parent Attorneys and Advocates, <http://www.copaa.net>

Disability Rights Education and Defense Fund, <http://www.dredf.org>

National Disability Rights Network (NDRN), <http://www.napas.org>

National Dissemination Center for Children & Youth With Disabilities (NICHY), <http://www.nichy.org>

National Institutes of Health and the Centers for Disease Control and Prevention *Helping the Student with Diabetes Succeed: A Guide for School Personnel* (June 2003), published by the, available at: http://www.ndep.nih.gov/diabetes/pubs/Youth_SchoolGuide.pdf

Rapp, James A., "Students with Diabetes in Schools", *Inquiry & Analysis* (National School Board Association, Council of School Attorneys), June 2005

U.S. Department of Agriculture Food and Nutrition Service, *Accommodating Children with Special Dietary Needs in the School Nutrition Programs: Guidance for School Food Service Staff*, available at: www.fns.usda.gov/cnd/Guidance/special_dietary_needs.pdf

U.S. Dept. of Education, Office for Civil Rights, *The Civil Rights of Students with Hidden Disabilities under Section 504 of the Rehabilitation Act of 1973*), available at: <http://www.ed.gov/about/offices/list/ocr/docs/hq5269.html?exp=0>

U.S. Dept. of Education, Office for Civil Rights, Chicago Office, *Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, available at: <http://www.ed.gov/about/offices/list/ocr/504faq.html>

U.S. Dept. of Education, Office for Civil Rights, *OCR Case Resolution and Investigation Manual*, available at: <http://www.ed.gov/about/offices/list/ocr/docs/ocrcrm.html>

U.S. Dept. of Education, Office for Civil Rights, *Sutton Investigative Guidance: Consideration of "Mitigating Measures" in OCR Disability Cases*, available at: http://www.diabetes.org/uedocuments/Sutton_Investigative_Guidance.pdf

Wrightslaw, <http://www.wrightslaw.com>

State Specific Resources

A number of state specific resources are accessible from the American Diabetes Association's website at www.diabetes.org/advocacy-and-legalresources/discrimination/school/ada_schoolmaterials.jsp.

Selected state resources include:

California

Information on settlement of American Diabetes Association lawsuit against California Department of Education (K.C., et al., v. O'Connell, et al.), available at <http://www.diabetes.org/CASettlement>

Glucagon Training Standards for School Personnel: Providing Emergency Medical Assistance to Pupils with Diabetes, available at <http://web.diabetes.org/Advocacy/school/glucagon.pdf>

Colorado

Colorado Board of Nursing, "Rules and Regulations Regarding the Delegation of Nursing Tasks", available at <http://www.dora.state.co.us/NURSING/rules/ChapterXIII.pdf>

Florida

Nursing Guidelines for the Delegation of Care for Students with Diabetes in Florida Schools, published by the Florida Department of Health, available at: <http://www.doh.state.fl.us/Family/school/reports/DiabetesGuidelines2003.pdf>.

Georgia

School Health Nurse Resource Manual, published by the Georgia Department of Education, available at: http://www.doe.k12.ga.us/DMGetDocument.aspx/nurse_manual.pdf?p=4BE1EECF99CD364EA5554055463F1FBB77B0B70FECF5942E12E123FE4810FFF55BC103AB8DEE33A5B5D482EB106BE0F9&Type=D.

Illinois

Diabetes in Schools: A Resource Manual for School Health Personnel, published by the Illinois Department of Human Services, available at: <http://www.dhs.state.il.us/chp/ofh/schoolhealth/pdf/diabetes.pdf>.

Recommended Guidelines for Medication Administration in Schools, published by the Illinois Department of Human Services and the Illinois State Board of Education

(September 2000), available at: http://www.isbe.state.il.us/spec-ed/pdfs/medication_administration.pdf.

Maine

Maine Guidelines for Schools: Tools for Schools Who Have Students with Diabetes, available at <http://web.diabetes.org/Advocacy/school/MDManagement.pdf>

Maryland

Management of Students with Diabetes Mellitus in Schools Maryland State School Health Services Guideline, available at <http://web.diabetes.org/Advocacy/school/MDManagement.pdf>

Kentucky

Health Services Reference Guide, published by the Kentucky Department of Education, available at: <http://www.education.ky.gov/KDE/Administrative+Resources/School+Health/Health+Services/HSRG+Table+of+Contents.htm>.

Michigan

Model Policy and Guidelines for Administering Medications to Pupils at School, published by the Michigan Department of Education, available at: http://www.michigan.gov/documents/REGITEMVIID_50046_7.pdf.

Minnesota

Minnesota Guidelines for Medication Administration in Schools, published by the Minnesota Department of Health, available at: <http://www.health.state.mn.us/divs/fh/mch/schoolhealth/medadmin/schoolmedadmin.pdf>.

Missouri

Diabetes Management in the School Setting: A Resource Guide for School Health Nurses, published by the Missouri Department of Health and Senior Services, available at: <http://www.dhss.mo.gov/diabetes/Dschool.html>.

Montana

Children with Diabetes: A Resource Guide for Schools, published by the Montana Department of Public Health and Human Services, available at: <http://www.dphhs.mt.gov/PHSD/Diabetes/pdf/srmpages.pdf> and supplemented at: <http://healthinfo.montana.edu/diabetes/srminserts.pdf>.

New Jersey

Guidelines for the Care of Students With Diabetes in the School Setting, published by the New Jersey Department of Education, Task Force on Diabetes in School, available at: <http://www.state.nj.us/njded/edsupport/diabetes/diabetes.pdf>.

New York

Diabetes in Children: A Resource Guide for Schools, published by the New York State Department of Health, available at <http://www.health.state.ny.us/diseases/conditions/diabetes/docs/schools.pdf>.

Diabetes in Children: A Resource Guide for Families of Children with Diabetes, published by the New York State Department of Health, available at: <http://www.health.state.ny.us/diseases/conditions/diabetes/docs/families.pdf>

Nevada

Program Nevada Diabetes Association for Children and Adults Recommendations for Management of Children with Diabetes in Schools, available at http://www.diabetesnv.org/child_manage.doc

Texas

Guidelines for the Care of Students with Diabetes in the School Setting Web Site, provided by the Texas Department of State Health Services at: <http://www.dshs.state.tx.us/diabetes/dcschool.shtm>.

Guidelines for Training School Employees Who Are Not Licensed Healthcare Professionals to Implement House Bill 984 (79th Legislature) Related to the Care of Elementary and Secondary School Students with Diabetes, published by the Texas Diabetes Council, available at: <http://www.dshs.state.tx.us/diabetes/PDF/HB984.pdf>.

Vermont

Recommendations for Management of Diabetes for Children in School, published by the Vermont Department of Health, Diabetes Control Program, available at: <http://www.healthvermont.gov/prevent/diabetes/SchoolDiabetesManual.pdf> .

Virginia

Virginia Board of Nursing Guidance Document: Guidelines for Training of Public School Employees in the Administration of Insulin and Glucagon, available at <http://www.dhp.virginia.gov/nursing/guidelines/90-36.doc>

Washington

Guidelines for Care of Students with Diabetes, published by the Washington State Task Force for Students with Diabetes, available at: <http://www.k12.wa.us/HealthServices/DiabetesCare.aspx>.

West Virginia

Guidelines for Determining Acts That May Be Delegated or Assigned By Licensed Nurses (2001), published by the W. Va. Board of Examiners of Registered Professional Nurses, available at: <http://www.lpnboard.state.wv.us/scope.pdf>.

Wisconsin

Children with Diabetes: A Resource Guide for Wisconsin Schools and Families, published by the Wisconsin Department of Health and Family Services, available at: http://www.dhfs.state.wi.us/health/diabetes/pdf_files/resources/PPH43063_DBchildrenResGuide.pdf.