

September 2011

## UPDATE ON THE LEGAL ISSUES INVOLVING DIABETES CARE IN K-12 SCHOOLS

**The fight continues to ensure that children with diabetes in California get the care they need while at school.** Given the state's serious fiscal crisis and its effect on local school budgets, we expect that an increasing number of school districts may be more reluctant/claim inability to provide needed diabetes care. We want to let parents, health care professionals, and advocates know the status of school diabetes litigation in California and how to secure the care that children require.

In August 2007 the California Department of Education (CDE) settled a lawsuit brought by DREDF and REED Smith LLP on behalf of the American Diabetes Association (ADA) and four students with type 1 diabetes. As part of the settlement, the CDE issued a Legal Advisory to all California K-12 public schools to remind them of their obligations to uphold the legal rights of students with diabetes, including provision of related aids and health services, based on federal and state laws. One portion of the Legal Advisory states that unlicensed school personnel are allowed to administer insulin to students when a nurse is not available. Several nursing groups sued to overturn this portion of the Legal Advisory. In November 2008 a trial court judge ruled in their favor. Left unchallenged, the court ruling would have required CDE to change the Legal Advisory to remove any references to unlicensed personnel administering insulin.

In June 2010, the Third Appellate District of the California Court of Appeals issued a decision affirming the superior court judgment. The Court of Appeals did not rule on whether insulin can be safely administered by unlicensed personnel, and did not question the rights of students to receive insulin at school.

In September 2010, the Supreme Court of California granted ADA's petition for review. All briefing is complete and we are waiting for oral argument to be scheduled. Numerous groups filed amicus briefs on behalf of the ADA including the U.S. Department of Justice, the California Department of Education, the American Academy of Pediatrics Section on Endocrinology, the American Association of Diabetes Educators, the California District of the American Academy of Pediatrics, the Endocrine Society, and the Pediatric Endocrine Society,

The case remains "stayed" until the Supreme Court of California issues a decision. Again, this means that the lower court's ruling has no effect until the appeal is decided. Therefore, **the entire original Legal Advisory remains in effect, and California school districts are permitted to train unlicensed personnel to administer insulin** as detailed in the Legal Advisory. Note what the CDE website says about the status of the law:

“The case is now on appeal, and the Court of Appeal has confirmed that the trial court's ruling is stayed until the appeal is finally resolved. The entire Legal Advisory therefore remains in effect. However, interested parties should check this Web site periodically for updates on the litigation and the status of the Legal Advisory.”

<http://www.cde.ca.gov/Ls/he/hn/legaladvisory.asp>

If you are a parent/caregiver of a child with diabetes, you should take several important steps now, before school begins, and as needed throughout the school year, to ensure that the 2011-2012 school year goes smoothly:

1. Obtain up-to-date medical orders from your child's physician. The medical orders should *explicitly state* the child's care needs including but not limited to: timeframe(s) and dosing for medication (including insulin for carb consumption and treatment of elevated glucose levels and glucagon for emergency treatment of low blood glucose levels), timeframe(s) to perform blood glucose checks and ketone checks, etc.
2. Inform the school in writing that you need to meet with the school nurse and other key school personnel to discuss the specifics of how your child's medical orders will be implemented. Emphasize this meeting is crucial to your child's safety. You should request a 504 plan meeting so that all diabetes health related services your child needs are documented in a 504 plan.

Learn more about your rights at the American Diabetes Association's website, [www.diabetes.org](http://www.diabetes.org):

<http://www.diabetes.org/living-with-diabetes/parents-and-kids/diabetes-care-at-school/legal-protections/>

The following resources are available online at [www.dredf.org/diabetes](http://www.dredf.org/diabetes):

- **A model Sample 504 Plan and Sample Diabetes Medical Management Plan**
- **A copy of the CDE *Legal Advisory***

If, after obtaining updated medical orders and working with your school, you are still unable to secure needed diabetes care services at school or during school-sponsored activities, DREDF needs to hear from you and will also guide you or make an appropriate referral to advocates in your area to help you know how to advocate for your child. Even if you are successful in getting your child the care he or she needs, DREDF still wants to hear from you so that we can help other parents resolve similar issues.

**To contact DREDF, follow these instructions:**

1. Send an email to [info@dredf.org](mailto:info@dredf.org)
2. In the subject line write, "Problem in a CA Public School"
3. In your email include the following information:

- Your Name and Phone Number
- Child's Date of Birth
- Child's Method of Insulin Administration (injection, pump)
- School Name
- School District Name and City
- Medical Needs Not Being Met
- Other Needs Not Being Met (e.g. field trips, medically-related absences, etc.)
- Whether School has a Nurse Only Policy for Insulin or Glucagon
- Frequency of Difficulty to Obtain Medical Services
- Indicate if Child has a 504 Plan, IEP, or Other Arrangement (explain)

Thank you for your continued help in keeping California students with diabetes safe at school-

Charlotte Lanvers, Staff Attorney/DREDF

- Brian Dimmick, Staff Attorney/ADA