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DISABILITY RIGHTS EDUCATION & DEFENSE FUND

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## SERVICES FOR STUDENTS WITH DIABETES IN PUBLIC SCHOOLS: QUESTIONS AND ANSWERS FOR CALIFORNIA PARENTS AND GUARDIANS

*Please distribute widely*

### **What is the California diabetes school care lawsuit, and why was it filed?**

In October 2005, Disability Rights Education and Defense Fund (DREDF) working with the law firm of Reed Smith LLP filed a lawsuit against the California Department of Education (CDE) and two school districts (the San Ramon Valley Unified School District and the Fremont Unified School District) on behalf of the American Diabetes Association (ADA) and four children with diabetes. The lawsuit was filed because many school districts in California were providing inadequate health care to students with diabetes. For example, some districts were refusing to make any school personnel available to administer insulin to a child who cannot self-administer. After a long period of negotiations, settlement agreements were reached with CDE and both school districts.

### **What has the California Department of Education agreed to do as part of the settlement of the lawsuit?**

In August 2007, CDE issued a document called “**Legal Advisory on Rights of Students with Diabetes in California’s K-12 Public Schools**” to all California school districts. A copy of the Legal Advisory is available at: [http://www.dredf.org/diabetes/CDE Legal Advisory on Rights of Students with Diabetes.pdf](http://www.dredf.org/diabetes/CDE%20Legal%20Advisory%20on%20Rights%20of%20Students%20with%20Diabetes.pdf). This document explains the rights of public school students with diabetes to school health care and other services at school. It gives detailed information about a district’s legal obligations—that is, what your school must provide for your child. Many of the topics covered in this document are discussed in more detail in the Legal Advisory. In addition, as part of the settlement, CDE has agreed to improve its handling of

diabetes-related complaints and greatly increase its monitoring of local district compliance with the law.

### **What federal laws protect my child?**

Students with disabilities, including those with diabetes, have a right to a “free appropriate public education” (FAPE) without discrimination. These rights are guaranteed by laws such as Section 504 of the Rehabilitation Act (Section 504), the Individuals with Disabilities Education Act (IDEA), and the Americans with Disabilities Act. Every student with diabetes has a right to be evaluated to determine his or her eligibility for services under Section 504 and/or IDEA, as appropriate.

Each of the above laws has a definition of what it means to have a disability, and your child must meet that definition in order to have rights under the law.

In general, a student has a disability under Section 504 (and the Americans with Disabilities Act which provides similar protections from discrimination) if he/she has a mental or physical impairment that substantially limits one or more major life activities, such as eating, breathing, walking, learning, and caring for oneself. The United States Department of Education Office for Civil Rights (OCR) has regularly determined that students with diabetes meet this standard and are entitled to related aids and services necessary to ensure a free appropriate public education, such as those described in this document. Your child can be covered by Section 504 even if he or she is succeeding academically and making good grades. Although schools sometimes think that there must be a demonstration of child’s declining grades or lack of academic progress to be covered under Section 504, the CDE Legal Advisory makes clear that this is not true.

IDEA protects students who need special education (specially designed instruction) and related services. A student with diabetes may be eligible under IDEA and entitled to an “Individualized Education Program” (IEP) because, for example, high or low blood glucose levels can cause symptoms giving him/her limited strength or limited alertness, and can cause chronic or acute health problems that adversely affect his or her educational performance. Fluctuations in blood glucose levels may have an adverse effect on education in a variety of ways, including effects on concentration, comprehension and energy levels. 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 special education and related services. In addition, a student with diabetes may be covered under IDEA if he or she has another disability that adversely impacts learning.

California state law also protects students with diabetes from discrimination, and state law covers some individuals who may not be eligible for services under these federal laws. For more information on state law see the Legal Advisory.

The services and accommodations that your child needs for his or her diabetes should be documented in a written plan (either a 504 Plan or an IEP). School personnel such as the 504/IDEA coordinator, school nurse, guidance counselor and key teachers should work with you to develop this plan, which incorporates the medical orders provided by your child’s treating physician (described below).

A copy of a **sample 504 Plan** developed by ADA and DREDF is attached and available at: <http://www.dredf.org/diabetes/ad-504-adanasndredf-2007.pdf>. You have a right to meet with school personnel to develop such a plan, and to bring an advocate, attorney and/or expert to this meeting to better explain your child’s diabetes management needs. The school should develop the IEP or 504 Plan with your input. You do not have to sign the plan if you disagree with it (to begin implementation, you can sign the parts you agree with but not those parts that need further discussion).

### **What diabetes health related services must my child’s school provide?**

Federal and state laws require school districts to provide a qualifying student with diabetes with the health care services that student needs in order to attend school safely and to participate in all school-sponsored activities. These services can include diabetes care tasks such as:

- Checking blood glucose
- Administering insulin
- Treating high blood glucose levels (hyperglycemia) and low blood glucose levels (hypoglycemia)
- Administering glucagon
- Monitoring a student’s meals, snacks, and level of physical activity

Decisions about what health care services your child will receive at school should be based on your child’s treating physician’s written orders. That is, your treating physician needs to provide a treatment plan that covers your child’s specific needs (including medication dosages and target blood glucose values) and ability to self-manage his or her diabetes, which the school should implement. A sample of such a plan, called a **Diabetes Medical Management Plan**, is attached and available at: <http://www.dredf.org/diabetes/DMMP-finalformatted.pdf>. Your school district may have another form that it requires you to use for this purpose, or your child’s treating physician may prefer a different form.

School nurses and other trained school district personnel should implement the plan and provide the care that your child needs while at school or participating in school-sponsored activities (including bus travel, extracurricular activities, field trips, and similar activities). District personnel will perform the task, assist your child in performing the task, or allow your child to perform the task depending upon his or her level of competence in self-managing diabetes.

It is usually very helpful to provide school personnel with general information about diabetes and the needs and rights of children with diabetes while at school. An excellent source for such information is the National Diabetes Education Program's "**Helping the Student with Diabetes Succeed: A Guide for School Personnel**" available at [http://www.ndep.nih.gov/diabetes/pubs/Youth\\_SchoolGuide.pdf](http://www.ndep.nih.gov/diabetes/pubs/Youth_SchoolGuide.pdf). This guide was developed by the federal government (Centers for Disease Control, National Institutes of Health, and U.S. Department of Education) and leading diabetes and school organizations. It is listed as a resource in the CDE Legal Advisory.

### **Where will needed diabetes care happen?**

Diabetes care should be provided wherever your child is on campus, on the school bus, and at off-campus activities. If you request it and your treating physician authorizes it, your child will be permitted to check his or her blood glucose level and to otherwise provide diabetes self-care in the classroom, in any area of the school or school grounds, during any school-related activity, and, upon specific request by you, in a private location.

### **Can my child be denied needed services because of a district policy that applies to all students with diabetes?**

The CDE Legal Advisory makes clear that policies that preclude individual evaluation of your child's educational and health related service needs (for example, policies stating that blood glucose monitoring is never allowed in the classroom, school personnel will not administer insulin and/or glucagon, or that children with diabetes must go to a particular school) are not permitted. Also, a school or district may not have a policy or general practice that insulin or glucagon administration, or other diabetes-related health care services, will only be provided by district personnel at certain schools in the district, or that your child must always leave the classroom to receive needed care. It is your right to have decisions made based on your child's individual needs, not on general district policies or the financial burden of providing care.

### **Which school personnel can administer glucagon to my child?**

California law specifically provides that glucagon may be administered by trained school personnel who are not licensed health care professionals, as well as by school nurses and other licensed health care professionals, so long as:

- the parent/guardian requests this in writing, and
- glucagon is included in the written orders of the student's treating physician.

### **Which school personnel can administer insulin to my child?**

California law permits insulin to be administered by school nurses (and other licensed health care professionals), students who are self-administering, parents, family members or friends. Any of these people can also assist a child who is self-administering his/her insulin and California law also provides that other school employees (like classroom teachers and school office staff) can assist students with insulin self-administration and can administer insulin in the case of a school emergency.

An important question is whether these other school employees who are not medical professionals can administer insulin in non-emergency situations. While there is disagreement about what California law says on the subject, the CDE Legal Advisory makes clear that school districts must meet requirements of federal law—even if school nurses or the other individuals listed above are not available. This means that training teachers, office staff, health aides or other school employees to administer insulin at school or school-related activities to a student whose IEP or Section 504 Plan requires insulin administration is a valid practice under federal law. For example, if your child needs someone to administer insulin in accordance with his or her 504 Plan or IEP, and no school nurse is available, another trained school employee can administer insulin. School districts may not require you to come to school to administer insulin to your child, to find other family members or friends to do so, or to change your child's diabetes regimen so that he or she doesn't need insulin administered as often at school.

### **Can my child be forced to go to a different school to get diabetes care?**

No. School placement decisions may not be based on the unwillingness of a school or district to provide needed care for diabetes at the school your child would otherwise attend. A school or district may not require you to agree to send your child to any particular school as a condition of administering medications or assisting your child in the administration of medication at school.

### **Will I have to sign a waiver of liability before my child can receive needed care?**

The CDE's Legal Advisory states the school cannot require you to waive any rights, hold the school district harmless, or agree to any particular placement or services as a condition of school personnel providing care to your child.

### **What academic services and modifications is my child entitled to receive?**

Your child may need academic services and adjustments because of diabetes, such as changes in the time of physical education class, changes to the normal school day schedule (breaks to treat hypoglycemia or hyperglycemia, changes in times for exams, food intake, assignment due dates, etc.). These services should also be documented in a Section 504 Plan or IEP, as discussed above.

### **What do I need to know if my child attends school in one of the districts involved in this lawsuit (the San Ramon Valley Unified School District or the Fremont Unified School District)?**

The San Ramon Valley and Fremont school districts were involved in the lawsuit and have reached settlement agreements with the ADA and individual plaintiffs to resolve the lawsuit. The agreements require these districts to put in place specific policies about what care will be provided to students with diabetes, as well as forms that parents of students with diabetes should use to ensure that their children get needed care.

For example, the San Ramon Valley Unified School District has implemented an excellent and comprehensive "diabetes protocol" specifying how diabetes care will be provided to students, and has agreed that trained school employees other than school nurses can administer insulin to students.

For more information on the settlements with these two districts, see the document "**An Important Message for California Families of Children with Diabetes...**" at <http://www.dredf.org/diabetes/CADiabetesFamiliesJuly07.pdf>. To contact DREDF, follow the instructions in that document. Be sure to specify clearly that your child attends school in one of these districts.

### **What should I do to make sure my child receives needed care?**

Here are some suggestions for working with your health care provider and your school to help ensure that school personnel understand your child's diabetes and provide the care he or she needs, and to avoid misunderstanding and disputes between you and the school:

- Make sure you have updated and accurate orders from your child's treating physician that include details about all care your child needs;
- Provide your school with general information about diabetes and the best model of school diabetes care using such resources such as the NDEP Guide mentioned earlier and the materials and information from ADA's website [www.diabetes.org/schooldiscrimination](http://www.diabetes.org/schooldiscrimination);
- If you have not already done so, request that your child be evaluated for eligibility under Section 504 and/or IDEA. These laws give you and your child important rights and protections, and you should make sure you get those protections;
- **Make all requests for evaluations and specific services in writing to your child's school principal** (including but not limited to requests for insulin administration services). Request responses in writing, especially if there is disagreement over what services are to be provided;

- Work with school and district officials to establish good district-wide protocols that will apply to your child throughout his/her education and will help all students with diabetes. For example, the San Ramon Valley Unified School District has implemented an excellent and comprehensive “diabetes protocol” specifying how diabetes care will be provided to students, and has agreed that trained school employees other than school nurses can administer insulin to students. These documents can be accessed at [www.diabetes.org/schooldiscrimination](http://www.diabetes.org/schooldiscrimination);
- If you receive an unfavorable response from your child’s school, talk to higher level district personnel (such as the superintendent or assistant superintendent) and your school board members (who are elected officials in most communities). Provide them with a copy of the CDE Legal Advisory and request a copy of all applicable district policies, procedures and forms.

### What if I need to make a formal complaint?

If your child is not getting needed services, you have a right to file an administrative complaint with CDE. Complaints alleging violations of Section 504 and the Americans with Disabilities Act may also be made to your local school district or to the United States Department of Education Office for Civil Rights (OCR).

If you have made such a complaint or would like to know more about making a formal complaint, please see the document “**An Important Message for California Families of Children with Diabetes. . .**” at <http://www.dredf.org/diabetes/CADiabetesFamiliesJuly07.pdf>. Contact DREDF by following the instructions in that document.

### Helpful Links

#### Disability Rights Education & Defense Fund

<http://www.dredf.org>

#### “An Important Message for California Families of Children with Diabetes. . .”

<http://www.dredf.org/diabetes/CADiabetesFamiliesJuly07.pdf>

#### American Diabetes Association

<http://www.diabetes.org>

<http://www.diabetes.org/schooldiscrimination>

#### California Department of Education (CDE)

##### “Legal Advisory on Rights of Students with Diabetes in California’s K-12 Public Schools”

[http://www.dredf.org/diabetes/CDE Legal Advisory on Rights of Students with Diabetes.pdf](http://www.dredf.org/diabetes/CDE%20Legal%20Advisory%20on%20Rights%20of%20Students%20with%20Diabetes.pdf)

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

#### Sample 504 Plan (for a child with diabetes)

<http://www.dredf.org/diabetes/ad-504-adanasndredf-2007.pdf>

#### Diabetes Medical Management Plan (DMMP) form

<http://www.dredf.org/diabetes/DMMP-finalformatted.pdf>

#### National Diabetes Education Program

of Centers for Disease Control (CDC), National Institutes of Health (NIH), U.S. Department of Education (DOE)

##### “Helping the Student with Diabetes Succeed: A Guide for School Personnel”

[http://www.ndep.nih.gov/diabetes/pubs/Youth\\_SchoolGuide.pdf](http://www.ndep.nih.gov/diabetes/pubs/Youth_SchoolGuide.pdf)