

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

At a minimum, students with diabetes may not simply be excluded from school because they require diabetes-related health services. For example, in *District of Columbia (DC) Pub. Schs.*, Complaint No. 11-12-1133, 112 LRP 50236 (OCR 2012), the district had a policy of requiring that students with diabetes be sent home when school nurses were not available to provide care, but entered into a resolution agreement with OCR that required the district to provide these services at school. *See also Lourdes (OR) Pub. Charter Sch.*, Complaint No. 10-10-1249, 57 IDELR 53 (OCR 2011) (district's difficulties in hiring a nurse could not justify its decision to transfer the student from the general education curriculum to homebound instruction); *Hasbrouck Heights (NJ) 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). *Cf. Rudyard (MI) Area Schs.*, Complaint No. 15-14-1177, 115 LRP 10469 (OCR 2014) (district agreed that it would not send or threaten to send the student home in order to

receive diabetes care if his blood glucose was at designated levels, but instead would provide such care at school, unless the parent requested that the child be sent home).

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 (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 (see Question 1.5). 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 DMMP approved by the child’s health care provider.

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 ADA 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. *See Sandusky (OH) City Sch. Dist.*, Complaint No. 15-08-1062, 108 LRP 66797 (OCR 2008) (“District staff’s denial of certain services and modifications, such as allowing blood sugar testing to be done in the classroom or administering emergency injections, were not determinations made based on evaluation data or on the student’s individual needs, but rather were based on administrative concerns or staff preference.”) *See also R.K. v. Bd. of Educ. of Scott County*, 494 Fed. Appx. 589, 597 (6th Cir. 2012) (factual issues existed as to whether district had made an individualized assessment of whether a student needed to attend a school with a full time nurse on staff); *Conejo Valley (CA) Unified Sch. Dist.*, Complaint No. 09-93-1002, 20 IDELR 1276 (OCR 1993) (homebound instruction for child with Down Syndrome and diabetes could not be limited to one hour per day without regard to student’s individual needs); *In re Student with a Disability*, Complaint No. 45043, 107 LRP 37946 (N.Y. State Educational Agency 2002) (district decided to reduce the services of a paraprofessional performing a student’s diabetes care from full time to half time based only on the fact that a few months had passed since the end of the prior school year, without considering any individualized information about the student’s condition or need for diabetes care from an adult).

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); *Sch. Bd. of Pinellas County*, 58 IDELR 59 (Fla. State Educational Agency 2011) (student’s assignment to another school in order to receive diabetes care could happen only after an individualized determination of the student’s needs, not based on inflexible district policy).

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 blood glucose monitoring, 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?

Some school districts may attempt to require students needing certain kinds of diabetes care to attend certain schools other than their zoned or assigned school. For example, the school may suggest that a student who needs assistance from school personnel with medication administration should attend a school with a full time school nurse (see Part 10). Parents may be given the option to assume responsibility for providing care for the child if they wish him or her to remain at the assigned school, but the district effectively refuses to provide the care the child needs at that school. 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 for 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. Although parents may accept placement in a different school, parents should not be required to do so since other less disruptive options to provide diabetes care exist.

Notes

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 U. S. Departments of Justice and Education have determined that a policy requiring students to transfer to a different school because of their need for diabetes care can violate both laws. In 2013, DOJ issued a letter of findings addressing a complaint that Alabama school districts were forcing students to transfer to a school with a full time nurse if they needed school personnel to administer insulin or

glucagon. The state was supporting this practice through interpretations of state law that prohibited school nurses from delegating diabetes medication administration (see Question 10.5). In reviewing these practices, DOJ stated:

Attendance at a child's zoned school or school of choice is a benefit generally afforded to Alabama school children. Indeed, many parents, in selecting a home, place great importance on the school enrollment options for their home's location. And most parents expect that their children will have the opportunity to attend school alongside their siblings and neighbors. The ADA thus mandates that this same benefit be afforded equally to children with diabetes unless it is necessary to provide a different benefit to ensure that the aids, benefits or services of the education program are equally effective.

U.S. Department of Justice, Letter re: The United States' Investigation Under Title II of the Americans with Disabilities Act with respect to Public School Children with Diabetes in Alabama (Dec. 9, 2013), available at <http://www.ada.gov/alabama-LOF.htm>. DOJ found that this right was violated when decisions about student placement related to diabetes were made without considering the individual circumstances related to the child's medical condition. OCR has also indicated that such policies can violate Section 504 in recent letters of finding and agreements. In *Duval County (FL) Pub. Schs.*, Complaint No. 04-08-1278, 113 LRP 27887 (OCR 2013), the district signed a resolution agreement revising its policies to provide that insulin administration services would be provided at the school the child would attend if he or she did not have diabetes, unless the parent or guardian elected to send the child to a school with a full time nurse. *See also Sarasota County (FL) Sch. Dist.*, Complaint No. 04-09-1571, 60 IDELR 261 (OCR 2012) (school district violated Section 504 by refusing to provide school staff to administer insulin at the child's assigned school, and forcing the parent to agree to provide care in order to keep the student at that school); *District of Columbia (DC) Pub. Schs.*, Complaint No. 11-12-1133, 112 LRP 50236 (OCR 2012) (resolution agreement forbade district from requiring students to transfer to a different school or restricting school choice based on diabetes care needs).

State agencies have also found such policies or practices invalid under Section 504. In *Sch. Bd. of Pinellas County*, 58 IDELR 59 (Fla. State Educational Agency 2011), a hearing officer ruled that the district's policy of requiring students to transfer to a school with a full time nurse was not based on individualized assessment of the student's needs or current medical knowledge about diabetes. The hearing officer stated:

Respondent school district's over-arching policy relative to the administration of diabetes care, which fails to consider the individual and unique needs of the student Petitioner on a case-by-case basis, necessarily violates Petitioner's § 504 procedural rights. ... What Respondent cannot do is use its policy decision to use only nurse administration of insulin, as grounds to defend its position that students, desiring district diabetes services, must transfer to a school where nurses are stationed. This is because Respondent does have alternative options for the provision of these services, which options would not be near as burdensome to Respondent.

See also North Thurston (WA) Sch. Dist., Complaint No. 2012-SE-0084, 113 LRP 31234 (Wash. State Educational Agency 2013) (district violated Section 504 by abruptly deciding that a student would have to be transferred to a different school in order to receive diabetes care, without providing the student any time for transition or considering the impact on the child's medical condition).

Older OCR opinions, however, suggest 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. *See Montgomery County (AL) Sch. Dist.*, Complaint No. 04-07-1022, 108 LRP 9480 (OCR 2007) (district did not violate Section 504 by requiring transfer of a student to a different school where state law did not permit anyone but a school nurse to administer insulin and where the academic programs in the new school were identical to those in the prior school); *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); *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). These decisions appear to be inconsistent with the more recent positions taken by OCR and DOJ, as noted above.

Section 504 and the IDEA require that students be educated with persons who are not disabled and in the least restrictive environment. 34 C.F.R. § 104.34; 20 U.S.C. § 1412(5). 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 Bd. of Educ.*, 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).

Two court cases (decided by the same judge) have used these principles to hold that Section 504 does not provide students with diabetes the right to attend any particular school. In *R.K. v. Bd. of Educ. of Scott County*, a federal district court held that a district did not violate Section 504 or the ADA in declining to assign a nurse to the school a student with diabetes would otherwise have attended and requiring the student to attend a different school if he wished district nurses to administer insulin. According to the court, the plaintiff failed to allege that the education at the school where a nurse was available was inadequate or, indeed, any different from that at the school he wished to attend, and the plaintiff had no claim so long as the district provided meaningful access to education at the school it chose. 2014 U.S. Dist. Lexis 121340 (E.D. Ky. Aug. 28, 2014). However, the U.S. Department of Justice, in an amicus brief to the Sixth Circuit on the same case, argued that the district court's analysis of the law and facts in a prior opinion was incorrect, and that the court had failed to properly consider whether a forced transfer to another school would deny a student FAPE or discriminate against the student on the basis of disability. See <http://www.justice.gov/crt/about/app/briefs/rkscottcountybrief.pdf>. *See also B. M. v. Bd. of Educ. of Scott County*, 2008 U.S. Dist. Lexis 66645 at *23-24 (E.D. Ky. 2008) (school acted reasonably in refusing to train unlicensed school personnel and transferring the student to a different school 5-7 minutes away where the school believed that state law did not permit the training of unlicensed personnel and was concerned about liability).

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); *see also Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069, 102 LRP 3258 (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. One court held that the parents of a student with diabetes were likely to prevail at trial on their claim that a school district was required to test the student’s blood glucose levels during an after-school care program. *A. P. v. Anoka-Hennepin Indep. Sch. Dist.*, 538 F. Supp. 2d 1125, 1142 (D. Minn. 2008). (Because this case dealt with an after-school program, it did not involve the duty to provide a free, appropriate public education; the case for requiring school districts to monitor blood glucose levels would be even stronger in the educational setting). In *Charles A. Beard Memorial Sch. Corp. (IN)*, Complaint No. 05-14-1191, 115 LRP 10477 (OCR 2014), a district allegedly failed to check a middle school student’s blood glucose levels on multiple occasions, and on several other occasions performed the checks late or failed to treat issues related to blood glucose. OCR, as part of a resolution agreement, required the district to provide training specific to diabetes to school staff, including “the importance of conducting

all required blood sugar testing, timely testing of blood sugar, [and] the appropriate treatment of a student's blood sugar after testing.” See also *In re Student with a Disability*, Complaint No. 45043, 107 LRP 37946 (N.Y. State Educational Agency 2002) (school district was required to provide a paraprofessional in the classroom to monitor blood glucose levels of a first grader where the parent presented extensive evidence that he was not safe in the classroom without access to blood glucose monitoring). A school may also be responsible for ensuring that a student monitors blood glucose levels even when that student does so independently. For example, in *Lake Station Community Schs.*, Complaint No. CP 015-2012, 112 LRP 12094 (Ind. State Educational Agency 2011), the student’s IEP called for the school district to check the student’s blood glucose levels if she was unable to do so. The district violated IDEA in one instance where school personnel did not ensure that the student checked her blood glucose levels after she ate a snack. See also *Waterbury (CT) Bd. Of Educ.*, Complaint No. 01-07-1030, 108 LRP 60388 (OCR 2007) (despite parent’s complaint that school failed to monitor student’s blood glucose levels, OCR found no violation where medication logs showed that levels were monitored on a regular basis).

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. See Question 8.1 (definition of medical services); see also *Ardmore (OK) Pub. Schs.*, Complaint No. 07-06-1016, 106 LRP 59000 (OCR 2006) (revised IEP required parents to provide diabetes supplies after school had difficulty getting parents to comply with requests to do so); *In re School Admin. Dist. #25*, Case No. 93.114, 20 IDELR 1316 (Me. State Educational Agency 1994) (parents were to provide a supply of fast acting sugar as a medical supply). Schools should have a place for parent-provided supplies to be stored so that they are accessible when needed. See *Moore (OK) Pub. Schs.*, Complaint No. 07-11-1234, 112 LRP 37770 (OCR 2012) (school agreed to store diabetes care supplies in the student’s classroom).

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 (Me. State Educational Agency 1994) (school expected to provide a backup supply of fast acting sugar; complaint about the choice rejected where parent 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

Students who need insulin have a right to receive it in school. As the California Supreme Court stated in *American Nurses Association v. Torlakson*, 57 Cal. 4th 570, 576 (2013):

Public school students with diabetes who cannot self-administer insulin are normally entitled to have it administered to them at no cost. ... Public schools must offer to students covered by [Section 504, the ADA, and IDEA] a free and appropriate public education that includes related aids and services, such as medical services, designed to meet their individual educational needs. Under these laws, diabetic students pay for insulin, supplies and equipment but not the cost of administering insulin.

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. *Sandusky (OH) City Sch. Dist.*, Complaint No. 15-08-1062, 108 LRP 66797 (OCR 2008) (district refused to allow any school staff to administer insulin because of policy forbidding medication administration); *see also Prince George's (MD) County Schs.*, Complaint No. 03-02-1258, 39 IDELR 103 (OCR 2003); *Amarillo Indep. Sch. Dist.*, Complaint No. 06-02-1181 (OCR 2002) (school agreed to administer medications, including insulin and/or glucagon); *cf. Moore (OK) Pub. Schs.*, Complaint No. 07-11-1234, 112 LRP 37770 (OCR 2012) (resolution agreement required district to remove statement from its policies that school staff would not be responsible for determining or calculating dosages of insulin); *Urbana (OH) City Sch. Dist.*, Complaint No. 15-11-1174, 112 LRP 4236 (OCR 2011) (district refused to administer insulin to a student when he did not want to self-administer).

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 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). 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.

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), since the 1990s advances in 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. See *Everett (WA) Sch. Dist. No. 2*, Complaint No. 10-06-1181, 108 LRP 42433 (OCR 2007) (where doctor's orders called for insulin administration only at lunch and during emergencies, and kindergarten student did not attend school during lunch, school had no obligation to provide for insulin administration); *Eastmont (WA) Sch. 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).

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. While independent students may be able to operate the pump without assistance, other students will need assistance as prescribed in the student's Diabetes Medical Management Plan (DMMP). All students may need assistance in the event of a diabetes emergency or pump malfunction. For students requiring assistance, the school nurse or other trained diabetes personnel need to be trained to assist with or perform essential pump functions such as bolusing, setting a temporary basal rate, changing batteries, and troubleshooting. The family and school should work together to develop a plan for providing insulin to the student in the event of a pump malfunction or infusion site dislodge. It may be necessary to administer insulin by syringe or pen until the infusion site can be changed as prescribed by the DMMP. A school nurse, if trained, possesses competency and agrees to do so, may also be able to change the infusion site. Schools may also need to make a plan for securing or storing a student's insulin pump if a student disconnects it for physical education or for some other reason.

Notes

One case involving an after-school program (and therefore not invoking the obligation to provide a free, appropriate public education) held that the parents of a student with diabetes were likely to prevail at trial on their claim that a school district was required to train staff to operate the student's insulin pump. *A. P. v. Anoka-Hennepin Indep. Sch. Dist.*, 538 F. Supp. 2d 1125, 1142 (D. Minn. 2008). For examples of Office for Civil Rights agreements addressing insulin pump issues, see *Palm Beach County (FL) Sch. Dist.*, Complaint No. 04-07-1271, 108 LRP 34606 (OCR 2007) (nurse would be trained and permitted to change the infusion site on a student's pump); *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. 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. Therefore, even students who are independent in all other aspects of care will generally need someone at school available to administer glucagon in an emergency. 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.

Notes

A life threatening situation may result if glucagon is not administered promptly when circumstances warrant. In *American School for the Deaf (CT)*, Complaint No. 01-07-1268, 108 LRP 58193 (OCR 2008), OCR found that a district had violated Section 504 by failing to properly respond to an incident of hypoglycemia during a field trip; glucagon was not brought on the field trip because no staff were authorized to administer it. It has 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).

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). Where the student's physician orders do not clearly require glucagon, the district may not be required to provide school staff to administer it even if parents believe it is needed. *Everett (WA) Sch. Dist. No. 2*, Complaint No. 10-06-1181, 108 LRP 42433 (OCR 2007).

The administration of glucagon has been frequently addressed in resolutions of discrimination complaints. See, e.g., *Springdale (AR) Sch. Dist.*, Complaint No. 06-08-1349, 109 LRP 4346 (OCR 2008) (school agreed to train coaches, principal and teachers to recognize symptoms of hypoglycemia and to administer glucagon); *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, 102 LRP 3258 (OCR 1999).

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

No. It is the American Diabetes 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 serious harm. 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 *Cape May County (NJ) Technical Sch. Dist.*, Complaint No. 02-09-1019, 110 LRP 19930 (OCR 2009), a district violated Section 504 when it did not have school staff available to provide diabetes care during before and after school activities and relied on calling the parents or 911 if the student experienced health problems. 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 Indep. Sch. Dist.*, 25 IDELR 1023 (Tex. State Educational Agency 1997). *But see Everett (WA) Sch. Dist. No. 2*, Complaint No. 10-06-1181, 108 LRP 42433 (OCR 2007) (appearing to endorse calling 911 as an alternative to school staff administering glucagon in a situation where the physician's orders did not clearly require glucagon). Calling 911 will, of course, be an appropriate part of an emergency protocol alongside glucagon administration. *See Rudyard (MI) Area Schs.*, Complaint No. 15-14-1177, 115 LRP 10469 (OCR 2014) (district agreed that it would call 911 under emergency circumstances requiring more than the administration of insulin and glucagon).

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, 9.8-9.9), in addition to designating a school staff member who is responsible for securing and transporting supplies to an emergency evacuation site.

Notes

Several OCR agreements have required districts to address whether diabetes care and supplies are accessible in an emergency or lockdown situation. In *Lowell (MA) Pub. Schs.*, Complaint No. 01-13-123, 63 IDELR 171 (OCR 2014), the school permitted the student to carry food and drink in a fanny pack, and as part of a resolution agreement the district agreed to convene a 504 meeting to decide whether other diabetes supplies could be carried in the pack and thus be available to the student during a lockdown. And in *Palm Beach County (FL) Sch. Dist.*, Complaint No. 04-07-1271, 108 LRP 34606 (OCR 2007), the district agreed in a resolution agreement to keep diabetes supplies in its crisis management kit so that they would be accessible in an emergency or lockdown.

8.14 Should students carry glucagon with them while at 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 *Prince George's County (MD) Pub. Schs.*, Complaint No. 03-14-1025, 114 LRP 36274 (OCR 2014) (where parent complained that the student was not allowed unlimited access to the restroom, resolution agreement required district to convene a new 504 plan meeting and address the student's need for restroom access); *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069, 102 LRP 3258 (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). In *Rudyard (MI) Area Schs.*, Complaint No. 15-14-1177, 115 LRP 10469 (OCR 2014), a parent complained that the school had failed to follow the student's 504 plan by not providing nutritional information for school lunches. As part of a resolution agreement, the school agreed, that, if the student returned to the district, the district would address at a 504 team meeting "how and when nutritional information would be provided to the family.

Most schools participate in the National School Lunch Program administered by the U.S. Department of Agriculture. The Department prohibits discrimination in programs 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 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. In addition to providing carbohydrate count information, schools may choose to meet the needs of students with diabetes by preparing individual meals for the student. *In re: Student with a Disability*, Complaint No. 0607-14, 48 IDELR 146 (N. M. State Educational Agency 2007) (school prepared special meals for student with type 2 diabetes to meet her medical needs). However, not all modifications to school food policies will be required or medically necessary. In *A.M. v. New York City Dep't of Educ.*, 840 F. Supp. 2d 660 (E.D. N.Y. 2012), a district court held that a school district did not violate Section 504 when it refused to allow the student's lunches to be heated in the school microwave. Even though the student was more likely to eat his food if it was heated and therefore more appealing, it was not medically necessary for the student's food to be hot. Therefore, the student did not require hot lunches in order to have meaningful access to lunch or to be safe, and the district did not discriminate when it failed to allow the use of its microwave to heat lunches.

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?

Despite misconceptions to the contrary, there are no forbidden foods for most students with diabetes. These students may eat candy or other treats at school parties, activities, or programs provided they make appropriate adjustments in their diabetes care regimen. Such adjustments often require advance planning and notice to parents or guardians. 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.

Notes

Misinformation about the ability of students with diabetes, particularly type 1 diabetes, to eat candy or other sugary foods persists, despite the fact that sugar intake is readily managed with proper insulin dosages. One district even reported the parents of a young child with type 1 diabetes to child protection authorities based, in part, on allegations that the parents provided the child with sweets to eat at school. In a case alleging that the district discriminated against the child by making this report, the court found that the principal (who made the report) had received training on diabetes and therefore knew or should have known that children with diabetes are not forbidden from eating sugar. *A.C. v. Shelby County Bd. of Educ.*, 711 F. 3d 687, 700 (6th Cir. 2013).

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 Americans with Disabilities Act (ADA) were violated where policy was not followed on one occasion where a parent brought treats without advance notice and, as a result, the child was denied the treat). See also *Danbury (CT) Bd. of Educ.*, Complaint No. 01-13-1115, 113 LRP 52424 (OCR 2013) (resolution agreement required district to hold a 504 team meeting to discuss with the parents what foods could be provided to the student at unanticipated classroom events, and that the district would continue to ask teachers and parents to provide advance notice of such events where possible); *Palm Beach County (FL) Sch. Dist.*, Complaint No. 04-07-1271, 108 LRP 34606 (OCR 2007) (resolution agreement required school to provide advance notice of classroom parties and to contact parents before denying the student a treat for medical reasons).

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 Unified Sch. Dist. #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 requires automated external defibrillators 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.heart.org/idc/groups/heart-public/@wcm/@ecc/documents/downloadable/ucm_425826.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.