

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. These non-medical school staff members should 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, a growing number of states explicitly allow non-nurse school employees to administer insulin and glucagon and to provide other care. The Office for Civil Rights 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) Sch. 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.”) See also *Lynnfield (MA) Pub. Schs.*, Complaint No. 01-07-1123, 108

LRP 21716 (OCR 2007) (private school did not violate 504 by not having a full time nurse where the principal's assistant monitored the student's diabetes on days the nurse was not present; this was adequate even though the parent expressed concern for the student's safety at times when the nurse was not present).

Courts and administrative agencies have also recognized the unlicensed personnel can and routinely do provide diabetes care. The California Supreme Court, in interpreting state law to permit insulin administration by unlicensed personnel, noted that the law "reflects the practical reality that most insulin administered outside of hospitals and other clinical settings is in fact administered by laypersons." *American Nurses Assn. v. Torlakson*, 57 Cal. 4th 570, 575 (2013). The court later went on to say, "The routine administration of insulin outside of hospitals and clinical settings, the [American Diabetes] Association observes, does not require substantial scientific knowledge or technical skill and is, in fact, typically accomplished by the patients themselves, including some children, or by friends and family members." *Id.* at 582. OCR agrees that 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).

A Florida administrative hearing officer evaluated the competing evidence presented by a family of a child with diabetes and a school district that refused to train unlicensed personnel to administer insulin, and found the evidence that insulin could be safely administered by such personnel to be persuasive. The hearing officer concluded:

The totality of the evidence leads to the conclusion that the administration of insulin requires a certain maturity and carefulness, as well as specific training in how to measure blood glucose levels, caloric intake, and the precise dosage to be administered. The science of this process has, however, been refined to the point where parents and other family members routinely administer insulin to children who are unable to self-administer, Children as young as eight and nine are allowed by schools to self-administer insulin albeit probably with supervision by a UAP.

Without doubt the administration of insulin requires serious attention, appropriate training, good medically established procedures. and close nursing supervision. I do not think that one could deny that it would be safer for insulin to be administered by a trained medical professional. That said, I do not think that Respondent has overcome Petitioner's evidence that insulin is routinely and safely administered to children with diabetes by individuals who are not licensed medical professionals.

Sch. Bd. of Pinellas County, 58 IDELR 59 (Fla. State Educational Agency 2011). *See also Hawaii State Educational Agency*, Case No. 01-34 (Hawaii State Educational Agency 2001) (although a nurse may be the preferable choice to administer medications, any individual properly trained could administer glucagon). One case to consider the issue (in the context of an after-school care program, rather than an educational program) found that the plaintiff had raised a triable issue of fact as to whether training unlicensed staff to administer glucagon was reasonable, although the court ultimately held that the parents could not meet the deliberate indifference standard required to recover damages under Section 504. *A. P. v. Anoka-Hennepin Indep. Sch. Dist.*, 538 F. Supp. 2d 1125, 1142-43 (D. Minn. 2008).

Many complaint resolutions approved by OCR also contemplate that other trained staff persons may be used. *See, e.g., Duval County (FL) Pub. Schs.*, Complaint No. 04-08-1278, 113 LRP 27887 (OCR 2013) (policies would be revised to provide that trained staff, in addition to nurses, could administer insulin); *Big Horn (WY) School District #2*, Complaint No. 08-13-

1165, 61 IDELR 236 (OCR 2013) (in resolving allegations that district refused to train any staff other than the school nurse to provide diabetes care, district agreed to train four staff members to provide care in the nurse's absence); *Cobville (WA) Sch. Dist. No. 115*, Complaint No. 10-09-1363, 110 LRP 49214 (OCR 2009) (adequate number of school staff to be trained); *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, 102 LRP 3258 (OCR 1999).

School districts needing to find volunteers to be trained to provide diabetes care should consider communicating with all staff members to see if any of them have interest in helping; many staff will have experience with or connections to diabetes and will be willing to do so. Recruitment of staff should stress that training will be provided and that no one will be coerced into providing the care. See, e.g., Ohio Rev. Stat. § 3313.7112(c)(2) (describing content of notice that school may send to staff). But see *Everett (WA) Sch. Dist. No. 2*, Complaint No. 10-06-1181, 108 LRP 42433 (OCR 2007) (principal's efforts to find volunteers by asking several staff members were sufficient, even though he refused to allow the parent to distribute written notices to all staff).

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/living-with-diabetes/parents-and-kids/diabetes-care-at-school/safe-at-school/safe-at-school-statement-of.html>.

10.3 What is the position of leading health organizations on diabetes care by unlicensed personnel?

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:

Nonmedical school personnel who receive ... training, called “trained diabetes personnel” in this guide, can be supervised by the school nurse to perform diabetes care tasks safely in the school setting. In your school, these individuals may be known as unlicensed assistive personnel, assistive personnel, paraprofessionals, or trained nonmedical personnel. Assignment of diabetes care tasks, however, must take into account State laws that may be relevant in determining which tasks may be performed by trained diabetes 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.

Notes

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 School campaign, which states that non-medical personnel can provide diabetes care. These organizations include: American Association of Diabetes Educators, American Dietetic Association, Pediatric Endocrine Society, Pediatric Endocrinology Nursing Society, Children with Diabetes, and Juvenile Diabetes Research Foundation.

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

Delegation of care tasks involves allowing an unlicensed person to perform a task under the authority and supervision of a nurse or other health care professional, who generally retains responsibility and accountability for how the task is performed. Delegation of diabetes care tasks is one mechanism used in some states to permit unlicensed school personnel to perform diabetes care (see Question 10.5). 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 *Assuring Safe, High Quality Health Care in Pre-K through 12 Educational Settings* (March 16, 2007). 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.state.ia.us/nursing/images/pdf/delegation1.pdf>.

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

Since state laws restrict which individuals can perform health care tasks, particularly in a professional setting, some mechanism is generally needed in state law to permit school personnel other than nurses to administer medication and provide some other types of diabetes care. While most states now allow unlicensed school personnel to perform most or

all diabetes care tasks, the manner of authorizing such care varies widely, and advocates need to be aware of the law in their state.

Advocates should be aware of the law in their state, as this can have a significant effect on what arrangements can be made for care in school.

Notes

The Association has information on state school laws in all fifty states, including citations to statutes, regulations, and court decisions, available at <http://www.diabetes.org/living-with-diabetes/parents-and-kids/diabetes-care-at-school/legal-protections/state-laws-and-policies.html>. This information on state laws focuses on administration of insulin and glucagon, along with self-care; other tasks, such as blood glucose monitoring and carbohydrate counting, are generally not considered to be restricted to nurses in the schools.

Some states permit delegation of diabetes care tasks such as insulin administration, while others allow unlicensed personnel to perform these tasks without requiring explicit delegation by a nurse. The first question to be asked is whether the particular diabetes care task falls within the scope of practice of nurses and other health care professionals; those that do not may be performed by any school employee. Even for tasks that generally do fall within the scope of practice of nurses, such as administration of medications, exceptions to the statutes governing the practice of nursing often permit them to be performed in the schools by non-nurses. Diabetes medications may be covered by general exceptions, such as those permitting care in an emergency, or by specific provisions relating to diabetes care in schools.

Some states have adopted comprehensive statutory schemes tailored to the school setting. See, e.g., Ohio Rev. Code Ann. § 3313.712, Ga. Code Ann. § 20-2-779. Other states have a simpler statutory provision permitting schools to train unlicensed personnel to administer insulin and glucagon, without detailed provisions regarding training and other issues. See, e.g., Ariz. Rev. Stat. § 15-344.01(C). Still others can be read to permit unlicensed personnel to administer insulin and/or glucagon through general provisions not related to diabetes, either by permitting delegation of care or through an exception to nursing scope of practice. For example, some states provide that care in an emergency situation is not subject to nursing regulations; this should be read to permit administration of glucagon by school personnel. (On the other hand, some school districts or even state nursing authorities may not accept such general authorizations; they may believe, for example, that authorization for delegation of medication administration should not include subcutaneous injections such as insulin, even though this distinction has no basis in state law).

Courts may also step in to interpret state law to permit unlicensed personnel to administer medications where there is no explicit authorization in state law. For example, in *American Nurses Assn. v. Torlakson*, 57 Cal. 4th 570 (2013), the California Supreme Court interpreted the state Education Code and Nursing Practice Act to authorize insulin administration by such personnel with parent consent and physician authorization. The court held that the Education Code generally authorized medication administration by both nurses and unlicensed personnel with physician authorization and parent consent, and nothing in the statute or regulations excluded insulin from this provision. *Id.* at 580 (citing Cal. Educ. Code § 49423(a)). The court then held that an exception to the state's Nursing Practice Act exempted from the scope of nursing practice acts performed in carrying out the orders of a physician, and held that insulin administration in the schools pursuant to physician orders fell within this exception. *Id.* at 583-584 (citing Cal. Bus. & Prof. Code § 2727(e)).

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 Schs.*, 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). In *District of Columbia (DC) Pub. Charter Schs.*, Complaint No. 11-12-1419 *et al.*, 60 IDELR 231 (OCR 2012), OCR found that many charter schools in the District of Columbia were violating Section 504 because they did not train staff other than nurses to provide care, and could not provide any care when a nurse was not available.

Where the school nurse or other trained person is absent or unavailable, a back-up is required. See *Rudyard (MI) Area Schs.*, Complaint No. 15-14-1177, 115 LRP 10469 (OCR 2014) (school would identify to parents an alternate diabetes care provider who would provide care when the school nurse was not present in the school); *Prince George's County (MD) Pub. Schs.*, Complaint No. 03-14-1025, 114 LRP 36274 (OCR 2014) (resolution agreement required district to convene a new 504 meeting to address how blood glucose monitoring and other care would be provided when the nurse was absent); *Big Horn (WY) Sch. Dist. #2*, Complaint No. 08-13-1165, 61 IDELR 236 (OCR 2013) (resolution agreement addressing complaint that school had no staff available to provide care when the nurse was absent and required parent to provide the care provided that school would train four staff members to provide care when the nurse was not available); *District of Columbia (DC) Pub. Schs.*, Complaint No. 11-12-1133, 112 LRP 50236 (OCR 2012) (resolution agreement required district to train at least two staff members in diabetes care at each school attended by a student with diabetes, rather than sending students home when no nurse was available); *Lee County (FL) Sch. Dist.*, Complaint 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"); *Pryallup (WA) 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 designate a 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) (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 (NY) 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"); *West Las Vegas Pub. Schs.*, Complaint No. DPH 0607-13, 107 LRP 33209 (N.M. State Educational Agency 2007) (student's health plan was

inadequate because the school nurse was not always available on campus and backup staff did not know how to administer insulin or glucagon).

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 Sch. District*, Complaint No. 1984/02-03, 103 LRP 9599 (Pa. State Educational Agency 2003). *But see C.T.L. v. Ashland Sch. Dist.*, 743 F. 3d 524 (7th Cir. 2014) (no violation of section 504 even though district refused to permit unlicensed staff to provide care, because parents could identify only one instance when the nurse was not present to provide care); *Middletown (OH) City Sch. Dist.*, Complaint No. 15-10-1005, 110 LRP 59013 (OCR 2010) (district had an adequate back up plan to provide care using other nurses when the full time nurse was absent, even though parent had concerns about substitute nurses); *Lake Station Community Schs.*, Complaint No. CP 015-2012, 112 LRP 12094 (Ind. State Educational Agency 2011) (no violation where one staff member trained to provide care was on site at all times, even when most staff were at an off-site event). 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.