SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of this _____ day of July, 2007 by K.C., by and through Erica C., her guardian; A.A., by and through Stacey A., her guardian; M.C., by and through Laurie C., her guardian; K.F., by and through Shereé F.,her guardian and the American Diabetes Association ("Association"), an organization, on the one hand (collectively "Plaintiffs") and Jack O'Connell, in his official capacity as Superintendent of Public Schools for the State of California; The State Board Of Education Of The State Of California; and the California Department Of Education ("CDE") on the other hand (collectively "Defendants");

WHEREAS, on October 11, 2005, Plaintiffs filed a Civil Rights Complaint for Declaratory and Injunctive Relief (Class Action) ("the Complaint") against Defendants in the United States District Court for the Northern District of California ("this Court"), Case No. C05-4077-MMC ("the Action"); and

WHEREAS, the Complaint alleges that, in violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"), Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq. ("ADA"), the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq. (amended by Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, Title I) ("IDEA") and applicable federal regulations, Defendants have failed to ensure that all students with diabetes in grades Kindergarten through Twelve who are within the jurisdiction of California's public schools receive the diabetes health related services they need to safely attend school and have failed to investigate

and monitor school districts' compliance with federal law requiring such services; and

WHEREAS, the Complaint seeks to compel Defendants to take appropriate action to ensure that every eligible child with diabetes in California public schools receives appropriate diabetes health related services necessary to ensure a free appropriate public education in the least restrictive environment ("FAPE") as required by the IDEA and Section 504 as well as related federal and state laws and regulations; and

WHEREAS, Defendants deny any liability with respect to the allegations made in the Complaint and affirm that nothing in this Agreement constitutes an admission by any of the Defendants of any such wrongdoing, or liability, or otherwise constitutes a violation of the IDEA, Section 504, the ADA, and/or other related federal and state laws and regulations; and

WHEREAS, the Plaintiffs and Defendants desire to resolve the Action and believe that its resolution, as detailed in this Agreement, is in the public interest.

NOW, THEREFORE, for and in consideration of the mutual understandings contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Legal Advisory. Within 30 days of the Effective Date as defined in paragraph 26 below of this Agreement, CDE will issue the statement attached as

Exhibit A, entitled *"Legal Advisory on the Rights of Students with Diabetes in California's K-12 Public Schools"* ("Legal Advisory").

a. In General. The Legal Advisory summarizes the rights of eligible students with diabetes to receive FAPE pursuant to the IDEA and Section 504/ADA as well as state anti-discrimination statutes while attending school and school-sponsored activities which exist at the time of the execution of this Settlement Agreement. It is intended to be a compilation of those rights, and it neither enlarges nor detracts from same. Within 30 days of the Effective Date of this Agreement, CDE will distribute this Legal Advisory, by mail and electronic mail, to all California K-12 public school districts (Local Education Agencies ("LEAs") or "districts") and Special Education Local Plan Areas ("SELPAs"). CDE will also post the Legal Advisory on its website within 30 days of the Effective Date of this Agreement. The legal requirements referenced in the Legal Advisory will be followed in all CDE monitoring, complaint resolution, and technical assistance activities, as set forth below at paragraphs 2, 3, 4, 5, 6, and 8.

b. Amendments/Modifications. CDE will maintain the Legal Advisory as an official document and comply with the terms of this paragraph for a period of not less than two and one-half years from the Effective Date of this Agreement. If any of the legal requirements referenced in the Legal Advisory change, then CDE may amend the Legal Advisory as set out in this paragraph. At least 30 days before any such amendment(s) are made, the Parties shall meet and confer on any proposed amendment(s). If Plaintiffs do not agree with the CDE's proposed amendment(s), then Plaintiffs will be entitled to file a motion with the Court opposing the amendment(s) as not being required by a change in law and the proposed amendment(s) shall not go into effect until ruled upon by the Court.

For an additional two year period, should the CDE wish to amend the Legal Advisory to reflect changes in the law, the CDE agrees that it will first meet and confer with Plaintiffs' counsel not less than 30 days before it makes any such amendment(s). In addition, the Legal Advisory may be amended by agreement of the Parties.

2. Training. As part of its regularly scheduled on-going training and in-service activities, CDE will inform LEAs and SELPAs of their obligations under federal and state law to identify and provide FAPE to all eligible students with diabetes consistent with the Legal Advisory. CDE will post all such training materials on its web site (http://www.cde.ca.gov/).

3. Complaint Procedures–IDEA and Section 504/ADA. CDE will investigate and act upon pending and future compliance complaints and appeals filed pursuant to Title 5, California Code of Regulations (5 CCR), sections 4600-4670 and 4900-4962 in general and sections 4650(a)(6) and 4650(a)(7) in particular. When appropriate and with parent/guardian consent, Association and DREDF will give CDE 15 calendar days notice in order to resolve a complaint on an informal basis prior to filing a formal Title 5 administrative complaint. The 15 days will begin to run upon receipt by the CDE of notice provided by DREDF and/or the Association. Timelines for resolution of the complaint will be governed by Title 5, section 4662 and will start to run when a formal complaint is filed.

4. Technical Assistance–IDEA and Section 504/ADA. CDE will provide any technical assistance that it conducts to individuals, agencies and organizations in a manner which is consistent with the legal requirements referenced in its Legal Advisory regarding compliance with IDEA and Section

504/ADA. See generally 5 CCR sections 4900 and 4902. In providing technical assistance to any individual, agency, organization, SELPA, or LEA regarding services required to be provided for students with diabetes who are eligible for services under the IDEA and/or Section 504, CDE will reference the Legal Advisory and its location on the website and use it as the basis for the technical assistance it gives. CDE also will reference the National Diabetes Education Program guide entitled *"Helping the Student with Diabetes Succeed: A Guide for School Personnel"* ("NDEP guide") that can currently be accessed on the CDE website (http://www.cde.ca.gov/ls/he/hn/diabetesmgmt.asp). CDE will maintain written records of each such request for technical assistance.

5. IDEA Compliance and Monitoring Programs. CDE will monitor California's LEAs in a manner consistent with its normal monitoring processes and schedules to ensure ongoing compliance with their obligations under the IDEA to conduct child find, evaluate for eligibility, and provide FAPE to IDEA-eligible children with the disability of other health impairment (OHI) based upon chronic or acute health problems, including diabetes as required by 34 C.F.R 300.8, subdivisions (a) and (c) (hereinafter "IDEA-eligible children with diabetes") as discussed in the Legal Advisory. Specifically, CDE will monitor compliance in its statewide compliance and monitoring systems as follows:

a. Uniform Complaint Resolution System.

i. CDE will accept for direct intervention IDEA complaints on behalf of children with diabetes by individuals, including interested third parties, public agencies, or organizations ("complainant") as required by 34 C.F.R. sections 300.151 - 300.153 and 5 CCR

sections 4600(b) and 4650(a)(7). CDE will conduct compliance complaint investigations according to 34 C.F.R. sections 300.151-300.153. As discussed in the Legal Advisory, compliance complaints can be filed regarding the identification, evaluation, placement, or provision of a FAPE including the provision of special education and related services to students with diabetes. 34 C.F.R. section 300.153(a). For example, a complainant may file a complaint alleging that an LEA's policies and/or practices violate the right of a student alleging IDEA eligibility to receive an individualized assessment for eligibility for special education, or the right of an IDEA-eligible child with diabetes to be provided with diabetes health related services pursuant to the IEP process, and/or any dispute arising out of the IEP process. When a complaint under the IDEA is filed regarding the disability OHI involving a student with diabetes, CDE will investigate policies and practices related to the provision of any required related health care services as well as the relevant factual circumstances of the child with diabetes who is IDEA-eligible or alleging IDEA eligibility, if such factual circumstances are relevant. Complaints alleging systemic violations need not identify individually affected students so long as the complaint contains sufficient facts to support a claim that there is a violation of federal or state law (such as an allegation that a policy or practice of general applicability is inconsistent with the legal standards referenced in the Legal Advisory). Where an unlawful policy or practice of general applicability is alleged to exist with sufficient factual specificity, such as those supported by parent statements of representations made to them, oral or written policy, memorandum or forms, it is not necessary to identify a specific student in the district.

ii. CDE will investigate and issue compliance reports within timeframes required by Federal Regulations and Title 5 Uniform Complaint Procedures and will include appropriate corrective actions, as applicable, such as:

1. Ensuring that LEA policies and procedures provide for the following:

a. the LEA conducts "child find" activities to ensure IDEA evaluation of students with disabilities, including students with diabetes;

b. diabetes medication administration services, based on a physician's written orders, are specified by IEP teams for IDEA-eligible students with diabetes whenever needed at school and school-sponsored activities (including field trips and other extracurricular activities), including, but not limited to, administration of insulin and glucagon;

c. parents/guardians are not required by an IEP team or LEA to provide diabetes health related services to IDEA-eligible children with diabetes during school hours or school sponsored activities, or to agree to any particular placement or waiver of any rights, as a condition of receiving such services;

d. school placement decisions are not made by IEP teams or LEAs with regard to IDEA-eligible children with diabetes on the basis of any blanket policy or practice of general applicability that diabetes health care services will only be provided at certain schools or sites in the LEA;

e. decisions about the provision of related health care services to IDEA eligible children with diabetes are not made by an IEP team or LEA on the basis of any blanket policy that fails to take into account the individual needs of an IDEA-eligible child with diabetes; and,

f. IEP teams ensure the evaluation of and provision of related health services to IDEA-eligible children with diabetes.

2. Requiring, as appropriate, that any LEA, which has been found by CDE pursuant to its administrative discretion to be noncompliant with federal and/or state statutes and/or regulations as set forth in the Legal Advisory, provide CDE with a list of all known or identified children with diabetes attending the LEA and, for each such student, data that lists (1) which special education and/or health related services are required for such student according to his or her IEP; (2) if no services have been provided, the reasons for the decision(s) not to provide

same; and (3) the plan for the provision of services, e.g., IEP/IDEA and/or medical management plan. In the event CDE finds students who have not been provided with an IEP due to failures of the LEA in child find activities including referrals and initial assessment for possible special education programs and services, CDE will require the LEA to provide assurances that children with diabetes are being offered IDEA evaluations and that IDEA-eligible children are provided with required services by IEP teams in conformity with the legal standards referenced in the Legal Advisory, including the documentation of same in an IEP as appropriate.

b. State Monitoring Reviews. CDE will review school LEA policies and procedures (including forms) relating to services provided to children with diabetes who allege or have been found eligible for IDEA with the disability of OHI or another recognized disability involving diabetes in all Special Education Self Reviews (SESR), Verification Reviews (VR), and Facilitated District Reviews (FR). CDE will revise its monitoring tools, including "Verification of Policies and Procedures," "Verification of Student Records," and "Parents Questionnaire" forms as attached in Exhibit B. CDE will ensure that LEA policies and procedures (including forms) conform to the legal standards referenced in the Legal Advisory to assure FAPE under IDEA.

c. Ongoing Analysis of Compliance History and Trends. CDE will identify allegations and findings of non-compliance with the procedural safeguards and other rights of IDEA eligible children with the disability of OHI or another recognized disability involving diabetes in its existing system of

tracking IDEA compliance issues and trends for two years from the effective date of this Settlement Agreement. This analysis will be based on an evaluation of calls to the CDE parent information line, compliance complaints records, and results of due process mediations and hearings. CDE will maintain a record of such identified allegations and findings of non-compliance, including the source of the allegations or findings as well as any actions taken by CDE in response to any identified allegations or findings of non-compliance with the IDEA. In addition, for the next two years until the completion of the current four-year review cycle CDE will continue to maintain all records and logs pursuant to this Paragraph of the Agreement and will provide them to Plaintiffs upon request within 30 days if practicable.

d. Parent Input Meetings. CDE will seek information from parents within an LEA regarding 1) health issues related to evaluation and 2) the provision of required health related services as defined in the IEP of children who are or who are alleging IDEA eligibility with the disability of OHI or another recognized disability involving diabetes at the parent meetings it regularly conducts as part of the verification review process to assist LEAs in highlighting or identifying LEA strengths and weaknesses. CDE will reference the Legal Advisory at each of its parent input meetings. CDE will maintain a record of input received from parents regarding allegations of legally noncompliant services to IDEA-eligible children with diabetes and/or failure to comply with the legal standards referenced in the Legal Advisory.

e. Targeted Verification Reviews. For a period of two years following the effective date of this agreement, Plaintiffs' counsel have the right to submit data on any LEA in California where Plaintiffs' counsel have a

stated factual reason, such as statements from parents or school personnel, correspondence, policies, forms, and/or other documents, alleging that due to an LEA's policies and/or practices, 1) children with diabetes are not being evaluated for IDEA eligibility according to legal standards referenced in the Legal Advisory, or 2) IDEA-eligible children with diabetes are not being provided with appropriate special education and/or related services that are compliant with the IDEA. CDE will include the recommended LEA data in the verification review selection process it selects for each of the next two years upon receipt of documentation evidencing those LEA policies and/or practices that are in violation of IDEA, unless CDE finds the documentation insufficient. LEAs which meet all of CDE's verification review criteria will be selected for review.

6. Section 504/ADA Complaint Resolution and Technical Assistance. CDE will enforce Section 504/ADA and state nondiscrimination rights through the UCP Complaint Resolution System and technical assistance activities described below.

a. Uniform Complaint Resolution System.

i. CDE will accept Section 504 complaints alleging discrimination, including failure to provide FAPE, for direct intervention as required by 5 CCR section 4650(a)(6) filed by individuals, third parties, public agencies or organizations on behalf of students with diabetes eligible or alleging eligibility under Section 504 and/or state law and investigate such complaints in conformity with the applicable Title 5 standards as established by the three required elements of such

complaints established by section 4650(a)(6). Complaints alleging systemic violations need not identify individually affected students so long as the complaint contains sufficient facts to support a claim that there is a violation of federal or state law (such as an allegation that a policy or practice of general applicability is inconsistent with the legal standards referenced in the Legal Advisory). Where an unlawful policy or practice of general applicability is alleged to exist with sufficient factual specificity, such as those supported by parent statements of representations made to them, oral or written policy, memoranda or forms, it is not necessary to identify a specific student in the district. CDE will also accept and investigate appeals from LEA decisions as provided in 5 CCR sections 4632-4633.

ii. Upon receipt of such a complaint or appeal, CDE will:

Except as otherwise provided in 5 CCR section 4633, investigate and issue investigation reports within timeframes required by 5 CCR section 4662, including appropriate corrective actions requiring conformity with the legal requirements referenced in the Legal Advisory when appropriate to remedy non-compliance, such as:

1. Ensuring that LEA policies and procedures provide for the following:

a. the LEA conducts "child find" activities pursuant to 34 C.F.R. section 104.32 in order to ensure Section 504 evaluations of students with diabetes;

b. diabetes medication administration services, based on a physician's written orders, are specified by Section 504 teams for 504-eligible students with diabetes whenever needed at school and school-sponsored activities (including field trips and other extracurricular activities), including, but not limited to, administration of insulin and glucagon;

c. parents/guardians are not required by a Section 504 team or LEA to provide diabetes health related services to 504-eligible children with diabetes during school hours or school sponsored activities, or to agree to any particular placement or waiver of any rights, as a condition of receiving such services;

d. school placement decisions are not made by Section 504 teams or LEAs with regard to 504-eligible students with diabetes on the basis of any blanket policy or practice of general applicability that diabetes health care services will only be provided at certain schools or sites in the LEA;

e. decisions about the provision of related health care services to 504-eligible students with diabetes are not made by a 504 team or LEA on the basis of any blanket policy that fails to take into account the

individual needs of an 504-eligible student with diabetes; and

f. Section 504 teams ensure the evaluation for and provision of related health services for 504-eligible children with diabetes.

2. Requiring, as appropriate, that any LEA, which has been found by CDE pursuant to its administrative discretion to be noncompliant with federal and/or state statutes and/or regulations as set forth in the Legal Advisory, provide CDE with a list of all known or identified students with diabetes attending the LEA, and for each such student data that lists (1) which special education and/or health related services have been provided to each such student; (2) if no services have been provided, the reasons for the decision(s) not to provide same; and (3) the plan chosen for the provision of services/ accommodations, e.g., IEP/IDEA, Section 504 Plan; and/or medical management plan. In the event CDE finds students who have not been provided with Section 504 Plans, due to failure of the LEA in child find activities including referrals and initial evaluation for possible 504 accommodations, CDE will require the LEA to provide assurances that students with diabetes are being offered Section 504 evaluations and that eligible students are provided with required accommodations and services by 504 teams in conformity with the legal

standards referenced in the Legal Advisory, including the documentation of same by means of 504 plan as appropriate.

b. Technical Assistance. As discussed in paragraph 4 above, CDE will utilize its existing technical assistance services to inform LEAs of their obligations under Section 504/ADA and related state law to provide a FAPE to 504 eligible students with diabetes. See generally 5 CCR sections 4900, 4902, and 4962.

7. Enforcement. CDE agrees that it will enforce compliance as authorized by 5 CCR sections 4670 and 4962 as well as its Quality Assurance Process ("QAP").

8. Monitoring and Reporting Provisions. CDE agrees that all changes and revisions to its statewide monitoring system needed to comply with the foregoing terms will be completed within 120 days. For a period of two years following the implementation of the foregoing changes and revisions to the statewide monitoring system, the CDE will meet with Plaintiffs' counsel to report on the following monitoring activities two times per year, as follows: 1) March 28, 2008; 2) September 30, 2008; 3) March 30, 2009; and 4) September 30, 2009. For the period ending March 28, 2008, CDE will provide documentation from 30 days after the date of the execution of the Settlement Agreement to March 28, 2008. At these meetings, CDE will provide Plaintiffs' counsel with a summary of the following information:

a. Description of technical assistance services provided pursuant to CDE's obligations to enforce the procedural safeguards of IDEA-eligible

children with diabetes and Section 504 eligible students with diabetes, including a description of all technical assistance provided and all requests made to CDE for technical assistance relating to the procedural safeguards and other rights of identified students with OHI, including IDEA-eligible children with diabetes and Section 504 eligible students with diabetes as well as a summary of the type of individual (e.g., parent, advocate, teacher, etc.), agency, organization, SELPA or LEA to whom such technical assistance is provided. CDE will make available all related materials developed by or with the cooperation of CDE and published by any means, including the Internet, which contain technical assistance provided by CDE or any representative or consultant to CDE on any matter related to the procedural safeguards and other rights of IDEA-eligible children with diabetes and Section 504 eligible students with diabetes 14 days prior to the meeting.

b. Progress on implementation of an effective state-level monitoring system described above, including:

i. Data regarding UCP complaints related to students with diabetes received during the reporting period, including copies to be made available of each of the following: 1) complaints, 2) CDE compliance investigation reports, 3) CDE determinations made pursuant to 5 CCR section 4633, 4) requests for reconsideration and CDE's responses, and 5) all documents related to actions taken by CDE to ensure corrective actions issued are carried out by LEAs (noting that information that identifies a particular student will be redacted pursuant to CDE's administrative discretion in order to avoid any violations of federal or state statutes governing student privacy

rights such as the Family Education Rights and Privacy Act, 20 U.S.C. section 1232g) (FERPA), the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d-2 (HIPAA), and the California Education Code);

ii. Making available CDE's Check List approval pertaining to each SELPA's annual service plan that may relate to the provision of health related services to IDEA-eligible students with diabetes;

iii. Making available a summary of CDE Monitoring Reviews that present any noncompliant finding from the Item Table (Exhibit B) regarding IDEA-eligible students with diabetes, within the SESR, FR, and VR as described in paragraph 5.b., and enforcement actions a described in paragraph 7, including:

1. List of LEAs which have been subject to enforcement from the Effective date of this Agreement to date of meeting (and thereafter between each succeeding meeting dates), related to findings regarding the disability of OHI, including IDEA-eligible children with diabetes;

2. Any copies of those LEA policies related to diabetes care, including medication administration policies, that have been gathered by CDE as part of its compliance activities;

3. A summary of any information compiled by CDE pursuant to parent input meetings as described in paragraph

5.d. above, and a description of actions taken by CDE in response to any allegations or findings of non-compliance that were brought to CDE's attention at such meetings as related to identified students with OHI, including IDEA-eligible students with diabetes.

9. Release of Defendants. Except for the executory obligations hereunder, Plaintiffs, on behalf of themselves and their guardians ad litem, parents, heirs, predecessors, successors, agents, affiliates, parent and/or subsidiary entities, successors and assigns, servants, employees, officers, directors, and assigns hereby release and forever discharge Defendants and their assigns, successors, agents, servants, employees, elected officials, Board members, officers, superintendents, and attorneys, from any and all claims, including but not limited to any claims for losses, damages, causes of action, and/or liabilities, known or unknown, asserted or unasserted, liquidated or unliquidated, in any manner which arise from the allegations of the Action, occurring up until the Effective Date of this Agreement. This release does not apply to actions concerning the resolution of future and pending Title 5 complaints or the identification and correction of noncompliance by LEAs or SELPAs. Further, it does not bar Plaintiffs from pursuing any relief against CDE in state court, with the exception that for two years following the Effective Date of this Agreement, Plaintiffs shall not bring a state court action on the issue of whether CDE's position on state law set forth in section IV of the Legal Advisory is a correct interpretation of state law. In addition, Plaintiffs agree to meet and confer with the CDE prior to initiating such state court litigation.

10. Dispute Resolution Procedure. In the event of any dispute arising out of or related to any alleged material breach of the Agreement by the CDE, Plaintiffs shall notify counsel for the CDE in writing of the alleged material breach and the requested remedy. Upon receipt of this notification, CDE will have 30 days to respond and engage in a meet and confer process with Plaintiffs in order to resolve the dispute. In the event that a resolution cannot be achieved, Plaintiffs may file a motion alleging a material breach of this agreement in this Court. "Material breach" is defined as any significant noncompliance with the terms of this agreement, including a refusal to distribute the Legal Advisory as required by paragraph 1(a), any change to or modification of the Legal Advisory except as specified in paragraph 1(b), any significant noncompliance with the complaint resolution provisions (paragraphs 3, 5, 6, 7), monitoring and reporting provisions (paragraphs 5, 8), or any refusal to meet with Plaintiffs' counsel as specified in this agreement. The remedy available to Plaintiffs under this paragraph is injunctive relief ordering compliance with the agreement if a material breach is found; it does not include the remedy of contempt as a sanction. Nothing in this agreement limits the ability of Plaintiffs to seek redress in state court under principles of contract law for any alleged breach of this agreement not covered in this paragraph.

11. Compromise Between the Parties. This Agreement represents a compromise between the parties that was reached in order to ensure that health care that is provided to students with diabetes in California elementary and secondary schools is compliant with the legal standards of the Legal Advisory but shall not be construed as an admission by plaintiff American Diabetes Association that it has in any manner changed its position on how diabetes care can and should best be provided in the school setting as reflected in its Position

Statements "Standards of Medical Care in Diabetes" and "Diabetes Care in the School and Day Care Setting," published in Diabetes Care 30, Supplement 1 (January 2007) at S4-S41, S66-S73, and the National Diabetes Education Program guide entitled "Helping the Student with Diabetes Succeed: A Guide for School Personnel" (NDEP guide), including, but not limited to, the American Diabetes Association's position that insulin can be safely administered by trained non-medical school staff.

12. Obligations Under Agreement Survive Releases. Notwithstanding any other provision in the Agreement to the contrary, the obligations arising under this Agreement are not affected by and shall survive the releases granted in this Agreement.

13. Attorneys' Fees/Costs. Within 60 days of the Effective Date of this Agreement, Defendants agree to pay $400,000 to the Disability Rights Education and Defense Fund, co-counsel for Plaintiffs in this Action, for Plaintiffs' attorneys' fees and costs, and to pay to Reed Smith, LLP, co-counsel for Plaintiffs in this Action, for their costs in their prosecution of this matter, the total sum of $30,000. The parties acknowledge that Reed Smith, LLP has acted in a pro bono capacity with respect to achieving this Agreement and is waiving a claim for potential attorneys' fees in excess of $1,800,000 in order to obtain this settlement. This provision for the payment of legal fees and costs is subject to the customary state approval processes, including approval by the Department of Finance. Plaintiffs hereby release any further claims to fees or costs incurred in the prosecution of this Action to date.

14. Notification to Court of Settlement and Dismissal of Action. Within five [5] court days of execution of this Agreement by the parties, counsel for Plaintiffs shall file a Notice of Settlement, a Request for Dismissal of Action, and the Proposed Order of dismissal attached as Exhibit C with the United States District Court for the Northern District of California, with this Court retaining jurisdiction for two and one-half years from the effective date of this Agreement, solely to rule on any motion filed pursuant either to Paragraph 1.b. or to Paragraph 10, of this agreement.

15. No Admission. The parties acknowledge that the purpose of this Agreement is to avoid the delay of protracted litigation and the expenses associated therewith. This Agreement is the result of a compromise of disputed claims. Throughout this Action, Defendants have denied any liability and/or fault. In executing the Agreement, no party to this Agreement shall be deemed to have admitted any fault or liability in connection with any matter or thing. Likewise, by entering this Agreement Plaintiffs do not waive any claims not expressly settled herein.

16. Other Documents. The Parties agree to execute such other documents and to take such other and further action as may be necessary to finalize and perform this Agreement.

17. Successors in Interest. This Agreement is binding upon, and inures to the benefit of the Parties, their successors, agents, servants, employees, officers, attorneys and assigns.

18. No Oral Modifications. In no event will any waiver, release, alteration or modification of any of the terms of this Agreement be valid unless it is in writing and signed by all parties. This Agreement cannot be modified or terminated oral.

19. Severability. If any term or provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the validity of the remaining terms shall not be affected.

20. Counterparts. This Agreement may be signed in one or more counterparts, each copy having the same force and effect as an original, and shall be effective upon its execution by the parties.

21. Captions and Interpretation. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. This Agreement is mutually drafted, and no provision in this Agreement is to be interpreted for or against either Party because that Party or its legal representative drafted such provision.

22. Number and Gender. Whenever required by the context hereof, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular, and the masculine, feminine and neutral genders shall each be deemed to include the other.

23. Entire Agreement. This Agreement, including Exhibits A and B, constitutes the entire agreement between the parties pertaining to the subject

matter hereof and fully supersedes any and all prior understandings, representations, warranties and agreements between the parties pertaining to the subject matter hereof. The consideration recited herein is the sole, complete and entire consideration for the releases, and there is no agreement, oral or written, express or implied, whereby the undersigned are to receive at any time or in any event or upon the happening of any contingency or upon the development or the discovery of any fact, circumstance or condition, any further consideration of any kind whatsoever from any party.

24. Voluntary Agreement. Each of the Parties further represents and declares that it has carefully read this Agreement and knows its contents and that each Party signs the same freely and voluntarily.

25. Facsimile Signatures. This Agreement may be executed by facsimile signatures, and any such signature should have the same force and effect as an original signature.

26. Effective Date. The "Effective Date" of this Agreement shall be July__, 2007.

27. Statutory References. The reference to each statute or regulation in this Settlement Agreement is to that statute or regulation in effect as of the Effective Date of this Agreement.

28. Notices. Any written notice under this Agreement shall be delivered as follows:

If to the Defendants:

Marsha A. Bedwell

Amy Bisson Holloway
Allan H. Keown
Defendants Jack O'Connell, California Department of Education, and the State Board of Education
1430 N. Street, Suite 5319
Sacramento, CA 95814-5901

If to Plaintiffs:

Arlene Mayerson (SBN 79310)
Larisa Cummings (SBN 131076)
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, INC.
2212 Sixth Street
Berkeley, CA 94710
Telephone: 510.644.2555
Facsimile: 510.841.8645

James M. Wood
Kenneth J. Philpot
Reed Smith LLP
1999 Harrison Street, Suite 2400
Oakland, CA 94612-3572
Facsimile: (510) 273-8832
Email: jmwood@reedsmith.com
kphilpot@reedsmith.com

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date(s) set forth below.

FOR PLAINTIFFS:

Dated: _____

_____
K.C., by and through Erica C., her guardian

Dated: _____

_____
A.A., by and through Stacey A., her guardian

Dated: _____

_____
M.C., by and through Laurie C., her guardian

Dated: _____

_____
K.F., by and through Shereé F.,her guardian

Dated: _____

American Diabetes Association

_____

By_____

Its_____

FOR DEFENDANTS:

Dated: July 12, 2007

_____
Jack O'Connell

Dated: 7/16/07

The Board of Education of the State of California

By ROGER MAGYAR

Its EXECUTIVE DIRECTOR

Dated: July 12, 2007

California Department of Education

By

Its

EXHIBIT A

LEGAL ADVISORY ON RIGHTS OF STUDENTS WITH DIABETES IN CALIFORNIA'S K-12 PUBLIC SCHOOLS

Pursuant to the recent Settlement Agreement in *K.C. et al. v. Jack O'Connell, et al.*, Case No. C-05-4077 MMC, in the United States District Court for the Northern District of California, the California Department of Education (CDE) has agreed to remind all California school districts and charter schools of the following important legal rights involving students with diabetes who have been determined to be eligible for services under either the Individuals with Disabilities Education Act (IDEA) and related California law or Section 504 of the Rehabilitation Act of 1973 (Section 504) and related California law.

The CDE notes that this is a complex area of the law. Every effort has been made to be clear and concise in providing this advisory.

I. The Applicability of Two Federal Anti-Discrimination Statutes (Section 504 and the ADA) to those Public School Students with Diabetes Who Require Diabetes Health Related Services While Attending K-12 Schools in California.

Two federal anti-discrimination statutes, Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 (ADA), together establish rights for eligible students with diabetes in California's public schools. Together, they serve to protect such students from discrimination based upon their disability including the right to receive a free appropriate public education (FAPE). The two statutory schemes are treated synonymously. (*Wong v. Regents of University of California*, 192 F.3d 807, 816 n. 26.) Hence, in this Legal Advisory, Section 504 will mean both Section 504 as well as the ADA unless otherwise noted.

A. Eligibility

In general, a student will be determined to have a disability under Section 504 if he/she has a mental or physical impairment that substantially limits one or more major life activities, such as eating, breathing, caring for oneself, performing manual tasks, hearing, speaking, walking, and learning. (See 34 CFR sec. 104.4, subds. (j), (k), and (i).) Accordingly, learning is not the only major life activity that must be considered when determining eligibility under Section 504. (*Rock Hill (OH) Local Schools*, 37 IDELR 222 (OCR 2002).)

The Ninth Circuit Court of Appeals recently determined that diabetes is a "physical impairment" and then addressed whether that impairment substantially limited a major life activity under the facts of that case. (*Fraser v. Goodale*, 342 F.3d 1032 (9th Cir. 2003).) In finding that the plaintiff had presented evidence that she was substantially limited in eating, the court noted that the plaintiff was required to be vigilant about testing blood

glucose levels and adjusting food intake, insulin and physical activity accordingly. *Id.* at 1040-1041.

Fluctuations in blood glucose levels can impact concentration and comprehension, as well as have significant and potentially life-threatening short and long term health implications. "Helping the Student with Diabetes Succeed- A Guide for School Personnel" U.S. Department of Health and Human Services (2003) at 1 (available at http://www.cde.ca.gov/ls/he/hn/diabetesmgmt.asp).

To avoid these fluctuations in blood glucose levels, students with diabetes must be vigilant about balancing food consumption, exercise, and administration of medication. For these reasons, the Office for Civil Rights of the United States Department of Education (OCR) has found that students with diabetes to be "disabled" under Section 504. (See *Bement (IL) Community Unit School District #5*, 14 EHLR 353:383 (OCR 1989) (holding that a student with diabetes is disabled under Section 504 when she required close monitoring of her diet, behavior, and activities at all times in order for her to be able to attend school); *Irvine (CA) Unified Sch. Dist.*, 19 IDELR 883, 884 (OCR 1993) (determining that the student with type 1 diabetes was a "disabled person" as defined by the regulation implementing Section 504).

B. 504 Plans

Once a local education agency (LEA) determines that a student is entitled to Section 504 protections, this includes the provision of a free appropriate public education. (34 CFR sec. 104.35.) Services, and accommodations are determined through the 504 planning process, and documented in a 504 plan. *Henderson County (NC) Pub. Schs.*, 34 IDELR 43, 44 (OCR 2000) (voluntary resolution agreement reached to develop Section 504 plan providing for a broad range of diabetes-related aids and services, including training staff to monitor blood glucose, count carbohydrates, manage student's insulin pump, and establish procedures for the provision of appropriate emergency services); *Prince George's County (MD) Schools*, 39 IDELR 103, 104 (OCR 2003) (district required to develop a Section 504 Plan tailored to the individual needs of a student with type 1 diabetes).

Academic modifications may be necessary whether or not the major life activity of "learning" is affected. A student with diabetes may need to have his/her curriculum adapted in a variety of ways such as changes in physical education instruction, in the regular school day schedule (such as breaks required to test for and treat abnormal blood sugar levels), in additional breaks or other time modifications during tests, and in the regular schedule for eating, drinking and toileting. These accommodations should be documented in the 504 plan. Decisions about what health care services a student will receive, including treatment while at school, such as the timing and dosage of insulin to be administered, usually are based on the treating physician's written orders. (See Cal. Ed. Code sec. 49423.) In rare circumstances, the 504 team will question the doctor's treatment plan as being outside standards of care and will seek a second opinion at school

district expense. (See section of this advisory discussing IDEA entitled *Related Services as Including Management/Administration of Insulin and Other Diabetes Care Tasks for Children With the Disability of OHI* below.)

C. Individualized Inquiries Required; Blanket Policies Prohibited

An LEA may not have a blanket policy or general practice that insulin or glucagon administration, or other diabetes-related health care services, will only be provided by district personnel at one school in the district or will always require removal from the classroom in order to receive diabetes related health care services. For example, in *Christopher S. v. Stanislaus County Office of Educ.*, 384 F.3d 1205, 1212 (9th Cir. 2004), the Ninth Circuit Court of Appeals noted that OCR has repeatedly held that blanket policies that preclude individual evaluation of a particular child's educational and health related services needs violate Section 504. (See also *Conejo Valley (CA) Unified Sch. Dist.*, 20 IDELR (LRP) 1276, 1280 (OCR 1993) (district violated Section 504 by failing to perform an evaluation that was individualized by proposing changes in placement based upon a generalized district policy regarding who could perform injections without regard to student's individual education needs); *Irvine (CA) Unified Sch. Dist.*, 23 IDELR 1144, 1146 (OCR 1995) (district's "unwritten policy" prohibiting blood glucose testing in classroom violated 34 CFR sec. 104.35(c)(3) requiring that a team of persons give careful consideration to all of the information available and makes determinations based upon the individual needs of the disabled student).) See further discussion below in the section of this advisory discussing IDEA entitled *Related Services May Include Management/Administration of Insulin and Other Diabetes Care Tasks for Children With the Disability of OHI.*

In addition, a school or district may not require the parent or guardian to waive any rights or agree to any particular placement or related services as a condition of administering medications or assisting a student in the administration of medication at school. (*Berlin Brothersvalley (PA.) School* Dist., EHLR 353:124 (OCR 1988) (district policy of giving school officials discretion in whether to administer needed medication and conditioning the provision of services required by Section 504 or IDEA on parents signing a waiver of liability is prohibited). See further discussion below in the section of this advisory discussing IDEA entitled *School Placement Decisions*.

D. FAPE Under Section 504

Pursuant to 34 CFR section 104.33, school districts must provide a free appropriate public education (FAPE) to all students with disabilities in public elementary and secondary schools. Under Section 504, "appropriate education" means "the provision of regular *or* special education and related aids and services that (i) are designed to meet individual educational needs of

handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 34 CFR sections 104.34, 104.35, and 104.36." (34 CFR section 104.33 (b)(emphasis added).)

The OCR has applied the FAPE obligation broadly to ensure nondiscrimination by providing individual accommodations that provide each disabled student with a FAPE. The requirement to provide FAPE under Section 504 has been applied in the context of the administration of medication in general and diabetes-based related services in particular. (See *Conejo Valley (CA) Unified Sch. Dist., supra*; *Irvine (CA) Unified Sch. Dist., supra*; and *Prince George's County (MD) Schools, supra*.) See also, Chapter 4 of *Compliance With The Americans With Disabilities Act: A Self-Evaluation Guide for Public Elementary and Secondary Schools*, Office for Civil Rights Department of Education, United States of America (1995) available at: http://www.dlrp.org/html/publications/schools/general/guidcont.html (last visited March 30, 2007) "Unlike the requirement to provide auxiliary aids in contexts other than FAPE ... the obligation to provide related aids and services necessary to the provision of FAPE is not subject to the limitations regarding undue financial and administrative burdens or fundamental alteration of the program." *Id.* at 73.

II. California's Anti-Discrimination Statutes and Students with Diabetes Who Require Diabetes Health Related Services During the Day In Order to Safely Attend K-12 Schools in California.

California's anti-discrimination statutes prohibit discrimination on the basis of disability under any program or activity funded directly by the State. (Cal. Gov. Code sec. 11135(a).) "Disability" means any mental or physical disability as defined by Government Code section 12926. (Cal. Gov. Code sec. 11135(d)(1).) "Physical disability" is defined in Government Code section 12926(k)(1) and (2). It affords broader coverage than Section 504 because it requires a "limitation" rather than a "substantial limitation" of a major life activity. (Cal. Gov. Code secs. 12926(k)(1)(B); 12926.1(c), (d)(2); see generally *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019, 1022-1032.)

In addition, whether a physical disability limits a major life activity under California's statutory scheme must "be determined without regard to mitigating measures such as medications...." (Cal. Gov. Code sec. 12926(k)(1)(B)(i).) This provision has made the Supreme Court's holding in *Sutton v. United Airlines*, 527 U.S. 471 (1999), which required consideration of such mitigating measures inapplicable under California law. Furthermore, section 12926(k)(2) of the Government Code provides that all students with diabetes who require special education or related services (*i.e.*, health-related services) are protected by state anti-discrimination laws.
Government Code section 11135 incorporates the rights under the ADA and thus Section 504. (See Gov. Code sec. 11135(b) and 42 USC sec. 12133; 28 CFR sec. 35.103(a)). Therefore, the discussion above regarding Section 504 and students with diabetes is applicable under the broad definitions of physical disability in California.

III. The IDEA and Students With Diabetes Who Require Diabetes Health Related Services During the Day In Order to Safely Attend K-12 Schools in California.

The primary purpose of the IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." (20 USC secs. 1400(d)(1)(A), 1401(a).) California law sets the same standard for educating individuals with exceptional needs as the reauthorized IDEA. (Cal. Ed. Code secs. 56000, 56363(a).)

A. Eligibility

The IDEA requires LEAs to conduct "child find" activities to ensure that children with diabetes are identified, located, and evaluated. (20 USC sec. 1412(a)(3).) Under the IDEA, a child with diabetes is evaluated for eligibility under one of the 13 categories of disability, including the disability of "other health impaired" (OHI). (20 USC sec. 1401(3)(A); 34 CFR sec. 300.8; Cal. Ed. Code sec. 56026; Cal. Code Regs., Tit. 5, sec. 3030.) The reauthorized IDEA defines "child with a disability" in the following way:

> The term "child with a disability" means a child –
>
> (i) with ... other health impairments .... and
> (ii) who, by reason thereof, needs special education and related services. (20 USC sec. 1401(3)(A).)

The term "other health impairments" (OHI) is further defined in the recently promulgated regulations as follows:

> (c) *Definitions of disability terms*. The terms used in this definition of a child with a disability are defined as follows:
>
> (9) *Other health impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the education environment, that --
>
> (i) is due to chronic or acute health problems such as diabetes ... and
>
> (ii) adversely affects a child's educational performance.

Hence, an individualized education program (IEP) team can determine that a child with diabetes is eligible under the disability of OHI because high or low blood glucose levels can cause symptoms giving him/her limited strength, limited alertness, and creating chronic or acute health problems that adversely affect the student's educational performance. (See "Helping the Student with Diabetes Succeed -- A Guide for School Personnel" ("NDEP Guide") U.S. Department of Health and Human Services, 2003) available *via* CDE's web site at http://www.cde.ca.gov/ls/he/hn/diabetesmgmt.asp. Fluctuations in blood glucose levels may have an adverse effect on education

in a variety of ways, including the effect on concentration, comprehension, and energy levels. It should be noted that the IEP team "must make an individual determination as to whether, notwithstanding the child's progress in a course or grade, he or she needs or continues to need special education and related services." (34 CFR sec. 300.101(c).)

B. Special Education Defined

The IDEA defines "special education" as meaning "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including –

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
(B) instruction in physical education." (20 USC section 1401(29).)

"Specially designed instruction" means "adapting, as appropriate to the needs of the eligible child under this part, the content, methodology, or delivery or instruction (i) to address the unique needs of the child that result from the child's disability and (ii) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children." (34 CFR sec. 300.39(b)(3).)

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

C. Individualized Education Program

Determinations about eligibility, special education and related services under the IDEA and relevant state statutes are made generally by the child's Individualized Education Program (IEP) team. (See generally Cal. Ed. Code secs. 56340-56347.) Such determinations are always based upon the unique needs of the individual child.

The term "individualized education program" (IEP) means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with 20 USC section 1414(d). As a part of each IEP, there must be "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and

a statement of the program modifications or supports for school personnel that will be provided for the child...." (20 USC sec. 1414(d)(1)(A)(i)(IV)) in school and in extracurricular and other nonacademic activities. The 2006 implementing regulations are located at 34 CFR sections 300.320 through 300.328.

D. Related Services May Include Management/Administration of Insulin and Other Diabetes Care Tasks for Children With the Disability of OHI

In general, the reauthorized IDEA includes "school nurse services" as a "related service." (20 USC sec. 1401(26).) The statutory definition was expanded in the regulations to include school health services. (34 CFR sec. 300.34.) California's definition of designated instruction and services/related services is located in Education Code section 56363 and is synonymous with related services in the reauthorized IDEA in 20 USC section 1401(26). California's designated instruction services thus do not deviate from the federal related services.

If a child needs both special education and health services, then, as determined by the child's IEP team, school nurse/health services should be made available to a child with the eligible disability of OHI as documented in the student's IEP. Services related to an OHI-eligible child's diabetes health care needs at school, including those involving the management and administration of insulin, are covered under the IDEA as nursing and health services rather than excluded from coverage as medical services requiring a physician to provide them. (See *Clovis Unified School Dist. v. Office of Administrative Hearings*, 903 F.3d 635, 641-643 (9th Cir. 1990) discussing and applying *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984).)

In California, by statute both a written statement from the child's physician as well as a written statement from the child's parent are required before either a school nurse or other designated school personnel may assist the child with the administration of medication. (Cal. Ed. Code sec. 49423.) Hence, decisions about what health care services a student will receive, including treatment while at school, such as the timing and dosage of insulin to be administered usually are based on the treating physician's written orders. (See Cal. Ed. Code sec. 49423.) In rare circumstances the IEP team will question the doctor's treatment plan as being outside the standard of care and then request clarification from the treating physician or a second opinion with the consent of the parent, at the district's expense. (See 34 CFR sec. 300.300; *Shelby S. ex rel. Kathleen T. v Conroe Independent School Dist., 454 F.3d 450, 454-455 (5th Cir. 2006)* (school district authorized to compel medical examination over parent objection and necessity demonstrated).) In addition, the IEP team is responsible for determining educational modifications. (See, *Special Education Defined*, above).

E. Individualized Inquiries Required; Blanket Policies Prohibited

As with Section 504 determinations discussed above in Part I.C., decisions by IEP teams must be based upon individualized inquiries. The IDEA and its implementing regulations are premised upon the fact that each child is "unique" (20 USC sec. 1400(d)(1)(A)) and must receive an "individualized education program" (20 USC sec. 1401(14); see generally *Porter v. Board of Trustees of Manhattan Beach Unified School Dist.*, 307 F.3d 1064, 1066 (9th Cir. 2002) quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 188-189 (1982) ("right to public education for students with disabilities 'consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction'".) As a consequence, decisions about a specific child's eligibility for services under the IDEA must not be based upon the generalized or "blanket" policies of a local education agency rather than the unique needs of the individual child. (See Part I.C., *supra*.) Therefore, policies that restrict the availability of health related services across-the-board would be out of compliance with the mandate to individualize decisions about special education and related services needs.

F. School Placement Decisions

School placement decisions may not be based upon the unwillingness of a district to provide needed related services to a child with OHI-diabetes disability at the school that the child would otherwise attend. A district may not require the parent to waive any rights, hold the district harmless, or agree to any particular placement or related services as a condition of administering medication or assisting a student in the administration of medication at school. (See Comment to IDEA regulations at p. 46587 (federal register) involving 34 CFR sec. 300.116(c): "Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.....Public agencies ....must not make placement decisions based on a public agency's needs or available resources, including budgetary considerations and the ability of the public agency to hire and recruit qualified staff;" see also *Berlin Brothersvalley (PA.) School Dist.*, EHLR 353:124 (OCR 1988) (blanket waiver of liability as condition to provision of medical services prohibited). For example, a district may not have a blanket policy or general practice that insulin or glucagon administration or other diabetes-related health care service are only going to be provided by district personnel at one school in the district, or that a child will always need to be removed from the classroom in order to receive diabetes related health care services. An IEP developed in the legally-required manner, which takes into account all of the relevant medical and education factors under the IDEA for each disabled child, is the only way to ensure that such a student receives an individualized determination of what constitutes FAPE under the IDEA and relevant state statutes.

G. Administrative Procedures; Financial Burden Not a Defense

A parent of a child with the disability of OHI or an organization can file an administrative complaint with the CDE alleging that a school district is violating the IDEA or relevant state statutes by failing to identify, evaluate, or provide a FAPE to a student with diabetes or a group of students with diabetes, including challenging a district policy or practice that restricts the provision of related health services to students eligible for such services under the IDEA. (34 CFR secs. 300.151-300.153; Calif. Code Regs., Tit. 5, secs. 4600-4671.)

In the alternative, a parent who disagrees with the IEP decision regarding identification, evaluation, or the provision of FAPE and related services can file for an impartial due process hearing with the Office of Administrative Hearings. (20 USC sec. 1415 (e)-(i).) An OAH judge can order that the applicable required related school health services be provided by the district, including the administration of insulin during the school day. (20 USC sec. 1415(f)(3)(E).) Financial burden is not a valid defense available to the LEA under the *Garret F.* case. (*Cedar Rapids v. Garret F.*, 526 U.S. 66, 75, fn. 6, 78-79 (1999) (district required to fund related school health services under 34 CFR sec. 300.13(a) where necessary in order to provide student with meaningful access to public school).)

IV. Who May Administer Insulin in California to Students with Diabetes As a Related Service Under Section 504 and the IDEA.

A. California Law

It is the position of the CDE that the Business and Professions Code section 2725(b)(2) and the California Code of Regulations, Title 5, section 604 authorize the following types of persons to administer insulin in California's public schools pursuant to a Section 504 Plan or an IEP:

1. self administration, with authorization of the student's licensed health care provide and parent/guardian;[1]
2. school nurse or school physician employed by the LEA;
3. appropriately licensed school employee (*i.e.*, a registered nurse or a licensed vocational nurse) who is supervised by a school physician, school nurse, or other appropriate individual;
4. contracted registered nurse or licensed vocational nurse from a private agency or registry, or by contract with a public health nurse employed by the local county health department;
5. parent/guardian who so elects;
6. parent/guardian designee, if parent(/guardian so elects,

[1] Unlicensed school personnel are authorized under state law to assist students as needed with insulin self-administration. Cal. Ed. Code sec. 49423 provides that unlicensed school personnel may assist with medication administration.

who shall be a volunteer who is not an employee of the LEA; and

7. unlicensed voluntary school employee with appropriate training, but only in emergencies as defined by Section 2727(d) of the Business and Professions Code (epidemics or public disasters).[2]

B. Federal Law

As noted above in Parts I and III, federal law under Section 504 and the IDEA provides that the administration of insulin can be determined to be a related service that must be provided to a student pursuant to a Section 504 Plan or an IEP in order to ensure FAPE. CDE has recognized in the regulations which implement Education Code section 49423 regarding the administration of medication to students during the school day that they did not affect "in any way" either the content or implementation of a student's Section 504 Plan or IEP. (Calif. Code Regs., Tit. 5, section 610(d).) Further, CDE's Program Advisory (required by Section 611 of the regulations) recognized that students' rights under Section 504 and the IDEA are distinct from state legal requirements. (See http://www.cde.ca.gov/ls/he/hn/medadvisory.asp.)

C. Reconciliation of State and Federal Law

The difficult issue in this area is reconciling state and federal requirements. Clearly the first set of personnel who are authorized to administer insulin pursuant to a Section 504 Plan or an IEP are those persons who are expressly so authorized under California law, as set forth in Part IV.A, *supra.* The question is what should occur when no expressly authorized school personnel are available.

In CDE's view, the list cannot be taken as exhaustive because LEAs must also meet federal requirements -- even if the personnel expressly authorized by California are not available. In practical terms, this means that the methodology followed by some LEAs of training unlicensed school employees to administer insulin during the school day to a student whose Section 504 Plan or IEP so requires it is a valid practice pursuant to federal

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[2] In such emergency cases, an unlicensed voluntary school employee should have been trained to at least the standards specified by the American Diabetes Association's training slides entitled "Diabetes Care Tasks At School: What Key Personnel Need to know: Insulin Administration" (Attachment A). Such a voluntary school employee should be regularly, and at least quarterly, supervised by a school nurse, physician, or other appropriate individual under contract with the LEA, providing the training, and with emergency communication access to the same school nurse or physician. Documentation of training, ongoing supervision, and annual written verification of competency are strongly recommended, and such documentation should be annually submitted to the LEA employing the unlicensed person by the school nurse or physician.

law. If the LEA determines that insulin administration by the types of persons listed in categories 2-4 are not available or feasible, then unlicensed school employees with appropriate training would be authorized under federal law to administer insulin in accordance with the student's Section 504 Plan or IEP. What is not valid is for an LEA to adopt a general policy or practice that a Section 504 Plan or IEP need not be developed or followed because the LEA is not able to comply with the student's federal rights based upon the express provisions of state law.

When federal and state laws are reconciled, it is clear that it is unlawful for an LEA to have a general practice or policy that asserts that it need not comply with the IDEA or Section 504 rights of a student to have insulin administered at school simply because a licensed professional is unavailable. In such situations, federal rights take precedence over strict adherence to state law so that the educational and health needs of the student protected by the Section 504 Plan or IEP are met.

V. Monitoring and Compliance by CDE

A. IDEA

Under the IDEA, the CDE monitors compliance with federal and state special education statutes and regulations with its Quality Assurance Process (QAP). That process is characterized by the gathering and evaluating of data in order to identify districts and areas within districts to aid in the inquiry, evaluation, and review of compliance issues. This enables the LEA and the CDE to develop corrective action plans, program improvement goals, and provide technical assistance to improve services to special education students throughout California.

Pursuant to the *K.C.* Settlement Agreement, the CDE has agreed to modify its QAP monitoring instruments and process to include special evaluation items related to students with the disability of OHI with chronic or acute health problems arising from diabetes.

The CDE also assures compliance under the IDEA by maintaining an administrative complaints system as required by federal regulation. (See 34 CFR sections 300.151-300.153.) Under 34 CFR section 300.153(a), a complainant can be either an organization or an individual who files a signed written complaint alleging any violation concerning identification, evaluation, placement, or the provision of a FAPE in the least restrictive environment including the provision related services. For example, a complaint may allege policies and/or practices that violated the child's right to receive an individualized assessment or eligibility and/or the provision of diabetes related health care services pursuant to the IEP process and/or any dispute arising out of the IEP process.

The required elements of a complaint are set forth in 34 CFR section 300.153(b). Of particular note is the requirement that a complaint alleging child-specific issues must contain the name and address of the residence of the child (34 CFR sec. 300.153(b)(4)(a).) Complaints of a systemic nature under the IDEA do not need to identify the individual student by name, although they still must provide facts of the alleged violation that are sufficient for the CDE or the district to conduct an effective investigation, and they must be signed.

B. Section 504/State Statutes

As required by the Uniform Complaints Procedure, CDE's Office of Equal Opportunity will continue to accept and investigate complaints pursuant to Section 504 and Government Code section 11135 which are filed by an organization or a student with a disability that alleges individual or systemic discrimination arising from an alleged non-compliant policy or practice or the failure to provide diabetes-related health services, reasonable accommodations or modifications to the student's educational program. (See Chapter 5.1, the Uniform Complaint Procedures (Sections 4600-4670) and Chapter 5.3, involving Nondiscrimination and Educational Equity, Sections 4900-4965.)

VI. Impartial Due Process Hearings

Parents who disagree with a school district's decisions regarding their child's eligibility and/or placement under the IDEA also have a federal right to request a due process mediation and/or hearing. (20 USC sec. 1415.) Procedural rights to an impartial hearing provided by the local district if a parent disagrees with a Section 504 team decision are also required by federal law. (34 CFR sec. 104.36.)

VII. Resources

CDE recommends that local education agencies and SELPAs use the following documents as guidelines for compliance: *Program Advisory on Medication Administration* (California State Board of Education, 2005) available *via* CDE's Web site at http://www.cde.ca.gov/ls/he/hn/mediadvisory.asp; *Sample Section 504 Plan* and *Diabetes Medical Management Plan* ("DMMP"), both available at http://www.diabetes.org/advocacy-and-legalresources/discrimination/school/504plan.jsp and *Helping the Student with Diabetes Succeed -- A Guide for School Personnel* ("NDEP Guide") U.S. Department of Health and Human Services, 2003) available via CDE's website at http://www.cde.ca.gov/ls/he/hn/diabetesmgmt.asp.

Checklist: Who May Administer Insulin in California's Schools Pursuant to An IEP or a Section 504 Plan

Business and Professions Code section 2725(b)(2) and the California Code of Regulations, Title 5, section 604 authorize the following types of persons to administer insulin in California's public schools pursuant to a Section 504 Plan or an IEP:

1. self administration, with authorization of the student's licensed health care provide and parent/guardian;
2. school nurse or school physician employed by the LEA;
3. appropriately licensed school employee (*i.e.*, a registered nurse or a licensed vocational nurse) who is supervised by a school physician, school nurse, or other appropriate individual;
4. contracted registered nurse or licensed vocational nurse from a private agency or registry, or by contract with a public health nurse employed by the local county health department;
5. parent/guardian who so elect;
6. parent/guardian designee, if parent/guardian so elects, who shall be a volunteer who is not an employee of the LEA; and
7. unlicensed voluntary school employee with appropriate training, but only in emergencies as defined by Section 2727(d) of the Business and Professions Code (epidemics or public disasters).[3]

When no expressly authorized person is available under categories 2-4, *supra*, federal law -- the Section 504 Plan or the IEP -- must still be honored and implemented. Thus, a category #8 is available under federal law:

8. voluntary school employee who is unlicensed but who has been adequately trained to administer insulin pursuant to the student's treating physician's orders as required by the Section 504 Plan or the IEP.

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[3] In such emergency cases, an unlicensed voluntary school employee should have been trained to at least the standards specified by the American Diabetes Association's training slides entitled "Diabetes Care Tasks At School: What Key Personnel Need to know: Insulin Administration" available at http://diabetes.org/advocacy-and-legalresources/discrimination/school/schooltraining.jsp. Such a voluntary school employee should be regularly, and at least quarterly, supervised by a school nurse, physician, or other appropriate individual under contract with the LEA, providing the training, and with emergency communication access to the same school nurse or physician. Documentation of training, ongoing supervision, and annual written verification of competency are strongly recommended, and such documentation should be annually submitted to the LEA employing the unlicensed person by the school nurse or physician.

EXHIBIT B

Item No	Compliance Test	Compliance Standard	Other Guidance	Parent Questions
20-1-1	Does the LEA identify, locate and assess all children, aged birth-21, in need of special education and related services residing in its jurisdiction, including children with other health impairments (OHI) (asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome)?	The district must maintain evidence that it carries out its policies and procedures.	Policy and Procedure Review: There is evidence that the district carries out its policies and procedures. This evidence may include logs, correspondence, scheduled meetings with outside agencies, posters, brochures, public awareness activities, etc. In addition, there is evidence that students are sought and located. LEA reviews emergency forms and other medical forms completed by parents and makes referrals for assessment if warranted.	
20-1-2	Does the LEA actively engage in child find activities? Does the LEA examine student records and other district records to identify students with OHI?			

20-1-3	Does the LEA use a systematic process for referring students suspected of being disabled, including students with OHI?			
20-1-4	Does the LEA initiate the assessment process when it identifies students with OHI?			
20-2-1	For a child with a diagnosed health *condition*, does the LEA solicit health information from the child's primary physician as a part of the assessment plan, including whether the child's condition affects strength, vitality, or alertness and the health care services required?	The district must maintain documentation that it carried out the assessment plan	Review student records for information supplied by the primary physician, copies of release of information letters, nurses notes	
20-2-2	Are assessments performed in all areas related to the suspected disability by trained and knowledgeable personnel using technically sound instruments, and include health and development information for	A child's health and development history is completed for all initial assessments, as appropriate; health and development history is on the Assessment Plan.	Health and development history is completed initial assessments, as appropriate; the health and development history is in the Assessment Plan. Forms used to communicate with treating physicians and forms used by district regarding treatment plans call for treatment plans from treating physicians.	If your child requires health care services to safely attend school, has the school district provided you with forms for your child's treating physician to complete describing the treatment plan for school hours?

	students with diagnosed health conditions?			
20-2-2.1	Are assessments performed in all areas of suspected disability, including OHI?			
20-2-2.2	Do *OHI* assessments include health information and incorporate current treatment plans from the child's treating physician for health care services during school hours?			

20-2-3	Do assessments result in a written report or reports, which include the findings of each assessment?	The Assessment Report or other assessment documentation must include discussion of extent to which assessment reflects student's skill and aptitude levels.	Look for written report(s) in the file. The Assessment Report must include, but not be limited to: (a) whether the student needs special education and related services, (b) the basis for making the determination, (c) the relevant behavior noted during the observation of the student in an appropriate setting, (d) the relationship of that behavior to the student's academic functioning, (e) the educationally relevant health and development, and medical findings, if any, (f) the need for specialized services, materials, and equipment for students with low incidence disabilities.	
20-2-3.1	Does the written report include current treatment plans from the child's treating physician for health care services during school hours?			
20-3-1	Is there an IEP developed within sixty days of obtaining written parental consent to the Assessment Plan, unless parents request an extension?	IEP must be completed within 60 days of parent consent for assessment, not counting days between the child's regular school sessions, terms, or days of school vacation in excess of five schooldays, unless a written request for extension is on file.	Check the date on the IEP (initial or triennial) to see that it is compliant with the timelines. If not, is there an extension document in the file?	

20-3-2	Does the IEP team determine that a child qualifiies as an individual with exceptional needs in the area of other health impairment when a pupil has limited strength, vitality or alertness, due to chronic or acute health problems, which adversely affects a pupil's educational performance?	The IEP team must document eligibility decision during intial and triennial reviews.	Review IEP form for eligibility determination. Look in IEP meeting notes to determine any particular factors considered.	
20-3-3	Does the current IEP include a statement of the child's present levels of performance including how the disability affects the child's involvement and progress in the general curriculum?	The present levels of performance must be in the IEP.	Look in the IEP. The present levels of performance must also include an indication of how the child's disability, based on assessment data, will affect their performance in the general education curriculum.	
20-3-4	Does the IEP include measurable annual goals, including academic and functional goals, related to the child's need, resulting from the child's disability, that will enable the child to be involved in and progress in the general	Must be documented in the IEP.	A statement that addresses measurable annual goals and benchmarks (short term objectives) must be on the IEP. These goals and objectives should reflect the areas of need stated on IEP.	

	education curriculum and that meet each of the pupil's other educational needs that result from the individual's disability?			
20-3-5	Does the IEP include a statement of the special education and related services and supplementary aids and services to be provided to the child or on behalf of the child?	Must be documented in the IEP.	The IEP must have specified special education and related services, supplementary aids and services to be provided.	Describe any health related services provided to your child. If in need of health related services, are they described in your child's IEP? If so, who provides the health related services your child needs? Are they consistent with current treatment plans from your child's treating physician? Describe academic adjustments your child needs, such as: 1) adaptations in the child's curriculum including, but not limited to, *changes in the child's physical education instruction, 2) changes to the normal school day schedule, such as *breaks when experiencing symptoms related to your child's health condition, and *breaks needs for health care and treatment, *provision of alternative times for tests, food intake, due dates, and 3) other academic

				adjustments.
20-3-5.1	Does the IEP include a description of specially designed instruction and specialized physical health care services needed by an eligible student with OHI?			

20-3-6	Does the IEP include descriptions of program modifications and supports for school personnel that will be provided to enable the child to: * Advance toward attaining annual goals? * Be involved and make progress in the general education curriculum and participate in extra-curricular activities? * Be educated and participate with other children with disabilities and with nondisabled children?	Must be documented in the IEP.	The IEP includes a description of the program modifications and supports for school personnel that will be provided for the child to enable the child to advance toward annual goals; to be involved in and progress in the general curriculum and to participate in extra-curricular activities; and to be educated and participate with other disabled and nondisabled children. LEA policies provide that special education and related services are offered at the school the child would attend if not disabled and do not require specialized physical health care services or self-administration of medication to be performed in certain locations.	Is your child attending the school your child would attend if not disabled? If your child requires medication during school hours, is your child capable of self-administering such medication? If so, is your child permitted to self-administer medication wherever he/she is located or is he/she required to go to a certain location for treatment?
20-3-6.1	Are specialized physical health care services provided during extracurricular activities, including field trips and other school-sponsored activities?			

20-3-7	Is each teacher and provider informed of specific responsibilities related to implementing the child's IEP, and the specific accommodations, program modifications, and support for school personnel?	Evidence must document that each teacher and provider is informed of their specific responsibilities related to implementing the IEP.	This item is most likely evaluated through interviewing regular and special education staff. Staff should be able to describe how he/she is informed of specific responsibilities related to implementing the child's IEP, and the specific accommodations, program modifications and supports that must be provided for the child in accordance with the IEP.	
20-3-7.1	Is staff responsible for providing health related services, including medication administration, designated in the IEP?			
20-3-8	Does the IEP include specific continuing specialized physical health care services required in order for the individual to attend school and benefit from special education?	IEP must include specialized health care services, if required	Check the IEP for specialized health care services. Review IEP meeting notes, if any, for discussion of needs	

20-4-1	Does the LEA provide special education and related services in accordance with the child's IEP including specialized physical health care services such as medication administration during school hours (and on the school bus and at school-sponsored activities)?	Records, documentation, and interviews must confirm that the LEA provides special education and related services as indicated on the IEP.	Check to make sure that all services are provided as described in the IEP (e.g., frequency, intensity, duration, location). Can staff confirm that students receive the special education and related services as stated on the IEP? Can staff describe methods that document how they ensure that student's receive services as stated on the IEP? Can staff and administration describe how they ensure that special education and related services are provided to children with disabilities according to their IEPs. Can staff and administration describe how they determine which children are currently receiving special education and related services as stated on the IEP and Can staff and administration describe how they determine which children are not receiving special education and related services as stated on the IEP?	