

**Updated Message for Parents and Guardians on the California
Schools Diabetes Care Lawsuit: Decision Restricting Access to Insulin is Put on Hold
Pending California Supreme Court Review**

The fight continues to ensure that children with diabetes in California get the care they need while at school. This message explains recent developments in our ongoing California school litigation and the impact on children with diabetes and their families.

In August 2007, as a result of a lawsuit filed by the American Diabetes Association and several parents, the California Department of Education (CDE) issued a Legal Advisory to all California K-12 public schools to remind them of their obligations to uphold the legal rights of students with diabetes, including the obligation to provide related aids and health services, based on federal and state laws. One portion of the Legal Advisory states that appropriate trained unlicensed school personnel may volunteer to administer insulin to students when a nurse is not available. Several nursing groups sued to overturn this portion of the Legal Advisory. A California trial court sided with the nurses, ruling that state law does not permit school employees who are not nurses to administer insulin to students. In June 2010, the California Court of Appeal agreed with the trial court ruling.

It is important to note that the courts did not rule on whether insulin can be safely administered by unlicensed personnel. Diabetes experts agree that permitting trained non-medical school personnel to administer insulin is in the best interests of these students. Neither did the courts question the federal rights of students to receive insulin administration at school. All the courts did was to say that current California law does not permit insulin administration by school employees who are not licensed health care professionals.

The decision of the Court of Appeal was disappointing and frustrating for parents of children with diabetes and other Diabetes Advocates.

In response, the American Diabetes Association asked the California Supreme Court to review this decision, and on September 29, 2010, the Supreme Court agreed. The Supreme Court will likely take at least a year to issue its decision. However, because it is reviewing the case, the decisions of the trial and appeals courts are no longer in effect.

Therefore, the entire original Legal Advisory remains in effect until the California Supreme Court decides the case—and California school districts may continue to permit volunteer school staff to administer insulin to students with diabetes when a nurse is not available.

The action taken by the California Supreme Court is quite unusual—the court accepts only about 2% of requests to review appellate court decisions. What's more, all seven justices on the court voted to review the case. But while there are reasons for optimism about what the court will do, there is no guarantee that the case will be decided in favor of children with diabetes.

If the Supreme Court sides with the nursing organizations, it would mean that where a child cannot self-administer insulin and needs someone at school to administer the medication, that

person must be a friend or family member of the child, a registered nurse, licensed vocational nurse, or other health care professional. Other school personnel—at least those who don't otherwise have a relationship with the family—would not be permitted to administer insulin, even if they are willing to be trained.

The American Diabetes Association is hopeful that the Supreme Court will reject this position. We all know that even a full time school nurse can't be there every time a child with diabetes needs insulin, especially during field trips and extra-curricular activities. This situation is made all the worse by the severe lack of nurses or other licensed health care professionals in California's schools and the state's budget crisis. We know there aren't enough available nurses to meet our children's needs and that non-medical school personnel can safely administer insulin—and are doing so in many other states.

In addition to fighting in the courts, we are considering options for pursuing legislation to ensure that trained staff are promptly available to administer insulin to children with diabetes during school and school-sponsored activities. We will keep parents and advocates informed about any potential legislative action.

Advocacy Tips for Parents and Guardians

In dealing with school officials regarding diabetes care, parents and guardians should assert the rights of their children to receive diabetes care, including insulin administration, when needed. Schools may pressure you to take on the responsibility of coming to school to administer insulin (or finding another family member or friend to do so). While you may do so if you wish (or you may designate a family member or friend to do so on your behalf), federal law requires that the school provide needed health services, including someone to administer insulin, and you cannot be forced to come to school to give insulin or provide other diabetes care to your child. Also, it is inappropriate for a school to pressure you or your child's doctor to change your child's treatment regimen in order to avoid the need for someone to administer insulin during school hours or school-sponsored events. If your school district refuses to train school employees to administer insulin to your child, as permitted by the Legal Advisory, it will need to hire a nurse to perform that task. Make sure that your school has a workable plan to have someone there to administer insulin when your child needs it (both for routine administration and in response to high blood glucose levels); your child's health cannot be put at risk by unnecessary delays.

Many school nurses or other school personnel may be familiar with the June 2010 ruling of the California Court of Appeal in this case and may not understand how review of this case by the Supreme Court affects that ruling. The key thing to know is that the court's ruling and opinion has no effect now that the Supreme Court has decided to review the case. It is as if the ruling was never issued; lawyers may not use it to support their position, and school personnel may not rely on it.

Parents should also bear in mind that their children are also entitled to the following important rights, as clarified in the Legal Advisory (these issues were not challenged in the case):

1. Schools must provide individualized assessment of each child with diabetes instead of having blanket policies.
2. Students with diabetes are entitled to receive services at all school-sponsored activities, including field trips and extracurricular programs.
3. Students with diabetes who are capable of doing so should be permitted to check their blood glucose levels in the classroom.
4. Students cannot be forced to attend a different school due to their need for diabetes care.

The American Diabetes Association believes that every child with diabetes has a right to be medically safe at school and the right to the same educational opportunities as his or her peers. Together, we will continue to fight for fairness and safety for children with diabetes and all those affected by the disease.

If you are experiencing problems with your child's diabetes care at school, please contact the ADA at 1-800-DIABETES and ask for information on school discrimination and how to speak to a legal advocate about your specific concerns.