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November 2, 2004

VIA CERTIFIED U.S. MAIL
Return Receipt Requested

Complaint Management and Mediation Unit
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814

RE: Direct State Intervention and "Fast Track" Investigation Request
All students with Type 1 Diabetes attending San Ramon Valley Unified School District

Dear Sir or Madam:

This is a compliance complaint per the California Department of Education ("CDE") Uniform Complaint Procedures based on the need for the CDE to carry out its statutory responsibility to supervise and monitor local educational agency ("LEA") compliance with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1412(a)(11)(A) and Section 504 of the Rehabilitation Act of 1973 ("Section 504"). The Disability Rights Education and Defense Fund ("DREDF") is filing this complaint as an interested third party pursuant to Title 5, CCR § 4600(b) on behalf of students with diabetes who attend San Ramon Valley Unified School District, and who are aggrieved by the failure of the CDE to monitor and enforce their rights to a non-discriminatory and free, appropriate public education. *See also*, Title 5, CCR § 4610(a), (b)(vii) and (c); 4650(a)(ii), (viii)(C) and (E).

We are requesting a state directive by the CDE to San Ramon Valley Unified School District which sets forth its obligation to administer insulin to children with diabetes in district schools, so that the parents and children are not left to the unlawful policy and/or practice of the school district. We request the CDE to require corrective action that will bring the district in compliance with applicable laws, as cited below. CDE should clarify that the district is responsible for administering insulin in accordance with a child's health care plan developed in conjunction with the family and the child's doctor, when necessary while a child is at school. CDE should further clarify that there is no legal prohibition against the administration of insulin by nurses or properly trained and supervised non-medical personnel.

DISABILITY RIGHTS EDUCATION & DEFENSE FUND

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Specifically, San Ramon Valley Unified School District prohibits administration of insulin by *any* school personnel. Forms used by the San Ramon Valley Unified School District include "Designated Giver of Insulin Injection" with explicit prohibitions such as "cannot be school personnel." See district forms, attached.

Diabetes must be managed twenty-four hours a day, seven days a week; that means careful monitoring of a child's blood glucose levels throughout the school day and, if indicated, administering doses of insulin therapy. Children with diabetes require insulin to be given at regular times each day and many children with diabetes require additional or corrective dosages of insulin during the course of the school day to treat hyperglycemia (high blood glucose), which in the short term can impair cognitive abilities and adversely affect academic performance. Caring for a child's diabetes at school is necessary for the child's immediate safety and critical in preventing long-term complications.

Under the IDEA, 20 U.S.C. § 1400 *et seq.*, school districts are required to provide a free and appropriate public education ("FAPE") to qualifying students with diabetes, including specially designed instruction and related services which are necessary for special education students to benefit from an education. Under Section 504 and the ADA, students with diabetes are protected against unlawful discrimination based on disability. In general, for students covered by both Section 504 and IDEA, if related aids and services are essential to providing a FAPE, then the school is required to implement them. 34 CFR § 104.33; 34 C.F.R. Pt. 100, App. B.

The definition of related services that must be provided under the IDEA is quite broad. See *Cedar Rapids Community Sch. Dist. v. Garret F.*, 526 U.S. 66 (1999) (holding that, under the IDEA provision for "related services," a school must provide nursing services to a student who requires such services to remain in school). An IDEA violation occurs when access to school at all, and/or placement in the least restrictive environment are compromised by the District's refusal to provide the services necessary. *Id.*

Similarly, under Section 504, such aids have been interpreted to include non-academic aids, like health services. 34 CFR § 104.37. See also, *Culver City (CA) Unified Sch. Dist.*, Complaint No. 09-90-1007 (March 23, 1990), 16 EHLR 673 (administering medications, allowing access to medications by student, and developing emergency procedure were necessary to comply with Section 504).

Under state law interpreting the IDEA, Cal. Ed. Code § 49423 *et seq.* and Title 5, CCR § 3051.12(b)(3)(A), the district must incorporate a properly devised Health Care Plan into a student's IEP when necessary for the student to benefit from special education: "specific continuing specialized physical health care services required in order for the individual to benefit from special education will be included in the [IEP]."

Further, under Section 504, school districts cannot adhere to blanket rules that adversely affect the educational opportunities of a child with a disability without examining the individual needs of that child. *See, for example, Conejo Valley (CA) Unified Sch. Dist.*, Complaint No. 09-93-1002 (Oct. 27, 1993), 20 IDELR 1276. In *Conejo Valley*, the Office of Civil Rights, U.S. Department of Education declared that injections of medicine are "a required related aid or service" if they are necessary for a student to effectively participate in an educational program.¹ The OCR also found that "[s]uch services, including the administration of injections by trained lay-persons, are commonly provided by many school districts." *Id.* OCR directed the district to examine each student's needs individually and noted that another school district in the area "provides designated lay personnel to administer injections to diabetic students." *Id.* The district had suggested transferring the student to another school closer to a hospital or to a school with a full-time nurse. The OCR concluded that these suggestions were based on the district's blanket refusal to allow non-licensed personnel to administer injections and not "the individual needs" of the student. According to *Conejo Valley*, a school district cannot rely on a blanket rule to refuse assistance to a diabetic student or to force such a student to transfer. The OCR found that the district, in failing to address the student's individual needs, violated Section 504 regulations, 34 C.F.R. §§ 104.33-4.

The administration of insulin is a procedure that should be performed in the school environment as necessary and can be performed by properly trained and supervised non-licensed personnel. *See Position Statement by the American Diabetes Association, the largest and most preeminent diabetes organization in the country: "Care of Children with Diabetes in the School and Day Care Setting" Diabetes Care, Volume 27, Supplement 1, January 2004 (www.diabetes.org).* *See also, Cal. Educ. Code § 49423.5*, which explicitly allows non-licensed personnel to be trained to assist with specialized physical health care services that require medically related training. Indeed, lay school personnel provide this type of care all across the country and in some school districts in California.

¹ Though the OCR's findings were based on Section 504's right to a FAPE and the ADA, the student in *Conejo Valley* had Down Syndrome and was covered by the IDEA as well.

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We look forward to your prompt investigation of this complaint, and request your immediate intervention to secure the rights of children with diabetes who attend San Ramon Valley Unified School District. This is a matter for direct state intervention, investigation and resolution for all of the following reasons:

- The San Ramon Valley Unified School District is engaged in unlawful discrimination in violation of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (Title 5, CCR § 4650(a)(ii); 34 CFR § 104.7); and
- The San Ramon Valley Unified School District is threatening students' health (Title 5, CCR § 4650 (a)(viii)(C)); and
- The San Ramon Valley Unified School District is violating federal law governing special education (Title 5, CCR § 4650 (a)(viii)(E)).

Please contact me directly, if you have any questions or concerns. Thank you for your prompt attention to this urgent matter.

Sincerely yours,

Larisa Cummings
Staff Attorney

Enclosures: Attachment A

cc: Shereen Arent, National Director of Legal Advocacy, American Diabetes Association
Lisa Murdock, Advocacy Director, American Diabetes Association