

CLIENT NEWS BRIEF

California Supreme Court Holds Non-Licensed School Personnel May Administer Medication, Including Insulin

On August 12, 2013, in *American Nurses Ass'n. v. Torlakson* (Docket No. S184583), the California Supreme Court answered the long outstanding question whether trained school district personnel are legally allowed to administer insulin to diabetic students under a Section 504 Plan or Individualized Education Program (IEP). *Torlakson* is an appeal from a 2010 California court of appeals decision, which held that under California law, unlicensed school personnel were not authorized to administer insulin injections to students. (See *American Nurses Ass'n v. O'Connell* (2010) 185 Cal.App.4th 393.) In this new opinion, the Court decided affirmatively that California law does permit personnel who have voluntarily received appropriate training to administer medication, including insulin to diabetic students, in accordance with written directives from a treating physician and parental consent.

The debate over the administration of insulin began in 2005 when parents of four diabetic students and the American Diabetes Association (ADA) filed a class action lawsuit against two school districts, the Superintendent of Public Instruction, the Board of Education of California, and the California Department of Education (CDE), alleging students with diabetes were not provided with appropriate health care services, including the administration of insulin, in violation of federal law ensuring the right to a free appropriate public education ("FAPE"). (*K.C. et al. v. O'Connell et al.* (N.D. Cal. 2005) No. C05-4077 MMC.) Pursuant to a settlement agreement reached by CDE, the parents and the ADA, CDE issued an advisory opinion ("Advisory Opinion") regarding the obligations of school districts to students with diabetes. The Advisory Opinion concluded that trained unlicensed school employees who have voluntarily received appropriate training are allowed to administer insulin to students with diabetes, during school hours, pursuant to a 504 Plan or IEP.

Shortly thereafter, the American Nurses Association (ANA) filed suit against the Superintendent of Public Instruction and CDE, claiming this opinion violated the Nursing Practice Act (NPA), which restricts unlicensed persons from performing the functions of a licensed nurse. The trial court agreed with the ANA and found the Advisory Opinion invalid under California Law. The Court of Appeal, in affirming the trial court's decision, reasoned that the legislature had specifically authorized the administration of other medications by unlicensed school personnel, including glucagon to diabetic students in limited, emergency situations and also asthma medications. However, there was no such authorization for the administration of insulin. CDE appealed to the California Supreme Court.

The Supreme Court has now reversed the Court of Appeal's decision, holding "California law does permit, trained, unlicensed school personnel to administer prescription medications, including insulin, in accordance with written statements of individual students' treating physicians, with parental consent." In reaching this ruling, the Court relied on Education Code sections 49423 and 49423.6, as well as the California Code of Regulations, title 5, sections 600 and 604, which have always permitted the administration of prescription medication by trained personnel. The Court's ruling clarifies that the administration of insulin

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is covered under these statutes and that state law essentially delegates to each student's doctor the decision whether insulin may safely and appropriately be administered by unlicensed school personnel or whether the student's medical needs can be met only by a licensed health care provider. The Court also held that, contrary to the claims of the ANA, unlicensed personnel administering insulin are not in violation of the NPA.

What this means for school districts: to meet their obligations to students who need assistance in administering medication, including those needing insulin injections, school districts must receive a written statement from the student's treating physician, authorizing the administration of the medication by trained, unlicensed personnel, and based on written consent from the student's parents. School districts must also ensure that school district personnel are trained by qualified professionals to administer medication. We also recommend that districts revise their Board policies and administrative regulations to reflect this decision.

For further detailed information regarding the administration of medication, Section 504, and the Individuals with Disabilities Education Act, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).