



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

May 30, 2017

BY FEDERAL EXPRESS

Shannon L. Tahoe, Esq
New York State Education Department
Office of Counsel, Room 140
Albany, New York 12054

Re: *Resolution of Investigation of ADA Complaints Regarding Adjustment of Medication for Students With Diabetes*

Dear Ms. Tahoe:

I write with regard to the investigation by the United States Attorney's Office for the Southern District of New York regarding complaints alleging that the New York State Education Department (the "NYSED") has violated Title II of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12131-12134, and the Department of Justice's implementing regulation, 28 C.F.R. Part 35. Specifically, our investigation concerned allegations that schools located in the Southern District of New York had not honored physicians' orders regarding the involvement of parents of students with diabetes in determining the timing and/or dosage of insulin administered to their children at school, within limits specified by the physician.

Our investigation determined that the schools were refusing to comply with such orders because of certain provisions of the NYSED's Guidelines for Medication Management in Schools issued in September 2015 (the "Guidelines") interpreting New York State Education Law. In a letter of findings dated January 18, 2017, our Office determined that, through the Guidelines, the NYSED had violated and continued to violate the ADA by denying medically necessary treatment and meaningful access to a public education to students with diabetes whose physicians had provided orders as described above.

After NYSED received our letter of findings, this Office and NYSED engaged in multiple communications, including the written response you provided on March 1, 2017. With prior notice to you, we met with the leadership of one of the schools about which we had received complaints. We also continued to consult with our expert endocrinologist as well as parents/guardians of students with diabetes from whom we had received complaints. On March 29, 2017, you and four other NYSED officials came from Albany for a meeting at our Office. And we have continued to have further discussions with NYSED since our March 29 meeting.

Through these efforts, we are pleased to have reached what we believe to be a workable resolution to the issues identified in our investigation. In brief, we understand that NYSED will

advise its schools that school nurses must implement physicians' orders that authorize a parent/guardian of a student with diabetes to adjust the timing and/or dosage of diabetes medication within specified limits by consulting with such parent/guardian regarding the parent's/guardian's proposed adjustment of insulin administration during school time hours and at school-sponsored events. For the school nurse to implement such orders, the student's Diabetes Medical Management Plan must also include an order by the student's physician authorizing the school nurse to make dosage adjustments within the same range(s) authorized for the parent/guardian to propose. The goal is to facilitate the communication of essential information regarding a student's medication adjustment needs that the student's physician has determined is within the expertise of the parent/guardian of his/her patient, so that students with diabetes can receive necessary medical care from a school nurse during school hours and at school-sponsored events.

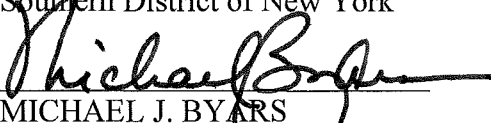
Toward this end, NYSED has agreed to take the following actions: (i) amend the specific provisions of the Guidelines that were identified by our Office as causing concerns; (ii) include additional language in the Guidelines explaining the respective roles of the school nurse and the parent/guardian who has been authorized to recommend adjustments of their child's diabetes medication within specified limits; and (iii) provide a link to a model form that NYSED will recognize through which physicians can provide such authorization to the parent/guardian (provided that the student's DMMP also includes authorization of the school nurse to make adjustments within the same range(s) as a matter of professional judgment). These changes are set forth in greater detail in the enclosures to this letter. We understand that these changes are now reflected in an amended version of the Guidelines available on the NYSED website at <http://www.p12.nysed.gov/sss/schoolhealth/schoolhealthservices/>.

As we believe that this resolution will address the specific issues we have identified, we are closing our investigation. We greatly appreciate the cooperation of officials from NYSED as well as the Pleasantville School District in reaching this result.

Very truly yours,

JOON H. KIM
Acting United States Attorney
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By:


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Enclosures

Amendments to existing language in the Guidelines:

Page 14—The third sentence in the last paragraph at the bottom of the page will be changed to read as follows: “Provider orders instructing schools to consult with a parent/guardian for a dosage, when to give a medication, etc., are not acceptable orders unless the orders only allow the parent to provide proposed adjustments or dosages and require the health care professional to make the ultimate decision after exercising his/her professional judgment.”

Page 31—The second complete sentence at the top of the page will be changed to read as follows: “Providers may not write orders that state the licensed health professional is to contact the parent regarding medication or other diabetes management procedures unless the orders only allow the parent to provide proposed adjustments or dosages and require the health care professional to make the ultimate decision after exercising his/her professional judgment.”

Additional language to be added to the Guidelines:

Under New York law, a registered professional nurse has the obligation to exercise his/her professional judgment in making decisions regarding health care provided to students in school. The sound exercise of professional nursing judgment requires, among other things, that a nurse gather all relevant information to the extent possible. As the parent/guardian of a student with diabetes typically will have information that is highly relevant to decisions regarding the administration of the student's diabetes medication, the nurse's decisions regarding the administration of diabetes medication will typically require consideration of information obtained from the parent/guardian.

Accordingly, a parent/guardian has the right to and should provide relevant and timely information regarding daily decisions as to dosage and timing of diabetes medication consistent with medical orders prescribed by a legally authorized prescriber, understanding that the nurse retains his/her professional judgment regarding the medication he/she administers. While a parent/guardian's provision of information regarding diabetes medication is not the same as a "medical order" for diabetes care (unless the parent/guardian is an authorized prescriber), such information, when provided by the parent/guardian, must be taken into consideration by a nurse when using his/her professional medical judgment.

It is very important that the student, parent/guardian, school staff (including school health professionals) and the student's physician or other health care provider agree on a clinically sound diabetes management plan for the student, which can reasonably be implemented in a school setting. Good communication, cooperation and coordinated planning among the student, parent/guardian, school staff (including school health professionals) and the student's physician or other health care provider are critical to ensure that the student receives optimal care and can participate in school activities as fully as possible. It may be a reasonable modification, where requested, for parents/guardians to speak to their child during the school day, whether through a cell phone provided to the child, or otherwise through a school phone, consistent with the school policies on cell phone use and the student's IEP or 504 plan, for the purpose of determining their recommendations to be made to the school nurse.

Written Diabetes Medical Management Plan

Although a Diabetes Medical Management Plan (DMMP) is required for Independent Students, it is highly encouraged that every student with diabetes have a current, written DMMP, on file in the school's health office. When nurses provide care to students with diabetes, parents/guardians usually consult with, advise and have regular communications with the nurse regarding their child's health condition, glucose or ketone monitoring, dietary intake (including carbohydrates), physical activities, emergency care and notifications or other health matters. When a parent/guardian requests that school personnel ensure that their child receive specific types or amounts of carbohydrates or additional snacks at a specific time, the school must consider the parent/guardian's request to the extent it is timely and relevant, along with other relevant health information (such as medical orders) and make appropriate decisions regarding the student's care. Likewise, health care providers of students with diabetes may specify in writing to the school, where appropriate, that the parent/guardian is sufficiently trained and experienced in

adjusting the insulin dose of the student for the parent/guardian to propose adjustments of insulin administration during school time hours and at school-sponsored events. A sample form is provided for this purpose. *Insert link.* Please note that the student's DMMP must be accompanied by a physician order that authorizes the school nurse to make dosage adjustments within the same range(s) that the student's health care provider authorizes for the parent/guardian to propose, so that a nurse may exercise her professional judgment.

Role of Parents/Guardians in Adjustment of Insulin Dose

It is my professional judgment that _____, the parents/guardians of _____ have sufficient training and experience in adjusting insulin doses they administer to their child, and therefore should be consulted regarding the adjustment of insulin doses administered by a nurse during school time hours and at school-sponsored events, to the extent reasonably practical, understanding that the nurse retains his/her professional judgment regarding the adjustment dose he/she will administer. One or more of the following are a necessary part of diabetes care for their child in school. Please refer to separate diabetes medical orders for treatment specifics.

Yes No *Parents/guardians, as named above, should be contacted for consultation before administering a correction dose.

Yes No Parents/guardians, as named above, are authorized to propose an increase or decrease in the correction factor within the following range: *(select one)*
 +/- ____ units; OR
 +/- ____% of the prescribed dose according to written orders.

Yes No Parents/guardians, as named above, are authorized to propose an increase or decrease in the insulin-to-carbohydrate ratio within the following range: *(select one)*
 1 units per prescribed +/- ____ grams of carbohydrate; OR
 +/- ____% of the prescribed dose according to written orders.

Yes No Parents/guardians, as named above, are authorized to propose an increase or decrease in the fixed insulin dose within the following range: *(select one)*
 +/- units of insulin; OR
 +/- ____% of the prescribed dose according to written orders.

Yes No Parents/guardians, as named above, are authorized to propose an increase or decrease in the consumption of carbohydrates at any time within the following range: ____ grams of carbohydrates.

Yes No For children on insulin pumps: Parents/guardians, as named above, are authorized to propose a temporary basal rate increase or decrease by ____% for the duration of schooltime hours.

**If school personnel attempt to contact the parents/guardians, as named above, at the following telephone number provided by the parents/guardians () ____ - ____ on at least one occasion and the parents/guardians, as named above, are unable to be reached, and the school health professional determines using his/her professional judgment that treatment is necessary, the school health professional should follow the written orders provided by the health care provider, using his/her professional judgment.*

Health care provider's Signature _____ Date ____ / ____ / ____

NOTE TO PROVIDER: For school personnel to honor this form, the student's DMMP must also be accompanied by a physician order that authorizes the school nurse to make dosage adjustments within the same range(s) authorized above for the parent/guardian to propose, so that a nurse may exercise her professional judgment, when needed.