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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 **K.C.**, by and through Erica C., her guardian,
 16 **A.A.**, by and through Stacey A., her guardian,
M.C., by and through Laurie C., her guardian,
 17 **K.F.**, by and through Shereé F., her guardian,
 each one individually and on behalf of all other
 18 similarly situated children, and the **AMERICAN**
DIABETES ASSOCIATION, an organization,

19 Plaintiffs,

20 vs.

21 **JACK O'CONNELL**, in his official capacity as
 Superintendent of Public Schools For the State of
 22 California; **RUTH E. GREEN, GLEE**
JOHNSON, ALAN BERSIN, RUTH BLOOM,
 23 **YVONNE CHAN, DONALD G. FISHER,**
KENNETH NOONAN, JOE NUÑEZ,
 24 **BONNIE REISS, and JONATHAN**
WILLIAMS, each in his or her official capacity
 25 as a member of the Board of Education of the
 State of California; **THE BOARD OF**
 26 **EDUCATION OF THE STATE OF**
CALIFORNIA; the **CALIFORNIA**
 27 **DEPARTMENT OF EDUCATION**; **ROBERT**
KESSLER, in his official capacity as
 28 Superintendent for San Ramon Valley Unified

Case No.

CIVIL RIGHTS COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF (CLASS ACTION)
DEMAND FOR JURY TRIAL

1 School District; **JOAN BUCHANAN, NANCY**
2 **PETSUCH, BILL CLARKSON, PAUL**
3 **GARDNER and GREG MARVEL**, each in his
4 or her official capacity as a member of the Board
5 of Trustees of the San Ramon Valley Unified
6 School District; the **BOARD OF TRUSTEES**
7 **OF THE SAN RAMON VALLEY UNIFIED**
8 **SCHOOL DISTRICT**; the **SAN RAMON**
9 **VALLEY UNIFIED SCHOOL DISTRICT**;
10 **DOUGLAS GEPHART**, in his official capacity
11 as the Superintendent of the Fremont Unified
12 School District; **PEGGY HERNDON, LARRY**
13 **SWEENEY, NINA MOORE, GUY**
14 **EMANUELE, IVY WU**, each in his or her
15 official capacity as a member of the Board of
16 Trustees of the Fremont Unified School District;
17 the **BOARD OF TRUSTEES OF THE**
18 **FREMONT UNIFIED SCHOOL DISTRICT**;
19 the **FREMONT UNIFIED SCHOOL**
20 **DISTRICT**,

Defendants.

INTRODUCTION

1. This action is commenced to compel San Ramon Valley Unified School District and its Board of Trustees (collectively “SRVUSD”), the Fremont Unified School District and its Board of Trustees (collectively “FUSD”), the California Department of Education, its Board and the State Superintendent of Public Instruction (collectively “CDE”), to provide to every eligible child with diabetes living within each defendant’s respective jurisdiction a free and appropriate public education in the least restrictive environment as required by 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.* (“Title II”), 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 other related federal laws and regulations. The named Plaintiffs, who bring this lawsuit as a class action on behalf of all similarly situated school children in grades Kindergarten through Twelve within the jurisdiction of California’s public schools, have diabetes, are in need of related services, and are persons with a “disability” within the meaning of applicable

1 provisions of Section 504 and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et*
2 *seq.* (“ADA”), in that the condition and effects of their diabetes substantially limit one or more
3 major life activities. In addition, some of these individuals are eligible for special education and
4 related services under IDEA. The American Diabetes Association, is an organizational plaintiff on
5 behalf of its members.

6 2. Diabetes is one of the most common chronic diseases in school-aged children,
7 affecting about 206,000 young people nationwide in 2002. About 1 in every 400 to 500 children
8 and adolescents has type 1 diabetes (formerly known as juvenile diabetes). The incidence of type 2
9 diabetes, formerly known as adult onset diabetes, is rising among school-aged children.

10 3. Both type 1 and type 2 diabetes present serious risks to school-aged children and
11 require careful monitoring and treatment. To maintain health and to prevent serious and potentially
12 fatal consequences, diabetes must be managed 24 hours a day, 7 days a week. Treating diabetes
13 requires a careful balancing of insulin intake, food, and physical activity to keep blood glucose
14 levels within the normal range. Blood glucose levels must be frequently monitored and appropriate
15 treatment responses (such as administering insulin or eating a snack) must be taken depending on
16 the measured glucose level. For most school children with type 1 diabetes, blood glucose levels
17 must be monitored throughout the school day and doses of insulin (either by injection or by an
18 insulin pump) must be given during school hours. In addition to blood glucose monitoring, some
19 students with type 2 diabetes also require insulin and/or oral diabetes medications during the school
20 day. In many instances children with diabetes, because of their age or other condition, need
21 assistance throughout the school day in managing their condition to maintain their health and well-
22 being.

23 4. Recent surveys conducted by the California PTA suggest that California schools with
24 full-time nurses fell from 7 percent in 1998 to 5 percent in 2003 and schools with no nurse at all
25 increased to 26 percent in 2003. Schools with a part-time non-medical employee to handle student
26 health care increased in 2003 from 44 percent to 66 percent. Most school nurses in districts that do
27 provide them are obligated to service several schools within one district.

1 5. The assistance required by school children with diabetes can be provided by school
2 nurses or by non-medical school personnel who have been adequately trained by health care
3 professionals, or other qualified individuals with expertise or training in the care and treatment of
4 diabetes in youth. Indeed, school personnel are regularly trained to assist in the monitoring of a
5 student’s diabetes, which include checking glucose levels, administering insulin, and responding to
6 emergency situations, all pursuant to the regimen prescribed by the student’s health care team
7 (usually contained in a written DMMP or physician’s orders). There are at present a number of
8 California schools that are meeting the needs of their students with diabetes in grades Kindergarten
9 through Twelve by providing diabetes-related care, services and treatment, particularly by allowing
10 trained non-medical personnel to administer insulin and to take appropriate action in emergency
11 situations.

12 6. In violation of Section 504, the ADA, IDEA and applicable federal regulations,
13 SRVUSD and FUSD fail to provide sufficient policies, programs, plans and practices to meet the
14 needs of students with diabetes in grades Kindergarten through Twelve. Specifically, SRVUSD and
15 FUSD refuse to assign any school personnel to assist students with the injection of insulin, as
16 needed, despite the fact that students with type 1 diabetes, and some students with type 2 diabetes,
17 require insulin to survive and, without access to insulin during the school day, are at risk of serious,
18 and possibly fatal, short-term consequences and long-term health complications.

19 7. CDE is responsible for ensuring that all children with disabilities in the State receive
20 a free appropriate public education, including school health services. CDE exercises this
21 responsibility through investigation and monitoring, and sanctions, including mandating corrective
22 action, withholding of funds and litigation. CDE has failed to ensure that children with diabetes in
23 California have the services they need to safely attend school and has failed to investigate and
24 monitor school districts’ compliance with federal law requiring such services.

25 8. To ensure that Plaintiffs receive a free and appropriate public education in the least
26 restrictive environment as required by Section 504, the ADA, IDEA, and applicable federal
27 regulations, Plaintiffs seek the following relief in general (stated more specifically in the prayer
28 below): an injunction compelling (1) SRVUSD and FUSD to develop appropriate diabetes policy

1 and to offer and provide a sufficient number of adequately trained school personnel to check
2 students' blood glucose levels, monitor students for symptoms of hypoglycemia (low blood glucose)
3 and hyperglycemia (high blood glucose), and administer insulin and glucagon or other treatment as
4 per a student's written diabetes medical management plan ("DMMP") developed in conjunction
5 with the student's family and treating physician, and (2) CDE to design and implement a written
6 policy, program or directive that adequately addresses the needs of students with diabetes in grades
7 Kindergarten through Twelve, to investigate all complaints regarding diabetes care and services, and
8 to regularly monitor and enforce implementation of policies and directives concerning such care.

9 **JURISDICTION**

10 9. This Court has jurisdiction under 28 U.S.C. § 1343(a)(3) and (4), because this is an
11 action to redress the deprivation under Section 504, the ADA, and IDEA. Because this action arises
12 under these laws, this Court also has jurisdiction under 28 U.S.C. § 1331.

13 **VENUE**

14 10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) as some of
15 the Defendants reside in this district and a substantial part of the events or omissions giving rise to
16 this action arose in the counties of Contra Costa and Alameda, which are both located within this
17 district.

18 **INTRADISTRICT ASSIGNMENT**

19 11. This action must be assigned to the San Francisco or Oakland Divisions of this
20 District pursuant to Local Rule 3-2(d) because a substantial part of the events or omissions giving
21 rise to this action arose in the counties of Contra Costa and Alameda.

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1 **THE PARTIES**

2 **Plaintiffs**

3 12. Plaintiff K.C. is eleven years old. K.C. resides with her parents in Danville, in
4 Contra Costa County, California, and comes within the jurisdiction of Defendants SRVUSD and
5 CDE. K.C. has type 1 diabetes, bi-polar disorder, and dyslexia and other learning disabilities, each
6 of which substantially limits her participation in major life activities, including eating, learning and
7 caring for herself. K.C. has a disability that entitles her to receive special education and related
8 services within the meaning of IDEA, Section 504 and the ADA. SRVUSD and CDE have denied
9 K.C. her right to a free and appropriate public education because SRVUSD has failed to include
10 diabetes care or a specialized physical DMMP in K.C.’s Individualized Education Program (“IEP”)
11 and because K.C. cannot safely attend school without written assurances that her blood glucose will
12 be checked, that she will be given sufficient opportunities to eat, and that she will be given insulin
13 and/or glucagon to treat her diabetes in accordance with the written DMMP determined by her
14 treating pediatric endocrinologist. K.C. brings this action by and through her guardian – her mother,
15 Erica C.

16 13. Plaintiff A.A. is five years old. A.A. resides with her parents in Danville, in Contra
17 Costa County, California, and comes within the jurisdiction of Defendants SRVUSD and CDE.
18 A.A. has type 1 diabetes, which substantially limits her major life activities, including eating,
19 learning and caring for herself and entitles her to receive related services; she is therefore a child
20 who has a disability within the meaning of Section 504, the ADA and possibly IDEA. SRVUSD
21 and CDE have denied A.A. her right to a free and appropriate public education because school
22 district officials have refused to provide needed services and because she cannot safely attend school
23 without written assurances that her blood glucose will be checked, that she will be given sufficient
24 opportunities to eat, and that she will be given insulin and/or glucagon to treat her diabetes in
25 accordance with the written DMMP determined by her treating pediatric endocrinologist. A.A.
26 brings this action by and through her guardian – her mother, Stacey A.

27 14. Plaintiff M.C. is five years old. M.C. resides with her parents in Danville, in Contra
28 Costa County, California, and comes within the jurisdiction of Defendants SRVUSD and CDE.

1 M.C. has type 1 diabetes, which substantially limits her major life activities, including eating,
2 learning, and caring for herself and entitles her to receive related services; she is, therefore, a child
3 who has a disability within the meaning of Section 504, the ADA and possibly IDEA. SRVUSD
4 and CDE have denied M.C. her right to a free and appropriate public education because school
5 district officials have refused to fully provide needed services and because she cannot safely attend
6 school without written assurances that her blood glucose will be checked, that she will be given
7 sufficient opportunities to eat, and that she will be given insulin and/or glucagon to treat her diabetes
8 in accordance with the written DMMP determined by her treating pediatric endocrinologist. M.C.
9 brings this action by and through her guardian - her mother, Laurie C.

10 15. Plaintiff K.F. is 7 years old. K.F. resides with her parents in Fremont, Alameda
11 County, California, and comes within the jurisdiction of Defendants FUSD and CDE. K.F. has type
12 1 diabetes, which substantially limits her major life activities, including eating, learning and caring
13 for herself and entitles her to receive related services; she is, therefore, a child who has a disability
14 within the meaning of Section 504, the ADA and possibly IDEA. FUSD and CDE have denied K.F.
15 her right to a free and appropriate public education because school district officials have refused to
16 provide needed services and because she cannot safely attend school without assurances that her
17 blood glucose will be checked, that she will be given sufficient opportunities to eat, and that she will
18 be given insulin and/or glucagon to treat her diabetes in accordance with the written DMMP
19 determined by her treating pediatric endocrinologist. K.F. brings this action by and through her
20 guardian, Shereé F.

21 16. Plaintiff American Diabetes Association is a nationwide, nonprofit, voluntary health
22 organization founded in 1940 and made up of persons with diabetes, health professionals who treat
23 persons with diabetes, research scientists and other concerned individuals. The mission of the
24 Association is to prevent and cure diabetes and to improve the lives of all people affected by
25 diabetes. The Association is the predominant non-governmental organization that deals with the
26 treatment and impact of diabetes. With over 435,000 general members, nearly 18,000 health
27 professional members, and over 1,000,000 volunteers, the Association is the largest voluntary health
28 organization addressing diabetes-related concerns. The Association establishes, reviews and

1 maintains the most authoritative and widely followed clinical practice recommendations, guidelines
2 and standards for the treatment of diabetes. The Association publishes the most influential
3 professional journals concerning the treatment of diabetes and developments in diabetes research.
4 Among the Association’s principal concerns is the fair and equitable treatment of persons with
5 diabetes. The failure of defendant CDE to monitor and enforce the rights of children with diabetes
6 to adequate medical care and appropriate aids and services in California public schools will cause
7 the Association to devote its resources to remedying this problem, including counseling of members
8 of the Association in the San Ramon and Fremont areas, and in other areas of California, on
9 addressing the inadequate care and accommodations and monitoring of the treatment of members of
10 the Association or their family members. The Association will also seek to ensure that students with
11 diabetes in grades Kindergarten through Twelve receive adequate care and services while at school.
12 Plaintiff American Diabetes Association sues on its own behalf, on behalf of the school children
13 with diabetes to whom it provides services, and on behalf of its members. Neither the claim
14 asserted, nor the relief requested, requires the participation of the Association’s individual members
15 in the lawsuit.

16 **Defendants**

17 17. Defendant Jack O’Connell (“O’Connell”) is the Superintendent of Public Instruction
18 for the State of California. It is Defendant O’Connell’s duty to oversee the operation of all public
19 schools in California, to execute policies that implement federal laws regarding the provision of
20 education to children in California, including those which guarantee equality of educational
21 opportunity to all children, to monitor compliance of public schools with such laws, and to ensure
22 that violations of such laws in public schools are promptly investigated and corrected. Defendant
23 O’Connell is sued only in his official capacity.

24 18. Defendants Ruth E. Green, Glee Johnson, Alan Bersin, Ruth Bloom, Yvonne Chan,
25 Donald G. Fisher, Kenneth Noonan, Joe Nuñez, Bonnie Reiss and Jonathan Williams are members
26 of the Board of Education for the State of California (collectively the “Members of the Board of
27 Education”). Defendant Members of the Board of Education are being sued only in their official
28

1 capacities. The Board of Education is an elected body responsible for setting policy for CDE and
2 ensuring that such policy is properly implemented.

3 19. Defendant California Department of Education is the governmental entity created
4 and mandated to oversee the operation of public schools in the State of California. It is the
5 department’s responsibility to ensure that all children in the State of California receive education
6 services pursuant to federal laws and regulations.

7 20. Defendants O’Connell, the California Department of Education, the Members of the
8 Board of Education for the State of California and the Board of Education for the State of California
9 were fully informed, or should have been informed had they fulfilled their duty, concerning the
10 failure of SRVUSD and FUSD to provide to all eligible children with diabetes a free and
11 appropriate public education as required under federal laws and regulations. These defendants are
12 collectively referred to as the “CDE.”

13 21. Defendant Robert Kessler is the Superintendent of the San Ramon Valley Unified
14 School District. Defendant Kessler is appointed by the Board of Trustees of the School District to
15 implement policies created by the Board of Trustees and/or mandated by federal laws and
16 regulations. Defendant Kessler is responsible for ensuring that children in the School District are
17 provided equal access to public education programs and activities offered in the School District.
18 Defendant Kessler is also responsible for ensuring that all eligible children with diabetes are
19 provided a free appropriate public education including special education and related services in
20 compliance with federal laws and regulations. Defendant Kessler is sued only in his official
21 capacity.

22 22. Defendants Joan Buchanan, Nancy Petsuch, Bill Clarkson, Paul Gardner, and Greg
23 Marvel are members of the Board of Trustees of the San Ramon Valley Unified School District
24 (collectively “Members of the Board of Trustees of the San Ramon Valley School District”).
25 Defendant Members of the Board of Trustees are sued only in their official capacities. The Board of
26 Trustees of the San Ramon Valley Unified School District retains ultimate responsibility for the
27 education of the School District’s students.
28

1 23. Defendant San Ramon Valley Unified School District is a government agency
2 responsible for providing school children full and equal access to the public education programs and
3 activities it offers in compliance with the requirements of federal laws and regulations. On
4 information and belief, it is chartered and incorporated under California law. Its responsibilities
5 include making and implementing educational decisions for the schools within its jurisdiction.

6 24. Defendants Kessler, the Members of the Board of Trustees of the San Ramon Valley
7 Unified School District, the Board of Trustees of the San Ramon Valley Unified School District and
8 the San Ramon Valley Unified School District are collectively referred to as the “SRVUSD.”

9 25. Defendant Douglas Gephart is the Superintendent of the Fremont Unified School
10 District. Defendant Gephart is appointed by the Board of Trustees of the School District to
11 implement policies created by the Board of Trustees and/or mandated by federal laws and
12 regulations. Defendant Gephart is responsible for ensuring that children in the School District are
13 provided equal access to public education programs and activities offered in the School District.
14 Defendant Gephart is also responsible for ensuring that all eligible children with diabetes are
15 provided a free appropriate public education including special education and related services in
16 compliance with federal laws and regulations. Defendant Gephart is sued only in his official
17 capacity.

18 26. Defendants Peggy Herndon, Larry Sweeney, Nina Moore, Guy Emanuele, and Ivy
19 Wu are members of the Board of Trustees of the Fremont Unified School District (collectively
20 “Members of the Board of Trustees of the Fremont Unified School District”). Defendant Members
21 of the Board of Trustees of the Fremont Unified School District are sued only in their official
22 capacities. The Board of Trustees of the Fremont Unified School District retains ultimate
23 responsibility for the education of the School District’s students.

24 27. Defendant Fremont Unified School District is a government agency responsible for
25 providing school children full and equal access to the public education programs and activities it
26 offers in compliance with the requirements of federal laws and regulations. On information and
27 belief, it is chartered and incorporated under California law. Its responsibilities include making and
28 implementing educational decisions for the schools within its jurisdiction.

1 35. Defendants, and each one of them, have acted and refused to act on grounds
2 applicable to the entire Plaintiff Class, thereby making it appropriate that final injunctive relief or
3 corresponding declarative relief be awarded with respect to the Plaintiff Class as a whole.

4 **STATEMENT OF FACTS**

5 36. Diabetes is a non-curable, serious, chronic disease that prevents the body from
6 producing or properly using insulin, a hormone that is needed to convert glucose, starches, and other
7 food into energy required for daily life. Insulin, a hormone produced by the pancreas, helps the
8 body convert food into energy. In people with diabetes, either the pancreas does not make enough
9 insulin or the body cannot use insulin properly. Type 1 diabetes occurs when the body destroys the
10 cells in the pancreas responsible for producing insulin, rendering the body unable to produce this
11 vital hormone. Type 2 diabetes results when the body cannot make sufficient amounts of insulin or
12 properly use insulin. If insulin is not present, cells cannot convert the glucose from the food that a
13 person eats into energy, and glucose builds up in the bloodstream, causing severe and possibly fatal
14 consequences. Even when a person with diabetes gets the insulin he or she needs to survive, long-
15 term risks remain. Over time, high blood glucose levels can cause blindness, heart disease, stroke,
16 kidney disease and amputation of the foot or leg, among other complications.

17 37. Diabetes can cause serious and possibly fatal consequences in school-aged children.
18 To avoid these consequences, many students with diabetes in grades Kindergarten through Twelve
19 are now on treatment regimens which require 3 to 4 or more insulin administrations per day (some
20 of which must be given during school hours). In addition to routine insulin administration, students
21 may need to take insulin to treat high blood glucose levels whenever they occur. The proper insulin
22 dosage to be given at a particular time will vary based on factors including current blood glucose
23 levels, anticipated meals and snacks, and anticipated physical activity levels. How insulin dosages
24 should be calculated is ordinarily specified by a child's physician in a written DMMP.

25 38. Low blood glucose, i.e., hypoglycemia, is the most common short-term health
26 problem for students with diabetes in grades Kindergarten through Twelve who require insulin. It
27 occurs when the body gets too much insulin, too little food, a delayed meal, or more than the usual
28 amount of exercise. Symptoms of mild to moderate hypoglycemia include tremors, sweating, light-

1 headedness, irritability, confusion and drowsiness. Mild to moderate hypoglycemia results in
2 impaired thinking ability. A student with this degree of hypoglycemia needs to ingest carbohydrates
3 promptly to increase the blood glucose level. Depending on the severity of the hypoglycemia and
4 whether the student’s mental and physical states are altered as a result, the student may require
5 assistance with ingesting the carbohydrates. If the blood glucose level is not raised, hypoglycemia
6 can become severe. Severe hypoglycemia may lead to unconsciousness and convulsions and can be
7 life-threatening if not treated promptly. When severe hypoglycemia resulting in unconsciousness,
8 seizures/convulsions or the inability to swallow occurs at school, it should be treated with the
9 administration of an injection of glucagon. Glucagon is a hormone that raises blood glucose levels
10 by causing the release of glycogen (a form of stored carbohydrate) from the liver.

11 39. High blood glucose, i.e., hyperglycemia, occurs when the body gets too little insulin,
12 food not covered by insulin or too little exercise. It may also be caused by stress or an illness such
13 as a cold. The most common symptoms of hyperglycemia are thirst, frequent urination, nausea and
14 blurry vision. If untreated over a period of days or hours, hyperglycemia can cause a serious
15 condition called diabetic ketoacidosis (“DKA”) in which the body begins to burn fat for energy and
16 is characterized by nausea, vomiting and a high level of ketones in the blood and urine. For students
17 using insulin pumps, lack of insulin supply due to a pump malfunction or other problem may lead to
18 DKA more rapidly. DKA can be life-threatening and thus requires immediate medical attention.

19 40. Studies show a significant link between the level of blood glucose control and later
20 development of diabetes complications. To achieve blood glucose control, a child’s blood glucose
21 must be monitored frequently, and appropriate responses (such as giving a dose of insulin or giving
22 a snack) must be made.

23 41. Effective diabetes management is crucial for the immediate safety and long-term
24 health of students with diabetes in grades Kindergarten through Twelve. It is also essential to ensure
25 that students with diabetes in grades Kindergarten through Twelve are ready to learn and to
26 participate fully in school activities and to minimize the possibility that diabetes-related emergencies
27 will disrupt classroom activities and the learning process.
28

1 42. Because monitoring and treatment must occur during the school day, a properly
2 trained school health team—which may include school administrators, school nurses, principals,
3 teachers, office personnel, transportation providers, and other staff members—plays a critical role in
4 helping students manage their diabetes. The school health team must be properly trained and
5 knowledgeable about the management and treatment of diabetes and be able to perform diabetes
6 care tasks to avoid the immediate health risks of low and high blood glucose and to decrease risks
7 for later development of diabetes complications.

8 43. As of 2003, research indicated that more than 12,000 adolescents in California had
9 been diagnosed with diabetes. There are numerous students in grades Kindergarten through Twelve
10 within the jurisdiction of SRVUSD and FUSD who are believed to have diabetes, the condition and
11 effects of which make them eligible for related services under Section 504 and the ADA because
12 their diabetes substantially limits at least one major life activity. In addition, some of these students
13 are eligible for special education and related services under IDEA.

14 **Allegations Of Plaintiff K.C.**

15 44. K.C. is eleven years old and is in the Fifth Grade. K.C. resides with her mother,
16 Erica C., her father and two sisters in Danville, in Contra Costa County, California.

17 45. K.C. has type 1 diabetes, bi-polar disorder, and dyslexia and other learning
18 disabilities, each of which substantially limits her participation in major life activities.

19 46. K.C. was diagnosed with type 1 diabetes in December 2002.

20 47. Because of her conditions, K.C. qualifies for special education services from the
21 SRVUSD and has had an Individualized Education Program (“IEP”) since she started school at the
22 age of six in 2000. When K.C. initially qualified for an IEP, it was on the basis of serious emotional
23 disturbance. Since then, the SRVUSD has changed her qualification to specific learning disability
24 and then back to serious emotional disturbance, according to her most recent IEP dated June 2005.

25 48. Because of her type 1 diabetes and the treatment regimen it requires, her major life
26 activities (including eating, caring for herself, learning, thinking and others) are substantially
27 limited. Some of the limitations on her major life activities include: need for a controlled diet with
28 carbohydrate counting at each meal and snack, an inability to eat the foods she chooses at the times

1 she chooses, the need to constantly balance insulin dosages with food intake, blood glucose levels
2 and physical activity, adult-monitoring and supervision of her activities (especially exercise,
3 recreation and socializing).

4 49. Following diagnosis, K.C.'s family immediately began a strict regimen of checking
5 her blood glucose levels, injecting insulin and balancing insulin with her physical activity and food
6 intake in order to maintain her blood glucose level within her target range. K.C. is on a treatment
7 regimen which requires her to take multiple doses of insulin per day (some of which must be given
8 during school hours). To manage her diabetes, K.C. wears an insulin pump. Daily monitoring and
9 treatment of her type 1 diabetes consists of blood glucose checks at least six times and up to twelve
10 times per day; continual insulin via her pump with five to ten additional doses of insulin via her
11 pump as directed by her DMMP according to blood glucose levels and food intake.

12 50. K.C. has been wearing an insulin pump to assist in the management of her diabetes
13 since the summer of 2003. Because pumps use only short acting insulin, any disruption in the flow
14 of insulin for whatever reason -- from an empty reservoir to a kinked line to losing its settings due to
15 low batteries -- can cause blood glucose levels to quickly rise dangerously high. Although K.C.
16 uses an insulin pump in her diabetes treatment, she may require alternative treatment, such as insulin
17 injections, and adult assistance if her pump were to develop problems or in any other emergency.

18 51. Due to her dyslexia, and blurred vision that she experiences when her blood glucose
19 level is high, K.C. cannot operate her insulin pump independently. She is very responsible for her
20 diabetes management, given her age and other disabilities, but she requires adult supervision to
21 ensure that she checks her blood glucose levels when necessary and takes correct action to give
22 herself insulin with her pump. She is incapable of troubleshooting her diabetes at school without
23 adult supervision and guidance.

24 52. The SRVUSD has failed to include diabetes care or a specialized physical DMMP in
25 K.C.'s IEP. Prior to her entering third grade in 2003, Ms. C. attended a meeting with district
26 representatives where they discussed K.C.'s diabetes. The district agreed to maintain notes about
27 when K.C. checked her blood glucose but made no commitment to develop a DMMP, or to
28 administer insulin or glucagon when needed. The notes were not supplied to Ms. C. and, to the best

1 of her knowledge, the district stopped keeping notes of blood glucose checks and results after that
2 school year.

3 53. Following K.C.'s diabetes diagnosis, SRVUSD provided a form to Ms. C. entitled
4 "Parent Consent and Authorized Health Care Provider Authorization for Management of Diabetes at
5 School and School Sponsored Events" which K.C.'s treating pediatric endocrinologist, Dr. Suruchi
6 Bhatia, at Children's Hospital in Oakland, completed and signed. The form signed by the doctor
7 covers when blood glucose testing should be performed, when K.C. should be allowed to eat
8 (including on bus trips), what to do in the event of hypoglycemia (including administration of
9 glucagon), her pump management regimen and insulin administration by syringe as back-up plan,
10 etc. The form generally allows trained and supervised non-medical personnel to perform specialized
11 physical health care services, except for the administration of insulin, where only the following
12 options are given: the student, parent, parent designee, or licensed nurse. On the latest form signed
13 by Dr. Bhatia and dated September 7, 2005, the doctor crossed out parent and wrote in "adult" to
14 designate the person responsible for determining the correct amount of insulin to be administered
15 via K.C.'s pump.

16 54. Representatives from SRVUSD have consistently failed to carry out the regimen
17 specified by K.C.'s doctor on the district's form. SRVUSD has refused to ensure that K.C. checks
18 her blood glucose when she should and have likewise rejected her parents' requests that a school
19 representative supervise K.C.'s use of her insulin pump during school hours. Although high blood
20 glucose levels cause K.C. to have difficulties focusing, blurred vision and a reduced ability to
21 concentrate – all of which impede her ability to learn – at times, K.C. has been forced to cope with
22 high blood glucose levels while at school because of this lack of consistent support by individuals at
23 her school or by SRVUSD.

24 55. Despite Ms. C.'s requests, representatives from the SRVUSD refuse to administer
25 insulin to K.C. On several occasions since K.C. was diagnosed in 2002, Ms. Sharon Dodson, the
26 school nurse, told Ms. C. that SRVUSD employees will not administer insulin. Although Ms.
27 Dodson indicated that she may be able to administer insulin on occasion, she also emphasized that
28 she might be delayed depending upon her whereabouts as she said she is at the school only once

1 every two weeks. Ms. Dodson told Ms. C. that Ms. C. or an individual designated by K.C.'s family
2 would have to be available to administer insulin to K.C. if needed. To Ms. C.'s knowledge, no one
3 employed by the SRVUSD has ever administered insulin to K.C.

4 56. Consequently, Ms. C., who is herself a registered nurse, has been unable to return to
5 work as she planned to in 2003 after her youngest child entered Kindergarten. She did try to work
6 part-time in the spring of 2004, but had to quit her job that fall because she was unable to respond to
7 calls from K.C. and she was not able to leave her patients to go to school when needed.

8 57. Since K.C.'s diagnosis, Ms. C. has had to be on-call to go to school whenever there
9 were complications with K.C.'s pump and she needed an injection of insulin. She has been called to
10 school to administer insulin to K.C. on numerous occasions. Since 2003, K.C. accidentally ripped
11 out her pump tubing at least three times at school; at least four times her pump malfunctioned; at
12 least three times she needed an injection; and at least four times Ms. C. was not able to get to school
13 and K.C. had to wait until she got home for Ms. C. to attend to her medical needs.

14 58. In addition to the district's failure to commit to administer insulin or designate staff
15 to administer glucagon, Ms. C. has also been unsuccessful in getting the district to supply a current
16 carbohydrate count of the school lunch menu and serving size so that Ms. C. can predetermine
17 K.C.'s lunch plans with her, which her parents need to do on a daily basis. Ms. C. believes that
18 there is a total lack of defined protocols in the district and that the absence of a district-level diabetes
19 policy that requires care and continuity of diabetes care has contributed to the total lack of
20 appropriate diabetes care services to her daughter.

21 59. K.C. cannot safely attend school without assurances that her blood glucose will be
22 checked, that she will be given sufficient opportunities to eat and that her food intake will be
23 monitored, and that she will be given insulin and/or glucagon to treat her diabetes as necessary
24 and/or in accordance with a written DMMP. K.C. needs a DMMP at school that ensures that an
25 adult will always be present and designated to oversee her care while she is at school. She is a child
26 with learning and emotional disabilities who cannot independently monitor her own diabetes care at
27 this time.

28

1 60. As K.C. attends a special day class at the Rancho Romero Elementary School,
2 pursuant to her IEP, SRVUSD is providing transportation via bus for K.C. to attend this class. In
3 light of Ms. C.'s concerns about the management of K.C.'s diabetes and the fact that the school bus
4 is scheduled to pick K.C. up nearly an hour and a half before school begins, at the beginning of this
5 school year Ms. C. contacted Ms. Sharon Dodson and asked that SRVUSD ensure that the bus
6 driver is adequately trained in dealing with type 1 diabetes management and is able to address and
7 resolve any emergency situation that may arise as a result of K.C.'s diabetes. Ms. Dodson,
8 however, referred Ms. C. to the bus company. When Ms. C. specifically asked Ramona, the bus
9 driver who would be providing K.C.'s transportation, whether she knew that K.C. was a student
10 with diabetes and what to do in an emergency, the driver expressed that she did not know what to do
11 and was merely instructed to call the transportation office in crisis situations. When Ms. C. called
12 the bus company office and spoke to someone named Regina, she said that the bus drivers are not
13 trained and are instructed to just call the office when necessary. Regina did not inquire about K.C.'s
14 diabetes care needs.

15 61. On the first day of school, K.C. was told that she was not allowed to eat her lunch on
16 the bus following her class, despite the fact that she would be on the bus for at least 45 minutes for
17 the bus ride home and not being permitted to eat would likely cause irritability, anxiety and other
18 physical and mental impairments, including possibly, life-threatening hypoglycemia. Again, Ms. C.
19 called the bus company and Ms. Sharon Dodson and the school office. Someone from the office at
20 K.C.'s school went to her and instructed her to eat before she got on the bus. K.C. ate and
21 administered too much insulin through her insulin pump. There is no adult on-site trained in K.C.'s
22 diabetes management. When she got home after the first day of school Ms. C. found that K.C.'s
23 blood glucose level was dangerously low. Ms. C. greeted the bus driver upon drop-off and the bus
24 driver indicated that it would be okay for her to eat on the bus in the future. However, Ms. C. has
25 since been informed that the bus driver has been re-assigned. The district has not provided any
26 assurances to Ms. C. that K.C.'s bus driver will be trained to carry out her diabetes management
27 regimen, including by making necessary accommodations, such as allowing her to eat on the bus.
28

1 69. A.A. began Kindergarten on August 29, 2005 at Greenbrook Elementary School in
2 Danville, California.

3 70. Ms. A. first contacted Greenbrook Elementary School on March 8, 2005 when she
4 had an impromptu meeting with Ms. Sharon Dodson, the school nurse.

5 71. During that meeting, Ms. A. informed Ms. Dodson that A.A. is a student with
6 diabetes, that she would require blood glucose testing in the classroom, and expressed interest in
7 creating a written placement plan adopted pursuant to Section 504 (“Section 504 Plan”). Ms.
8 Dodson agreed that a Section 504 Plan would need to be developed but she did not say when that
9 would happen.

10 72. In another meeting with Greenbrook Elementary School personnel on May 31, 2005,
11 Ms. Dodson told Ms. A. that school personnel would not give insulin injections. If A.A. required
12 insulin during the school day, Ms. Dodson advised Ms. A. that either she or a family friend would
13 have to go to the school to administer A.A.’s insulin. Ms. A. was not given clear direction on
14 whether school personnel would administer a glucagon injection in the event of an emergency.

15 73. On August 17, 2005, Ms. A. wrote to Tom Ladouceur, the principal of Greenbrook
16 Elementary, and reiterated her concerns regarding her daughter’s diabetes maintenance and care
17 while in school. Ms. A. told Mr. Ladouceur that if school personnel would not provide A.A. with
18 insulin during school, as Ms. A. had been advised, she would need to be “on-call” at all times and,
19 thus, constantly be within a 10-minute radius of the school. But there may be times when Ms. A.
20 cannot get to school. She anticipates that A.A. will need an injection of insulin while at school two
21 times per week.

22 74. In response to Ms. A.’s request for a Section 504 Plan, Mr. Ladouceur told her that
23 the Section 504 Plan would not be developed until after school starts.

24 75. On August 26, 2005, Ms. A. met informally with school nurse Sharon Dodson, the
25 Kindergarten teachers, and an office staff member to discuss A.A.’s diabetes care, needs and
26 treatment. Ms. A. gave them a proposed Section 504 Plan that she recommends, and she gave them
27 a copy of a DMMP that she recommends, both of which she completed according to A.A.’s specific
28

1 care needs. Although Ms. Dodson told Ms. A. that Mr. Ladouceur, the principal, would be writing
2 A.A.'s Section 504 Plan, he was not in attendance at this meeting.

3 76. During the course of the meeting Ms. Dodson informed Ms. A. that staff will be
4 trained to administer glucagon but not insulin. Because Ms. Dodson "floats" to five other schools
5 and has other assignments, she could be called to administer insulin but would need to be the third
6 contact for insulin injections after Ms. A. and her designee. Ms. Dodson said it would be best if Ms.
7 A. was designated the first contact and after that, Laurie C. (the mother of Plaintiff M.C.), because
8 she assumed that Ms. A. and Ms. C. would be able to respond more quickly. Ms. Dodson reiterated
9 that there is no one on-site who could be assigned.

10 77. Despite the meeting, the school has not provided Ms. A. with a written Section 504
11 Plan and she does not have adequate assurances that A.A. will receive insulin or glucagon injections
12 as necessary and/or in accordance with a written DMMP. In response to Ms. Dodson's request at
13 the August 26, 2005 meeting, Ms. A. has given her a copy of A.A.'s most current doctor's orders,
14 completed on a district form Ms. Dodson provided to Ms. A, and signed on May 4, 2005 by Dr.
15 Suruchi Bhatia, her pediatric endocrinologist at Children's Hospital in Oakland, California. The
16 orders set forth A.A.'s diabetes care regimen, including administration of insulin via syringe and
17 glucagon as needed during the school day. The district form completed and signed by the doctor
18 contains a general authorization for non-medical personnel to perform specialized physical health
19 care services. However, the section pertaining to persons responsible for insulin dosage and
20 administration asks the parent and doctor to select from only the following options: student, parent,
21 parent designee, or licensed nurse, and there is no option to select non-medical personnel.

22
23 **Allegations Of Plaintiff M.C.**

24 78. Plaintiff M.C. is five years old and is now in Kindergarten. M.C. resides with her
25 mother, Laurie C., her father, and her brother, in Danville, in Contra Costa County, California.

26 79. M.C. was diagnosed with type 1 diabetes at the age of 13 months. She is currently
27 under the care of Dr. Suruchi Bhatia, a pediatric endocrinologist at Children's Hospital in Oakland,
28 California for treatment of her type 1 diabetes.

1 80. Because of her type 1 diabetes and the treatment regimen it requires, her major life
2 activities (including eating, caring for herself, learning, thinking and others) are substantially
3 limited. Some of the limitations on her major life activities include: need for a controlled diet with
4 carbohydrate counting at each meal and snack, an inability to eat the foods she chooses at the times
5 she chooses, the need to constantly balance insulin dosages with food intake, blood glucose levels
6 and physical activity, adult-monitoring and supervision of her activities (especially exercise,
7 recreation and socializing).

8 81. Daily monitoring and treatment of her type 1 diabetes consists of 7-12 blood glucose
9 checks daily and insulin doses as appropriate based on blood glucose readings and food consumed.

10 82. In or around March 2004, M.C. began wearing an insulin pump to assist in the
11 management of her diabetes. Her insulin pump, known as a “smart” pump, simplifies the task of
12 injecting insulin. If one enters M.C.’s blood glucose level into the pump and information about
13 what she plans to eat, the pump measures the amount of insulin M.C. needs and guides the user
14 through the process such that the machine injects M.C. with the correct amount of insulin. Given
15 M.C.’s age and the fact that she is unable to read, she cannot use the pump without an adult’s
16 supervision and help. The pump itself cannot monitor blood glucose levels; blood glucose checks
17 must still be done. In addition, because pumps use only short acting insulin, any disruption in the
18 flow of insulin for whatever reason can cause blood glucose levels to quickly rise dangerously high.
19 Although M.C. uses an insulin pump in her diabetes treatment, she may require alternative
20 treatment, such as insulin injections, and adult assistance if her pump were to develop problems or
21 in any other emergency.

22 83. M.C. began Kindergarten on August 29, 2005 at Greenbrook Elementary School in
23 Danville, California.

24 84. In or around May 10, 2005, Ms. C. met with Ms. Sharon Dodson, the school’s nurse,
25 on several occasions to inform the school of M.C.’s condition and to discuss how the school would
26 assist M.C. with her monitoring and insulin needs.

27 85. At that time Ms. Dodson told Ms. C. that school personnel would not give injections
28 and was noncommittal as to whether school personnel would assist with blood glucose monitoring

1 or operation of M.C.'s insulin pump. Although Ms. Dodson told Ms. C. that school staff was
2 trained in administering glucagon injections, given the policy against school personnel giving
3 injections, the nurse was noncommittal as to whether school personnel would administer the
4 glucagon, even if it meant the difference between life and death.

5 86. During her conversations with the nurse, Ms. C. requested a meeting with school
6 personnel to create a Section 504 Plan, but Ms. Dodson told her that the meeting could not take
7 place until after registration – just days before school started. Ms. C. also asked Ms. Dodson
8 whether she should request that an IEP be prepared for M.C., but Ms. Dodson stated that M.C.
9 would not qualify for an IEP and that the school does not do IEPs under such circumstances.

10 87. On or around August 26, 2005, Ms. C. met with school personnel to discuss M.C.'s
11 diabetes care, needs and treatment. Prior to the meeting, Ms. C. provided the district with a
12 complete diabetes management regimen on a form supplied by the district and signed by M.C.'s
13 pediatric endocrinologist. The district form signed by the doctor generally allows trained and
14 supervised non-medical personnel to perform specialized physical health care services, except for
15 the administration of insulin, where only the following options are given: the student, parent, parent
16 designee, or licensed nurse.

17 88. Ms. C. also provided the district with other supporting documents, including a draft
18 Section 504 Plan specific to M.C.'s needs for the district's review and consideration. During the
19 meeting, Ms. C. demonstrated to M.C.'s teacher, co-teacher, an office staff member and Ms.
20 Dodson how to check blood glucose levels and how to use M.C.'s insulin pump. She also instructed
21 these staff members on M.C.'s snack schedule, testing schedule and when she should be contacted.
22 These staff members agreed to test M.C.'s glucose levels, monitor her snacks, and work her insulin
23 pump. Although Ms. C. was told that the principal would be writing M.C.'s Section 504 Plan, he
24 was not in attendance at this meeting. Despite the meeting, the school has not provided a written
25 Section 504 Plan for M.C. nor adequate assurances that M.C. will receive insulin or glucagon
26 injections in accordance with a written DMMP.

Allegations Of Plaintiff K.F.

1
2 89. Plaintiff K.F. is seven years old and is now in Second Grade. K.F. resides with her
3 mother, Shereé F., her father, and her sister, in Fremont in Alameda County, California.

4 90. K.F. was diagnosed with type 1 diabetes in May 2004, when she was five years old.

5 91. Because of her type 1 diabetes and the treatment regimen it requires, K.F.'s major
6 life activities (including eating, caring for herself, learning, thinking and others) are substantially
7 limited. Some of the limitations on her major life activities include: need for a controlled diet with
8 carbohydrate counting at each meal and snack, an inability to eat the foods she chooses at the times
9 she chooses, the need to constantly balance insulin dosages with food intake, blood glucose levels
10 and physical activity, adult-monitoring and supervision of her activities (especially exercise,
11 recreation and socializing).

12 92. Daily monitoring and treatment of K.F.'s type 1 diabetes consists of 7 to 10 blood
13 glucose checks per day, 4 to 6 injections of insulin by syringe, and counting of carbohydrate intake
14 at every meal.

15 93. K.F. began Second Grade on August 30, 2005 at Haley Durham School in the
16 Fremont Unified School District, in Fremont, California.

17 94. K.F.'s mother and guardian, Ms. F., contacted Durham Elementary School on or
18 around October 2004 to discuss K.F.'s diabetes and had an impromptu meeting with Ms. Nada
19 Graham, the school nurse and Ms. Erica Donahue (Principal) and other personnel from K.F.'s after-
20 school program, the YMCA on the Durham school site in Fremont.

21 95. During that meeting, Ms. F. informed Ms. Graham that K.F. is a student with
22 diabetes, that she would require blood glucose checks in the classroom, and expressed interest in
23 creating a Section 504 Plan. Ms. Graham agreed that a Section 504 Plan would need to be
24 developed but she did not say when that would happen. The Principal and nurse both insisted that a
25 specific DMMP would be in place for K.F. Ms. F. provided the Principal with a current copy of
26 K.F.'s diabetes care regimen on a Fremont Unified School District form given to Ms. F. when she
27 enrolled K.F. for the first time in the district in October 2004. The form was signed by her pediatric
28 endocrinologist, Dr. Anna Sandstrom at Kaiser Permanente in Hayward, California. The orders set

1 forth K.F.’s diabetes care regimen, including administration of insulin via syringe and glucagon as
2 needed during the school day. The form signed by the doctor generally allows trained and
3 supervised non-medical personnel to perform these tasks, except for the administration of insulin,
4 where the doctor is asked to select from the following options: the pupil independently or “after
5 staff verification of insulin syringe/pen/pump number(s)”, parent or parent designee (“non FUSD
6 employee trained by parent”).

7 96. In another meeting with Durham Elementary School personnel on or about
8 November 2004, Ms. Graham told Ms. F. that school personnel would not give injections. If K.F.
9 required insulin during the school day, Ms. Graham told Ms. F. that either she or a family member
10 would have to go to the school to administer insulin. Ms. F. was also instructed that glucagon
11 would not be administered by school personnel. 911 would be called instead.

12 97. K.F.’s First Grade school year, 2004-2005, was very difficult with many issues
13 arising throughout the year. Ms. F. was constantly “on-call” to attend to K.F.’s diabetes. K.F.
14 normally checked her blood glucose under supervision daily at 10:55 a.m. Whenever K.F.’s blood
15 glucose readings were above 240, Ms. F. was called and expected to come to school to administer
16 insulin. This happened three to four times per week. Ms. F. works in Livermore, about 30 miles
17 from the school, and her husband works throughout the San Francisco Bay Area in concrete
18 construction. Most of the time, Ms. F. or her mother went to school to administer insulin. The
19 school principal informed Ms. F. that she wanted one of K.F.’s family members there to administer
20 insulin when necessary within 10 to 20 minutes and that if Ms. F. or another family member did not
21 arrive within one hour, she would call 911. In addition, whenever K.F.’s blood glucose levels did
22 not return to the range determined acceptable by her physician within 15 minutes of getting a shot of
23 insulin, Ms. F. and her husband were told to remove her from school or remain with her until her
24 blood glucose level returned to normal, because the principal said it was unsafe for her to remain on
25 site. This happened about fifteen to twenty times.

26 98. A school secretary supervised K.F.’s blood glucose checks in the school office one
27 time per day, but supervision of further blood glucose tests as needed occurred only after Ms. F. and
28 her husband made numerous requests. Ms. F. was unsuccessful at getting any school personnel to

1 assist with carbohydrate counting at the school-sponsored hot lunch time. No one monitored her
2 food intake at all, so Ms. F. had to pack a lunch for K.F with pre-determined counts of
3 carbohydrates. Because no one monitored K.F.'s food intake, she was constantly at risk of
4 hypoglycemia any time she ate less than what Ms. F packed for her.

5 99. Ms. F. informed the meeting participants last year of the many reasons why she
6 thought it was unacceptable to expect her to be on-call to administer insulin during school hours,
7 including that it is not a safe plan to not have anyone on-site trained and designated to administer
8 insulin and glucagon whenever necessary and/or in accordance with K.F.'s written DMMP. She
9 also expressed concern about the amount of classroom instruction K.F. missed while traveling to
10 and from the school office, having her blood sugar tested, and, often, waiting a significant period of
11 time to receive treatment. Because she was required to go to the office for blood glucose testing,
12 and had to remain there until Ms. F. or another family member could get to school to administer
13 insulin, three to four times per week K.F. spent more than one hour sitting in the office. On those
14 days she also missed lunch with her classmates and missed recess after lunch. Because she missed
15 so much class time, she was required to complete additional homework most days of the week and
16 at times her parents had to give her instruction at home that she did not get at school.

17 100. On or about August 26, 2005, Ms. F. called her Kaiser diabetes educator, Lynn
18 Franks, to get updated doctor's orders as requested by a school nurse who called her that day saying
19 she needed to get updated orders. Ms. F. informed Ms. Franks of all of her difficulties attending to
20 K.F.'s diabetes at school last year, and Ms. F. very reluctantly suggested that maybe her insulin
21 regimen could be changed to avoid having to administer insulin during school hours. Ms. Franks
22 said that she would talk to Dr. Sandstrom the following Monday. On August 29, 2005, Ms. F.
23 talked with Dr. Sandstrom who changed the orders so that K.F. will not need insulin unless her
24 blood glucose level is over 300 instead of 240. This change to the treatment regimen is not what the
25 doctor recommended and does not correspond to K.F.'s treatment regimen at home or in any other
26 setting.

27 101. On August 30, 2005, Ms. F. met with Erica Donahue, the school Principal, Dagmar
28 Sandoval and Pat Golden, district school nurses, and Peggy Cline, a third school nurse who

1 appeared mid-way through the meeting. K.F.'s Second Grade classroom teacher was not present.
2 Again, all the school nurses present told Ms. F. that the district would not administer insulin. Ms. F.
3 left the meeting without a written commitment about what the district would do to assist K.F. in
4 managing her diabetes, and indeed did not receive any written documentation until approximately
5 September 12, 2005 when she received a copy of the district's "Individualized Health Care Plan"
6 ("IHCP") for K.F. dated September 6, 2005. The primary commitment that is contained in the
7 September 6 IHCP is that K.F.'s primary teacher and other class teachers would recognize when she
8 needed to check her blood glucose other than at the routine time of 10:55 a.m., would allow her to
9 test her blood glucose at the back of the classroom and assist in recording and reporting the test
10 results as well as assist by giving her juice as specified in the September 6 IHCP. The only place
11 where she would be closely supervised in testing blood glucose is in the office.

12 102. On September 19, 2005, the district revised the September 6 IHCP to provide that the
13 teacher's responsibility for assisting K.F. is limited to observing for signs and symptoms of
14 hyperglycemia and hypoglycemia and calling the office for someone to come to the classroom to
15 assist K.F. with blood glucose testing, treat with juice for low blood glucose levels as specified in
16 the IHCP, and contact Ms. F., who is still expected to come to school to administer insulin whenever
17 necessary. However, Ms. F. learned that K.F.'s classroom teacher refused to follow the September
18 19 IHCP for K.F.

19 103. Ms. F. and her husband removed K.F. from that teacher's classroom on September
20 19, 2005 and asked the Principal to assign K.F. to another classroom because K.F. could not safely
21 be in a classroom without an adult present to observe for signs and symptoms of hyperglycemia and
22 hypoglycemia and summon help, as described in the September 19 IHCP. K.F. was reassigned to
23 another classroom on September 21, 2005, but this new classroom does not have the benefit of
24 being a bi-lingual program. K.F.'s new teacher has committed to follow the September 19 IHCP.

25 104. On or about September 23, 2005, Ms. F. and her husband received a copy of a "504
26 plan" for K.F. This was the first time Ms. F. or her husband received any Section 504 Plan from the
27 district. The Section 504 Plan includes the September 19 IHCP and does not commit the district to
28 administer insulin or glucagon under any circumstances.

1 that DREDF "failed to identify a specific student that was allegedly harmed as a result of the
2 District[']s policies regarding the administration of insulin." The CDE's response did not address
3 the allegations of violations of IDEA and it was not provided within the 60-day timeframe required
4 under governing state and federal regulations. A true and correct copy of CDE's February 25, 2005
5 letter is attached hereto as Exhibit B.

6 108. On March 22, 2005, DREDF, again on behalf of students with diabetes attending the
7 SRVUSD, filed a compliance complaint with CDE identifying three affected students by name and
8 requesting (a) a state directive by CDE to SRVUSD which sets forth its obligation to administer
9 insulin to children with diabetes in district schools so that the parents and children are not left to the
10 unlawful policy/practice of the school district; (b) CDE to require corrective action that will bring
11 the SRVUSD in compliance with applicable laws such as IDEA and Section 504; (c) that CDE
12 clarify that the district is responsible for administering insulin in accordance with the child's DMMP
13 developed in conjunction with the family and the child's doctor, when necessary while the child is at
14 school; and (d) that CDE clarify that there is no legal prohibition against the administration of
15 insulin by nurses or properly trained and supervised non-medical personnel. A true and correct
16 copy of DREDF's March 22, 2005 complaint is attached hereto as Exhibit C.

17 109. By letter dated May 20, 2005, CDE again summarily dismissed the unlawful
18 discrimination allegations in DREDF's March 22, 2005 compliance complaint without any inquiry
19 or investigation on the grounds that it "fail[ed] to specifically identify the actual acts of
20 discrimination that resulted in the loss of educational benefits to the three individuals named."
21 Nevertheless, CDE indicated that had it evaluated SRVUSD's policies, it would probably have
22 found them to be acceptable. The CDE's response did not address the allegations of violations of
23 IDEA. A true and correct copy of CDE's May 20, 2005 letter is attached hereto as Exhibit D.

24 110. By refusing to respond to and summarily dismissing these complaints, CDE has
25 violated governing federal regulations requiring it to maintain Section 504, Title II and IDEA
26 complaint resolution procedures that meet these regulations. By failing to take corrective action,
27 CDE has aided or perpetuated prohibited discrimination against qualified persons in violation of the
28 governing federal regulations. 34 C.F.R. § 104.4. With respect to Section 504 and Title II, CDE

1 must maintain a grievance procedure with “appropriate due process standards and that provide for
2 the prompt and equitable resolution of complaints alleging any action prohibited by this part.” 34
3 C.F.R. § 104.7. With respect to IDEA, CDE must maintain complaint resolution procedures that
4 provide for investigation of a complaint made by an organization specifying “facts on which the
5 complaint is based,” that includes “review of all relevant information” and issuance of a written
6 decision within sixty (60) days, during which time the complainant must be given an “opportunity to
7 submit additional information.” 34 C.F.R. § 300.660-662. Where complaints allege blanket illegal
8 policies, the applicable federal regulations do not require an organizational complaint on behalf of a
9 group of children to identify affected students by name or to identify specific actions of
10 discrimination suffered by individual students.

11 111. By law, the invocation of the state’s complaint resolution process is sufficient to
12 satisfy any exhaustion requirements, particularly in this case. Given the summary dismissal of
13 DREDF’s complaints regarding SRVUSD, it would be futile to file another complaint with CDE on
14 behalf of the named plaintiffs alleging the same violations and requesting the same relief. The
15 multiple complaints to the CDE also proved futile. Accordingly, Plaintiffs have exhausted all
16 required administrative remedies.

17
18 **CDE Has Responsibility To Investigate, Monitor And Enforce**

19 112. CDE has also failed to ensure that all children with diabetes who reside in California
20 receive a free and appropriate public education by: (a) failing to adequately monitor compliance
21 with federal laws and regulations related to the education of children with diabetes; (b) failing to
22 adequately investigate complaints regarding school districts’ noncompliance with these laws; and,
23 (c) failing to enforce these laws to require districts to comply with federal laws and regulations
24 designed to protect children with diabetes.

25 113. CDE has provided contradictory information to the school districts and their
26 administrators about the proper role of school personnel in the management of diabetes in schools.
27 In or around May 2005, CDE issued a “Program Advisory on Medication Administration” in which
28 it expresses that unlicensed school personnel should not be permitted to administer medication by

1 injection, except for emergency medications as allowed by law. This Advisory provides
2 recommendations to local education agencies on administering medication to students and was
3 accessible on the CDE’s official website as of the filing of this Complaint. Although the Advisory
4 may not be binding authority, it is intended to provide guidance and is undoubtedly persuasive to the
5 individual school districts. It is actions such as this that have perpetuated the widespread belief
6 among school districts that non-medical personnel should not administer insulin to students with
7 diabetes in grades Kindergarten through Twelve.

8 114. In contrast to CDE’s approach, other government agencies, including the United
9 States Department of Education, have recognized that trained non-medical personnel can provide
10 diabetes care, including injections, in schools. For example, this is the view articulated in “Helping
11 the Student with Diabetes Succeed: A Guide for School Personnel.” (NIH Publication No. 03-5217).
12 A link to this Guide is included on the CDE’s official web site. This Guide was published in June
13 2003 by the National Diabetes Education Program, a Joint Program between the National Institutes
14 of Health and the Centers for Disease Control and Prevention and has received explicit endorsement
15 from the United States Department of Education. In contradiction to CDE’s Advisory, this Guide
16 recommends that non-medical school personnel be trained to assist in diabetes care tasks in the
17 school setting, including the administration of insulin. Given the view of federal agencies that non-
18 medical personnel should be trained, CDE’s failure to provide a consistent directive on the issue of
19 administration of injectable medication by school personnel is inexcusable.

20
21 **Failure To Ensure That All Eligible Children With Diabetes Receive A Free And Appropriate**
22 **Public Education under IDEA**

23 115. IDEA requires school districts to ensure that all children with disabilities receive a
24 free and appropriate public education, including “related services” as may be required to assist a
25 qualifying child with a disability to benefit from special education. “Related services” include (1)
26 “supportive services” and (2) school health services provided by a qualified school nurse or other
27 qualified person, including a trained layperson.
28

1 local school system, and from subjecting such individual to discrimination under any such
2 operations.

3 121. Defendant school districts, as part of their obligations to ensure that all children with
4 disabilities receive a free and appropriate public education, are obligated to offer and provide
5 regular or special education and related aids and services that are designed to meet individual
6 educational needs of disabled children as adequately as the needs of non-disabled children are met.

7 122. Defendants have failed to offer and provide related aids and services designed to
8 meet the individual educational needs of children with diabetes as adequately as the needs of
9 children without disabilities are met.

10 123. In particular, Defendants have failed to offer and provide the related aids and
11 services designed to meet the individual educational needs of children with diabetes as adequately as
12 the needs of children without disabilities are met by failing to ensure that there are a sufficient
13 number of trained adults who are willing and able to perform tasks necessary for the safety and
14 ability to learn of children with diabetes, including: (i) checking of blood glucose levels including
15 the monitoring and recording of results, (ii) recognizing and treating hypoglycemia and
16 hyperglycemia, (iii) administering insulin and glucagon, and (iv) learning the schedule of and
17 monitoring the student's meals and snacks and working with the student's parent or guardian to
18 coordinate this schedule with that of the other pupils as closely as possible.

19 124. None of the aforementioned accommodations require a physician's assistance, and
20 all may be provided by either a school nurse or trained layperson.

21
22 **Discrimination Against Children Who Have Or Are Perceived To Have Disabilities**

23 125. Defendants have discriminated and continue to discriminate against children with
24 diabetes by the following acts or omissions:

25 a. Defendants deny children with diabetes equal access to district programs,
26 field trips and other extra-curricular activities by inappropriately refusing to assist them in managing
27 their diabetes.

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THIRD CLAIM FOR RELIEF
(Violations of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*)

143. Plaintiffs reallege and incorporate by reference as though fully set forth herein paragraphs 1 through 142, above.

144. Defendants are the recipients of federal funds sufficient to invoke the coverage of the Individuals with Disabilities Education Act. Under 20 U.S.C. § 1415(i)(2), Plaintiffs have an explicit right to bring a civil action in the District Court of the United States to seek redress for the violation of rights protected under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* Together and separately, these statutes provide the authority under which Plaintiffs now petition this Court for declaratory and injunctive relief for the violations of the Individuals with Disabilities Education Act alleged herein.

145. By the acts and omissions alleged herein, taken under color of law, Defendants, and each of them, have denied Plaintiffs who require IEPs and similarly situated members of the Plaintiff Class of their rights to a free and appropriate public education in the least restrictive environment guaranteed under the Individuals with Disabilities Education Act, 20 U.S.C. § 1401, *et seq.* and the regulations promulgated thereunder, 34 C.F.R. § 300, *et seq.*

146. As a direct and proximate result of Defendants' violations of the Individuals with Disabilities Education Act, Plaintiffs and similarly situated members of the Plaintiff Class have or will suffer irreparable harm, including threats to immediate health and safety.

147. No administrative remedy exists under IDEA to address these wholesale violations by Defendants. Accordingly, Plaintiffs are not required to exhaust the administrative procedures set forth in IDEA.

148. Wherefore, Plaintiffs request relief as set forth below.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully pray that this Court:

1. Declare in accordance with Rule 23 of the Federal Rules of Civil Procedure that this action may be maintained as a class action;

2. Certify a class of all children in California entering or in grades Kindergarten through Twelve with diabetes who are within the jurisdiction of California’s public schools and who are entitled to diabetes care and management but are not receiving such mandated school health services that would enable them to participate equally and safely in school, and;

3. Declare that Defendants’ practices, actions and omissions have violated the rights of children with diabetes protected under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*;

4. Enjoin Defendants from violating the rights of children with diabetes, specifically with regard to their immediate health and safety, as protected under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, and the Individuals with Disabilities Education Act of 2004, 20 U.S.C. § 1400, *et seq.*;

5. Enter a mandatory injunction compelling Defendants to provide to every eligible child with diabetes living within each defendant’s respective jurisdiction a free and appropriate public education in the least restrictive environment in conformity with the provisions of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and regulations promulgated thereunder (“Section 504”), Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (“Title II”), the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (as amended by Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, Title I) (“IDEA”), and other related federal laws and regulations by designing, adopting and implementing policies, procedures, programs, plans and practices that will meet the needs of children with diabetes in grades Kindergarten through Twelve, including the following:

a. Order defendants SRVUSD and FUSD to design, adopt and implement

1 comprehensive policies, procedures, programs and/or directives that will provide for
2 sufficient advance notice to parents so that an individualized DMMP (“DMMP”) for each
3 eligible student may be developed in conjunction with the parents and the treating physician
4 of the student, and that a DMMP so developed shall be incorporated into and made a part of
5 each student’s Individualized Education Program (“IEP”) adopted pursuant to IDEA and/or
6 written placement plan adopted pursuant to Section 504 (“Section 504 Plan”), as appropriate.
7 IEPs and Section 504 Plans developed in compliance with this section shall:

8 i. Afford to each student with diabetes access to diabetes care, including
9 testing of blood glucose levels and responding with appropriate care including
10 needed medication, food, and liquids, with such care to be self-administered or
11 provided by trained adults (“Trained Personnel”) in accordance with the student’s
12 DMMP;

13 ii. Permit diabetes care to be administered in the classroom, in any
14 location where a student is participating in a school activity, and/or in a private area
15 close to where the student is located when the student’s DMMP so provides;

16 iii. Permit any student with diabetes to see a nurse or other school staff
17 member trained in diabetes treatment, in conformity with the student’s DMMP;

18 iv. Ensure that in every school with at least one student with diabetes,
19 there are sufficient numbers of Trained Personnel who are willing and able to
20 perform any of the following: (a) observe and recognize signs and symptoms of
21 hypoglycemia and hyperglycemia; (b) test blood glucose levels and monitor and
22 record test results, when the student’s DMMP so provides; (c) treat hyperglycemia
23 and hypoglycemia by taking actions specified in the student’s DMMP; (d) administer
24 insulin, glucagon and other diabetes medication, administer food or liquids, and take
25 any other necessary actions as specified by the student’s DMMP; and (e) monitor the
26 student’s meals, snacks, and medication and work with the student’s parent or
27 guardian to coordinate the student’s meal and snack schedule with that of the other
28 pupils as closely as possible. The number of Trained Personnel shall be sufficient to

1 ensure that at least one adult is present to perform the above-described tasks in a
2 timely manner while the student is at school, on field trips, during extracurricular
3 activities or other school-sponsored events, and in the event of a natural disaster,
4 including but not limited to an earthquake;

5 v. Ensure that in the event a student with diabetes suffers acute
6 hypoglycemia Trained Personnel administer glucagon as necessary and in conformity
7 with the student's DMMP; contact local emergency response personnel; notify the
8 on-call credentialed school nurse or other appropriate school personnel and the
9 pupil's parent or guardian; and take any other actions prescribed under such
10 circumstances by the student's DMMP;

11 vi. Ensure that all food, medications and supplies needed by each student
12 with diabetes as prescribed by the student's DMMP, in the event of a natural disaster,
13 including but not limited to an earthquake, are properly stored and readily accessible
14 to Trained Personnel;

15 vii. Ensure that training as described in subparagraph 5.a.iv above is
16 provided in a timely manner by health care professionals or other qualified
17 individuals with expertise or training in the care and treatment of diabetes in youth;

18 viii. Ensure that in every school that has at least one pupil with diabetes
19 Trained Personnel are immediately available to administer insulin and glucagon;

20 ix. Permit any student with diabetes: (a) to miss school without
21 consequences for required medical appointments related to the student's diabetes
22 when the student presents a doctor's note if such note is generally required by school
23 policy; and (b) be allotted extra time for tests and other graded work if necessary due
24 to hypoglycemia or hyperglycemia;

25 x. Permit any student with diabetes: (a) to use the restroom as necessary;
26 and (b) to have access to fluids as necessary;

27 xi. Permit students with diabetes to carry their diabetes-related supplies
28 and equipment on their person and/or provide a location for insulin and/or glucagon

1 storage, if necessary, that allows immediate access to these supplies;

2 xii. Comply with the universal precautions and requirements for handling
3 and disposing of contaminated sharps, as prescribed by regulations adopted by the
4 California Department of Industrial Relations;

5 xiii. Incorporate all other necessary school health services in order for a
6 student with diabetes to receive a free appropriate public education in the least
7 restrictive environment in conformity with applicable law and to benefit from special
8 education and/or related services; and

9 xiv. Ensure that assignment of students to schools and classes in grades
10 Kindergarten through Twelve is made without regard to the student's diabetes.

11 b. Order Defendant CDE:

12 i. To design, adopt and implement written policies, procedures,
13 programs and/or directives that will require SRVUSD, FUSD and all other California
14 school districts to comply with all of the provisions of subparagraph 5.a, above;

15 ii. To monitor SRVUSD, FUSD and all other public California school
16 districts to ensure ongoing compliance with all of the provisions of subparagraph 5.a,
17 above;

18 iii. To investigate and act upon complaints made by interested third
19 parties on behalf of a discernible class or group of individuals alleging a practice or
20 policy in violation of Section 504, Title II or IDEA without requiring that such
21 complaints identify affected children by name or supply facts pertaining to the
22 individual children; and

23 iv. To ensure each school district provides informational materials
24 explaining to the parents or guardians of students with diabetes in grades
25 Kindergarten through Twelve within their jurisdictions the rights of the students and
26 parents under Section 504, ADA, IDEA, other applicable federal laws and
27 regulations, and the policy, procedure, program and/or directive implemented in
28 compliance with subparagraph 5.a, above.

1 c. Order Defendants SRVUSD and FUSD to adopt, implement and comply with
2 any policy, program and/or directive established and implemented by CDE as it relates to
3 Plaintiffs and similarly situated members of the Plaintiff Class.

4 d. Order Defendants SRVUSD and FUSD to comply with and implement
5 DMMPs developed in conjunction with parents and treating physician of students with
6 diabetes.

7 e. Order Defendant SRVUSD to conduct a meeting between school
8 administrators, nurse, teachers, parents and any other relevant school personnel to discuss
9 SRVUSD's responsibilities and duties with regard to the services required for students with
10 diabetes in grades Kindergarten through Twelve within the jurisdiction of SRVUSD.

11 f. Order Defendant FUSD to conduct a meeting between school administrators,
12 nurse, teachers, parents and any other relevant school personnel to discuss FUSD's
13 responsibilities and duties with regard to the services required for students with diabetes in
14 grades Kindergarten through Twelve within the jurisdiction of FUSD.

15 g. Order Defendants SRVUSD and FUSD to provide informational materials
16 and documentation explaining the rights of students with diabetes in grades Kindergarten
17 through Twelve and their parents within the jurisdictions of SRVUSD and FUSD under the
18 aforementioned policy, program or directive regarding diabetes care in schools, Section 504,
19 ADA, IDEA and other applicable federal laws and regulations.

20 h. Order all Defendants to provide, by a specified date, written documentation
21 demonstrating that they are providing students with diabetes in grades Kindergarten through
22 Twelve mandated school health services that enable them to participate equally and safely in
23 school to ensure a free and appropriate public education and that they are meeting the
24 requirements of such an order and Section 504, ADA, and IDEA.

25 i. Retain jurisdiction over all Defendants until such time as the Court is satisfied
26 that their unlawful policies, practices, acts and omissions complained of herein no longer
27 exist and will not recur, and that Defendants are fully and completely fulfilling their duties to
28 provide all children with diabetes within the appropriate jurisdictions mandated school

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health services that enable them to participate equally and safely in school to ensure a free appropriate public education in the least restrictive environment.

- 6. Award Plaintiffs' costs, disbursements, and reasonable attorney's fees.
- 7. Grant any other relief as this Court may deem just and proper.

DATED: October __, 2005.

REED SMITH LLP

By _____
Kenneth J. Philpot

and

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

DATED: October ____, 2005.

REED SMITH LLP

By _____
Kenneth J. Philpot

and

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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil LR 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

DATED: October ____, 2005.

REED SMITH LLP

By _____
Kenneth J. Philpot

and

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