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JULY 9, 2014
1:00 P.M. CST
THE CALIFORNIA SUPREME COURT DIABETES CARE RULING

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>> Hello to those who are continuing to join us. You have reached the webinar "The California Supreme Court Diabetes Care Ruling:"We're going to be starting in about five, six minutes.

(Background talking.)

>> OPERATOR: The conference has been muted.

>> OPERATOR: Hi, everyone as you continue to join us for the webinar we're going to be starting in about four minutes.

>> Hello again everyone we're going to be starting in about two minutes. "The California Supreme Court Diabetes Care Ruling:" Webinar.

>> OPERATOR: This conference is being recorded.

>> Well, hello everyone and welcome to the webinar "The California Supreme Court Diabetes Care Ruling:" My name is Taryn and I'm the

legal advocacy outreach manager. Just a few quick reminders and then we'll turn it over for the actual program. All of the phone lines are going to be muted except for those of the presenters. To let you know the webinar is being recorded and the recording will be available some time later in July we'll let you know when that's available for access and a PDF of the slides we're using today is going to be available by a very short survey that you will be asked to take at the end of the webinar so you will have access to the slides. And pay attention to the chat box at the lower left hand portion of your screen. You can ask questions throughout the webinar and if we have time, we'll take even more questions at the end.

So right now I'm going to turn over the program to Brian Dimmick who is going to start.

>> BRIAN DIMMICK: Thank you, Taryn and welcome to "The California Supreme Court Diabetes Care Ruling: What Attorneys Need to Know". I'm glad that everyone was able to join us today. And hopefully you'll find this webinar informative and useful in your work. We're here today to talk about American Nurses Association, the Torlakson action the case decided by the state Supreme Court in August of 2013 that dealt with medication administration in California public schools. And held that unlicensed school personnel are permitted under state law to administer medications to students. We believe this case is a landmark ruling that will have a major impact. It will have impact for conditions beyond diabetes and medications beyond insulin. It may have impacts beyond the school setting. But at its heart, this is a case about protecting the rights and the health of students with diabetes in California schools who are being denied access to insulin.

So we are happy to be here to talk about the ruling and to kind of let you know what it means for the work of those who are out there advocating for people with diabetes.

My name is Brian Dimmick. I'm the Director of litigation with the American Diabetes Association. And this is a major focus area for us. We have been fighting these battles around diabetes care in public schools for years as part of our safe at school campaign we have had a number of victories and this is one of the biggest ones we are constantly fighting to make sure that kids with diabetes are safe at school.

And this webinar -- this free webinar along with our other

educational efforts is supported by a grant by Novo Nordisk and we have the ability in this webinar system to conduct polls so before we start, I would just like to do a quick poll here to get a sense of where everybody is so give people a few seconds to answer the question that's on your screen about where geographically you're located. All right thanks everybody for responding it seems like we have a nice geographic distribution within the state and also a few people outside California and I hope those outside the state will find this helpful, as well. Some of the state specific aspects of the ruling aren't directly relevant but I think a lot of the -- some of the language in the case is helpful and I think we'll also be talking about advocacy strategies that I think have nationwide applicability so welcome.

So on this slide you can see what the session will cover. We're going to start with a quick introduction to diabetes management and the legal underpinnings of protections for students with diabetes. We're then going to move into some discussion of the actual Supreme Court ruling, what the court said and what it means. And then at the end we'll have some practical discussion of how to advocate for kids with diabetes.

First let me give some background about the laws that protect students with diabetes and require schools to serve them. Also an explanation of diabetes and why access to insulin and other medications is so important in the school setting.

In those cases, this is going to be a whirlwind tour of topics that justify an hour in their own right but I want to give everybody a background regardless of your level of diabetes or educational law I want to give you enough background to understand what the Supreme Court was talking about and some of the other things that we're going to be discussing. So this is going to be a very quick tour. But there's a lot more information about both diabetes and it's management and the legal Federal and state laws that protects kids with diabetes on our Web site and I'll be giving the link to that at the end. Let's start with the three major Federal laws that protect students with diabetes those are the Section 504 of the Rehabilitation Act the IDEA and the Americans With Disabilities Act. Now, these three laws have some differences in scope and coverage. But for us today they are largely interchangeable in that they provide basically the same protections and require the same things out of

school districts. They require students with diabetes be free from discrimination and be educated. A lot of times we're going to talk about Section 504 as the main law because No. 1 that's the law we're most clear that all students with diabetes should be covered and also that's a law that schools are very familiar with and we'll talk about a lot so there are similarities to both sides. Students with diabetes and other conditions should have a written Section 504 plan that's going to set out the services and accommodations that they need in the school setting. That's an important step in securing students rights to have all of those services in writing.

So what do schools have to do under these three Federal laws?

This slide just lays it out in very basic detail. Schools have to provide a free, appropriate public education to students with disabilities that includes related aids and services that are necessary for a trial to access education. The related aids and services can include things like medication administration and accommodations around diabetes care, having someone available to monitor a student's condition and give medications they can also include academic modifications like modifications in tests and access to water in the classroom. Things like that. We're not really going to be talking a lot about those kinds of accommodations. We're focused on medication today. But there is more information about those other kinds of accommodations on our Web site, as well.

Schools also cannot discriminate against kids with diabetes and that's true even beyond just the content of what services they provide. They cannot treat students with disabilities differently. They have to make modifications to policies and procedures. But the goal here and all of these will require basically -- they amount to one thing, the school has to provide the services that a child needs to be safe at school and to be able to learn. And among those services is medication administration where a child needs it, has it prescribed by a physician and where they need it during the school day. So with that very bare bones introduction to the law, let me talk a little bit about how diabetes affects children and why they need these services and supports at school. There are two main types of diabetes that occur in children. Type I diabetes is the most common in children.

Happens when the body basically loses all its ability to produce insulin so children with type I diabetes need insulin in order to survive. Type II diabetes is most common in adults but is becoming

more prevalent in children there are different ways to treat type II diabetes but some will also need insulin while at school.

There are about 200,000 people -- at least 200,000 people under the age of 20 today who are diagnosed with Type I diabetes alone so we're talking about a significant number of children we have estimated somewhere in the range of 15 to 20,000 in California alone.

Diabetes management, it's a constant process of adjusting the amount of insulin in the body and the bloodstream to the food a person is consuming and the physical activity they are undertaking. It's something that has to be managed 24/7. And that includes during school hours.

Older children are often able to handle this management and these tasks themselves. But younger children are going to need help from adults. So a lot of what we're focused on today because of the California Supreme Court's ruling is medications in school. So let's go into what types of medications that kids with diabetes are going to need at school. And there are two big things we're concerned about. One is insulin. Insulin is as I said a hormone that helps the body translate Ewing gar from food into energy. It's necessary for life. And kids with type 1 diabetes in particular don't produce insulin so they will need to get it from an external source in order to survive. It can be administered through several different methods through syringe or a device called an insulin pen or insulin pump. Most children will need it during school hours. It's common today for children to be on a regimen that requires at least three injections of insulin and sometimes five or six or more. It all depends on the individual child's age, treatment needs, how they are blood sugar levels fluctuate and it's all individually determined. Also children who are on an insulin pump they receive a constant base rate of insulin from the pump but they are going to need additional administrations of the pump during the day during school so clearly one or more times that will occur during school hours often that happens often before or immediately after food is consumed. Before lunchtime, before a snack.

So younger children are going to need to have an adult to administer their insulin. Children usually learn to administer their own insulin by around the age ten or even earlier but it depends on the child. Sometimes they are at different stages in that process. Sometimes they learn to give the shot before they are able to handle all of the calculation of dosage and preparing the insulin.

And sometimes children don't learn to do this until they are older if at all. So it all depends on the child, his or her maturity level, how recently they were diagnosed and just what the family and the doctor decide about their ability to self administer their medications.

So let's move on to glucagon. Glucagon is another hormone that's injected into the body to treat severe low blood glucose levels which can be a life threatening emergency. It's something that fortunately doesn't happen very often but it's always something that's in the back of your mind as a person with diabetes that can happen.

Glucagon is administered when someone with diabetes is having a low blood sugar episode and is unable to swallow or is unconscious so by definition it is not self administered.

Let's just going back to insulin, insulin at schools can be given as a dose to cover anticipated or just completed food intake or given as a correction dose as a -- if a student's low blood glucose level is too high in any case when they need insulin they need it relatively quickly so their needs is to have someone there to give it to them and having access is pretty important lack of access has serious consequences in the short-term the child has difficulty concentrating and generally not feeling well and not able to learn and you can miss a significant amount of class time in that condition either sitting in your seat in the classroom and unable to concentrate or sitting in the nurse's office waiting for someone to administer insulin.

Long-term for lack of insulin we worry about complications from diabetes things like neuropathy, stroke, heart disease, things that -- high blood glucose levels increase the risk over time.

So those are all serious things we want to avoid.

Now, the question that brings us here today then who is going to administer insulin to kids in the school setting? Especially the younger kids who aren't yet able to do it themselves. One option is school nurses. There's -- school nurses are qualified to administer insulin and many other medications and it would be ideal if there were a school nurse available every time a child needed insulin but I think as we all know in the real world today, that's just not practical given the numbers of school nurses out there. And the increasing numbers of kids with diabetes. California has a severe school nurse shortage. Only about 5% of schools have a

full-time nurse in California. And if the nurse isn't onsite they can't provide care.

So some schools try to have one nurse cover multiple schools and try to shuttle them around to meet needs but that is a setup that doesn't really practically work for diabetes most of the time. It leads to too many delays.

And also even if you have a full-time nurse in a school at any given moment that nurse may be treating another student or may be out that day. There has to be a backup plan. A lot of people then ask well why doesn't the parent just handle it. But as we know many parents are working during the day or otherwise unable to just be constantly on call for the entire school day in case their child needs insulin. The school -- some students do have parents who are able to do that. But that's not something that is realistic for most. Federal law, as I said, requires that the education provided be free as well as appropriate. Parents cannot be forced to provide care to their child at school. Because that's the school's legal responsibility while the child is there.

But often schools put pressure on parents to do so. And we have heard stories of parents being laid off, losing their jobs or foregoing employment all together because they are being told by their school that if you want to have your child access to insulin you have to be there every day to provide it and that's a big part of what we're fighting against. So the solution the American Diabetes Association supports to fill this gap are unlicensed school personnel, they can be guidance counselors, even cafeteria staff but the important thing is they are there when the child needs them. They can be trained. People are trained all the time, family members, parents, siblings, caregivers are regularly trained. Most diabetes care is not provided by nurses. It's provided by the person themselves or their family and many school personnel are going to have some personal knowledge in diabetes because of personal or family connection and will already be on the way to being good care providers.

This is the only solution that really practically supports kids and makes sure that they are going to have access to the insulin when they need it and it has found to be safe and effective by American Diabetes Association and many of the other medical groups that work with diabetes. But some nursing groups don't agree that this is the

right solution and in order to keep nurses in charge of all medication administration. And that is why we find ourselves fighting this battle in the courts.

So how did we get here? And this has been an issue for us around country for a number of years. Many states have passed legislation that physically allows insulin and other diabetes medications to be administered by school staff and lays out training guidelines and procedures. We try to get that legislation in California. We started more than a decade ago. In 2003 we passed a bill that provided for glucagon administration by unlicensed school personnel but we were not able to pass anything with insulin. And therefore we continue to try subsequent efforts were met with opposition from nursing groups and budget shortfalls in the previous few years have only made this situation worse. So that leaves us to the beginning of our litigation. In 2005 without a legislative solution and hearing from families across the state their kids were being denied insulin we decided to address this through litigation we filed a class action in Federal Court called KC verse O'Connell filed in 2005 in the Northern District we were represented by Berkeley and Reid Smith LLC out of San Francisco the association was party plaintiff along with four families of children with diabetes.

We sued the two school districts that were not providing care and basically had no one on site to provide inulin and telling parents they had to do so we also sued the state Department of Education because they were failing to have a system in place that made sure schools followed Federal law and were basically allowing students rights to be violated.

We settled that case in 2007. And part of that settlement was the state Department of Education issued a legal advisory that was sent to all school districts and explained in detail what their legal obligations were to serve these students and in particular who could administer insulin it listed several categories of people permitted under state law explicitly able to administer insulin like nurses, locational nurses, parents, but did not include school staff. But they also acknowledged the role of Section 504 and other Federal laws in this process and acknowledged that students had to get this service under Federal law still the state of legal advisory said that if none of the explicitly permitted people categories under state law was available and a student still needs insulin denying insulin is not an option so schools were permitted to train an unlicensed school

employee in that situation in order to comply with their obligations under Federal law regardless of what state law said so in essence state law has to give way to Federal law in this situation. We thought that we had achieved a great victory for kids with diabetes. And we're going to start to see more training happening. Unfortunately within a few months of that settlement, several nursing organizations, including the American Nurses Association and the California nurses association sued the state claiming that language training of unlicensed personnel violated state law we intervened the ADA intervened as a party plaintiff to protect kids and got ourselves into six more years of litigation. I will spare you a blow-by-blow account of all that transpired. But in short, two lower courts sided with the nurses on this case so only a nurse under state law could administer medication to kids at school but we appealed to the California Supreme Court and they involved us in 2013 -- they issued their ruling reversing the lower court judgement.

So now that I've laid out the background and litigation that led to this ruling I'm going to turn it over to Michael McCabe to explain what the Supreme Court tale did in its opinion. Mike was a partner at Reid with this litigation continued and continued to be on the mitigation team even after moving to Littler Mendelson. So we'll turn it over to you.

>> MICHAEL McCABE: Thanks so much, Brian a couple of observations before starting I think it's important to note that getting the California Supreme Court to grant review in this case was really a long shot only 5% of petitions for review are granted so once we got review granted that was a big development in the case and another interesting anecdote the Court of Appeals decision that was reviewed by the California Supreme Court was authored by then Court of Appeals Justice Fakaua after the court appealed the decision but before the California Supreme Court petition for review was granted just as he was Chief Justice but since she couldn't review her own decision she recused herself from the review and Justice McGuinness from the Court of Appeal was appointed so the decision by the California Supreme Court as Brian mentioned truly was a landmark decision. And it started by providing strong support for public school kids with diabetes.

The court began by acknowledging the Federal rights and critical needs of students with diabetes as Brian outlined earlier the court

recognized that insulin administration and other diabetes care is normally provided by laypeople in fact the court recognized that outside of hospitals and licensed health care facilities, insulin is normally administered according to a physician's direction by the person with diabetes or by friends or family members. The court recognized the need for insulin can arise any time and anywhere at school. In the classroom. During school sponsored activities and this also includes afterschool activities such as sporting events or school sponsored field trips.

The court explicitly noted that under Federal law, a student who needs insulin but cannot self administer are entitled to have school personnel do so at no cost. However, the issue before the California Supreme Court was whether under California law who can administer insulin. Next slide. The court looked at two state laws to answer the question of who could administer insulin under California law the first statute was the California Education Code. Section 49423 of the Education Code governs medication administration by school personnel and provides any pupil who is required to take, during the regular school day, networked prescribed for him or her by a physician may be assisted by the school nurse or other designated school personnel.

Court in its decision interpreted assist to include the act of administration. The nurse groups in the case had a more limited definition of what assist in the statute meant that did not cover of administration. The court also looked at the implementing regulations under title 5 of the California code of regulations. And construed those regulations to permit insulin administration but unlicensed personnel.

So the second statute that the Supreme Court looked at was the Nurse Practicing Act. And that's found in our California business and professions code at Section 2700 and Nurse Practicing Act determines the scope of nursing tasks in California which the statute says anything that requires substantial scientific knowledge and technical skill.

Now in the court the American Diabetes Association argued that insulin administration does not require such knowledge or skill. However while the Supreme Court felt it did not need to decide that issue, it did cite our argument approvingly and noted that most insulin is administered by laypeople. In fact 99% of insulin administration is performed by non-nurses and non-health care

providers.

So what the court determined was under the Nurse Practicing Act, there was a stat core exemption which supported the administration of insulin by non-licensed personnel. And that's the orders of the physician exception.

So the court stated it did not need to decide if administration for insulin was a nurse function or not since there was this expressed statutory exception.

So the exception provides that under 2727 E that nursing tasks do not include the performance by any person of such duties as required in the physical care of a patient and/or carrying out medical orders prescribed by a licensed physician provided such person shall not in any way assume to practice as professional registered graduate or trained nurse.

So this orders of physician exception the court determined covers insulin administration when carried out based on a physician's orders so when a physician authorizes school personnel to provide care as they do when they submit their orders to a school, they bring insulin administration within this statutory exception so the court determined that school personnel do not assume to practice as a nurse merely by agreeing to provide care to students with diabetes the court found that the nurse groups argument that carrying out a physician's order was in fact assuming to practice as a nurse was circular and illogical.

So going to the next slide, the court's conclusion based on its construction of the Education Code and Nurse Practice Act is that California law does permit trained unlicensed school personnel to administer prescription medication, including insulin in accordance with the written statements of individual students' treating physicians with parental consent and that persons who act under this authority do not violate the Nurse Practice Act.

So based on the court's construction of California law it did not need to address the association's alternative argument that Federal law preempts state law when state law frustrates the purpose of Federal law because it construed California law as permitting unlicensed to administer. And one last note, my participation and involvement in this case and the result that was obtained by this team has been the highlight of my 31-year-long legal career it was just a joy to work on this case. With that I'm going to turn it back over to Brian.

>> BRIAN DIMMICK: Thank you, Mike. I'm going to move from what the court said to what this is going to mean in practice. In the real world for medication administration in schools.

So let's start with existing California law. Just to lay out the ground rules of what's going on. Unlicensed school personnel are administering glucagon with proper training that was the bill passed in 2003 that I mentioned earlier it's Education Code Section 49414.5. Training standards have been adopted by the state for glucagon and that's been working pretty well for a while. That statute also permits students with diabetes who are capable and who are authorized by their parent and a physician to self administer their own diabetes medications. And to carry their diabetes their supplies wherever they are at school. So what the court was ruling on basically was what happens to the medications that are not explicitly authorized by statute. As I said, glucagon is specifically authorized by statute as is epinephrine and some asthma allergy medications as well as diastat for treating epilepsy but for other medications like insulin this is where the court's ruling comes in.

So the ruling allows unlicensed school personnel to administer these medications and this can happen if three conditions are met. First of all if the parent consents in writing. Also with the physician -- if the physician authorizes such administration medical orders and if the school staff person is trained. These requirements come both from Education Code Section 409423 which governs medication administration and which has always required parent consent and physician authorization and it also comes from the orders of physician exception to the Nurse Practice Act that Mike mentioned which requires the physician to authorize the performance of these tasks by unlicensed school personnel.

So as you heard from Mike the court put a lot of stress on the role of medical orders from the physician and these are critical to -- for unlicensed personnel employees getting everyone on the same page for what going to be provided we have a standard form called a diabetes medical management plan DMMP on our Web site many physicians use their own form or school districts have forms they use. It doesn't matter what the form looks like it just matters it has basically two critical things that are in the physician's orders. It should have a detailed description of the care that the child needs. Detailed enough to allow nurses and unlicensed personnel to

carry it out. For medication that means needs to specify the times when medication needs should be administered, the dosage what circumstances might lead to changing the sort of -- if it's not administering the medication or a different dose, so far insulin for example it needs to say specifically when to administer insulin for example within 15 minutes before lunch or you know right after a snack or any time blood glucose level is above say 240 or some number specified by the physician they need to specify exactly when that is to happen.

It needs to specify what the dosage is going to be and how to calculate that dose and that's going to be often just a calculation based on the amount of carbohydrates or food consumed or it could be based on the number and blood glucose reading or it will be a simple calculation based on those physicians that should be set out specifically in the physician's orders and it needs to specify any conditions under which that might be modified for example if the child was sick or has a particularly really high amount of physical activity you might vary the insulin dose somewhat. The medical orders also need to include authorization by the physician for school personnel who are not nurses to administer insulin and that -- you know of the forums that were developed before the Supreme Court came out with the decision may not have a specific place for the physician to say that but the physician can just write it in on the form if need be. But it will make things a lot easier if that's explicitly stated in the physician's orders. Now, nothing in the Supreme Court's ruling requires that the physician approve the individual person or persons who are going to be giving the medication. That physician isn't going to know the secretary or the guidance counselor or whoever in the school who is administering. That's not their role is to actually select the provider. They just need to authorize a licensed or unlicensed person and lead the selection of that person and ultimately the training of that person to the school.

So what do school districts need to do in light of this rule? They need to set up a plan that allows for kids to get the insulin they need when they need it. They need to have a plan to get insulin when a student with diabetes is in school or at school sponsored activities it needs to cover the whole school day, field trips, extracurricular activities that the child participates in. And they need a backup plan for times when the person doesn't -- who provides care whether it's a nurse or guidance counselor or someone else, when that person

is not there. It's really not enough to train one person even if they are a nurse you really need several people to ensure that someone is always going to be there.

Now the school can choose how they do that they can choose to try to do everything with nurses but we know in practice it doesn't work very well it's great if you have a nurse there most or all of the time to be the primary provider but you need to train someone, also, for when the nurse is not there. Most districts are going to want to set up a system where much of this care is provided by unlicensed personnel just because of the number of nurses out there. They are just not sufficient to meet the need and we are going to talk more in a minute about how you sort of help districts make that happen.

But before I do that I want to say a little bit about other settings and other conditions for diabetes beyond schools. Basically the ruling specifically applies to insulin in the school setting. It doesn't by definition apply to other medications or other conditions. But what the court wrote is pretty broad. And interpreted the orders of physician exception very broadly and talked about what the Education Code said and nothing in the court's logic limits it's ruling to insulin or schools. I think it will apply to any other medication that's not specifically authorized that a child might need in school. There's no limitation on certain types of medications. Now, there may be certain types of medications that for one reason or another the physician might not feel should be administered by an unlicensed person. And the physician remains free under the orders of physician exception not to authorize that.

But that's on a case-by-case basis and that should not be an issue for diabetes because as we said the diabetes communication of physician -- diabetes community of physicians agree this can be something delegated to unlicensed personnel. The logic of the ruling should also apply to certain situations beyond schools certainly this would allow unlicensed personnel to administer in other what I would call community based settings like child care facilities, group homes, adult day care facilities, things like that somewhere someone is living independently but may need access to insulin. It might not apply in certain settings more like health care facilities where you would say that if the person is doing that, they are really just doing what a nurse normally does it looks more like they are assuming the practice of a nurse or the nurse in that situation.

But in a situation where someone's primary job duties are not related to medication and they are just giving insulin as a small part of their job, there would be no reason to think it wouldn't apply in those settings. So today this is an audience I think you are -- almost all of you attorneys advocating for kids and trying to make the educational process work for them so I want to move into talking practically about how do we make this ruling happen and have effect. It's been nearly a year. Schools are still working to implement it. And I suspect as we head into back-to-school time we're going to be hearing from families that are struggling to get schools to provide the care they need so I'm going to turn it over to Lisa Murdock to talk about that. And about how -- Lisa Murdock is the Director of state Government affairs for association.
And she has been leading our state advocacy site in California and has been helping families for over 20 years.

>> LISA MURDOCK: Thank you this is a great part of the session to talk about how about translating the laws and rules into action how you can advocate for students with diabetes and their families let's start by doing a quick poll to get some information from you about what you've had the opportunity to do to help students with diabetes and their families so if everyone would just take a quick minute to respond to the poll and you can select as many as apply, that would be great.

Great. It looks like a lot of you have undertaken activities and we'll talk about those activities as we cover this next series of slides. In California we tend to see problems around insulin. And for those of you who are joining the webinar from outside of California, you may see these, as well schools refusing to provide any staff to administer insulin even though there's a school nurse there and Brian covered some of those issues and the numbers of nurses lack of nurses in a school setting for California for states in the west it's particularly problematic oftentimes parents are pressured into coming to school we'll talk about that a little bit more in a few minutes. And in some cases we are actually seeing school districts and schools try to force parents to send their children to a special school where all of the children who have medical conditions would be attending.

Next slide. There are other key issues that I think we should touch base upon quickly and I think Brian has talked about this to

some extent but schools often time deny eligibility for 504 plans because they don't have a good grasp about what the 504 law says we'll talk about that again in a few minutes things like requiring students to go to the nurse's office for care are very problematic for students with diabetes. And you know the other issues that we hear quite commonly from parents are refusal to allow children with diabetes to participate in extracurricular activities or go on field trips if a parent is not able to attend.

As Brian covered earlier, diabetes should be an automatic qualifier for 504 plan but we do experience families reporting that that's not -- that schools are denying eligibility or indicating that diabetes doesn't qualify.

So there is a lack of knowledge on the part of some school personnel that this is an -- this should be an automatic qualifier. In addition, that process can sometimes take six or more months for a parent. And at that point the student is almost done with the school year it's very frustrating for families to try to get a 504 plan in place in some school districts.

Next slide.

As we mentioned earlier, requiring a student to go to the nurse's office for care is really problematic for a lot of students. For a number of reasons. No. 1, most students who are able to self manage can do it quickly and safely at their desks with very little interruption of educational time so we're talking about if the requirement is that a student has to leave a classroom to go to a nurse's office to get care they may be missing 15 minutes multiple times a day of multiple classes. In addition to that, if a student feels like they are having a low blood sugar or having them get up and walk to a nurse's office is not medically advisable and you know quite honestly skinned knees and other accidents that happen for kids will result in much more blood than a blood glucose monitoring in the classroom which is really just a very, very small drop of blood. So there's really -- there's really no reason for requiring a student to go to the nurse's office for care in addition to that it jeopardizes the student's health and could potentially could result in loss of instructional time.

Next slide.

This part where the rubber meets the road is where schools don't have personnel trained to provide diabetes care. In that case what we typically hear is parents are pressured to coming to the school

to provide care. Many times parents will report that school administrators will put a lot of pressure on them and talk about cost issues that they are going to be -- the schools don't have money and by having the parent refuse to come they are going to have to cut personnel from school. Those kinds of things are unacceptable but it's pretty common that we hear that. In addition to that, we hear from parents that school nurses are contacting a student's health care provider directly to pressure them to change a regimen so that -- that a school -- that it's not in the best interest health-wise so the school can avoid having to provide insulin during the school day.

Or they may be pressuring a child to learn to self administer too early. Those are really decisions that need to be made by the parent and by the student's physician.

Next slide. Thanks.

So the role for attorneys and advocates is really advising parents of rights for strategies -- rights and strategies and helping parents pick their battles. Sometimes a parent will come to us with a laundry list of things they have to have where they really should be focusing maybe on getting half that list as something they need to have. It's very frustrating for parents. Everything should be -- they should be getting what they need. But in some cases, they need to pick their battles and having attorneys and advocates help them make that decision is useful.

In addition other very commonplace kind of activities are writing letters to school districts where just often time having a lawyer's signature will get the attention it needs to escalate it where it may be sitting kind of waiting with the School District hoping that maybe the issue with the parents will just stop and go away. And then the other issue is going to 504 meetings with parents. These meetings can be very intimidating for parents. If they go by themselves, it's usually a parent or two parents going. And they are going to be meeting with five or more people from the School District. And on the flip side with attorneys coming to the meeting sometimes it results in kind of ratcheting up the adversarial aspect of it with districts bringing their own lawyers, too so maybe this is something we could talk about in a Q&A session but maybe this is something that we do only if -- if a School District is being uncooperative but certainly can be helpful for parents to go and support them.

Next slide.

The other issue that I think we want you to be aware of is we can work with the health care providers to resolve some of these issues and potentially resolve them before they turn into something big. Commonly medical orders are given on forms if those forms aren't very specific the School District may fudge a little bit with the interpretation and in addition, physicians should be -- should know that they shouldn't be pressured to change orders just for the needs of the School District it needs to be changing the orders if they feel it's in the best interest of the student. It's helpful to get supporting letters in addition to the orders from the child's health care provider and it's also important or if there's also the opportunity to invite the doctors or other medical health care providers to be part of the 504 meetings so they can help educate school personnel on how they can best implement care for the students diabetes.

Training as Brian mentioned because this court ruling is only a year old. Training has been a problem. And school districts have been unprepared to handle the training and have reached out to ADA and other sources to help them do that and that's great. We want them to do that one of the issues that involves school nurses to have them they have been hesitant to provide training although they are able to do that without obligating themselves as a supervisor. Sometimes they are not comfortable to provide the training. So in those cases, we, the association and school districts can reach out to certified diabetes educators or the physicians and nurses who were part of the child's own health care team to help bring them in to the schools to provide training to unlicensed personnel in the School District. It's also very helpful usually parents are eager and very willing to help with the training and they can be brought in when it's appropriate to supplement the training that's being provided by a health care provider.

With that I'm going to turn this over to Brian who is going to talk to you about the training resources that ADA has and the opportunities that we have for you. Thank you.

>> BRIAN DIMMICK: Thanks, Lisa and I do want to talk for a couple of minutes just to close about the resources we have and the opportunity we would like to partner with you guys to help represent

families before I do that I want to say quickly we are going to have a couple of minutes at the end for Q&A if you have a question you've been thinking about something type it into the chat box we have Ben another staff attorney with ADA who has been monitoring the box can answer the question or read it out for the panel answers at the end so like Lisa said this decision has been implemented for a year and it's been a challenge in terms of getting this set up and getting training to happen. And we really need people to be able to help with these issues. We are constantly looking for people to help represent families even if that's just writing a letter and calling the School District and making sure they are aware of the law a lot of these things can be resolved fairly quickly and simply with the right person involved but we would want the opportunity to work with you.

And along those lines we have resources to help with these cases. I'm not going to go through all of this. And we'll send out some links to stuff after the webinar and you can find this on our Web site. But we have an attorney materials bank with a lot of training materials and litigation related materials in the school setting that's on our Web site. There we also have we call legal rights of students with diabetes. It's an online publication in sort of a Q&A form but with legal citations and authority that covers all aspects of diabetes and how it's in the school setting not just insulin but the other accommodations a child might need. All of the ins and outs of Federal law and how that works. So I encourage you to if you do get a case to look at that to find exactly what you need.

We also have pages on our Web site with state school laws. And so especially if you're out in the California and we haven't been focusing on your state school we have pages that outline where your state stands on administering medications and other topics.

But like I said, we are always looking for attorneys to help represent families. Whether that's on a pro bono basis or as part of the regular practice. It can be free it can be part of a fee arrangement you work out with the original client we kind of act as a referral we are always looking for people who are interested and we provide support we work with you. But we are constantly looking for people who want the opportunity to work with us and work with these families. School is going to start in another month or so and we fully expect to get a number of calls from families who are looking for help. They call our 800 number and speak to one of our staff

attorneys who screens the calls and makes a referral in an appropriate case but we are really looking for people around the state of California who are knowledgeable on these issues and can help step in and work for these families who are having difficult situations with school districts.
Again we try to screen the calls. We don't require anyone -- there's no commitment to taking a particular case. You always have the option to decline a case or work out a fee arrangement with the client. But we really appreciate anything you can do to help. And we provide resources. I and other ADA staff attorneys are available to talk to you through a case. Talk strategy, point you to resources. We have a network of health care professionals who help with these cases and can sometimes help provide training. Can sometimes help as an expert in an appropriate case. We're happy to try to connect you with one of them. We also have a mailing list, a listserve for members of our network which is a good place for discussion those of you who are already members of the network know, but if you are not a -- if you are not a member of our attorney network, we would encourage you to get involved we'll provide more information afterwards on just how to do that.

So with that, I just want to conclude. I want to thank Mike and Lisa, my fellow presenters. I want to thank Reid Smith for representing us for all of these years and fighting the fight with us. And I want to thank all of you for being here. So I want to turn it over we have about five minutes left if anyone has questions. Then if you see anything in the chat -- Dan, if you see anything in the chat box feel free to ask.

>> A reminder to unmute your line.

>> Hello this is Ben yes if you have any questions, I would be glad to ask.

Someone had a question regarding other state laws and I put the link in we have a great state law resource on the Web site. That has every single state in the nation in the District of Columbia. Each state has different state laws related to diabetes care we also have additional information available on request feel free to e-mail legaladvocate@diabetes.org I would be glad to send you more information that we have that's not on the Web site. We had a question about Diastat, which is medication that's not related to diabetes care if I recall. Sometimes there's issues that can come

up that are parallel but usually the laws are separate on that. We do have a resources that shows the correlations between the use of Diastat and other laws. Again we have available. Each state can be different.

>> BRIAN DIMMICK: I'll jump in on Diastat, too there is a specifically California state law that allows unlicensed personnel to administer Diastat it was passed two or three years ago it sets out training standards and things like that so while this ruling would be applicable to Dia stat as well there's also a specific state law that governs Diastat that you should look to.

>> Right there's an explicit carveout. Also for EpiPens.

Someone else asked about what someone can do when a nurse refuses to train.

Under the current California Supreme Court ruling there's nothing that gives any kind of specific remedy if someone refuses to train. What usually you can do is argue under Section 504 that there has to be access in some way. And if training is the only way this can happen then there needs to be someone willing to provide the training.

Also the nurse -- if the nurse refuses to train, again this is the way the law has come down in California, it's essential doctors orders that gives the person authorization to have other people administer the insulin. So you could have outside people provide training and we also have resources at the American Diabetes Association for finding people who will do training and often we can find people who do free trainings.

>> BRIAN DIMMICK: And just to add to that this can happen because the nurse just simply doesn't want to do it and sometimes that can be solved by going higher up the chain of command and going to the school principal or the superintendent and saying, look, you have to do this. And you have to find a way to do this if you have to bring someone in from outside there are turf battles that can happen with individual nurses and things like that but usually most of them want to do the right thing.

If the school just doesn't want to train anyone that -- like I said that's fine in the sense that nothing in the Supreme Court decision requires anyone to train an unlicensed person but Federal law requires that they receive the service and the school has got to find a way to do this if they want to have a nurse there every day all day all field trips all extracurricular activities and want to have a backup nurse on call they can do that that's not a great

practical solution and not something that I think a lot of districts actually want to do if you put their feet to the fire and make them aware of their obligations under 504.

>> We have seen this several times at either a local nurse's association didn't know the decision came down and thought they couldn't train or were not able to and sometimes just giving the information can change their mind also agreeing with Brian going up the chain of command saying this isn't an option anymore can be helpful I've seen once or twice a School District that implemented in their particular district they would hire nurses for everything, substitute care everything and they tried to implement it and of course the cost is quite a bit higher but if that's the way they are going to implement it, that's another way to do it if they want to hire all nurses it's great to have direct medical care provided. For those ones that don't have nurses coverage all the time, then you have to find something under Section 504 that will allow the child to access school that has to be covered for field trips when there's no substitute available, anything that can happen.

>> BRIAN DIMMICK: I believe we are about at 3:00 o'clock so if there are no other questions -- if you have questions afterwards feel free to e-mail us legaladvocate@diabetes.org we hope you'll be able to join our network if you are not already a member and help us out.

>> Please a reminder there's a very brief survey that will pop up as you exit the webinar we ask that you just take a minute or so to answer that and as you do that you'll have access to a PDF of the slides used today. So thank you so much for joining us.

(Session ended at 2:02 p.m. CST)

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