

March 16, 2007

**VIA FACSIMILE**

Counsel  
Public School District  
Illinois

**Re: Clara's 504 Plan**

Dear Counsel:

We are writing on behalf of the parents of Clara, concerning their daughter's school-related issues and her rights under §504 of the Rehabilitation Act and Title II of the American With Disabilities Act. We have also been asked by Clara's parents to attend the 504 Plan meeting scheduled for March 18, 2007 at 11:00 am. We are writing in advance of the meeting to address what we understand to be the main issue(s) in the formulation of an acceptable 504 plan for Clara. It is our hope that this letter will help to foster a productive meeting and facilitate the development of a mutually agreeable 504 plan which provides Clara with a safe and non-discriminatory learning environment at Public School.

In reviewing the Conference Recommendation from the 504 plan meeting on February 12, 2007, and the subsequent correspondence between Clara's mother and your office, it appears that the majority of 504 accommodation issues have been (or are in the process of becoming) resolved. Certainly, Clara's parents are pleased that Public School District has agreed to ensure that an LPN is assigned to Public School five days a week. However, as Clara's mother pointed out in her letter of February 16, 2007, providing a full-time nurse does not resolve the very important issue of a back-up person who can be available to check Clara's blood sugar when the nurse is unavailable. While the plan states that a nurse or Principal's designee can provide this backup, after nearly two months, the school has still not identified anyone to provide this critical piece of a safe learning environment for Clara.

The main sticking point (no pun intended) would seem to be the involvement of an unlicensed person checking Clara's glucose levels. Our understanding is that while your office acknowledges the need for a backup, it is concerned that allowing someone other than a licensed nurse to check glucose levels would create a conflict with the newly amended Nurse Practice

Act (NPA) in Illinois. While we understand this concern, we would argue (strongly) that the NPA does not prevent properly trained volunteers (who are not licensed nurses) to be involved in checking a child's glucose levels at school.

The Illinois NPA defines "nursing activity" as "any work requiring the use of knowledge acquired by completion of an approved program for licensure.... as a licensed practical nurse or professional nurse." 225 ILCS 65/50-75. On the other hand, any work "not requiring nursing, knowledge, judgment or decision-making" is deemed to be a "task." The Act provides that a nurse may delegate tasks to unlicensed persons, but that she may not "delegate any nursing activity requiring the specialized knowledge, judgment, and skill of a licensed nurse."

With respect to checking Clara's glucose levels, the entire process involves three simple, easy steps. First, a test strip is inserted into the meter. Second a button is pressed on a lancet device that is touching Clara's finger. Third, the test strip is placed onto a tiny drop of blood and in 5 seconds a number appears with Clara's reading. (The lancet device is self-contained and requires no changing or disposal of lancets.) The number displayed on the monitor is Clara's blood sugar level at that moment. Given this simple process, checking glucose levels is clearly not a nursing activity which cannot be delegated to unlicensed individuals. It is merely a "task" (albeit one often performed by nurses in the hospital setting) as defined under the NPA and one that is simple enough that many children as young as 4 or 5 check themselves routinely.<sup>1</sup> It is hard to imagine that such a simple, non-technical activity could be interpreted as requiring completion of a nursing program, or "specialized knowledge, judgment or skill."

Significantly, any willing "lay-person" can be trained to check glucose levels quickly and easily by a nurse, a physician, or any number of qualified diabetes educators who are readily available in this area. Having a small group of individuals at school who are willing to be trained and available to step in when the nurse is not available, is not only appropriate and feasible, but, we would argue, it is required by §504 of the Rehabilitation Act because there is no other way to provide the necessary backup for those inevitable times when the nurse is not available.

Furthermore, while Clara's health management plan does not presently call for her to receive insulin while at school, we would also point out that the NPA does not prevent these same properly trained volunteers from

---

<sup>1</sup> Because she is newly-diagnosed, Clara is not yet ready to check her own blood sugar. However, she may be ready to do so by as early as next school year.

administering insulin to a child or supervising the self-administration of insulin by a child at school when a 504 plan calls for it. While the NPA (arguably) prevents nurses from delegating their own authority to administer medication to a child, the Act certainly cannot prevent a doctor from delegating to properly trained non-nurses the authority to check glucose levels, administer medication, supervise the self-administration of medication or help to implement any other aspect of a health management plan that does not require technical expertise or training that is beyond an unlicensed individual's capacities. There are many examples throughout the Public School District of children who receive medication while at school that does not pass through the hands of the school nurse (or principal). In much the same way, if/when a child like Clara has a health management plan that calls for the school to be in a position to administer insulin (or to supervise the self-administration of it) – a nurse's involvement is not necessary and the NPA non-delegation provision is not an issue.

This interpretation of the NPA — that it does not prevent checking glucose levels or administering insulin without the involvement of a licensed nurse — is also entirely consistent with the Illinois School Code and the Public School District policy on administration of medication during school hours. The School Code envisions that when it is necessary for a child to be administered medication during school hours, a school district will adopt “guidelines for self-administration of medication by students.” 5/10-22.21b. Public School District, in its wisdom, implemented its Policy Manual which specifically states that self-administration of medication can be monitored by a “principal's designee.” Nothing in the School Code or in the Public School District Policy would prevent properly trained, unlicensed volunteers from monitoring Clara's glucose level or otherwise being involved in the implementation of a student's health management plan.

Finally, allowing unlicensed but properly trained individuals to be involved in the health-management of a child with diabetes is anything but a “new” or “radical” approach or one that somehow exposes the district to new and unforeseen liability. The clearest example of this is the National Institutes of Health and the Centers for Disease Control and Prevention publication in June 2003 of “Helping the Student with Diabetes Succeed, A Guide for School Personnel.” (Available as a PDF file at [http://ndep.nih.gov/diabetes/pubs/Youth\\_SchoolGuide.pdf](http://ndep.nih.gov/diabetes/pubs/Youth_SchoolGuide.pdf)) The guide, endorsed by such groups as the American Academy of Pediatricians, the American Medical Association, the National Association of Elementary School Principals, the National Association of School Nurses, and the U.S. Department of Education, states that “at its core, effective school-based diabetes management requires two things:”

- All school staff members who have responsibility for a student with diabetes should receive training that provides a basic understanding of the disease and the student's needs, how to identify medical emergencies, and which school staff members to contact with questions in case of an emergency.
- A small group of school staff should receive training from a qualified health care professional such as a physician or a nurse in student-specific routine and emergency care so that a staff member is available for younger or less-experienced students who require assistance with their diabetes management (e.g., administering insulin, checking their blood glucose, or choosing an appropriate snack) and for all students with diabetes in case of an emergency. **This group may be comprised of the school nurse and other school staff who are not health care professionals.** ... (emphasis added)

We encourage you to consider the merits of this approach to providing children like Clara with a safe, non-discriminatory school environment and to reject an interpretation of the State NPA that would fly in the face of the recommendations of the most respected and knowledgeable medical and health professionals in the field, including the national organizations of doctors who themselves have the authority to delegate to non-nurse volunteers by-passing nurses entirely. We look forward to discussing these issues as they relate to Clara's particular situation with you further on March 18<sup>th</sup>.

Sincerely,

Edward Kraus

Julie Burger