



Disability Rights Education & Defense Fund

August 12, 2013

Disability Rights Education & Defense Fund (DREDF), representing the American Diabetes Association (ADA), with co-counsel Reed Smith, LLP, is extremely pleased with the California Supreme Court's unanimous decision in *American Nurses Association v. Torlakson*, a landmark case involving diabetes care in California public schools. Today's decision made it clear that state law is not an obstacle to children with diabetes receiving the proper care they need to be healthy and medically safe at school. The California Supreme Court agreed with plaintiffs' interpretation of state law to allow school personnel, who are not nurses, to volunteer and be trained to help children with the insulin they need to survive and thrive at school.

"Today's decision is a critical victory for the estimated 14,000 California schoolchildren with diabetes and their right to diabetes health related services in school and during school-sponsored activities," said Larisa Cummings, DREDF Staff Attorney. "We're equally excited to see the practical realities of living with a disability and/or chronic illness safeguarded by established law."

This case has implications for many people living with other chronic conditions and/or disabilities, including those that are age-related. People with disabilities' ability to access services such as administering medication through attendants or other caregivers is integral to living independently in the community or receiving affordable residential care elsewhere. The question of who can provide what type of service is crucial to the people who need those services, and it is an issue that links a diabetes-related case with the broader disability rights community.

This is a very broad decision that covers many more settings and situations than public schools in CA — e.g., licensed care facilities, including child care, IHSS workers, etc. From the opinion: "For all of these reasons, we conclude the medical-orders exception does permit a layperson to carry out a physician's medical orders for a patient, even orders that would otherwise fall within the definition of nursing practice, without thereby violating the rule against unauthorized practice. To fall outside the exception by "assum[ing] to practice as a . . . nurse" (Bus. & Prof. Code, § 2727, subd. (e)), one must go further by holding oneself out, explicitly or implicitly, to be a nurse in fact."

DREDF recognizes the vital role school nurses play in maintaining the overall health of all students, including those with diabetes, and that all people with disabilities benefit from access to high-quality health services. But this need

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CONTACT DREDF:

info@dredf.org

www.dredf.org

3075 Adeline Street, Suite 210

Berkeley, CA 94703

510.644.2555 v

510-841-8645 fax/tty

800-348-4232

Government Affairs Office:

1825 K Street, NW, Suite 600

Washington DC 20006

800-348-4232

not conflict with the fact that, for many people with disabilities, their everyday lives include tasks that are medical by label but routine in practice. This has already been reflected in the law.

As argued in the ADA's Opening Brief on the Merits (2010), the California Nursing Practice Act's language,

"clearly does not prohibit unlicensed persons from administering medication categorically, this Court need not look beyond the statute's words. But if it were to do so, it would find confirmation in the consequences flowing from the competing constructions. For instance, in many types of settings licensed by the California Department of Health Care Services and the California Department of Social Services, unlicensed persons are authorized by regulations to administer medication to persons dependent on their services. Such facilities include child care centers [see 22 Cal. Code Regs. § 101226(e)], adult residential facilities [see id. § 85065(f)(1)], intermediate care facilities [see id. §§ 73313(c), 76347(i)], and correctional treatment centers [see id. § 79635(a)(6)]. The purpose of the NPA, of course, is to protect and promote the health and safety of the public. In view of the great benefits promised to public health and safety if services to dependent persons continue, it is reasonable to construe the statute not to prohibit unlicensed persons from administering medication. And in view of the commensurately grave costs threatened if such services end, it is absurd to construe the statute otherwise."

The case came before the California Supreme Court after more than seven years of litigation, which began with a class action lawsuit that was resolved by a settlement agreement allowing trained non-medical school personnel to administer insulin when a nurse is not available. That provision of the settlement was challenged in the current lawsuit by several nursing organizations, leading to [today's decision](#).

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Founded in 1979, by people with disabilities and parents of children with disabilities, the Disability Rights Education & Defense Fund (DREDF) is a national law and policy center, based in Berkeley, CA, dedicated to protecting and advancing the civil rights of people with disabilities. A leader in special education law and policy, DREDF has focused on the challenges children with diabetes and other chronic illnesses often face in receiving appropriate care and accommodations at school. DREDF, along with the American Diabetes Association, has developed a sample 504 Plan and a sample Health Plan for parents to use as a model when creating individualized plans for their own children.

[Sample plans and more information on school rights for children with diabetes.](#)
Information about DREDF's [Parent Training and Information Center](#) (PTI).