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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

DECISION

DUE PROCESS HEARING

Name of Child: DC
ODR # 7516/06-07

Date of Birth: xx/xx/xx

Dates of Hearing: May 1, 2007

OPEN HEARING

Parties to the Hearing:

Ms. Yolanda Smith
Reading School District
800 Washington Street
Reading, PA 19601-3616

Mr. and Mrs.

Date Record was closed:

Date of Decision:

Hearing Officer:

Representative:

Richard L. Guida, Esquire
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June 22, 2007

July 6, 2007

Marcie Romberger, Esquire

BACKGROUND

Student just completed the Second Grade in the Reading School District. Student has been identified as a child needing accommodations under Section 504 of the Rehabilitation Act as a result of his diabetes. Student requested a due process hearing alleging a need for a full time medical professional who can dispense medication at his elementary school as an accommodation under Section 504. The Reading School District does not have a full time medical professional who can dispense medication in the elementary school Student attends, nor does it feels Student is in needs of such.

FINDINGS OF FACT

1. Student is a xx year old child who just completed Second grade in the Reading School District (hereinafter, "District"). N.T. 34, 62.
2. Student was diagnosed in 2003 with Type 1 Diabetes. N.T. 20, 24, 52, 164. He is insulin dependent. N.T. 20. He is reviewed by [redacted medical] Center every three months. N.T. 165.
3. Student's family receives training and instruction on Student's condition through [redacted medical] Center. N.T. 24.
4. An average blood sugar level for Student should be between approximately 70 and 150. N.T. 48; P-1.
5. If Student's blood sugar is over 150, Student receives insulin through a junior pen. N.T. 27, 96. Student's blood sugar should be rechecked ten minutes after a high blood sugar reading. N.T. 27, 96. If Student's blood sugar level is still high, physical activity is recommended to burn the extra sugar. Id.
6. A person cannot always tell if a person has high blood sugar without doing a blood test. N.T. 87.
7. If Student's blood sugar level is low, between 40 and 70, Student should be provided a drink or some food. N.T. 28, 29, 96, 193, 194, 195. If Student's sugar level is approximately 40 or below, if he is unresponsive, or if he refuses a drink or a snack when his blood sugar level is low, Student should receive an injection of Glucagon. N.T. 28, 29, 96, 193, 194, 195.
8. Once, Student refused to drink juice when his blood sugar level was low. N.T. 191, 192. In instances such as this, the correction of the low blood sugar needs to be by an injection of Glucagon. N.T. 191.

9. Glucagon alerts the liver to release sugar. N.T. 28. It takes approximately fifteen minutes for the Glucagon to work once it enters the body. N.T. 114.
10. To prepare Glucagon, a liquid substance is injected into a powder substance, mixed, and inserted into a needle. N.T. 29.
11. Normally, if Student has low blood sugar levels, he will exhibit symptoms such as perspiring, his skin will either be pale or flushed, he will say silly things or things that do not make sense, and he will yawn. N.T. 40. He may also show signs of weakness or dizziness. N.T. 87.
12. If Student's blood sugar level drops to a low level, Student can fall into a diabetic coma which can cause brain damage. N.T. 118, 194.
13. There are times where Student's blood sugar number was normal, but in reality his blood sugar was low. N.T. 60.
14. Blood sugar levels can drop pretty rapidly, sometime within a few minutes. N.T. 189.
15. Student's blood sugar is usually controllable; however, he can still have very low blood sugar levels. N.T. 192.
16. Student has at least three low blood sugar readings per week. N.T. 48; P-1.
17. Student's family checks Student's blood sugar levels every two hours or more if he is active to ensure his blood sugar does not get too low. N.T. 23, 30, 62. Student may have a few high or low readings each day if he is active. N.T. 65.
18. Student has had three or four seizures or near seizure behaviors in his life: two or three instances occurred when he was four years old and one approximately a year ago. N.T. 58-60, 66-67.
19. Testimony conflicted as to when the last time Student needed an injection of Glucagon. At one time, Student's father said it was approximately three years ago, and at one time he said it was November, 2006. N.T. 30, 81. 1
20. Student was hospitalized in November, 2006 for low blood sugar. N.T. 125; P-1. He was found dazed and not talking by his parents who called emergency services. P-1; S-3.

1 There were inconsistencies in the testimony of Student's father, but this Hearing Officer did not consider this a lack of credibility or "lying." Rather, it appeared Student's father was too nervous to listen to the question and to think before answering. For example, Student's father incorrectly answered even simple questions regarding his son's age and/or birthday which had no effect in how I would decide the issue. N.T. 60-61.

21. On February 8, 2007, insulin adjustments had to be made by Student's doctors "due to numerous hypoglycemic episodes." P-1.
22. Student does not show symptoms of low or high blood sugar at all times of distress. N.T. 32.
23. A normal school day for Student consists of the following: Student's family checks Student's blood sugar level at breakfast; Student begins school approximately 8:30 a.m.; Student has a snack at approximately 9:30 a.m.-10:00 a.m.; Student's blood sugar level is checked at lunchtime at approximately 11:45 a.m.; Student has another snack at 2:00 p.m.; Student's family rechecks his blood sugar level at 3:00 p.m. when he returns home, at dinnertime, midnight, and again between 3:00 and 4:00 a.m. N.T. 31, 95.
24. No one at the District appears to be monitoring Student's snack or lunch intake to ensure he is eating. N.T. 33-34, 36, 72.
25. Only the school nurse is permitted by the District to dispense insulin or Glucagon. N.T. 87-88, 90.
26. The school nurse is at Student's school, [redacted] Elementary, all day Monday, Tuesday, and Friday. N.T. 89. On Wednesday and Thursday, the school nurse is at Student's school from approximately 11:25 a.m. to 12:00 p.m., the time when Student needs his insulin. Id. The school nurse is at two other schools – the rest of the school day on Wednesdays and Thursdays. N.T. 91.
27. The school nurse is responsible for three elementary schools: Student's school, which enrolls over 900 children; [redacted], which has over 400 students, and [redacted] which has 211 children enrolled. N.T. 130; www.schools.privateschoolsreport.com/Pennsylvania/Reading/redactedElementarySchool.html.
28. During the times the school nurse is not at Student's school, there is no individual at the school permitted to dispense insulin or Glucagon to Student. N.T. 90, 97.
29. When the school nurse is not present at Student's school, the health assistant will check Student's blood levels. If he has a low blood sugar reading, she can give Student juice. N.T. 98. If Student's blood sugar level is very low or if he will not eat or drink, the health assistant must call the school nurse and ask her to return to school to give Student a Glucagon injection. N.T. 98.
30. If Student's blood sugar level is high, the health assistant must call the school nurse to return to the school to give Student insulin. N.T. 98.
- 31.

32. It takes the school nurse between six and ten minutes to return to Student's school from the other schools. N.T. 91.
33. If the school nurse cannot return to the school to aide Student with his medication, a school nurse from another District school comes to the building. N.T. 104. This nurse is approximately ten minutes away from Student's school. N.T. 118.
34. If an emergency occurred in school and the school nurse was not present, 911 would be called. N.T. 111. Response time for 911 services is approximately four to five minutes. N.T. 151.
35. Student's teacher has seen Student exhibit signs of low blood sugar and has sent him to the nurse. N.T. 41. Unfortunately, she has sent him alone even though she was asked not to by Student's parents because of the possibility of Student passing out on the trip to the nurse as a result of the low blood sugar. N.T. 41.
36. Prior to filing for a due process hearing, Student's family would come to school to test Student's levels because the nurse was often not there. N.T. 71, 133. Student's parents also brought him his lunch or count the carbohydrates in the school lunch Student was buying. N.T. 34, 35.
37. Since Student requested a due process hearing, a nurse has been available at lunch most days to test Student's sugar level. N.T. 34.
38. A few instances after Student filed for due process, the nurse did not return to the school during lunch because she knew one of Student's parents was there who could check Student's blood sugar level. N.T. 34-35.
39. Student's doctor feels it is unsatisfactory to have the only person who can give Student an injection off site and five minutes away because that is a long period of time if Student has a seizure. N.T. 168.
40. Student's doctor believes Student should have someone available at school at all times who is trained in recognizing symptoms of low and high blood sugar and who has the ability to administer a Glucagon and insulin injection. N.T. 166, 167-168.
41. Student's doctor believes it would be optimal for there to be someone in the classroom who has the ability to give injections in an emergency. N.T. 169.
42. During the 2006-2007 school year, District's nurse logged 47 low blood sugar readings, 78 high blood sugar readings, and 52 normal blood sugar readings for Student. S-1. Out of the 47 low blood sugar readings, 18 of those were close to or lower than 40 – the number where Student's doctor testified the Glucagon should

- be given immediately. S-1; N.T. 193-194. 2 At no time was the Glucagon given to Student. S-1, N.T. 73.
43. Student's doctor believes the reason Student has not had a blood sugar crisis in school is because Student's family is "on top of things." N.T. 190.
 44. Student's blood sugar levels at school have been as high as 500 when the nurse has not been in the school and over 400 when she has been in the school. N.T. 102.
 45. Although the nurse's office keeps a medical log that tracks Student's blood sugar levels, it does not list those times when the health assistant has had to call the nurse for assistance or when Student was hospitalized as a result of low blood sugar. N.T. 143, 144.
 46. Normally, the school nurse does not retest Student after a high blood sugar reading. N.T. 105-106, 132.
 47. Student has not had seizure activities while in school. N.T. 69.

ISSUES

Is Student in need of someone at school full time who can dispense insulin and Glucagon to Student when necessary?

DISCUSSION AND CONCLUSIONS OF LAW

Following [Schaffer v. Weast, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 \(Nov. 14, 2005\)](#), and [L.E. v. Ramsey Bd. of Educ., 435 F.3d 384 \(3d Cir. 2006\)](#), the burden of persuasion, as one element of the burden of proof, is now borne by the party bringing the challenge. As it was Student who filed this due process request, he has the burden of persuasion. Pursuant to [Schaffer](#), though, it only comes into play when neither party introduces preponderant evidence and, as a result, that evidence is fairly evenly balanced. Although [Schaffer](#) related to a situation under the Individuals with Disabilities Education Act and this hearing was brought only under Section 504 of the Rehabilitation Act, I will follow [Schaffer](#) as many Courts have used decisions under the Individuals with Disabilities Education Act for cases arising under Section 504.

² Student's doctor testified, "if you've got a low blood sugar of 40, okay, and it takes about five seconds to measure, the Glucagon should be given immediately. If the child is comatose, seizing or if the child is absolutely refusing to take anything and the blood sugar is 40, it has to be given immediately." N.T. 193-194.

In his closing, Student requested relief as stated below:

1. “Compensatory Education” in the form of compensation for [Student’s] mother who has had to regularly come to the school to monitor her son’s condition;
2. Implementation of a §504 Service Plan which includes that [Student] has prompt access to a school nurse or other acceptable medical professional who can determine if he needs an insulin injection, and administer said injection, if his blood sugar is too high, or some form of carbohydrate, if his blood sugar is too low;
3. Said placement to be in an appropriate least restrictive environment such as his local neighborhood school or nearby private placement;
4. Counsel fees and costs; and
5. Such other relief as may be awarded and be appropriate.

However, in his opening, Student only requested that I order the District to have someone full time at Student’s school who is permitted to dispense medication. Therefore, that is the only issue that I will address and review. 3 In re the Educational Assignment of A.P., a Student in the Oxford Area School District, Special Education Opinion Number 1744 (2006).

The Pennsylvania School Code states that every child of school age should be provided with school nurse services. 24 Pa Code § 14-1402(a.1). The Code also limits the number of children under the care of each school nurse to no more than 1500. Id. However, the school nurse responsible for Student’s care is responsible for over 900 children at [redacted] Elementary School, over 400 students at [redacted] Elementary School, and 211 students at [redacted] Elementary School – a total of more than 1500 children. N.T. 130, www.schools.privateschoolsreport.com/Pennsylvania/Reading/redactedElementarySchool1.html. This alone violates the Pennsylvania School Code and requires the District to hire another school nurse.

Moreover, however, the District needs to provide a medical professional full time at [student’s school] as an accommodation to Student as a result of his unstable blood sugar levels during the school year. 4 During the 2006-2007 school year, District’s nurse logged 47 low blood sugar readings, 78 high blood sugar readings, and only 52 normal blood sugar readings. S-1. Out of the 47 low blood sugar readings, 18 of those were close to or lower than 40 – the number where Student’s doctor testified the

3Regarding the other issues first raised in his closing, Student provided no information during the hearing for me to determine compensatory education nor any information to show that there is an issue of least restrictive environment. Moreover, in Pennsylvania, I have no authority to order attorneys fees. Therefore, even if Student raised these issues before me during the hearing, there is no evidence for me to find in his favor regarding these issues.

4 Testimony offered stated the nurse is the only one employed by the District who can dispense insulin or Glucagon to Student. N.T. 87-88, 90.

Glucagon should be given immediately. S-1; N.T. 193-194. At no time was Glucagon given to Student. S-1. Student, and the District, has been very lucky that no serious diabetic episode has occurred during the school day. Based on his blood sugar readings, it is clear that the possibility of a serious diabetic incident could have occurred at least 18 times during the school year where a Glucagon injection may have been necessary. S-1; N.T. 193-194. In addition, since Student needs a daily injection of insulin, it is imperative that a school nurse is available. Without a school nurse stationed at [student's school] on a daily basis, there is no guarantee a medical professional will be there to dispense insulin to Student when he needs it.

Although these issues were not before me, I strongly recommend the District add to Student's § 504 Service Agreement that school personnel will monitor Student's food intake to ensure Student is eating when required. I also recommend the District recheck Student's high blood sugar levels as recommended by Student's doctor, and that Student's teachers have someone walk Student to the school nurse when the teacher is concerned Student may be exhibiting symptoms of low blood sugar.

ORDER

The District must have on staff at Student's school a full time staff member who is trained in recognizing symptoms of low and high blood sugar and who has the ability and training to administer a Glucagon and insulin injection.

Marcie Romberger, Esquire