

# Answers to FAQs Care of Students with Diabetes Act

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Committee of the Illinois Council of School Attorneys<sup>1</sup>

ICSA publishes this guidance as part of its continuing effort to provide assistance to school leaders. The responses to the FAQs represent the combined thinking of committee members. Potential questions may arise that are not addressed in this guidance. The *Care of Students with Diabetes Act* (Act) raises several unanswered questions regarding its implementation in a manner consistent with the Illinois Nurse Practice Act and other State and federal laws. The Illinois Council of School Attorneys, Special Education Committee is seeking further guidance.

**This guidance is published for informational purposes only and is not a substitute for legal advice. For legal advice or a legal opinion on a specific question, you should consult a lawyer.**

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## Section I. Process for Selecting a Delegated Care Aide (Aide)

### A. What are the collective bargaining implications of the Care of Students with Diabetes Act (“Act”)?

Employers whose support staff are represented by a labor organization are required to bargain over the employees’ terms and conditions of employment. Since the Act will change the work of employees designated as Delegated Care Aide, most likely school districts will be asked to bargain over how those changes impact these employees. This is referred to as “impact” bargaining. For example, the union may seek to bargain over the rate of pay for the Aides. School districts are advised to inform the relevant union of intended changes and, if requested, bargain over the impact of such changes. In rare cases, an existing bargaining agreement may waive any requirement to bargaining during the term of a current agreement, but this is unlikely in most districts. We recommend that each district work with its legal counsel to determine what (if any) issues need to be bargained.

### B. If the Delegated Care Aide is a member of the collective bargaining unit, how will his/her membership affect the Act’s requirement to enter into individual agreements with the Delegated Care Aides?

Some collective bargaining agreements may contain a provision prohibiting the district from entering into any individual agreements with its employees. The Act’s requirement that such agreements be signed overrides such prohibitions. Other bargaining agreements may require that individual agreements be consistent with the collective bargaining agreement. Most likely, such requirements can be complied with through bargaining with the union as discussed in No. 1 above.

### C. Should districts create new employment positions for Delegated Care Aides, or can the role of the Delegated Care Aide be added to a current position’s job description?

The Act does not require a school district to hire additional personnel for the sole purpose of serving as a Delegated Care Aide, nor does it require specific employees to serve as an Aide with no other duties. Because the responsibilities of each Aide will vary depending on the number of students with diabetes in a given school district and the needs of those students, the decision of whether to add the role of Aide to a current employment position or to create a new employment position for the Aide will be unique to the needs of each district.

If a school district creates a new position for the Aide, it may need to bargain the new position’s impact on the district’s current employees, including issues regarding compensation and separate seniority classifications. We recommend that each district work with its legal counsel to determine what (if any) issues need to be bargained.

### D. Should a school district post and/or describe “diabetes care” as “an essential function of the job”?

Because the Act requires a school district to have a Delegated Care Aide to provide care to students with diabetes, a school district should strongly consider having diabetes care, including the specific functions to be performed by the Aide, as an essential function of that job. By including diabetes care as an essential function of the job, a district would be able to ensure that it can fill the position with someone who is both capable and willing to perform the necessary duties. School districts may not require an employee (other than a certified school nurse, non-certificated RN, or administrator) to administer medication to students. (105 ILCS 5/10-22.21b). Before making any changes to an employee’s job description, the administration, in consultation with legal counsel, should examine its applicable collective bargaining agreement (if any) to make sure that changes are made in compliance with the agreement.

### E. Can an employee serve as the Delegated Care Aide for more than one student?

Yes.

**F. Can an employee serve as the Delegated Care Aide for students enrolled in different school buildings?**

Yes. The Act does not require that the Delegated Care Aide be a full-time employee assigned to the same building as the students he or she serves. Before assigning an Aide to multiple students in different school buildings, however, school districts should consider whether the Aide will be able to practically perform all of the functions required by the Act if the students he or she is responsible for serving are located in different school buildings.

**G. How can districts prevent losing their Delegated Care Aide(s) in the event of a reduction in force?**

School districts should consider creating a separate seniority category for Delegated Care Aides. In that way, a reduction in other positions would not be as likely to impact the staffing of this position.

**H. Are the sub-contracting requirements in Section 10-22.34c triggered by the Care of Students with Diabetes Act?**

It depends on whether the services to be subcontracted are considered services “currently performed by any employee” of the district. To the extent the district currently has employees performing the duties required by the Act, it could be argued that Section 10-22.34c must be complied with before those duties can be subcontracted. On the other hand, if the duties to be subcontracted did not exist before the Act was implemented, then the requirements of Section 10-22.34c should not apply. The difficulty in resolving this issue is that some duties probably were performed before and some will be new. A resolution to this question may require input from the ISBE and ultimately may need to be clarified by the legislature or the courts. However, if a school district subcontracted these services before Section 10-22.34c was enacted, it does not need to comply with that provision in the future as long as it continues to subcontract the services.

## **Section II. Training**

**A. Who must receive training?**

The *Care of Students with Diabetes Act* (Act) mandates training for two groups - all school employees and Delegated Care Aides.

**B. Initial Training of Delegated Care Aides**

**1. What must the training of Delegated Care Aides include?**

The initial training *must be consistent with* guidance provided by the U.S. Department of Health and Human Services in its publication, *Helping the Student with Diabetes Succeed*, (June 2003)(Guidance) [www.ndep.nih.gov/media/youth\\_schoolguide.pdf](http://www.ndep.nih.gov/media/youth_schoolguide.pdf). The training also must be individualized by a student’s parent(s) or guardian(s). §25(d).

The Guidance recommends a two tiered training - a basic training for all school staff who have responsibility for a student with diabetes and a more detailed, student specific training by a qualified health care provider to a smaller group of staff composed to ensure at least one staff member is always available to assist younger students or in case of a medical emergency.

The basic training should provide a basic understanding of diabetes and the student’s needs, how to identify medical emergencies and whom to contact in case of an emergency. The more in-depth training would cover student-specific routines and emergency diabetes care tasks. Guidance, pp. 2 & 10 (June 2003),

Additionally, Delegated Care Aides must receive training that is individualized to the tasks set forth in a student’s diabetes care plan and:

- a) checking and recording blood glucose levels;
- b) recognizing and responding to the individual student’s symptoms of hyperglycemia and hypoglycemia, as set forth in the diabetes care plan;
- c) estimating the number of carbohydrates in a snack or lunch;

- d) administering and recording the administration of insulin, according to the individual student's diabetes care plan; and
- e) responding in an emergency, including how to administer glucagon and call 911. §25(b).

## **2. What does it mean that training is to be “individualized by a student’s parent or guardian”?**

The Act does not identify what is meant by “individualized by a student’s parent or guardian.” The Guidance suggests that parents should provide specific information about their child’s diabetes and performance of diabetes-related tasks at home, the signed diabetes care plan, and current and accurate emergency contact information. As the training is to be consistent with the Guidance, any individualization of the training by a student’s parent(s) or guardian(s) minimally should include this information. Inviting parent(s) or guardian(s) to participate in the training is one way of meeting this requirement. Absent the issuance of regulations to the contrary, school districts also may individualize the training through staff member report of information gathered from parent(s) or guardian(s) and/or distribution of an information sheet completed by parent(s) or guardian(s) along with the student’s individual diabetes care plan.

## **3. Who performs the initial training?**

Initial training must be provided by a licensed healthcare provider with expertise in diabetes or a certified diabetic educator. A parent may, but is not required to, participate in the training for purposes of individualizing the training to his/her child.

## **4. Who qualifies as a licensed health care provider?**

A licensed health care provider may be one of three individuals holding a current and active license: a) a physician, b) an advance practice nurse who has a written agreement with a collaborating physician who authorizes diabetes care, or c) a physician assistant who has a written supervision agreement with a supervising physician who authorizes the provision of diabetes care.

## **5. Who can be a “certified diabetic educator”?**

Diabetic educators are certified by the National Board of Diabetic Educators, in the United States. In order to be qualified for certification, an individual must be licensed in one of several healthcare related professions, meet other minimum experience and continuing education requirements specific to diabetes as well as pass an examination. Once initially certified, the certificate must be renewed every five years. Professions which may qualify for certification include: clinical psychologists, registered nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, certified clinical exercise specialist, registered clinical exercise physiologist, registered dietitian, registered physician assistant or social worker with a masters degree or higher. For further information, see the NBDE website at: [www.ncbde.org](http://www.ncbde.org).

## **6. What other considerations are there for initial training of Delegated Care Aides?**

- Maintaining the student’s privacy rights if the same trainer is used to train multiple Delegated Care Aides simultaneously. As the training is to include information individualized by a student’s parent(s) or guardian(s), parents may be requested to provide a release of information in compliance with the *Family Educational Rights and Privacy Act* and the Illinois *School Student Records Act* or training time should be scheduled to allow for individualized training times for each Delegated Care Aide/Student pairing;
- Identifying a qualified healthcare professional willing to provide training addressing the needs of individual students with whom the healthcare professional may not have an existing treating relationship;
- Providing the qualified healthcare professional who agrees to conduct the training with sufficient information about students’ respective diabetes health care needs in advance of the training to support delivery of appropriate information during the training, having secured appropriate written consents for release of the information;
- Identifying for each student the staff members appropriate to receive individualized training, per the student’s diabetes care plan/504 plan;

- Scheduling the training during an in-service day with a primary session for the basic training and then sufficient individual student-specific sessions with all appropriate staff; and
- Costs associated with preparation and training time needed by the trainer to address individual student needs.

### **C. Training Updates for Delegated Care Aides**

#### **1. When must a Delegated Care Aide’s training be updated?**

Whenever there is a change in the student’s diabetes care plan and at least annually.

#### **2. What training is required when a student’s diabetes care plan changes?**

The Act is silent in regard to the scope of training when there is a change in a student’s diabetes care plan. Minimally, the training should include any information necessary to support the Delegated Care Aide to continue to assist in implementation of the diabetes care plan.

#### **3. What is required in an annual training?**

Absent further guidance, the annual training should cover the same topics covered in the initial training, updated for changes in any individual student’s diabetes care plan or guidance provided by the United States Department of Health and Human Services.

#### **4. Who can conduct the annual training or a training due to a change in a student’s diabetes care plan?**

The Act is silent in regard to who may conduct trainings, once an initial training has been provided.

#### **5. What is the parent role in the annual training or a training due to a change in a student’s diabetes care plan?**

The Act does not specify the parent role in training other than to provide for individualization of the training to the child. However, training is to be consistent with the Guidance, which recommends that parents provide: (1) specific information about their child’s diabetes and performance of diabetes-related tasks at home; (2) the signed diabetes care plan, which is to include directions from the student’s health care provider as to management of the student’s diabetes in school; and (3) current and accurate emergency contact information.

### **D. Training of “All School Employees”**

#### **1. Who is required to be trained?**

The Act mandates that “all school employees”, in schools that have a student with diabetes, receive training during a regular in-service training required by Section 10-22.39 of The School Code. For purposes of this training, a school employee includes: *a person who is employed by a public school district or private school, a person who is employed by a local health department and assigned to a school or a person who contracts with a school or school district to perform services in connection with a student’s diabetes care plan.* §10.

#### **2. What must the training provided to all school employees address?**

The training minimally must cover *the basics of diabetes care, how to identify when a student with diabetes needs immediate or emergency medical attention, and whom to contact in the case of an emergency.* §25(a). This is consistent with what is recommended in the Guidance.

### **3. Who can conduct the training for all school employees?**

The Act does not specifically identify who must conduct this training.

### **4. When must the “all school employee” training be completed?**

The training must be conducted any time a student with diabetes is in attendance at a school and may be incorporated into the school’s regular in-service training schedule. §25(a). The Act does not identify a particular date by which the training must be completed. It is advisable to consult with your school district’s attorney to determine how to address the timing of training from a legal risk management perspective.

## **Section III. Developing a Diabetes Care Plan**

### **A. Who needs to have a Diabetes Care Plan?**

Under the Act, a Diabetes Care Plan is required for any student with diabetes who seeks assistance with diabetes care in the school setting or who has been managing his or her diabetes care in the school setting.

### **B. Where can school districts find an example of a “reasonable” diabetes care plan that contains all of the elements required under the Act?**

There is not yet a model diabetes care plan that contains all of the elements required by the Act.

School districts may find the U.S. Department of Health and Human Services’ publication, *Helping the Student with Diabetes Succeed* (Guidance), helpful when preparing or reviewing students’ diabetes care plans. [www.ndep.nih.gov/media/youth\\_schoolguide.pdf](http://www.ndep.nih.gov/media/youth_schoolguide.pdf). The American Diabetes Association and the American Pediatric Association both appear to endorse this Guidance. In addition to the general parameters that the Guidance provides, pages 14 and 49-54 may be particularly helpful to districts as they review their students’ diabetes care plans for reasonableness and compliance with the Act. Page 14 of the Guidance contains a list of “typical” services that may be included in a Section 504 plan for a diabetic student. Pages 49-54 of the Guidance contains a sample Diabetes Medical Management Plan which provides some examples of what would likely be considered “reasonable” components of a diabetes care plan. Keep in mind, however, that this Medical Management Plan does not contain all of the necessary elements of a diabetes care plan as required by the Act, nor does it specify the exact “services” to be provided.

We recommend that each district work with its legal counsel to determine whether its particular students’ diabetes care plans comply with the Act.

### **C. Should school districts obtain parental consent in order to speak with a student’s physician?**

Yes. When reviewing a diabetes care plan for compliance with the Act, school districts should seek to obtain parental consent in order to speak with the student’s physician about the necessary care and management of the student’s diabetes. (See Section V.)

## **Section IV. Classroom Management**

### **A. Does the Care of Students with Diabetes Act change self-administration by students?**

Yes, a student’s ability to manage his diabetes in the classroom is greatly impacted by the Act. Indeed, at the outset of the Act, the General Assembly finds that many students are capable of managing their diabetes independently and that such self-management is consistent with the recommendations of pediatric endocrinologists and certified diabetes educators. From this finding, the General Assembly then goes on to mandate that students be permitted to manage their diabetes in the classroom, in any area of the school and at school events and activities if authorized by the student’s physician in his diabetes care plan.

## **B. What is “self-management” of diabetes?**

The Act contains an entire section devoted to a student’s “self-management” of his or her diabetes. Section 30 of the Act provides that a student must be permitted to engage in the following activities if his physician has authorized these activities in his diabetes care plan:

1. Check his blood glucose levels when and wherever needed;
2. Administer insulin;
3. Treat hypoglycemia and hyperglycemia and otherwise attend to the care and management of his diabetes in the classroom, in any area of school or school grounds and at any school related activity or event; and
4. Possess the supplies and equipment necessary to monitor and treat his diabetes on his person at all times.

## **C. How is “self-management” accomplished at school?**

If a student’s physician has indicated as a part of a student’s diabetes care plan that the student is capable of checking his own blood glucose levels, determining and administering the appropriate insulin dosage or other appropriate treatment, the student may care for his diabetes himself, within the classroom, without the assistance of the school nurse, Delegated Care Aide or other appropriately trained school staff member. In such a case, the student must be permitted to manage his diabetes in the classroom, in any area of the school on school grounds or at any school event or activity. Finally, if authorized by the student’s physician, the student must be permitted to carry his supplies with him in the school building, on school grounds or at school events or activities. The student’s equipment may include glucometers, lancets, test strips, insulin, syringes, alcohol swabs, a glucagon injection kit, glucose tablets and food and drink as determined necessary by the student’s diabetes care plan. In addition to addressing these issues in the student’s diabetes care plan, school districts should also request that physicians and parents complete the district’s administration of medication, self administration and self carry forms.

The Act specifically references, with regard to training requirements, the U.S. Department of Health and Human Services document entitled, *Helping the Student with Diabetes Succeed*, [www.ndep.nih.gov/media/youth\\_schoolguide.pdf](http://www.ndep.nih.gov/media/youth_schoolguide.pdf). This document, albeit a non-binding guidance document, stresses the importance of taking immediate action to address a student’s symptoms of hypoglycemia and hyperglycemia. Accordingly, these Guidelines strongly encourage school districts to permit students, determined capable by their physician, to check their blood glucose levels and respond to the results “in the classroom, at any other campus location or at any school activity.” The General Assembly appears to have been strongly influenced by these recommendations and has mandated that school districts permit students to manage their diabetes anywhere in a school building or on school grounds if authorized by the student’s physician in his diabetes care plan.

If, therefore, the student’s physician authorizes the student’s self-management of his diabetes care, the student may test his blood glucose levels and treat his diabetes through the administration of insulin, intake of food or beverage or alteration of his activity level within the classroom. School districts must, therefore, carefully plan with the student, his parents and physician how and where the student should manage his diabetes within the classroom, where and how to dispose of the used diabetes supplies and equipment in a safe manner consistent with universal precautions and local waste disposal laws and how to record the student’s glucometer readings and insulin administration during the school day. In addition, school districts should identify other areas of the school building or grounds where the student may test his blood glucose levels and treat his diabetes and devise a plan to address these same issues in other locations.

Note, however, that if a student’s physician has not authorized the student to manage his diabetes care in the student’s diabetes care plan, the school district may require the student to meet with a school nurse, dedicated care aide or other appropriately trained school staff member outside of the classroom to care for and treat his diabetes.

**Section V. Authorization, Release, and Acknowledgement**

*Consider asking parents and guardians to sign the following:*

**Sample Authorization to Provide Diabetes Care,  
Release of Health Care Information, and Acknowledgement of Responsibilities**

As provided by the Care of Students with Diabetes Act, I hereby authorize [School District] and its employees, as well as any and all Delegated Care Aides named in the Diabetes Care Plan or later designated by the District, to provide diabetes care to my child, \_\_\_\_\_, consistent with the Diabetes Care Plan. I authorize the performance of all duties necessary to assist my child with management of his/her diabetes during school.

I acknowledge that it is my responsibility to ensure that the School is provided with the most up-to-date and complete information regarding my child's diabetes and treatment. Therefore, I consent to the release of information about my child's diabetes and treatment by my child's health care provider(s),  [child's health care provider(s)] , to representatives of [School District]. I further authorize District representatives to communicate directly with the health care provider(s).

I also understand that the information in the Diabetes Care Plan will be released to appropriate school employees and officials who have responsibility for or contact with my child, \_\_\_\_\_, and who may need to know this information to maintain my child's health and safety.

Pursuant to Section 45 of the Care of Students with Diabetes Act, I acknowledge that the District and District employees are not liable for civil or other damages as a result of conduct, other than willful or wanton misconduct, related to the care of a student with diabetes.

Parent's Signature\* : \_\_\_\_\_ Date: \_\_\_\_\_

\* Failure of Parent(s) to execute this document does not affect the civil immunity afforded the District and school employees by Section 45 of the Care of Students with Diabetes Act for civil or other damages as a result of conduct, other than willful or wanton misconduct, related to the care of a student with diabetes, or any other immunities or defenses to which the District and its employees are otherwise entitled.