

# SCHOOL AND COLLEGE LEGAL SERVICES of California

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## LEGAL UPDATE

July 23, 2009

**To:** Superintendents, Member School Districts (K-12)

**From:** Frank Zotter, Jr., Senior Associate General Counsel *FZ*  
Marko Fong, Assistant General Counsel *MP*

**Subject:** *American Nurses Association v. O'Connell* – Diabetes Appellate Update  
Memo No. 18-2009

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In 2007, the California Department of Education issued an advisory informing school agencies that trained non-medical personnel could administer insulin to students in certain situations. However, in light of recent litigation, the question of who may administer insulin to students with diabetes who need assistance remains legally unresolved. In November 2008, the California Nurse's Association obtained a writ of mandate in Superior Court to prevent non-medical school staff from administering insulin to students.<sup>1</sup> Since that time, the California Department of Education has appealed this ruling and obtained a stay that prevents enforcement of the writ of mandate until the Appellate Court completes its determination.<sup>2</sup>

We will update you on the status of this case. In the meantime, districts should continue their current practices as specified in applicable district policy or the California Department of Education's advisory.<sup>3</sup>

A number of districts have also received requests under the Public Records Act seeking various documents relating to this topic, including district policies on administering medicines to students, statistics on the number of medical staff personnel, and on the number of students with diabetes in the district. The firm who has sent these requests apparently represents the American Diabetes Association, which is opposing the position taken by the American Nurses Association in the litigation. Districts should provide those policies and other documents that are public records, but should remember that only documents in existence need to be provided--such a request does not require that new documents be created to respond to the request.

If you have any questions related to this, please contact any of the attorneys in our offices.

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<sup>1</sup> CDE advisory <http://www.cde.ca.gov/ls/he/hn/legaladvisory.asp>

<sup>2</sup> \_\_\_ Cal App. 4th \_\_\_ (2009)

<sup>3</sup> CDE advisory <http://www.cde.ca.gov/ls/he/hn/legaladvisory.asp>