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Safe at School: The Legal Rights of Children with Diabetes at School and Childcare

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This session is being recorded NDRN and will be made available online for public access and viewing.



While the American Diabetes Association attempts to ensure that all information is accurate and current, this general information about potential legal protections and medical best practices is not a substitute for individualized legal or other expert advice and assistance.

The American Diabetes Association, its staff and volunteers, do not provide legal or medical advice or represent you. For detailed legal advice or representation, contact and consult an independent attorney, and for health care consultation and advice, consult with your professional health care provider.

MISSION

To prevent and cure diabetes and improve the lives of all people affected by diabetes.

We deliver MISSION through:

- **Research**
- **Information & Support**
- **Advocacy & Public Awareness**

GOALS FOR SAFETY AND INCLUSION FOR THE CHILD

- Schools and childcare must provide a medically safe environment for students with diabetes
- Students with diabetes must have the same access to educational opportunities and school-related activities as their peers
- Childcare centers generally must provide children with diabetes the same access to childcare as their peers
- Schools and childcare must work with parent/guardian and the child to reasonably support daily diabetes management activities

WHAT WE KNOW:

- Diabetes care is 24/7
- Children with diabetes cannot take a break
- Smooth transition from home to school or childcare is essential, with recognition that diabetes care at home and school or childcare may be delivered differently
- Child must have access to equipment, medication, and assistance
- Fluctuating/out-of-range blood glucose levels may negatively impact learning and behavior
- Written care plans are essential

KEY STRATEGIES

- Engage in spirit of cooperation and work with staff
- Be realistic and reasonable
- Communication is paramount
- Provide supplies, snacks, quick-acting form of glucose
- Provide updated contact information
- Work with your diabetes care team to develop the right plan and to prepare staff for success through training and support

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Legal Protections

FEDERAL & STATE LAWS TO THE RESCUE

Federal Laws

- Americans with Disabilities Act (ADA)
 - Title II: publicly run/funded childcare and schools
 - Title III: privately run/funded childcare and schools
- Section 504 of the Rehabilitation Act of 1973 (1973, 29 CFR 104)
- Individuals with Disabilities Education Act (IDEA)

State Laws, Regulations and Guidelines

Legal Protections

ADA: Whom Does It Apply To?

- Title II of the ADA applies to “state and local government entities”
- Title III of the ADA applies to “places of public accommodation”
- All programs that are open to the public

**Religious entities are generally exempt from the ADA’s protections.*

Legal Protections

ADA: What Does It Require?

- Prohibits discrimination on the basis of disability
- Diabetes substantially limits a number of major life activities including walking, talking, eating, endocrine function
- Requires entities to make “reasonable modifications” in policies, practices, or procedures to ensure that the person with a disability as meaningful or equal access to the programs, services, and activities

**The United States Department of Justice has enforced the ADA against several childcare centers regarding children with diabetes based on reports from families.*

Legal Protections

Section 504

- Applies to public and private schools receiving federal funds including religious-operated schools
- Applies to childcare settings when the childcare provider receives federal funding
- Rights are similar to those under the ADA
- A Section 504 Plan is developed for students eligible for services under Section 504

Legal Protections

IDEA

- Special education law
- Must demonstrate that diabetes or another disability adversely impacts ability to learn and to progress academically
- An Individualized Education Program (IEP) is developed for a student eligible for services under IDEA

Legal Protections

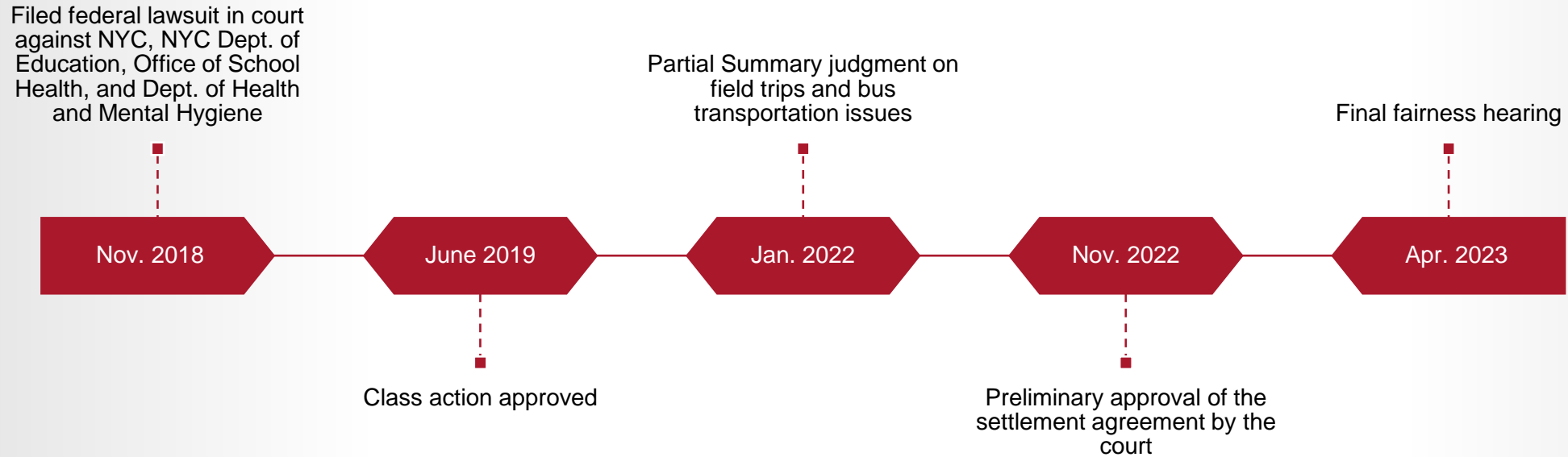
Common reasonable diabetes care modifications for children with diabetes

- Designating and training childcare and school staff to provide care, including bus drivers
- Checking a child's blood glucose levels and responding to those that are too low or too high
- Helping a child administer their insulin and administering insulin for a child who cannot do it independently
- Counting carbohydrates
- Administering glucagon in an emergency

U.S. Department of Justice Settlements

- Three things the DOJ has said consistently in settlements:
 - Denying access to childcare because of a child's diabetes is a violation of ADA Title III
 - Per doctors orders, layperson staff can be trained to administer insulin and glucagon in the childcare setting. This is a reasonable modification.
 - Evaluation of each reasonable modification must be made on an individualized basis
- Most recent settlements:
 - [Atlanta YMCA](#) (press release)
 - [Lil Einstein's Academy](#) (settlement agreement)
 - [Community First School](#) (settlement agreement)
 - More settlements at ada.gov

MF v. NYC Dept of Education



MF v. NYC Dept of Education

Reforms in the settlement agreement include:

- Establishing new timelines related to how school staff will plan to meet the needs of students with diabetes, including meetings to develop Section 504 plans and ensuring students can attend school with all accommodations in place on their first day of school
- Providing care such that students with diabetes are not excluded or segregated from their classmates, such as in field trips and school-sponsored activities
- Training for staff and contractors (nurses, paraprofessionals, administrators, bus drivers and attendants, and teachers and other staff) and the provision of services during the school day and in afterschool activities.
- Monitoring and reporting and the appointment of the American Diabetes Association as the Joint Expert, and a professional monitor as External Monitor, for a term of three school years.

More information at: diabetes.org/nycstudents

STATE LAWS & REGULATIONS

- State and local laws and regulations (i.e., Board of Nursing regulations) vary regarding who may perform various aspects of diabetes care
- Often there is no statewide policy. Rather, policy is determined district by district
- Some states have developed school diabetes management guidelines
- Some states have passed school or childcare diabetes care legislation or changed Board of Nursing regulations
- Regardless of state and local laws, requirements of federal laws must be met
- To learn more about your state's laws with regard to schools, go to diabetes.org/fedlaws

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Written Plans

Diabetes Medical Management Plan

SCHOOL YEAR: _____



(Add student photo here.)

STUDENT LAST NAME: _____ FIRST NAME: _____ DOB: _____

1 of 6

TABLE OF CONTENTS		
PARENT/GUARDIAN SECTIONS	PAGE	SECTION
Demographics	1	1
Supplies/Disaster Plan/Field	1	2
Tips Self-Management Skills	2	3
Student Recognition of High/Lows	2	4
Glucose Monitoring at School	2	5
Parent Approval Signatures	6	9
DIABETES PROVIDER SECTIONS	PAGE	SECTION
Insulin Doses at School	3	6
Dosing Table (Single Page Update)	4	6A
Correction Sliding Scale	4	6B
Long Acting Insulin Other Medications	4	6C
Other Medications	4	6D
Low Glucose Prevention	5	7
Low Glucose Management	5	8
High Glucose Management	6	9
Approval Signatures	6	9

PARENTS/GUARDIANS: Please complete pages 1 and 2 of this form and approve the final plan on page 6.

1. DEMOGRAPHIC INFORMATION – PARENT/GUARDIAN TO COMPLETE

Student First Name: _____ Last Name: _____ DOB: _____ Student's Cell #: _____ Diabetes Type: _____ Date Diagnosed: Month: _____ Year: _____

School Name: _____ School Phone #: _____ School Fax #: _____ Grade: _____

Home Room: _____ School Point of Contact: _____ Contact Phone #: _____

STUDENT'S SCHEDULE Arrival Time: _____ Dismissal Time: _____

Travels to school by (check all that apply): <input type="checkbox"/> Foot/Bicycle <input type="checkbox"/> Car <input type="checkbox"/> Bus <input type="checkbox"/> Attends Before School Program	Meals Times: <input type="checkbox"/> Breakfast _____ <input type="checkbox"/> AM Snack _____ <input type="checkbox"/> Lunch _____ <input type="checkbox"/> PM Snack _____ <input type="checkbox"/> Pre Dismissal Snack _____	Physical Activity: <input type="checkbox"/> Gym <input type="checkbox"/> Recess <input type="checkbox"/> Sports <input type="checkbox"/> Additional information: _____	Travels to: <input type="checkbox"/> Home <input type="checkbox"/> After School Program Via: <input type="checkbox"/> Foot/Bicycle <input type="checkbox"/> Car <input type="checkbox"/> Student Driver <input type="checkbox"/> Bus
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Parent/Guardian #1 (contact first): _____ Relationship: _____ Parent/Guardian #2: _____ Relationship: _____

Cell #: _____ Home #: _____ Work #: _____ Cell #: _____ Home #: _____ Work #: _____

E-mail Address: _____ E-mail Address: _____

Indicate preferred contact method: _____ Indicate preferred contact method: _____

2. NECESSARY SUPPLIES / DISASTER PLANNING / EXTENDED FIELD TRIPS

1. A 3-day minimum of the following Diabetes Management Supplies should be provided by the parent/guardian and accessible for the care of the student at all times.

<ul style="list-style-type: none"> Insulin Syringe/Pen Needles Ketone Strips Treatment for lows and snacks Glucagon Antiseptic Wipes Blood Glucose (BG) 	<ul style="list-style-type: none"> Meter with (test strips, lancets, extra battery) – required for all Continuous Glucose Monitor (CGM) users Pump Supplies (Infusion Set, 	<ul style="list-style-type: none"> Cartridge, extra Battery/Charging Cord) if applicable Additional supplies:
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2. View Disaster/Emergency Planning details – refer to Safe at School Guide

3. Please review expiration dates and quantities monthly and replace items prior to expiration dates.

4. In the event of a disaster or extended field trip, a school nurse or other designated personnel will take student's diabetes supplies and medications to student's location.

Name of Health Care Provider/Clinic: _____ Contact #: _____ Fax #: _____

Email Address (non-essential communication): _____ Other: _____

DIABETES MEDICAL MANAGEMENT PLAN (DMMP)

- New ADA DMMP for the 2022-2023 school year
- Schedule a visit with your child's provider to develop your child's DMMP
- To download the new DMMP, go to: diabetes.org/dmmp
- For the Childcare DMMP, go to diabetes.org/childcare

DIABETES MEDICAL MANAGEMENT PLAN/HEALTH CARE PROVIDER ORDERS

- Serves as the foundation for a written accommodation plan
- Document signed by child's diabetes provider that sets out how child's diabetes needs will be met at childcare or school
- **Provisions:**
 - Emergency contact information
 - Blood glucose monitoring/CGM
 - Glucagon administration
 - Exercise and sports
 - Recognition and treatment of hypoglycemia and hyperglycemia
 - Insulin administration
 - Meal and snack schedule
 - Level of self-care

ADDITIONAL BENEFITS OF HAVING A 504 PLAN/IEP

- Helps to clarify roles, responsibilities, and expectations for the school, student, parent/guardian
- Validates health condition for the student and what the student needs to optimally function during school-related activities
- Employs a formal legal process for determining how the student's needs will be met and redress if needs are not met
- Provides student and parent/guardian with the comfort in knowing the student will be safe and treated fairly

It is important for the school and family to work together to develop an individualized plan. What works for one student with diabetes may not work for your student.

NAVIGATING THE 504/IEP PROCESS

- Parent/guardian should contact school's 504/IEP coordinator – many times this is the school principal or guidance counselor
- School may initiate the development of a plan if they suspect the student needs special education or related services
- An evaluation for eligibility under Section 504 (504 Plan) or IDEA (IEP) will be conducted by school staff knowledgeable about your child
- Once an eligibility determination has been made, the 504/IEP team will convene to develop a written plan
- The 504 Plan/IEP are important pieces of the diabetes toolbox for all students with diabetes. Don't wait until there's a problem!

Frequently Asked Questions: School

- What steps should an advocate take if a student is encountering diabetes management issues at school?
 - Educate the school on the relevant laws and the school's legal obligations
 - If a conversation doesn't work, draft a letter explaining the child's rights
- Can a school say they do not have anyone trained on diabetes management and therefore refuse to enroll a student or send a student to another school?
 - Training school staff, in addition to a school nurse, to provide diabetes care enables a child to safely access the school setting
 - Parents/guardians can be helpful in connecting the school nurse with a pediatric diabetes health care provider to conduct trainings.
- Can a school refuse to allow a student with diabetes to go on a field trip if a parent/guardian chooses not to come along?
 - No. It is the school's legal obligation to provide a school nurse or trained non-clinical school staff member to provide care to the student during the field trip. A parent/guardian cannot be required to accompany the student as a condition of the student's participation.

Frequently Asked Questions: Childcare

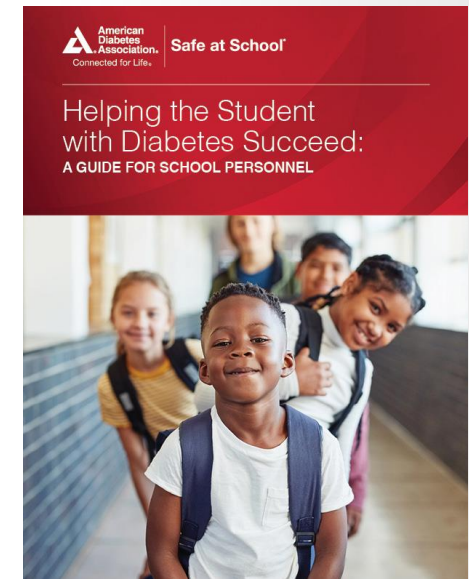
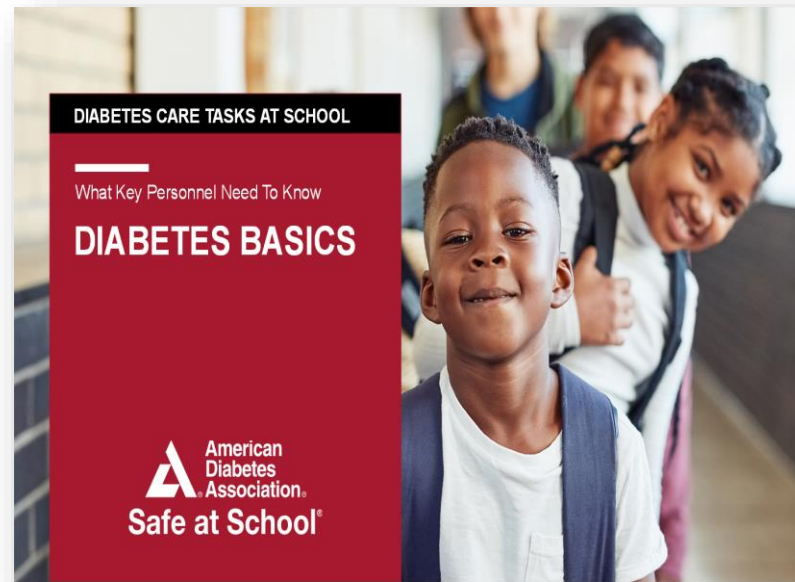
- What steps should an advocate take if a childcare center says they will not admit a child with diabetes?
 - Educate them on what the law says
 - If a conversation doesn't work, draft a letter explaining the child's rights
- Can a childcare center say they do not have anyone trained on diabetes management and therefore reject a child?
 - Usually, getting a staff member trained is a reasonable accommodation under the ADA.
 - Advocates or parents/guardians can connect staff with a medical professional who may do trainings.
- Can a childcare center say they are not licensed to administer insulin and therefore reject a child?
 - Licensing requirements vary per state. State law may provide an exception to typical administration of medication licensing requirements with a doctor's order.

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Resources

SAFE AT SCHOOL® ONLINE RESOURCES

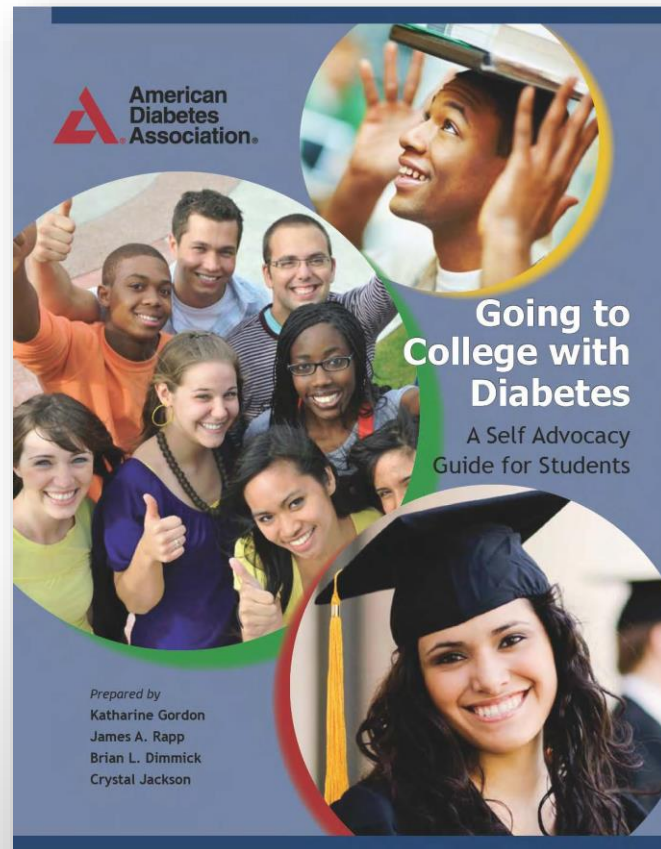
Let families know about
online resources:
www.diabetes.org/safeatschool



Diabetes Care Task Training Modules
for school personnel available or
FREE www.diabetes.org/schooltraining

EDUCATE: POST-SECONDARY EDUCATION

This resource is available for downloading at:
<https://www.diabetes.org/collegerights>



SAFE AT SCHOOL® CHILD CARE RESOURCES



Child Care Diabetes Medical Management Plan

American Diabetes Association.
YOUR RIGHTS. ONE VOICE.™

Name of Child: _____ DOB: _____ Dates Plan in Effect: _____
 Parent or guardian Name(s)/Number(s): _____
 Diabetes Care Provider Name/Number: _____
 Diabetes Care Provider Signature: _____ Date: _____
 Location of diabetes supplies at child care facility: _____

Blood Glucose Monitoring
 Target range for blood glucose is: 80-180 Other _____
 When to check blood glucose: before breakfast before lunch before dinner before snacks
 When to do extra blood glucose checks: before exercise after exercise when showing signs of low blood glucose
 when showing signs of high blood glucose other _____

Insulin Plan: Please indicate which type of insulin regimen this child uses (check one):
 Insulin Pump Multiple Daily Injections Fixed Insulin Doses
 Specific information related to each insulin regimen/plan is included below for this child.
 Type of insulin used at child care (check all that apply): Regular Apidra Humalog Novolog NPH
 Lantus Levemir Mix Other _____

<p>Plan A: Insulin Pump*</p> <ol style="list-style-type: none"> Always use the insulin pump bolus wizard: <input type="checkbox"/> Yes <input type="checkbox"/> No If no, use Insulin/Carbohydrate Ratio and Correction Factor dosage on Plan B. Blood glucose must be checked before the child eats and will (check one): <input type="checkbox"/> Be sent to the pump by the meter <input type="checkbox"/> Need to be entered into the pump The insulin pump will calculate the correction dose to be delivered before the meal/snack. After the meal/snack, enter the total number of carbohydrates eaten at that meal/snack. The insulin pump will calculate the insulin dose for the meal. Contact parent/guardian with any concerns. <p>For a list of definitions of terms used in this document, please see the Diabetes Dictionary.</p> <p><small>*Providers should complete Insulin/Carbohydrate Ratio and Correction dosage under Plan B section for ALL pump users.</small></p>	<p>Plan B: Multiple Daily Injections</p> <ol style="list-style-type: none"> Child will receive a fixed dose of _____ unit(s) long-acting insulin at _____ <input type="checkbox"/> Yes <input type="checkbox"/> No Give injection after the child eats. Follow blood glucose monitoring plan above. Use _____ insulin for meals and snacks. Insulin dose for food is _____ unit(s) for meals OR _____ unit(s) for every _____ grams carbohydrate. If blood glucose is above target, add correction dose to: <input type="checkbox"/> Breakfast <input type="checkbox"/> Snack <input type="checkbox"/> Lunch <input type="checkbox"/> Snack <input type="checkbox"/> Other: _____ Use the following correction factor _____ or this scale: _____ units if BG is _____ to _____ _____ units if BG is _____ to _____ _____ units if BG is _____ to _____ _____ units if BG is _____ to _____ <p><small>Only add correction dose if it has been 3 hours since the last insulin administration.</small></p>	<p>C: Fixed Insulin Doses</p> <ol style="list-style-type: none"> Child will receive a fixed dose of long acting insulin? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, give child _____ units of _____ insulin at _____ Insulin correction dose at child care (< _____ insulin)? <input type="checkbox"/> Yes <input type="checkbox"/> No If blood glucose is above target, add correction dose to: <input type="checkbox"/> Breakfast <input type="checkbox"/> Snack <input type="checkbox"/> Lunch <input type="checkbox"/> Snack <input type="checkbox"/> Other: _____ Use the following correction factor _____ or the following scale: _____ units if BG is _____ to _____ _____ units if BG is _____ to _____ _____ units if BG is _____ to _____ _____ units if BG is _____ to _____ <p><small>Only add correction dose if it has been 3 hours since the last insulin administration.</small></p>
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Safe at School® American Diabetes Association

Tips for Managing Diabetes in the Child Care Setting

The needs of very young children with diabetes - infants, toddlers and pre-schoolers - need to be safely met in the child care setting. Since very young children are unique in that they cannot participate in self-management tasks it is crucial for parents/guardians to secure a setting that can keep their child safe and well-managed. The following tips are designed to provide basic information for parents/guardians seeking child care.

- Child care centers cannot refuse to accept your child because he or she has diabetes.
- Your child's health care provider should work with you to prepare a care plan for your child.
- Child care center staff should provide the care prescribed for your child by his or her health care provider including blood glucose monitoring, insulin and glucagon administration, recognition and treatment of hypoglycemia (low blood sugar) and hyperglycemia (high blood sugar) and meeting nutritional needs outlined in the care plan.
- You must provide all diabetes supplies, equipment, snacks and insulin or other diabetes medication to the child care provider.
- All child care staff should receive basic diabetes information including training on diabetes emergencies and know who to contact for help.
- At least one staff member should be identified and trained to give your child insulin, glucagon and do blood glucose monitoring.
- You should train child care staff and help your child care provider to locate a diabetes trainer, like your child's diabetes educator, if needed.
- Your child should be allowed to participate in their own care as they are able to do so.
- You should be familiar with federal and state laws that protect your child's right to safely participate in a child care program.

Examples of unfair treatment by child care providers that may be illegal:

- Your daughter's day care refuses to allow her back after her diabetes diagnosis - even though she's already been enrolled for a year.
- Your son is routinely not allowed to eat a snack with the other children because there is no one to give him insulin.
- You have to leave work to provide care to your child at the child care center.

Where to get help:

Call the American Diabetes Association at 1-800-DIABETES (342-2383) for free information and to ask how you can speak with an ADA legal advocate. ADA's legal advocates will help you to understand the law and your rights and provide practical solutions to help you make sure your child gets needed care and is safe in the child care setting.

diabetes.org/childcare

LINKS FROM TODAY'S PROGRAM

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- diabetes.org/safeatschool
 - diabetes.org/fedlaws
 - diabetes.org/nycstudents
 - diabetes.org/504plan
 - diabetes.org/dmmp
 - diabetes.org/sastraining
 - diabetes.org/collegerights
 - diabetes.org/childcare
 - diabetes.org/advocate



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Contact us: 1-800-DIABETES or
askada@diabetes.org