

1 MARY-LEE SMITH (CA BAR NO. 239086)
(msmith@dralegal.org)
2 REBECCA WILLIFORD (CA BAR NO. 269977)
(rwilliford@dralegal.org)
3 FREYA PITTS (CA BAR NO. 295878)
(fpitts@dralegal.org)
4 SETH PACKRONE (*Pro Hac Vice* Admission Pending)
(spackrone@dralegal.org)
5 Disability Rights Advocates
2001 Center Street, Fourth Floor
6 Berkeley, California 94704-1204
Telephone: (510) 665-8644
7 Facsimile: (510) 665-8511

8 Attorneys for Plaintiffs

9

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12

13

14 M.W., by and through her guardian ad litem,
15 HOPE W., and the AMERICAN DIABETES
ASSOCIATION,

16 Plaintiffs,

17 v.

18 UNITED STATES DEPARTMENT OF THE
19 ARMY; ERIC FANNING, Secretary of the
Army, in his official capacity; UNITED
20 STATES ARMY FAMILY AND MORALE,
WELFARE AND RECREATION
21 PROGRAMS; and UNITED STATES ARMY
CHILD, YOUTH AND SCHOOL
22 SERVICES.

23 Defendants.

24

25

26

27

28

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF FOR
VIOLATIONS OF SECTION 504 OF THE
REHABILITATION ACT OF 1973, 29
U.S.C. § 794**

INTRODUCTION

1
2 1. Plaintiffs M.W.¹ and the American Diabetes Association (“Association”), by and
3 through their counsel, Disability Rights Advocates, bring this Complaint against Defendants
4 United States Department of the Army (“DOA”), United States Army Family and Morale,
5 Welfare and Recreation Programs (“MWR”), United States Army Child, Youth and School
6 Services (“CYSS”), and Eric Fanning, the Secretary of the Army, in his official capacity
7 (collectively “Defendants”), who own, operate, maintain and/or control CYSS programs and
8 activities.

9 2. This lawsuit challenges Defendants’ discriminatory blanket policy prohibiting the
10 provision of critical diabetes-related care for children with diabetes who are otherwise eligible to
11 participate in CYSS programs and activities. In so doing, this lawsuit seeks to end these
12 egregious civil rights violations committed by Defendants against M.W., and other children with
13 diabetes nationwide who are eligible for CYSS programs and activities, including Association
14 members and Association members’ children, who want to participate in CYSS programs and
15 activities, but cannot do so without diabetes-related care.

16 3. CYSS, a division of MWR, operates a range of programs and activities for
17 eligible families’ children on military bases around the country. CYSS offers programs and
18 activities for children of all ages, including daycare services, in-home childcare programs,
19 school-age and teen programs, summer camps, and youth sports.

20 4. According to the CYSS section of the MWR website, CYSS operates these
21 programs and activities because it “recognizes the challenges of our Soldiers and their Families”
22 and CYSS seeks to “reduc[e] the conflict between mission readiness and parental responsibility.”
23 For many families, CYSS fulfills its mission, providing critical childcare services and quality
24
25

26 ¹ Plaintiffs are redacting Plaintiff M.W.’s name pursuant to Federal Rule of Civil Procedure
27 5.2(a) (“in an electronic or paper filing with the court that contains . . . the name of an individual
28 known to be a minor, . . . a party or nonparty making the filing may include only . . . (3) the
minor’s initials[.]”) Plaintiffs are concurrently filing under separate cover a motion to file under
seal M.W.’s application for appointment of a guardian ad litem and for her guardian ad litem to
proceed using a fictitious name.

1 programs for children and teens. Yet for families who need support more than others—families
2 of children with diabetes—CYSS denies this support.

3 5. United States Army Regulation 608-10 and a MWR 2008 memorandum, which
4 interprets Army Regulation 608-10 (together, “Defendants’ policy”), prohibits CYSS personnel
5 from providing a range of critical diabetes-related care to children with diabetes, including
6 counting carbohydrates, giving injections of insulin, monitoring a child’s insulin pump, and
7 administering a potentially lifesaving glucagon injection.

8 6. Due to Defendants’ policy, children with diabetes cannot safely attend CYSS
9 programs and activities, because without assistance in monitoring and responding to blood
10 glucose levels, a child with diabetes can experience hypoglycemia or hyperglycemia, both of
11 which are medical conditions that can lead to extreme and incapacitating symptoms if not
12 addressed. Thus, children with diabetes are effectively denied and excluded from all CYSS
13 programs and activities.

14 7. Since the issuance of the MWR 2008 memorandum, the standard of care for
15 children with diabetes in childcare related programs and activities has progressed and in turn
16 resulted in greater access for children with diabetes to these types of programs and activities.
17 Many other organizations that run childcare related services, including daycares, summer camps,
18 and schools, offer essential diabetes-related care to children with diabetes in compliance with
19 their civil rights obligations.

20 8. Plaintiff M.W., a six-year-old child with type 1 diabetes, cannot safely attend her
21 local CYSS programs and activities due to Defendants’ refusal to provide diabetes-related care.
22 Because of her type 1 diabetes and young age, M.W. requires assistance in managing her
23 diabetes—assistance CYSS personnel cannot provide because of Defendants’ policy.

24 9. Plaintiff American Diabetes Association is a membership organization whose
25 members include families and individuals affected by Defendants’ policy, including M.W.’s
26 mother. The Association has expended resources in meeting with Defendants to discuss their
27 policy and assisting those affected by Defendants’ policy.

1 10. By refusing to provide children with diabetes the necessary diabetes-related care,
2 CYSS denies M.W. and other children with diabetes who are eligible for programs and activities,
3 including Association members and Association members' children, access to CYSS programs
4 and activities nationwide on the basis of disability in violation of Section 504 of the
5 Rehabilitation Act of 1973 ("Section 504").

6 11. M.W.'s mother first informed CYSS about M.W.'s diabetes diagnosis and
7 medical needs in June 2015. Throughout the next few months, M.W.'s mother communicated
8 extensively with CYSS via telephone, email, and in-person meetings to continue advocating for
9 her daughter's inclusion. In response, CYSS notified her that its personnel cannot provide
10 adequate care for M.W. to safely attend CYSS programs and activities. Since May 31, 2016,
11 M.W.'s mother, through her counsel, has attempted to resolve this issue through negotiations
12 with Defendants so M.W. could attend CYSS's after-school program starting in August 2016.
13 Defendants failed to adequately respond.

14 12. The Association has been working on issues related to this policy since they
15 initially met with Defendants about it in 2010. The Association has received numerous intake
16 calls from members and other families who have been affected by Defendants' policy. The
17 Association expended resources to offer guidance to each affected family about their rights and
18 Defendants' legal obligations to provide diabetes-related care.

19 13. This lawsuit seeks to put an end to this ongoing discrimination by requiring
20 Defendants to meet their legal obligation to provide M.W. and other children with diabetes,
21 including Association members and Association members' children who are eligible for CYSS
22 programs and activities, with the critical diabetes-related care they need to safely attend CYSS's
23 programs and activities.

24 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

25 14. This is an action for declaratory and injunctive relief brought pursuant to Section
26 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

27 15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
28 §§ 1331 and 1343 for claims arising out of Section 504.

1 volunteers. Founded in 1940, the Association is now the largest voluntary health organization
2 addressing issues around diabetes.

3 22. To accomplish its goal of preventing and curing diabetes, the Association takes a
4 range of actions, including advocacy for increased funding for diabetes research and publishing
5 the most authoritative professional journals on the subject of diabetes research and treatment.
6 The Association pursues its goal of improving the lives of all people affected by diabetes through
7 its community programs for children with diabetes, its advocacy for policies and laws to keep
8 children with diabetes safe at school, including developing a training module for child care staff,
9 and providing legal information and assistance to families and individuals experiencing diabetes-
10 related discrimination. Accordingly, the interests that the Association seeks to protect through
11 this litigation are germane to its mission and purpose.

12 23. The Association's advocacy and direct service work is based on a close
13 association with its members and volunteers. Many of the Association's members and
14 volunteers are people with diabetes, their families and caregivers, or professionals that work in
15 the field of diabetes. As persons with diabetes, one or more members of the Association are
16 suffering injury due to Defendants' policy and refusal to provide diabetes-related care that
17 children with diabetes need to safely attend CYSS programs and activities. Accordingly, one or
18 more of the Association's members have standing to sue in their own right. Moreover, since
19 only injunctive and declaratory relief are requested, the participation of individual members in
20 the lawsuit is not required.

21 24. Furthermore, the Association is directly harmed by Defendants' policy. Because
22 of this policy, the Association has expended resources to provide guidance to affected families,
23 including time spent researching the legal and health issues presented by the families and
24 advising them accordingly. In addition, Defendants' policy frustrates the mission of the
25 Association.

26 25. Defendants United States Department of the Army, United States Army Family
27 and Morale, Welfare and Recreation Programs, United States Army Child, Youth and School
28 Services, and Eric Fanning own, operate, maintain and/or control CYSS's programs and

1 activities that fail to provide adequate diabetes-related care to M.W. and other children with
2 diabetes who are eligible for CYSS programs and activities.

3 26. Defendant United States Department of the Army (“DOA”) is the United States
4 federal agency responsible for the programs and activities conducted on United States Army
5 military bases. DOA is a component of the United States Department of Defense.

6 27. Defendant Eric Fanning is the Secretary of DOA (the head of a United States
7 Department of Defense (“DOD”) Component) and is sued in his official capacity.

8 28. Defendant United States Army Family and Morale, Welfare and Recreation
9 Programs (“MWR”) is a division of DOA that operates a variety of programs and activities,
10 including CYSS, to support the military and eligible civilian families.

11 29. Defendant United States Army Child, Youth and School Services (“CYSS”) is a
12 division of MWR and operates programs and activities for eligible families’ children on military
13 bases, including daycare services, before and after-school care, and summer camps.

14 **FACTUAL ALLEGATIONS**

15 *The Necessary Care for Children with Type 1 Diabetes is Well-Established.*

16 30. Type 1 diabetes is a chronic and incurable disease of the endocrine system. It is
17 characterized by the body’s inability to produce insulin. Insulin is the hormone that regulates the
18 amount of glucose in the blood. Glucose is the body’s main energy source. Thus, failure to
19 produce insulin deprives the body of glucose and, as a result, energy. Insulin is necessary to
20 sustain life, and thus people with type 1 diabetes must receive insulin injections to help regulate
21 their glucose and energy levels. Insulin can be delivered through either an injection or an insulin
22 pump.

23 31. The amount of insulin a child with type 1 diabetes needs is affected by numerous
24 variables, including but not limited to age, body mass index, the amount of carbohydrates the
25 child consumes, activity levels, illness, and other medications the child is taking. Balancing
26 carbohydrate intake and insulin levels is critical to avoiding diabetes complications. Children
27 often need assistance in counting carbohydrates to ensure their insulin dosage is correct.
28 Children also need assistance monitoring their glucose levels.

1 32. When the glucose levels of a child with type 1 diabetes get too low, a condition
2 called hypoglycemia results. If left untreated, hypoglycemia can lead to seizures,
3 unconsciousness, and even death. At the point of severe hypoglycemia, someone must inject the
4 child with glucagon, a potentially lifesaving hormone that causes the liver to release glucose
5 reserves into the child’s bloodstream. Glucagon may be required regardless of age, and the
6 medication cannot be self-administered, because it is only given when a person is unresponsive.
7 So regardless of how old M.W. becomes, she will always have the potential to need a dose of
8 glucagon.

9 33. While the specifics of care for each child with type 1 diabetes may vary based on
10 factors including but not limited to age and complexity of regimen, these necessary treatments
11 for managing type 1 diabetes are well-established. M.W. requests only this routine level of
12 diabetes-related care.

13 ***CYSS’s Blanket Policy Discriminates Against Children and Youth with Diabetes.***

14 34. CYSS operates a range of programs and activities for the children of eligible
15 families, including daycare services, in-home childcare programs, school-age and teen programs,
16 summer camps, and youth sports on military bases around the country.

17 35. For military and eligible civilian families, CYSS provides high quality childcare
18 options. For families working and living on military bases in remote areas, CYSS often provides
19 the only childcare option.

20 36. While CYSS programs and activities are explicitly intended to support and assist
21 with parental responsibilities for eligible families, the current policy excludes families who need
22 support more than others —families of children with diabetes.

23 37. The 2008 MWR memo entitled “Care of Diabetic Children and Youth within
24 Army Child, Youth & School (CYS) Services,” interpreting Defendants’ Army Regulation 608-
25 10, states that “CYS Services is not authorized to” provide the following diabetes-related care to
26 children with diabetes: “(1) Count carbohydrates; (2) Give injections of insulin to include
27 manipulation of the insulin pump which is an alternate method of delivering insulin; (3) Give
28

1 injections of Glucagon, a rescue medication.” Under Defendants’ policy, CYSS is allowed to
2 assist in glucose level monitoring but has nonetheless refused to do so for M.W.

3 38. Defendants’ policy explicitly relies upon two outdated settlement agreements
4 reached under the Americans with Disabilities Act between the United States Department of
5 Justice (“DOJ”) and two private childcare centers, KinderCare Learning Centers (1996) and La
6 Petite Academy (1997).

7 39. In the almost 20 years since these settlement agreements were finalized, the DOJ
8 has settled numerous matters requiring even more substantial supports for children with diabetes.
9 In fact, during this time, the DOJ has consistently required that childcare centers and camps
10 provide the same supports that M.W. now seeks from CYSS. The landscape for diabetes-related
11 care has evolved, and as such, many other organizations that offer programs and activities for
12 children provide essential diabetes-related care to children with diabetes.

13 40. CYSS’s refusal to give injections of insulin or even assist with an insulin pump as
14 well as count or monitor children’s carbohydrate levels places children with type 1 diabetes in
15 danger. Additionally, CYSS’s refusal to administer the rescue medication glucagon to children
16 with type 1 diabetes in the event of severe hypoglycemia compounds the danger children with
17 type 1 diabetes in CYSS’s care already face.

18 41. Viewed in its entirety, Defendants’ policy is terrifying for families of children
19 with type 1 diabetes. CYSS personnel are not able to deliver potentially lifesaving medication to
20 a child experiencing severe hypoglycemia, nor can they assist the child through routine
21 carbohydrate counting and insulin administration necessary to prevent high blood sugar, or
22 hyperglycemia.

23 42. Although the specifics of the care that each child with diabetes needs varies
24 according to individual circumstances, CYSS’s blanket refusal based on Defendants’ policy
25 prohibiting staff from performing or assisting with these functions endangers every child with
26 diabetes in their care.

1 43. By failing to provide diabetes-related care, CYSS excludes children with diabetes
2 from its programs and activities and denies them equal access to the benefits of its array of
3 programs and activities solely because of their disabilities.

4 ***CYSS's Policies Have Caused Harm to Plaintiff M.W.***

5 44. M.W., a six-year-old child with type 1 diabetes, has been denied and continues to
6 be denied equal access to the benefits of CYSS programs and activities solely because of her
7 disability.

8 45. M.W. requires the following diabetes-related care: glucagon administration,
9 supervision of blood glucose testing and appropriate response to high or low blood glucose
10 levels, assistance with the administration of insulin using an insulin pump, carbohydrate
11 counting, and monitoring of her food intake.

12 46. M.W. is eligible to attend CYSS programs and activities at the Presidio of
13 Monterey because her parent's employer, CSU-MB, has an MOU with the military base that
14 allows CSU-MB employees to enroll their children in these programs and activities.

15 47. M.W. attended the Presidio of Monterey's Child Development Center until
16 kindergarten when M.W. started attending the Porter Youth Center's after-school care program.
17 CYSS operates both of these programs.

18 48. Because the Porter Youth Center is located across the street from M.W.'s school,
19 CYSS staff pick up the children immediately after school. At the after-school program, M.W.
20 would have a snack, do homework with the assistance of staff, and then participate in age-
21 appropriate activities. Because the Porter Youth Center draws children from more than one
22 school, M.W. was able to make friends there that she would not otherwise meet at school.

23 49. On June 14, 2015, when school was out for summer vacation, M.W. was
24 diagnosed with type 1 diabetes after a health crisis landed her in the emergency room.

25 50. Wanting M.W. to continue to attend the Porter Youth Center's after-school
26 program when school started in August, M.W.'s mother contacted CYSS on June 22, 2015 and
27 explained that M.W. had been diagnosed with type 1 diabetes. Over the next few months until
28 approximately September 30, 2015, M.W.'s mother communicated extensively via telephone, e-

1 mail, and in-person meetings with CYSS personnel to advocate for her daughter’s return to the
2 CYSS programs and activities at the Porter Youth Center.

3 51. For example, on July 22, 2015, M.W.’s mother attended a meeting with CYSS
4 personnel to explain the diabetes-related care that M.W. would need to attend the Porter Youth
5 Center’s after-school program. At the time, M.W. still needed injections of insulin and would
6 not be able to use an insulin pump for several months. CYSS personnel indicated at the meeting
7 that they could not administer glucagon to M.W. in an emergency situation but informed M.W.’s
8 mother that they might make an exception for M.W. CYSS did not provide a specific date for a
9 final decision.

10 52. On August 27, 2015, M.W.’s mother provided individualized training and a
11 scenario sheet for CYSS staff instructing them how to provide diabetes-related care to M.W.

12 53. On August 31, 2015, CYSS staff wrote to M.W.’s mother that “ANY United
13 States Army Garrison that allows CYSS staff to administer glucagon is in direct violation” of
14 Army regulations, and while “AR 608-10 is very old” and has been “under revision” for almost
15 three years, a revision “is not expected to be released for another 5 years.”

16 54. In addition to refusing to administer glucagon, CYSS also refused to provide
17 other necessary diabetes-related care to M.W. CYSS would not interpret the results on her blood
18 glucose monitor, they would not administer insulin injections, and the Army’s policy would not
19 allow CYSS staff to assist M.W. with using an insulin pump. While CYSS would provide a low
20 carbohydrate snack, they would not count carbohydrates for M.W. and initially refused to give
21 M.W. anything when she became hypoglycemic, including orange juice, because they claimed it
22 constituted giving medication.

23 55. Not willing to risk M.W.’s safety with the nonexistent diabetes-related care at
24 CYSS, M.W.’s parents decided to seek alternative after-school care for her in October 2015.

25 56. M.W.’s parents have been unable to find an appropriate alternative program for
26 M.W. She stays at home after school with M.W.’s father, who works from home. This
27 interferes with M.W.’s father’s ability to complete his work.
28

1 57. Not only was M.W. deprived of attending CYSS programs and activities and
2 interacting with the friends she made there, but being excluded because of her diabetes, M.W.
3 was devastated because she feared that the adults she had come to depend on in her after-school
4 program no longer cared about her. Through January and February 2016, M.W. frequently asked
5 her parents when she could return to the Porter Youth Center.

6 58. On April 14, 2016, M.W.'s mother contacted CYSS staff to ask if there were any
7 changes to Defendants' policy. CYSS staff wrote back with the same non-answer they had
8 provided almost one year earlier: "There is no official modification to our current glucagon
9 policies. . . . This issue glucagon [*sic*] is at our highest headquarters for consideration."

10 59. On May 31, 2016, M.W. renewed her demand for a modification of Defendants'
11 illegal policy that would allow CYSS staff to provide essential diabetes-related care to M.W.,
12 when included in a medical action plan prepared by her health care provider.

13 60. On June 20, 2016, MWR staff informed M.W. that Defendants' policy "is under
14 revision" and "[u]ntil that policy is revised, each case presented is reviewed on the individual
15 circumstances of the child." Based on CYSS staff's own description, Defendants will continue
16 to evaluate whether each child with diabetes should be given an exception to its illegal policy for
17 another four years – the time remaining since the 2015 email indicating the review would last
18 five years. MWR also renewed the United States Army's offer to evaluate M.W. for "an
19 exception" to Defendants' policy.

20 61. More than one year after initially raising the issue with Defendants, M.W. has
21 received no assurances that she will be able to safely participate in CYSS programs and
22 activities. Defendants have refused to modify their policy and continue to evaluate M.W. for "an
23 exception" to Defendants' policy.

24 62. Even if an exception were granted for M.W., it could be revoked at any time at
25 the whim of Defendants, given that the formal policy is still under review, and will continue to
26 be so for an estimated four more years. M.W. will remain at risk of exclusion from CYSS
27 programs and activities while Defendants' policy remains in flux.

1 *CYSS's Policies Have Caused Harm to Plaintiff American Diabetes Association and Its*
2 *Members.*

3 63. The Association has approximately 485,000 general members. These members
4 include individuals who have been affected by Defendants' policy. Thus, one or more of the
5 Association's members have been injured as a direct result of Defendants' policy and would
6 have standing to sue in their own right. The Association can bring this action on behalf of itself
7 and its members because the interests at stake are germane to the Association's purpose.
8 Additionally, Plaintiffs' claims are limited to injunctive and declaratory relief which do not
9 require the participation of individual members in the lawsuit.

10 64. The Association is directly harmed by Defendants' policy and failure to provide
11 diabetes-related care so children with diabetes can safely attend CYSS programs and activities.
12 The Association has dedicated resources to addressing this issue since at least 2010 when they
13 prepared for and attended a telephonic meeting with Defendants to discuss Defendants' policy.
14 Additionally, the Association has expended resources fielding intake calls from people who are
15 harmed or at risk of being harmed by Defendants' policy, conducting legal and health-related
16 research for the intakes, and then communicating their findings over the phone or via email. The
17 Association has received a wide range of intakes from families harmed by Defendants' policy
18 from across the country, including for children between the ages of three and nine seeking to
19 attend CYSS summer camps, pre-schools, and before and after-school care programs. As a
20 result of Defendants' policy, the Association has fewer resources to dedicate to its other
21 programs. This injury to the Association is ongoing and would be directly redressed by
22 injunctive and declaratory relief. In addition, each act of discrimination caused by Defendants'
23 policy directly frustrates the Association's mission of improving the lives of all people affected
24 by diabetes.

25 //
26 //
27 //
28 //

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973**

3 **(29 U.S.C. § 794)**

4 **(Discrimination in Aid, Benefit or Service)**

5 65. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the
6 Complaint.

7 66. Section 504 of the Rehabilitation Act provides that “No otherwise qualified
8 individual with a disability in the United States . . . shall, solely by reason of her or his disability,
9 be excluded from the participation in, be denied the benefits of, or be subjected to discrimination
10 under any program or activity receiving Federal financial assistance or under any program or
11 activity conducted by any Executive agency . . .” 29 U.S.C. § 794(a).

12 67. Section 504 requires the head of every executive agency to promulgate
13 regulations as shall be necessary to carry out the Act. 29 U.S.C. § 794(a).

14 68. The Department of Defense’s Section 504 regulations provide that “[n]o qualified
15 handicapped person shall, on the basis of handicap, be excluded from participation in, be denied
16 the benefit of, or otherwise be subjected to discrimination under any program or activity that is
17 conducted by the Department of Defense or that receives or benefits from Federal financial
18 assistance disbursed by the Department of Defense.” 32 C.F.R. § 56.8(a)(1).

19 69. The statute and applicable regulation defines an “individual with a disability” as
20 an individual who has “a physical or mental impairment that substantially limits one or more
21 major life activities of such individual.” 29 U.S.C. § 705(20)(B) (referencing 42 U.S.C. §
22 12102); *see also* 32 C.F.R. § 56.3(c).

23 70. M.W. is an individual with a disability within the meaning of the statute in that
24 she has type 1 diabetes, an impairment that substantially limits a major bodily function by
25 affecting the functioning of her endocrine system and substantially affects the major life
26 activities of eating and caring for oneself. The Association has members who have diabetes and
27 who, like M.W., are individuals with disabilities.
28

1 71. To be qualified, an individual must “meet the essential eligibility requirements for
2 receiving the services in question.” 32 C.F.R. § 56.3(f)(2).

3 72. M.W. has reason to and is otherwise eligible to participate in Defendants’ after-
4 school care program at the Porter Youth Center. Indeed, prior to her diabetes diagnosis, M.W.
5 attended the Porter Youth Center’s after-school care program. The Association also has
6 members and children of members who are eligible for and would still like to participate in
7 CYSS programs and activities.

8 73. As entities with programs and activities that receive or benefit from federal
9 financial assistance distributed by the Department of Defense or are conducted by the
10 Department of Defense, Defendants must comply with the requirements of Section 504. *See* 29
11 U.S.C. § 794; 32 C.F.R. pt. 56 & § 79.5(c)(18); Department of Defense Directive No. 1020.1.
12 CYSS programs and activities have received this assistance or have been conducted by the
13 Department of Defense at all relevant times to the claims asserted in this Complaint.

14 74. The Department of Defense’s regulations codifying prohibitions against
15 discrimination bar Defendants, in providing any aid, benefit, or service, “directly or through
16 contractual, licensing, or other arrangements, on the basis of handicap,” from:

- 17 a. “Deny[ing] a qualified handicapped person the opportunity to participate in or
18 benefit from the aid, benefit, or service,” 32 C.F.R. § 56.8(a)(2)(ii);
- 19 b. “Afford[ing] a qualified handicapped person an opportunity to participate in or
20 benefit from the aid, benefit, or service that is not equal to that afforded others,” 32
21 C.F.R. § 56.8(a)(2)(iii);
- 22 c. “Provid[ing] a qualified handicapped person with an aid, benefit, or service that is
23 not as effective as that afforded to others,” 32 C.F.R. § 56.8(a)(2)(iv); or
- 24 d. “Otherwise limit[ing] a qualified handicapped person in the enjoyment of any right,
25 privilege, advantage or opportunity granted to others receiving the aid, benefit, or
26 service,” 32 C.F.R. § 56.8(a)(2)(v).

27 75. Defendants’ blanket policy prohibiting necessary diabetes-related care (1) results
28 in denial to children with diabetes of the opportunity to participate in and to benefit from the

1 programs and activities that CYSS offers; (2) affords an unequal opportunity to participate in or
2 benefit from the programs and activities of CYSS; (3) provides a wholly ineffective aid, benefit
3 or service that CYSS offers to children with diabetes as compared with those without diabetes;
4 and (4) otherwise limits children with diabetes in the enjoyment of the opportunity to participate
5 in CYSS programs and activities—all because the only way in which children with diabetes can
6 participate in or benefit from CYSS programs and activities is if they risk their health, and even
7 their lives. Defendants and their agents and employees have violated and continue to violate
8 Section 504 and the regulations promulgated thereunder by discriminating against M.W.,
9 Association members, and Association members' children solely by reason of their disabilities.
10 The only reason that M.W., Association members, and Association members' children cannot
11 participate in Defendants' CYSS programs and activities is because they refuse to provide
12 necessary support to children with disabilities, thus risking their lives due to their disabilities.

13 76. As a direct and proximate cause of the aforementioned acts, M.W. and the
14 Association and its members have been and continue to be injured.

15 77. M.W. and the Association and its members have no adequate remedy at law.
16 Unless the relief requested herein is granted, M.W., Association members, and Association
17 members' children will suffer irreparable harm in that they will continue to be discriminated
18 against and denied access to CYSS programs and activities. Furthermore, unless the relief
19 requested herein is granted, the Association will suffer irreparable harm in that Defendants'
20 policy will continue to force the Association to spend resources and continue to frustrate the
21 Association's mission.

22 WHEREFORE, Plaintiffs pray for relief as set forth below.

23 **SECOND CAUSE OF ACTION**

24 **VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973**

25 **(29 U.S.C. § 794)**

26 **(Discrimination in Methods of Administration)**

27 78. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the
28 Complaint.

1 79. The DOD Section 504 regulations also prohibit Defendants from “us[ing],
2 directly or through contractual or other arrangements, criteria or methods of administration that:
3 (i) Subject qualified handicapped persons to discrimination on the basis of handicap; [or] (ii)
4 Defeat or substantially impair accomplishment of the objectives of the recipient’s or DOD
5 Component’s program or activity with respect to handicapped persons. . . .” 32 C.F.R.
6 § 56.8(a)(6)(i)-(ii). Defendants’ methods of administration as they relate to CYSS include a
7 blanket policy that prohibits diabetes-related care to children with diabetes. Such methods of
8 administration have the effect of subjecting M.W., Association members, and Association
9 members’ children to discrimination on the basis of disability because the blanket policy
10 effectively bars M.W. and other children with diabetes who are eligible for CYSS programs and
11 activities, including Association members and Association members’ children, from participation
12 in CYSS programs and activities. In addition, the methods of administration defeat
13 accomplishment of the objectives of CYSS programs and activities with respect to M.W. and
14 other children with diabetes who are eligible for CYSS programs and activities, including
15 Association members and Association members’ children, because, due to the blanket policy,
16 M.W. and other children with diabetes who are eligible for CYSS programs and activities,
17 including Association members and Association members’ children, cannot participate in or
18 benefit from the CYSS programs and activities without risk to their health and lives.
19 Furthermore, Defendants’ methods of administration have most recently included refusal to
20 modify their policy or, at minimum, to offer assurances that the policy will change. Such a
21 position has the effect of subjecting children with diabetes to discrimination on the basis of
22 disability and defeating the accomplishment of the objectives of the CYSS programs and
23 activities for the same reasons detailed above.

24 80. As a direct and proximate cause of the aforementioned acts, M.W. and the
25 Association and its members have been and continue to be injured.

26 81. M.W. and the Association and its members have no adequate remedy at law.
27 Unless the relief requested herein is granted, M.W., Association members, and Association
28 members’ children will suffer irreparable harm in that they will continue to be discriminated

1 against and denied access to CYSS programs and activities. Furthermore, unless the relief
2 requested herein is granted, the Association will suffer irreparable harm in that Defendants'
3 policy will continue to force the Association to spend resources and continue to frustrate the
4 Association's mission.

5 WHEREFORE, Plaintiffs pray for relief as set forth below.

6 **THIRD CAUSE OF ACTION**

7 **DECLARATORY RELIEF**

8 82. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the
9 Complaint.

10 83. An actual controversy has arisen and now exists between the parties in that
11 Plaintiffs contend, and are informed and believe, that Defendants deny that, by prohibiting the
12 provision of critical diabetes-related care for children with diabetes who are eligible to
13 participate in CYSS programs and activities, Defendants fail to comply with applicable laws,
14 including but not limited to Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

15 84. A judicial declaration is necessary and appropriate at this time in order that each
16 of the parties may know their respective rights and duties and act accordingly.

17 WHEREFORE, Plaintiffs pray for relief as set forth below.

18 **RELIEF REQUESTED**

19 WHEREFORE, Plaintiffs pray for judgment as follows:

20 1. A declaration that Defendants' CYSS programs and activities are being operated
21 in a manner that discriminates against M.W. and all other children with diabetes who are eligible
22 for CYSS programs and activities, including Association members and Association members'
23 children, and that Defendants' CYSS programs and activities fail to provide access for M.W. and
24 all other children with diabetes who are eligible for CYSS programs and activities, including
25 Association members and Association members' children, as required by Section 504 of the
26 Rehabilitation Act, 29 U.S.C. § 794;

27 2. An order and judgment enjoining Defendants from violating Section 504 of the
28 Rehabilitation Act and requiring Defendants to immediately develop and implement a policy

1 governing the care of children with diabetes within CYSS programs and activities. The policy
2 would direct CYSS personnel to provide diabetes-related care including but not limited to
3 counting carbohydrates, monitoring and administering insulin, and administering glucagon when
4 it is included in a medical action plan prepared by a child's health care provider, to allow M.W.
5 and all other children with diabetes who are eligible for CYSS programs and activities, including
6 Association members and Association members' children, to safely participate in CYSS
7 programs and activities;

- 8 3. Plaintiffs' reasonable attorneys' fees and costs; and
9 4. Such other and further relief as the Court deems just and proper.

10
11 DATED: July 19, 2016

Respectfully submitted,

12
13 DISABILITY RIGHTS ADVOCATES

14
15 

16 _____
17 Mary-Lee K. Smith
18 Rebecca Williford
19 Freya Pitts
20 Seth Packrone
21 Attorneys for Plaintiffs

22
23
24
25
26
27
28