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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; ROBERT SPEER, Acting 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.

Case No. 5:16-cv-04051-LHK

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

Judge: Hon. Lucy H. Koh

Trial Date: Sep. 24, 2018 at 9:00 a.m.

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**INTRODUCTION**

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

9           2.       This lawsuit challenges Defendants’ discriminatory policy governing the  
10 provision of essential diabetes-related accommodations for children with diabetes who are  
11 otherwise eligible to participate in childcare and youth programs offered by the Army (“CYSS  
12 programs and activities”). By creating a far more burdensome accommodation review process  
13 for the essential accommodation required by children with diabetes – insulin administration –  
14 Defendants’ current policy offers only a façade of equal access for children with diabetes and  
15 their families to CYSS programs and activities. In so doing, Defendants’ policy not only violates  
16 anti-discrimination mandates under Section 504 of the Rehabilitation Act of 1973 (“Section  
17 504”) but also imposes unnecessary burdens and inflicts harm on an already vulnerable  
18 population – children with diabetes and their families – who must fight for their civil rights at  
19 every turn.

20           3.       Children with type 1 diabetes require an outside source of insulin to regulate their  
21 blood glucose and energy levels, as insulin plays an indispensable role in all the body’s  
22 functions. Thus, in order to participate in CYSS programs and activities, children with type 1  
23 diabetes can either, if developmentally appropriate, self-administer insulin or otherwise rely on  
24 others to administer insulin, such as a CYSS employee or a parent and/or legal guardian  
25 (“parent/guardian”).

26  
27 <sup>1</sup> The Court granted Plaintiffs’ Motion for Administrative Relief to Proceed Using Fictitious  
28 Name and to File Under Seal on July 21, 2016. Order Granting Plaintiffs’ Motion for  
Administrative Relief to Proceed Using Fictitious Name and to File Under Seal, Dkt. No. 11.

1           4.       Defendants’ current policy governing diabetes-related accommodations requires  
2 an unnecessarily lengthy and involved review process for any requested diabetes-related  
3 accommodation for a child in CYSS programs and activities. For accommodations requiring  
4 CYSS employees to administer insulin<sup>2</sup> – accommodations which are necessary and essential for  
5 any child who is unable to self-administer insulin – the procedure is even worse. This review  
6 process is multi-tiered, protracted, medically unjustified, and unnecessarily elevates local  
7 decisions up the chain of command.

8           5.       Specifically, any insulin-related accommodations for an individual child seeking  
9 to enter local CYSS programs and activities must be approved by the Army’s Assistant Chief of  
10 Staff for Installation Management (“ACSIM”) in consultation with the Office of The Surgeon  
11 General. Local CYSS Coordinators, who are most familiar with the needs of the child and the  
12 resources of their programs and facilities, are prohibited from approving requests for insulin-  
13 related accommodations. Moreover, it is not only the ACSIM that reviews each request from an  
14 individual family but also personnel from at least four other Army offices, including the local  
15 CYSS Coordinator, the Office of the Staff Judge Advocate (“OSJA”), the Garrison  
16 Commander/Manager, and the Installation Directorate and Commander, Installation  
17 Management Command (“IMCOM”).

18           6.       This multi-tiered review process is medically unjustified and results in  
19 unnecessary and extended delays in determining whether a requested insulin-related  
20 accommodation will be granted for an individual child. Under Defendants’ revised policy,  
21 approval or rejection of insulin-related accommodations may take up to three months (or more,  
22 considering no internal compliance procedures exist for any timelines in the process). There is  
23 also no appeal process for rejections by the ACSIM. Moreover, there is up to a thirty-day delay  
24 after any diabetes-related accommodation is granted on top of the up to three month delay for  
25 approval to train staff and implement the accommodations. Many other organizations that run  
26 childcare-related services, including daycares, summer camps, and schools, outside of the Army,  
27

28 <sup>2</sup> Insulin administration comprises both determining and administering the dose.

1 evaluate and provide diabetes-related accommodations in approximately two weeks – a fraction  
2 of the time for which the Army makes children wait for these accommodations.

3 7. In July of 2016, Plaintiffs filed their initial complaint (“the Complaint”) in this  
4 lawsuit to challenge Defendants’ illegal policy prohibiting the provision of essential diabetes-  
5 related accommodations. At the time Plaintiffs filed the Complaint, United States Army  
6 Regulation 608-10 and a MWR 2008 memorandum, which interpreted Army Regulation 608-10  
7 (together, “Defendants’ previous policy”), prohibited CYSS personnel from providing a range of  
8 essential diabetes-related accommodations to children with diabetes, including counting  
9 carbohydrates, administering insulin, and administering a potentially lifesaving glucagon  
10 injection. Under the previous policy, Defendants allegedly offered “exceptions” to their policy  
11 for certain diabetes-related accommodations, but the process for doing so was unclear and never  
12 publicized.

13 8. Defendants’ previous policy was unquestionably discriminatory. By expressly  
14 prohibiting a range of essential diabetes-related accommodations, Defendants’ previous policy  
15 effectively excluded children with diabetes from CYSS programs.

16 9. Now, in June of 2017, almost one year after Plaintiffs filed their lawsuit,  
17 Defendants have issued a revised policy in response to this pending litigation. The revised  
18 policy, currently in effect, consists of three documents: an updated version of United States  
19 Army Regulation 608-10; a United States Army Memorandum entitled “Diabetes-Related  
20 Accommodations in Child, Youth, and School Services Programs”; and a United States Army  
21 Memorandum entitled “Accommodation of Children and Youth with Diabetes in Army Child,  
22 Youth, and School Services Programs” (together, “Defendants’ revised policy”).

23 10. Despite the issuance of a revised policy, children with diabetes and their  
24 parents/guardians continue to experience discrimination. As a preliminary matter, Defendants  
25 can reinstate their previous discriminatory policy at any time. Defendants have proven that they  
26 can reverse course and amend their diabetes-related accommodation policy quickly and in  
27 whatever manner is suited for their needs. Indeed, Defendants substantially revised the Army’s  
28 policy regarding diabetes-related accommodations in less than a year in response to this

1 litigation. Even if the Army cannot comprehensively amend the relevant regulations quickly,  
2 Defendants have made clear that a Secretarial directive can circumvent a regulation in as little as  
3 ninety days.

4 11. Even if Defendants do not reinstate their previous policy, any family currently  
5 seeking to enroll a child in CYSS programs and activities will confront a system plagued by  
6 burdensome procedures and unnecessary delays due to Defendants' revised policy, which harm  
7 families in at least three ways.

8 12. First, Defendants' revised policy explicitly subjects children with diabetes and  
9 their parents/guardians to delays of up to four months as their requests for accommodations  
10 progress through an onerous multi-tiered process. During this time, children are denied the  
11 benefits of participating in CYSS programs and activities and parents/guardians struggle to find  
12 appropriate alternate care.

13 13. Second, Defendants' revised policy effectively excludes children with diabetes  
14 and their parents/guardians when families cannot endure up to four months without childcare,  
15 especially without a guarantee that after the wait they will receive appropriate accommodations  
16 for their child to participate, and they must therefore seek alternate childcare. In this way,  
17 parents/guardians are deterred from seeking enrollment in CYSS programs and activities  
18 altogether and children are effectively excluded from participating in CYSS programs and  
19 activities because they have diabetes.

20 14. Third, Defendants' revised policy may push parents/guardians into accepting  
21 unreasonable and potentially unsafe insulin practices in a variety of scenarios, because of the  
22 pressing need for childcare. Such scenarios include: (1) parents/guardians who wish to avoid the  
23 delay inherent in Defendants' revised policy and who agree to an interim accommodations plan,  
24 pending the review process, which does not include all necessary accommodations;  
25 (2) parents/guardians who avoid requesting insulin-related accommodations altogether to avoid  
26 the onerous process; and (3) parents/guardians whose requested insulin-related accommodations  
27 for their children were denied and who cannot find other childcare. Each of these groups of  
28 parents may be encouraged to adopt unreasonable and potentially unsafe insulin practices. Such

1 insulin practices may force the parents/guardians to leave work in order to administer insulin for  
2 their children themselves at CYSS sites. Such insulin practices also may lead to less timely or  
3 missed injections of insulin for children with diabetes, thus impairing their ability to benefit from  
4 CYSS programs and activities.

5 15. A multi-tiered and burdensome review process with unnecessary delays is not  
6 simply an inconvenience to children with diabetes and their parents/guardians that is necessary to  
7 appease the military bureaucracy. The harm resulting from delays in or effective denials of  
8 provision of childcare for both civilian and enlisted families on military bases cannot be  
9 underestimated. CYSS operates a range of programs and activities for eligible families' children  
10 on military bases around the country. CYSS offers programs and activities for children of all  
11 ages, including daycare services, in-home childcare programs, school-age and teen programs,  
12 summer camps, and youth sports. CYSS programs and activities often provide the only childcare  
13 option for military parents/guardians whose work obligations begin early in the morning, long  
14 before non-military childcare facilities are open. CYSS is also sometimes one of the few, if not  
15 the only, childcare option for children living on military bases in remote areas.

16 16. Through filing this First Amended Complaint, Plaintiffs seek to put an end to  
17 Defendants' ongoing discrimination by requiring them to comply with their legal obligations  
18 under Section 504. Defendants' revised policy offers a façade of equal access for all children,  
19 maintaining that necessary diabetes-related accommodations, including insulin-related  
20 accommodations, "may" be approved. However, at the same time, Defendants' revised policy  
21 targets the most critical accommodation for children with diabetes who cannot self-administer  
22 insulin and establishes often insurmountable barriers to accessing that accommodation.  
23 Defendants are obligated to provide essential diabetes-related accommodations, including  
24 insulin-related accommodations, which are necessary for eligible children with diabetes to safely  
25 attend and participate in CYSS's programs and activities – without imposing these unjustified  
26 barriers.

**JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

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

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

19. This Court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. § 2201, and to order further relief pursuant to 28 U.S.C. § 2202.

20. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(e)(1)(B)-(C) because: (1) a substantial part of the events or omissions giving rise to the claim occurred within the District and (2) Plaintiff M.W. resides within the District and the Association has member families who reside in the District, and no real property is involved in the action.

21. Pursuant to the Northern District of California’s Civil Local Rule 3-2(c)-(e), because M.W. resides in and a substantial part of the events giving rise to Plaintiffs’ claims occurred in Monterey County, the intradistrict assignment should be to the San Jose Division.

**PARTIES**

22. Plaintiff M.W. is a seven-year-old child with type 1 diabetes. She is a person with a disability under all applicable statutes. M.W. is eligible to attend CYSS programs and activities at the Presidio of Monterey.

23. Plaintiff M.W. is still seeking to enroll in CYSS programs and activities, a process her family began in June of 2015 when she was first diagnosed with type 1 diabetes. M.W. had been enrolled in the after-school program at the Presidio of Monterey’s Porter Youth Center (“Porter Youth Center”), operated by CYSS, for the 2014-2015 school year and planned to continue attending the following school year. However, due to M.W.’s new diabetes diagnosis in June of 2015, M.W.’s mother was informed that, per Defendants’ previous policy, CYSS personnel were not authorized to provide the diabetes-related accommodations that M.W. needs to safely participate in CYSS programs and activities. This policy prevented M.W. from attending CYSS programs and activities for the 2015-2016 and 2016-2017 school years.

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1           24.     Because of her type 1 diabetes and young age, M.W. requires assistance in  
2 managing her diabetes – assistance CYSS personnel could not provide under their previous  
3 policy and now, under Defendants’ revised policy, can only provide after an extended and  
4 burdensome review process with unnecessary, medically unjustified delays.

5           25.     Due to Defendants’ revision of their policies in response to this litigation, M.W.’s  
6 accommodations have been granted, but she has still not been enrolled in CYSS programs and  
7 activities. Even if M.W. is ultimately allowed to participate in CYSS programs and activities,  
8 she will still be subject to Defendants’ revised policy when she must renew her accommodations  
9 or if she has any changes in her needs for diabetes-related accommodations.

10           26.     Organizational Plaintiff American Diabetes Association is a nationwide, volunteer  
11 non-profit membership organization whose members include families affected by Defendants’  
12 previous policy and their revised policy, including M.W.’s mother. Association member families  
13 include parents/guardians and children who have been harmed by Defendants’ policies in that  
14 they have missed out on months of CYSS programs and activities due to the lengthy  
15 accommodations review process; have been effectively excluded from CYSS programs and  
16 activities; and have needed to adopt unreasonable and potentially unsafe insulin practices in  
17 order to access childcare. The interests that the Association seeks to protect through this  
18 litigation are germane to its mission and purpose. That mission and purpose – improving the  
19 lives of all people affected by diabetes – requires the Association to take on a range of actions,  
20 such as providing community programs for children with diabetes, undertaking advocacy for  
21 policies and laws to keep children with diabetes safe at school, advising companies and  
22 organizations who request the Association’s expertise on best practices concerning caring for  
23 children with diabetes, and providing legal information and assistance to families and individuals  
24 experiencing diabetes-related discrimination. Since the lawsuit seeks only injunctive and  
25 declaratory relief, the participation of individual member families in the lawsuit is not required.

26           27.     Furthermore, the Army’s previous and revised policies regarding the provision of  
27 diabetes-related accommodations have perceptibly impaired the Association’s ability to carry out  
28 its mission. In response to the Army’s discriminatory policies, the Association has diverted



1 resources from its other activities to participate in a meeting and follow up with the Army in  
 2 2010 to attempt to convince them to change their policy and, most importantly, to provide  
 3 assistance to those affected by Defendants' policies. The Association has expended resources to  
 4 provide guidance to affected families through numerous intakes, including time spent  
 5 researching the legal and health issues presented by the families and advising them accordingly.

6 28. Defendants United States Department of the Army, United States Army Family  
 7 and Morale, Welfare and Recreation Programs, United States Army Child, Youth and School  
 8 Services, and Robert Speer own, operate, maintain and/or control CYSS's programs and  
 9 activities that fail to provide equal access to M.W. and other children with diabetes who are  
 10 eligible for CYSS programs and activities.

11 29. Defendant United States Department of the Army is the United States federal  
 12 agency responsible for the programs and activities conducted on United States Army military  
 13 bases. DOA is a component of the United States Department of Defense.

14 30. Defendant Robert Speer is the Acting Secretary of DOA (the head of a United  
 15 States Department of Defense ("DOD") Component) and is sued in his official capacity.

16 31. Defendant United States Army Family and Morale, Welfare and Recreation  
 17 Programs is a division of DOA that operates a variety of programs and activities, including  
 18 CYSS, to support the military and eligible civilian families.

19 32. Defendant United States Army Child, Youth and School Services is a division of  
 20 MWR and operates programs and activities for eligible families' children on military bases,  
 21 including daycare services, before and after-school care, and summer camps.

## 22 **FACTUAL ALLEGATIONS**

### 23 *The Necessary Care for Children with Type 1 Diabetes*

24 33. Type 1 diabetes is a chronic and incurable disease of the endocrine system. It is  
 25 characterized by the body's inability to produce insulin. Insulin is the hormone that regulates the  
 26 amount of glucose in the blood. Glucose is the body's main energy source. Insulin carries  
 27 glucose from the bloodstream to the body's cells, where the glucose is used as energy. Thus,  
 28 failure to produce insulin deprives the body of glucose and, as a result, energy. Insulin is

1 necessary to sustain life, and thus people with type 1 diabetes must receive an outside source of  
2 insulin to help regulate their glucose and energy levels.

3       34. The amount of insulin a child with type 1 diabetes needs is pre-determined by a  
4 physician and affected by numerous variables, including but not limited to duration of diabetes,  
5 body mass index, the amount of carbohydrates the child consumes, activity levels, illness, and  
6 other medications the child is taking. Balancing carbohydrate intake and insulin levels is  
7 important in order to avoid diabetes complications. Children often need assistance in checking  
8 blood glucose and counting carbohydrates to ensure their mealtime insulin dosage is correct, and  
9 in performing the administration of their insulin. People with type 1 diabetes rely on either an  
10 injection of insulin or an insulin pump. An insulin pump is a well-established and commonly  
11 used medical device that some individuals with diabetes wear. It delivers rapid or short-acting  
12 insulin twenty-four hours a day through a catheter placed under the skin. It is common for  
13 persons with type 1 diabetes to experience changes in their needs for diabetes-related  
14 accommodations over time. For instance, someone who primarily uses an insulin pump may,  
15 from time to time, for various reasons, need to switch to insulin injections and vice versa.

16       35. Children who need insulin throughout the day typically require insulin at  
17 mealtime and as needed to correct high blood glucose. While parents/guardians working with  
18 medical professionals can develop a schedule for insulin administration, insulin can be needed at  
19 any time. Thus, it is essential to have someone on site at CYSS programs and activities to  
20 administer insulin for children who may need insulin at any time during which the child is in  
21 care. Not having someone on site who can administer insulin can lead to delayed or missed  
22 injections and less effective management of blood glucose levels. If children do not receive  
23 insulin when they need it, their ability to participate in, let alone benefit from, CYSS programs  
24 and activities is decreased.

25       36. While the specifics of care for each child with type 1 diabetes may vary, these  
26 necessary treatments for managing type 1 diabetes are well-established. M.W. and many of the  
27 families seeking access to CYSS programs and activities request only this routine level of  
28 diabetes-related accommodations.

1 37. In many other childcare settings, outside of the U.S. Army, this routine level of  
2 diabetes-related care is requested, approved, and provided in approximately two weeks.

3 ***Defendants' Discriminatory Policies Governing Diabetes-Related Accommodations***

4 38. Through the provision of reliable and quality childcare for military and civilian  
5 families, CYSS “recognizes the challenges of our Soldiers and their Families” and seeks to  
6 “reduc[e] the conflict between mission readiness and parental responsibility.” As a result, CYSS  
7 operates a range of programs and activities for the children of eligible families that account for  
8 the unique circumstances facing these families, including daycare services, in-home childcare  
9 programs, school-age and teen programs, summer camps, and youth sports on military bases  
10 around the country.

11 39. For many military and eligible civilian families, CYSS fulfills its mission,  
12 providing high quality childcare services and programs for children and teens. For families  
13 working and living on military bases in remote areas, CYSS programs and activities offer unique  
14 childcare that starts far earlier in the day than non-CYSS programs and activities and in some  
15 cases provides the only childcare option in the area.

16 40. Given the importance of childcare for military and eligible civilian families,  
17 Defendants' diabetes-related policies – both previous and revised – are not a mere annoyance  
18 that one accepts when dealing with a bureaucracy; rather, they are life-altering, causing families  
19 to change routines, jobs, and even locations in order to support their children's needs for  
20 diabetes-related accommodations. Such policies are also discriminatory.

21 41. Defendants' previous policy, as set by an Army regulation and the 2008 memo  
22 that interpreted the regulation, denied equal access to CYSS programs and activities for children  
23 with diabetes and their parents/guardians. Defendants' blanket prohibition on a range of  
24 essential diabetes-related accommodations effectively excluded children with diabetes who could  
25 not participate in CYSS programs and activities without such diabetes-related accommodations.

26 42. Defendants could reinstate their previous policy at any time. Defendants  
27 substantially revised their policy governing diabetes-related accommodations in less than a year  
28 in response to this litigation. Defendants initially claimed that amending Army Regulation 608-

1 10 would take substantial time, but then proved otherwise as they were able to amend it in less  
2 than a year. Moreover, even if an Army Regulation could not be amended quickly, Defendants  
3 have indicated that a Secretarial directive that circumvents an Army Regulation could be issued  
4 in as little as ninety days.

5 43. In May and June of 2017, Defendants issued a revised policy governing the  
6 provision of diabetes-related accommodations in CYSS programs and activities, which consists  
7 of three documents. First, on May 11, 2017, Defendants amended the language of United States  
8 Army Regulation 608-10 paragraph 4-32 to require ACSIM approval for “[r]equests for  
9 accommodation that require CYS Services staff and Family Child Care providers to perform  
10 functions that necessitate extensive medical knowledge; are considered medical intervention  
11 therapy; or if improperly performed, have a high medical risk . . . .” Second, on June 2, 2017,  
12 Defendants issued United States Army Memorandum entitled “Diabetes-Related  
13 Accommodations in Child, Youth, and School Services Programs,” which requires that “requests  
14 for accommodations requiring the calculation of insulin dosage or the administration of insulin”  
15 be forwarded to the ACSIM. Finally, on June 12, 2017, Defendants issued the third document  
16 comprising their revised policy regarding the procedures for the review process, entitled  
17 “Accommodation of Children and Youth with Diabetes in Army Child, Youth, and School  
18 Services Programs.” This document interprets Defendants’ newly revised Army Regulation 608-  
19 10 and establishes the timelines and review process for families who request diabetes-related  
20 accommodations for their child.

21 44. Of note, Paragraph 4-32(b) of Army Regulation 608-10 was not amended and, in  
22 fact, already stated that “[m]edication and special therapeutic procedures will be administered  
23 only when prescribed by a physician and only when there is no other reasonable alternative to the  
24 medical requirement for the child. It is not reasonable to expect parents to leave their work site  
25 for this purpose.” However, even though this was the language under the previous regulation  
26 and continues to be the language under the current regulation, parents/guardians have had to  
27 leave their work sites to administer insulin and there is no evidence that they will not continue to  
28 have to do so.

1           45.     Although Defendants have revised their policy, the discrimination that children  
2 with diabetes and their families experienced under the previous policy is ongoing, and  
3 Defendants have not corrected it. Defendants' revised policy imposes an unnecessary delay of  
4 up to ten weeks for any diabetes-related accommodation. In addition, if Defendants provide  
5 access to insulin administration – a basic, essential and necessary diabetes-related  
6 accommodation – Defendants do so only through a burdensome process with even longer  
7 unnecessary delays. In so doing, the revised policy bifurcates requests for diabetes-related  
8 accommodations into two separate processes: (1) requests for some non-insulin related  
9 accommodations that can be approved by the local CYSS Coordinator and (2) requests for  
10 insulin-related accommodations that must proceed through four separate Army offices and then  
11 be forwarded to and ultimately approved or denied by the ACSIM in consultation with the Office  
12 of the Surgeon General prior to implementation. The separation of insulin-related  
13 accommodations into this onerous, multi-layered review process is not medically justified, and  
14 thus, this burden of the Army's own design is discriminatory.

15           46.     Any parent/guardian seeking diabetes-related accommodations in CYSS programs  
16 and activities for a child with diabetes, even if those accommodations do not involve insulin,  
17 now confronts the following series of steps: completion of documentation by the child's medical  
18 provider; review by a multi-disciplinary team after up to thirty days; review by a local CYSS  
19 official after up to four working days; and, if the accommodations are approved, admission  
20 following an additional waiting period of up to thirty days. Although it is difficult to determine  
21 with precision the exact timelines under Defendants' revised policy because the text vacillates  
22 between working and calendar days and fails to account for each step families will have to take  
23 in order to actually secure diabetes-related accommodations, the revised policy suggests that it  
24 will take as long as ten weeks even for children with diabetes who do not need insulin-related  
25 accommodations to access CYSS programs and activities.

26           47.     For families of children who do need insulin-related accommodations in order to  
27 access CYSS programs and activities, the procedural hurdles are significantly more burdensome.  
28 In addition to the steps required for children whose required accommodations do not include

1 insulin administration, families also face these additional steps: a compulsory legal review by an  
2 installation attorney to be completed after up to five working days; review by the Garrison  
3 Commander to be completed after up to five working days; processing by IMCOM after up to  
4 five working days; and review by ACSIM after up to fifteen working days. To be clear, it is not  
5 only the ACSIM that reviews requests for insulin-related accommodations for each individual  
6 family but also personnel from at least four other Army offices, including the local CYSS  
7 Coordinator, the Office of the Staff Judge Advocate , the Garrison Commander/Manager, and the  
8 IMCOM. These additional steps involve considerably more delay – it takes Defendants up to  
9 three months to approve or reject a single request for insulin-related accommodations. If an  
10 accommodation is approved, families must wait up to thirty additional days to access CYSS  
11 programs and activities, bringing the total waiting period for childcare to four months. Best  
12 practices suggest that request to enrollment should take approximately two weeks.

13 48. Furthermore, there is no guarantee that Defendants will comply with these  
14 timelines as there is no mechanism to ensure internal compliance with the deadlines. Indeed,  
15 even under Defendants’ previous policy, which allowed exceptions to be granted to provide  
16 limited diabetes-related accommodations, Defendants were unable to commit to timelines for  
17 granting such exceptions.

18 49. Moreover, after this entire process, if the accommodations are not granted by the  
19 ACSIM, Defendants’ revised policy contains no appeals process.

20 50. Finally, if the local level does not approve a non-insulin related accommodation,  
21 which the policy makes clear they “may” approve but not “must” approve, the non-insulin  
22 related accommodation request is then subject to the whole review process up to the ACSIM,  
23 which, once again, can take up to three months.

24 *Harm to Plaintiff M.W.*

25 51. M.W., a seven-year-old child with type 1 diabetes, has been denied and continues  
26 to be denied equal access to the benefits of CYSS programs and activities solely because of her  
27 disability.  
28

1 52. M.W. requires the following diabetes-related accommodations: glucagon  
2 administration, supervision of blood glucose testing and appropriate response to high or low  
3 blood glucose levels, assistance with the administration of insulin using an insulin pump,  
4 carbohydrate counting, and monitoring of her food intake.

5 53. M.W. is eligible to attend CYSS programs and activities at the Presidio of  
6 Monterey.

7 54. M.W. attended the Presidio of Monterey's Child Development Center until  
8 kindergarten, when M.W. started attending the Porter Youth Center's after-school care program.  
9 CYSS operates both of these programs.

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

15 56. On June 14, 2015, when school was out for summer vacation, M.W. was  
16 diagnosed with type 1 diabetes.

17 57. Wanting M.W. to continue to attend the Porter Youth Center's after-school  
18 program when school started in August, M.W.'s mother contacted CYSS on June 22, 2015 and  
19 explained that M.W. had been diagnosed with type 1 diabetes. Over the next few months until  
20 approximately September 30, 2015, M.W.'s mother communicated extensively via telephone, e-  
21 mail, and in-person meetings with CYSS personnel to advocate for her daughter's return to the  
22 CYSS programs and activities at the Porter Youth Center.

23 58. CYSS refused to provide a range of necessary diabetes-related accommodations  
24 to M.W. CYSS would not interpret the results on her blood glucose monitor, they would not  
25 administer insulin injections, and the Army's previous policy would not allow CYSS staff to  
26 administer glucagon or assist M.W. with using an insulin pump. While CYSS would provide a  
27 low carbohydrate snack, they would not count carbohydrates for M.W. and initially refused to  
28

1 give M.W. anything when she had low blood glucose, including orange juice, because they  
2 claimed it constituted giving medication.

3 59. Considering the nonexistent diabetes-related care at CYSS, M.W.'s parents  
4 decided not to send M.W. to CYSS programs. As a result, both M.W. and her family suffered  
5 harm.

6 60. Because of Defendants' previous policy, M.W.'s family sought alternate after-  
7 school care where M.W. could get the diabetes-related accommodations she needs. They were  
8 unable to find an appropriate alternate program. As a result, M.W.'s father has to end his  
9 workday earlier to care for M.W. after school and ensure that she receives appropriate diabetes-  
10 related accommodations. This reduction in his number of hours worked has resulted in a  
11 financial loss to the family.

12 61. M.W. was effectively excluded from CYSS programs and activities because  
13 Defendants refused to provide the diabetes-related accommodations she needed to attend. With  
14 that, she was denied all the benefits that CYSS programs and activities offer, including school  
15 pick-up, assistance with homework, and interacting with friends she had made at the Porter  
16 Youth Center.

17 62. Moreover, not only was M.W. deprived of attending CYSS programs and  
18 activities and interacting with the friends she made there, but being excluded because of her  
19 diabetes, M.W. was devastated because she feared that the adults she had come to depend on in  
20 her after-school program no longer cared about her. Through January and February 2016, M.W.  
21 frequently asked her parents when she could return to the Porter Youth Center. M.W.'s parents  
22 worry that being excluded from a program because of her disability will have a long term  
23 psychological impact on their daughter.

24 63. On April 14, 2016, M.W.'s mother contacted CYSS staff to ask if there were any  
25 changes to Defendants' policy. CYSS staff wrote back with the same non-answer they had  
26 provided almost one year earlier: "There is no official modification to our current glucagon  
27 policies. . . . This issue glucagon [*sic*] is at our highest headquarters for consideration."  
28



1           64.     On May 31, 2016, M.W. renewed her demand for a modification of Defendants’  
2 illegal policy that would allow CYSS staff to provide essential diabetes-related accommodations  
3 to M.W., when included in a medical action plan prepared by her health care provider.

4           65.     On June 20, 2016, MWR staff informed M.W. that Defendants’ policy “is under  
5 revision” and “[u]ntil that policy is revised, each case presented is reviewed on the individual  
6 circumstances of the child.”

7           66.     On November 3, 2016, Defendants granted M.W. an exception from their  
8 previous policy regarding diabetes-related accommodations.

9           67.     By June 2017, almost two years after M.W.’s family initially raised the issue with  
10 Defendants, Defendants approved M.W.’s requested accommodations. However, she is still not  
11 enrolled in CYSS programs and activities.

12           68.     M.W. has yet to be evaluated under Defendants’ revised policy. Her  
13 accommodations could be revoked at any time at the whim of Defendants, and she would then be  
14 subject to the burdensome review process for any diabetes-related accommodations.  
15 Additionally, if the diabetes-related accommodations she needs change, including if she needs to  
16 switch her method of insulin administration from her insulin pump to injections, she would be  
17 subject to Defendants’ revised policy. Furthermore, Defendants issued their revised policy only  
18 in response to litigation, and they could change it, or the details of it, at any point. M.W. remains  
19 at risk of further discrimination until Defendants issue a non-discriminatory policy and commit  
20 to maintaining it.

21           69.     Moreover, M.W.’s “Approval of Requested Accommodations” notes that a  
22 “review of required accommodations will be conducted semiannually . . . .” Thus, even if M.W.  
23 is eventually admitted to CYSS programs and activities with her requested accommodations in  
24 place, she will be subject to Defendants’ revised policy on a semi-annual basis. M.W. will  
25 remain at risk of discrimination by CYSS programs and activities while Defendants’ revised  
26 policy is in place.

*Harm to Association and Association Member Families*

1  
2           70.     The Association has standing to bring this lawsuit both because Defendants have  
3 injured the Association and as a representative of its members.

4           71.     The Association has standing to bring this lawsuit because Defendants have  
5 directly harmed the Association, dating back to 2005, over ten years before Plaintiffs filed the  
6 Complaint in this case, when the Association first encountered problems with the Army's failure  
7 to provide diabetes-related accommodations.

8           72.     The Association has suffered an injury-in-fact because Defendants' previous and  
9 revised policies regarding the provision of diabetes-related accommodations have perceptibly  
10 impaired the Association's ability to carry out its mission of preventing and curing diabetes and  
11 improving the lives of all people affected by diabetes. In response to Defendants'  
12 discrimination, the Association has diverted resources from many programs including (1)  
13 administering community programs for children with diabetes; (2) creating resources for  
14 individuals with diabetes; (3) advocating for policies and laws to keep children with diabetes safe  
15 at school, including developing a training module for childcare staff and advising companies and  
16 organizations who request the Association's expertise on best practices concerning caring for  
17 children with diabetes; and (4) providing legal information and assistance to families and  
18 individuals experiencing diabetes-related discrimination.

19           73.     Defendants' failure to provide appropriate accommodations for children with  
20 diabetes to safely attend CYSS programs and activities has forced and continues to force the  
21 Association to divert resources from the programs above to conduct intakes with harmed  
22 member families and constituents, to provide assistance to these member families and  
23 constituents, and to attempt to persuade the Army to change its diabetes-related accommodations  
24 policy.

25           74.     Specifically, Defendants' failure to provide appropriate diabetes-related  
26 accommodations for children to safely attend CYSS programs and activities has caused the  
27 Association to conduct intakes from impacted families since 2005. The Association conducted  
28 the majority of these intakes with families who were harmed or at risk of being harmed by

1 Defendants' discriminatory policy before the filing of this lawsuit in July 2016. Since filing, the  
2 Association has conducted several additional intakes. For each of these intakes, Association  
3 employees review the information provided by the constituent, conduct legal and health-related  
4 research, communicate their findings over the phone or via email, and provide guidance, in some  
5 cases on multiple occasions, to families regarding options and strategies for resolving the  
6 discrimination. The time spent on each intake varies dramatically, but Association staff  
7 members have spent numerous hours assisting these families burdened by Defendants'  
8 discrimination.

9 75. In 2010, the Association also diverted resources from accomplishing its mission  
10 to prepare for and conduct a meeting with the Army in an attempt to convince them to change  
11 their policy. After the meeting, Association staff spent time corresponding with the Army to  
12 offer further resources to help them change their illegal policy. Ultimately, these Association  
13 resources were wasted because the Army has refused to correct their policy. As a result,  
14 Defendants have continued to discriminate against children with diabetes and the Association has  
15 continued to divert resources to conducting intakes about Defendants' discrimination, with the  
16 most recent intake occurring on July 3, 2017. In addition to the time spent around the 2010  
17 meeting, Association staff have spent considerable time meeting internally to discuss and  
18 strategize regarding this issue. Association staff also performed research outside the context of  
19 individual intakes on the topic of the Army policy generally, as part of developing the  
20 Association's response strategy.

21 76. 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 policies directly frustrates the Association's mission of improving the lives of all people affected  
24 by diabetes.

25 77. The Association has standing to bring this lawsuit as a representative of its  
26 members because (1) Association member families would otherwise have standing to sue in their  
27 own right, (2) the interests the Association seeks to protect are germane to the Association's  
28

1 purpose, and (3) the participation of individual members in the lawsuit is not required to assert  
2 the claims or relief requested.

3 78. At least one Association member family would have standing to sue in their own  
4 right because (1) Defendants' previous policy discriminated against Association member  
5 families and could be reinstated at any time and (2) Defendants' revised policy continues to  
6 discriminate against and currently harms Association member families.

7 79. The discrimination experienced by member families under Defendants' previous  
8 policy has not been corrected under Defendants' revised policy in that Defendants continue to  
9 deny equal access to CYSS programs and activities. Defendants' revised policy blocks access by  
10 imposing burdensome procedures and unnecessary delays that harm families currently seeking to  
11 enroll their children in CYSS programs and activities.

12 80. First, Defendants' revised policy imposes unnecessary delays on families of  
13 children with diabetes seeking access to CYSS programs and activities. Association member  
14 families seeking insulin-related accommodations will wait up to three months to even receive a  
15 decision about whether these requests will be granted, which will result in harm to both the  
16 children with diabetes and the parents/guardians of Association member families. For this period  
17 of time, these children are entirely excluded from CYSS programs and activities and from  
18 enjoying the intended benefits of CYSS programs and activities. Furthermore, even if an insulin-  
19 related accommodation is approved, it will, per Defendants' revised policy, then take up to thirty  
20 days for the child to actually enter the CYSS program or activity. Even children who do not seek  
21 insulin-related accommodations must wait up to ten weeks to be enrolled in CYSS programs and  
22 activities and, during this period of delay, also will not receive any benefit from CYSS programs  
23 and activities. When Defendants force parents/guardians to wait months for a decision regarding  
24 whether their child will receive insulin-related accommodations, parents/guardians have no  
25 choice but to find alternate, temporary childcare for their children with diabetes. This can result  
26 in the parents/guardians facing increased expenses or even having to leave their jobs to care for  
27 their children.  
28

1           81.     Second, Defendants' revised policy leads to delays in the provision of childcare  
2 that Association member families cannot endure, especially without a guarantee that they will  
3 ultimately receive the requested accommodations. As a result, some Association member  
4 families are deterred from seeking or continuing to seek accommodations for their children with  
5 diabetes in CYSS programs and activities, and are effectively excluded from CYSS programs  
6 and activities. This exclusion harms both the parents/guardians and the children with diabetes  
7 who comprise Association member families. When Defendants effectively exclude children in  
8 this way, such children never benefit from CYSS programs and activities because the children  
9 end up in another childcare arrangement, never getting a chance to attend CYSS programs and  
10 activities.

11           82.     Third, Defendants' revised policy, which requires a more burdensome review  
12 process for insulin-related accommodations, encourages Association member families to adopt  
13 unreasonable and potentially unsafe insulin practices out of desperation either as an alternative to  
14 seeking appropriate insulin-related accommodations, or as an interim measure while their  
15 requests for insulin-related accommodations are pending, or because their requested insulin-  
16 related accommodations have been denied. In so doing, the revised policy harms both the  
17 children with diabetes and the parents/guardians who comprise Association member families.  
18 Children with diabetes who have less effective control of blood glucose levels have decreased  
19 ability to participate in, let alone benefit from, physical and other activities at CYSS programs  
20 and activities. Without support on-site at CYSS locations, parents/guardians are forced to step in  
21 and leave their work to administer insulin to their child at the CYSS location. Parents/guardians  
22 face harm in the form of lost time and potentially lost wages at their jobs, potentially multiple  
23 times per day, each time their child needs insulin. Such a practice has been and continues to be  
24 recognized by the Army itself as a harm to the parents/guardians given that United States Army  
25 Regulation 608-10 paragraph 4-32(b), governing diabetes-related accommodations, specifically  
26 states: "It is not reasonable to expect parents to leave their work site [to administer medication]."  
27 This parental harm leads to further harm to the children, who may not be fully able to participate  
28

1 in or benefit from CYSS programs and activities, as they are forced to wait for their  
2 parents/guardians to arrive to administer insulin, or miss a dose entirely.

3 83. Finally, parent/guardian Association members also have third-party standing to  
4 pursue their children’s claims on their behalf for harms Defendants committed against their  
5 children because: (1) the children and the parents/guardians themselves have both suffered injury  
6 as described above, (2) the children and the parents/guardians have a close relationship, and (3)  
7 the children face obstacles in pursuing their own claims because they are minors.

8 84. The interests the Association seeks to protect are germane to the Association’s  
9 purpose. The Association is challenging Defendants’ discriminatory policies governing the  
10 provision of essential diabetes-related accommodations for children with diabetes who are  
11 otherwise eligible to participate in CYSS programs and activities. These interests are germane to  
12 the Association’s purpose of improving the lives of all people affected by diabetes.

13 85. Finally, Plaintiffs’ claims are limited to injunctive and declaratory relief, which  
14 do not require the participation of individual Association member families in this lawsuit.

15 **FIRST CAUSE OF ACTION**

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

17 **(29 U.S.C. § 794)**

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

19 86. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the  
20 First Amended Complaint.

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

26 88. Section 504 requires the head of every executive agency to promulgate  
27 regulations as shall be necessary to carry out the Act. *Id.*  
28

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

6 90. The statute and applicable regulation defines an “individual with a disability” as  
7 an individual who has “a physical or mental impairment that substantially limits one or more  
8 major life activities of such individual.” 29 U.S.C. § 705(20)(B) (referencing 42 U.S.C. §  
9 12102); *see also* 32 C.F.R. § 56.3(c).

10 91. M.W. is an individual with a disability within the meaning of the statute in that  
11 she has type 1 diabetes, an impairment that substantially limits a major bodily function by  
12 affecting the functioning of her endocrine system and substantially affects the major life  
13 activities of eating and caring for oneself. The Association has members who have diabetes  
14 themselves or are caregivers or family members of people who have diabetes and who, like  
15 M.W., are individuals with disabilities.

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

18 93. M.W. has reason to and is otherwise eligible to participate in Defendants’ after-  
19 school care program at the Porter Youth Center. Indeed, prior to her diabetes diagnosis, M.W.  
20 attended the Porter Youth Center’s after-school care program. The Association also has, at least,  
21 one member family with children who are eligible for and would still like to participate in CYSS  
22 programs and activities.

23 94. As entities with programs and activities that receive or benefit from federal  
24 financial assistance distributed by the Department of Defense or are conducted by the  
25 Department of Defense, Defendants must comply with the requirements of Section 504. *See* 29  
26 U.S.C. § 794; 32 C.F.R. pt. 56 & § 79.5(c)(18); Department of Defense Directive No. 1020.1.  
27 CYSS programs and activities have received this assistance or have been conducted by the  
28

1 Department of Defense at all relevant times to the claims asserted in this First Amended  
2 Complaint.

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

- 6 a. “Deny[ing] a qualified handicapped person the opportunity to participate in or  
7 benefit from the aid, benefit, or service,” 32 C.F.R. § 56.8(a)(2)(ii);  
8 b. “Afford[ing] a qualified handicapped person an opportunity to participate in or  
9 benefit from the aid, benefit, or service that is not equal to that afforded others,” 32  
10 C.F.R. § 56.8(a)(2)(iii);  
11 c. “Provid[ing] a qualified handicapped person with an aid, benefit, or service that is  
12 not as effective as that afforded to others,” 32 C.F.R. § 56.8(a)(2)(iv); or  
13 d. “Otherwise limit[ing] a qualified handicapped person in the enjoyment of any right,  
14 privilege, advantage or opportunity granted to others receiving the aid, benefit, or  
15 service,” 32 C.F.R. § 56.8(a)(2)(v).

16 96. CYSS programs and activities provide an aid, benefit, or service through actual  
17 attendance at and participation in CYSS programs and activities. However, Defendants’ revised  
18 policy, which subjects families, such as M.W.’s family and Association member families, to a  
19 burdensome multi-tiered review process for accommodations, like Defendants’ previous policy,  
20 (1) effectively denies children with diabetes the opportunity to participate in and benefit from the  
21 programs and activities of CYSS; (2) affords an unequal opportunity to participate in or benefit  
22 from the programs and activities of CYSS; (3) provides a less effective aid, benefit or service  
23 that CYSS offers to children with diabetes as compared with those without diabetes; and  
24 (4) otherwise limits children with diabetes in the enjoyment of the opportunity to participate in  
25 CYSS programs and activities. Defendants’ revised policy violates the above prohibitions  
26 against discrimination and, in so doing, subjects children with diabetes (such as M.W. and the  
27 children of Association member families), their parents/guardians, and the Association to harm  
28 in at least three ways.



1           97.     First, for families who are able to wait up to four months for appropriate  
2 childcare, Defendants' revised policy requires these families to jump through unnecessary  
3 bureaucratic hoops to receive benefits that are provided without delay to children without  
4 diabetes. Indeed, even children who do not seek insulin-related care are delayed up to ten weeks.  
5 As such, children with diabetes are delayed in accessing the benefits of CYSS programs and  
6 activities, which results in unequal, limited, or at least less effective attendance at and  
7 participation in CYSS programs and activities for children with diabetes. The parents/guardians  
8 are also harmed by this delay in that they must find alternate, temporary childcare while CYSS  
9 reviews their requests for essential diabetes-related accommodations for their children.

10           98.     Second, for families who cannot wait the disproportionate amount of time for  
11 their requests to be processed, Defendants' revised policy forces them to seek alternate childcare  
12 options, effectively excluding their children with diabetes from CYSS programs and activities  
13 altogether. As a result, children with diabetes are denied the opportunity to participate in and  
14 benefit from CYSS programs and activities because the childcare is not available when they need  
15 it. Additionally, the parents/guardians are harmed as they must seek alternate childcare with  
16 potentially increased costs or even quit their jobs to care for their children.

17           99.     Third, for families who want an alternative to seeking appropriate insulin-related  
18 accommodations, need an interim measure while their requests for insulin-related  
19 accommodations are pending, or have had their requested insulin-related accommodations  
20 denied, Defendants' revised policy encourages families to adopt unreasonable and potentially  
21 unsafe insulin practices that can result in delayed or missed injections and less effective  
22 management of blood glucose levels. These unreasonable and potentially unsafe insulin  
23 practices impact children's ability to concentrate and fully benefit from CYSS programs and  
24 activities. As such, children are otherwise limited in the enjoyment of CYSS programs and  
25 activities. These unreasonable and potentially unsafe insulin practices also cause harm to the  
26 parents/guardians as they are forced to leave work during the day to administer insulin to ensure  
27 the medical safety of their children. This results in less effective CYSS programs and services  
28

1 than those afforded to others in that parents of children without diabetes do not have to come to  
2 the CYSS site to care for their children.

3 100. Defendants and their agents and employees have violated and continue to violate  
4 Section 504 and the regulations promulgated thereunder by subjecting children with diabetes and  
5 their families to this discriminatory accommodation policy solely by reason of their disabilities.  
6 The only reason that children with diabetes and their families do not have equal access to  
7 Defendants’ CYSS programs and activities is because Defendants’ revised policy fails to provide  
8 necessary accommodations to children with disabilities without burdensome procedural hurdles  
9 and unnecessary delays.

10 101. As a direct and proximate cause of the aforementioned acts, the Association and  
11 children with diabetes and their families, including M.W. and Association member families, have  
12 been and continue to be injured.

13 102. M.W. and the Association and its member families have no adequate remedy at  
14 law. Unless the relief requested herein is granted, M.W. and Association member families will  
15 suffer irreparable harm in that they will continue to be discriminated against and denied equal  
16 access to CYSS programs and activities. Furthermore, unless the relief requested herein is  
17 granted, the Association will suffer irreparable harm in that Defendants’ revised policy will  
18 continue to force the Association to spend resources and continue to frustrate the Association’s  
19 mission.

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

21 **SECOND CAUSE OF ACTION**

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

23 **(29 U.S.C. § 794)**

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

25 103. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the  
26 First Amended Complaint.

27 104. The DOD Section 504 regulations also prohibit Defendants from “us[ing],  
28 directly or through contractual or other arrangements, criteria or methods of administration that:

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1 (i) Subject qualified handicapped persons to discrimination on the basis of handicap; [or]  
 2 (ii) Defeat or substantially impair accomplishment of the objectives of the recipient's or DOD  
 3 Component's program or activity with respect to handicapped persons. . . ." 32 C.F.R.  
 4 § 56.8(a)(6)(i)-(ii).

5 105. Defendants' methods of administration as they relate to CYSS programs and  
 6 activities include a revised policy with a multi-tiered review process with burdensome procedural  
 7 hurdles and unnecessary delays that families must endure in order to have the requested  
 8 accommodations reviewed, without guarantee that such accommodations will actually be  
 9 approved by Defendants at all or can be appealed if denied.

10 106. Methods of administration that "subject qualified handicapped persons to  
 11 discrimination on the basis of handicap" include those that screen out children with diabetes. *See*  
 12 32 C.F.R. § 56.8(a)(6)(i). Defendants' revised policy has this effect, and thus subjects children  
 13 with diabetes and their families, including M.W. and Association member families, to  
 14 discrimination on the basis of disability. The parents/guardians of children with diabetes are  
 15 deterred from seeking or continuing to seek enrollment of their eligible children with diabetes in  
 16 CYSS programs and activities. These families may be deterred because they cannot endure the  
 17 protracted and lengthy timelines for Defendants' accommodation review process without  
 18 childcare, especially without a guarantee that they will eventually receive the accommodations  
 19 that they require and further without the option of appeal.

20 107. Defendants' methods of administration also "[d]efeat or substantially impair  
 21 accomplishment of the objectives" of CYSS programs and activities with respect to persons with  
 22 disabilities. *See* 32 C.F.R. § 56.8(a)(6)(ii). The stated objective of CYSS is to "reduc[e] the  
 23 conflict between mission readiness and parental responsibility." This objective is accomplished  
 24 by providing effective childcare options for military families. As with Defendants' previous  
 25 policy, Defendants' revised policy impairs this objective for children with diabetes. It does this  
 26 in at least three ways. First, Defendants' revised accommodations review process delays  
 27 children in attending CYSS programs and activities, which not only prevents the children from  
 28 benefitting from CYSS programs and activities during that time, but also places an additional

1 burden on the parents/guardians (one that the Army's CYSS programs and activities are intended  
 2 to mitigate), who must turn their attention away from their work to find alternate childcare for up  
 3 to four months. Second, the fact that the revised policy effectively excludes some families from  
 4 seeking CYSS care altogether defeats the very purpose of CYSS as it requires parents/guardians  
 5 to search for an alternate childcare option, often on remote bases where no other options are  
 6 available. Finally, it encourages families to adopt unreasonable and potentially unsafe insulin  
 7 practices, which actually increase the conflict between the parents'/guardians' professional  
 8 mission and their parental responsibilities since parents/guardians often must miss work to go to  
 9 CYSS sites to administer their children's insulin.

10 108. As a direct and proximate cause of the aforementioned acts, the Association and  
 11 children with diabetes and their families, including M.W. and Association member families, have  
 12 been and continue to be injured.

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

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

21 **THIRD CAUSE OF ACTION**

22 **DECLARATORY RELIEF**

23 110. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the  
 24 First Amended Complaint.

25 111. An actual controversy has arisen and now exists between the parties in that  
 26 Plaintiffs contend, and are informed and believe that Defendants deny, that by subjecting  
 27 requests for essential and necessary diabetes-related accommodations to a burdensome review  
 28 process with unnecessary delays for children with diabetes who are eligible to participate in

1 CYSS programs and activities, Defendants fail to comply with applicable laws, including but not  
2 limited to Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

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

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

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiffs pray for judgment as follows:

8 1. A declaration that Defendants’ CYSS programs and activities are being operated  
9 in a manner that discriminates against M.W. and all other children with diabetes who are eligible  
10 for CYSS programs and activities, including Association member families, in violation of  
11 Section 504 of the Rehabilitation Act, 29 U.S.C. § 794;

12 2. An order and judgment enjoining Defendants from violating Section 504 of the  
13 Rehabilitation Act and requiring Defendants to immediately develop, implement, and maintain a  
14 non-discriminatory policy governing the provision of accommodations for children with diabetes  
15 within CYSS programs and activities. The policy would authorize local CYSS personnel to  
16 approve and provide diabetes-related accommodations, when they are included in a medical  
17 action plan prepared by a child’s health care provider, including but not limited to counting  
18 carbohydrates, administering insulin, including determining insulin dosages and administering  
19 insulin through the means the child uses, and administering glucagon, to allow M.W. and all  
20 other children with diabetes who are eligible for CYSS programs and activities, including  
21 children in Association member families, to safely participate in CYSS programs and activities  
22 on an equal basis with children without diabetes;

23 3. Plaintiffs’ reasonable attorneys’ fees and costs; and

24 4. Such other and further relief as the Court deems just and proper.

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DATED: July 21, 2017

Respectfully submitted,

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