

# **CASO PRÁCTICO: ALUMNADO DIABÉTICO Y ACTIVIDADES EXTRAESCOLARES EN UNA ESCUELA INCLUSIVA. QUEJA ANTE EL DEFENSOR DEL PUEBLO.**

## **A CASE STUDY: DIABETIC STUDENTS AND EXTRACURRICULAR ACTIVITIES IN AN INCLUSIVE SCHOOL. A COMPLAINT TO THE OMBUDSMAN**

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### **Resumen**

La participación del alumnado con enfermedades crónicas en actividades extraescolares es un tema no pacífico que genera titulares en los medios de comunicación, dudas en los centros educativos sobre cómo proceder y qué responsabilidad asumir, demandas de las familias afectadas y hasta denuncias ante las Administraciones Educativas o el Defensor del Pueblo, como es el caso que aquí se plantea.

En este caso práctico sobre un alumno afectado de Diabetes Mellitus tipo 1 se aborda el problema con una triple finalidad: la de informar, por un lado, el inspector de educación a las autoridades educativas para que puedan motivar con mayor fundamento su respuesta al Defensor del Pueblo; por otro, asesorar al centro educativo sobre cómo proceder para garantizar los derechos tanto del alumno como del profesorado; y, por último, mediar en los conflictos familiares que afectan al proceso educativo.

El enfoque adoptado aquí por el inspector es deliberadamente tanto jurídico como educativo, doble perspectiva esta que debería presidir siempre sus actuaciones.

**Palabras clave:** *diabetes, actividades extraescolares, patria potestad, inspección educativa, enfermero escolar, derecho a la educación, educación inclusiva.*

### **Abstract**

The participation of pupils with chronic diseases in extracurricular activities is a non-peaceful issue that generates headlines in the media, doubts in schools about how to proceed and what responsibility to assume, demands from affected families and even complaints to the educational administrations or the Ombudsman, as it is the case raised here.

In this case study on a student affected by type 1 Diabetes Mellitus, the problem is addressed with a threefold purpose: reporting, on the one hand, the educational authorities by the school inspector so that reasoned arguments can be provided to the Ombudsman; on the other hand, advising the educational institution on how to proceed to guarantee the rights of both the student and the teaching staff; and, finally, mediating in family conflicts that affect educational processes.

The approach taken here by the inspector is deliberately both legal and educational, a dual perspective which should always govern his actions.

**Keywords:** *diabetes, extracurricular activities, parental authority, school inspectorate, school nurse, right to education, inclusive education.*

## I. PREVIOUS CONSIDERATIONS

An educational center is far more than an instructional establishment, and therefore, despite the inherent risks, it does not limit its activities to strictly academic ones. Instead, it accommodates others that provide students with life experiences and non-formal learning that contribute to the comprehensive education of the individual. One of these experiences is extracurricular activities (whether they are educational, cultural, or recreational), and, in particular, in the context here, school excursions, as a privileged form of active teaching. This idea is already present in the peripatetics, in Rousseau, in Pestalozzi, in the Free Institution of Education, and in the phrase "lesson-walk" coined by the French education inspector Edmond Blanguernon in his book "Pour l'école Vivante" (1918), and later adopted by Célestin Freinet for the New School.

School excursions provide an excellent opportunity for students to learn in a practical and experiential way outside the confines and structured rhythms of the school. Additionally, they promote peer socialization, autonomy, coexistence, active leisure, collaborative work, and the development of emotional skills, while also creating situations and learning contexts where certain key competencies find their best mode of acquisition and execution. These competencies (such as civic, entrepreneurial, personal, social, and learning-to-learn competencies, or cultural awareness and expression) could be referred to as "orphan competencies" since, in the teaching practice of a significant portion of educators, they do not seem to find a place or offspring in the curricula of subjects, courses, or modules, despite the declarative rhetoric of educational legislation and policy, and the good intentions of didactic planning.

In light of this, it is undeniable that in an educational system guided by principles such as inclusion and equity, school excursions should be able to weave the life experiences of any student, including those with diabetes.

However, it is not uncommon for cases to arise where children with disabilities or chronic illnesses and their families feel discriminated against when excluded from extracurricular activities and perceive their right to education, as enshrined in article 27 of the Spanish Constitution, and the principle of universal accessibility, as outlined in the Convention on the Rights of Persons with Disabilities, to be violated. It is important to note that not only should the curriculum be developed in accordance with the principles of Universal Design for Learning (UDL), but the same should apply to extracurricular activities.

And there are many cases (some of which have resulted in convictions) in which teachers participating in school excursions feel unprotected and legally vulnerable due to the risks involved and the increasing judicialization of school life.

Diabetes is one of the most frequent chronic diseases at school. In Spain there are some 30,000 diabetic students registered. The school life of students with diabetes should not represent a problem for the school institution, but their specific needs require training and information from teachers, as well as protocols for action that provide guidance on how to proceed with guarantees, both health and legal.

In this regard, although we will stick here to what has been published on the subject by the Regional Government of Extremadura, at the end of the text, in the section on documentary references, the guides, protocols and regulatory provisions on health care in schools in the autonomous communities that have regulated this issue are included. After this preamble, the following is a practical case study.

## II. CASE STUDY

Mr. AJCR, father of ACD, a 1st-year ESO student at IES AAA in the Autonomous Community of Extremadura, files a complaint with the Ombudsman, alleging

discrimination and the violation of his son's rights due to his diagnosis of Type 1 Diabetes Mellitus. This is because the educational administration has not assigned a school nurse to accompany him during an extracurricular activity to be held in the Sierra de Guadarrama, organized by the English Department of the educational institution for all 1st-year ESO students.

ACD's parents are separated with a child arrangement order. The mother has no objections to her child attending the excursion, but the father has raised objections. He refuses to sign the authorization until ACD has the assistance of a school nurse.

In response to the father's letter, the Ombudsman, prior to admitting the complaint for consideration, requests the Department of Education of the Extremadura Regional Government to provide information in order to establish criteria regarding the issue raised. This request for information, as well as the conflict situation at the educational institution, leads to the need for the education inspector to issue a report.

The report issued by the inspector of reference of the center is set out below.

## REPORT

### 1. DESCRIPTION OF THE FACTS AND ACTIONS

**1.1.** On March 16, 2023, the undersigned inspector received, through the Provincial Chief Inspector, a request from the Provincial Delegate of Education to report on the actions taken in relation to the participation of ACD, a student of 1st. The Inspector receives, through the Provincial Chief Inspector, a request from the Provincial Delegate of Education to report the actions taken in relation to the participation of ACD, a student of 1st ESO-A of IES AAA, in the extracurricular activity, proposed by the Department of English, consisting of a language immersion camp, leisure and adventure, for all students of 1st ESO of the center, to

be held in the "Espacio Los Molinos", located in the Sierra de Guadarrama, Madrid, from April 12 to 16, 2023.

**1.2.** The report is requested at the request of the General Secretariat of Education and is based on file no. 24013622 (attached as Document No. 1), filed with the Ombudsman by Mr. AJCR, father of the minor ACD. The file refers to the complaint filed by Mr. AJCR in view of the refusal by the Administration of his request that his son ACD, who suffers from Diabetes Mellitus type 1, be attended by a nurse during extracurricular activities organized by the educational center and, in particular, during the aforementioned excursion to the Guadarrama mountain range, as the child had to spend the night away from his home.

**1.3.** On March 16, 2023, as the inspector of reference, I asked the principal of IES AAA for a report on the actions taken by the school in relation to the complaint filed by Mr. AJCR and announced that I would visit the school to analyze the details of the case (the principal's report is attached as Document No. 2).

**1.4.** On March 17, 2023, an inspection visit took place to clarify the facts and to be able to analyze and evaluate, in accordance with the applicable regulations, what was reported by Mr. AJCR. During the visit, I met with the principal of the center and also with the head of the Extracurricular Activities Department, the teacher of the English Department who organized the activity and the student's tutor. That same day, having been previously summoned, I met with the student's parents.

**1.5.** The following Monday, after receiving a copy of the documents by e-mail from the center, I reviewed in my office the documentation containing the programming of the camp in the "Espacio Los Molinos", as well as the protocols established by the center in its Organization and Operation Regulations for the care of diabetic students.

**1.6.** From the reading of the letter addressed to the Councilor of Education by the Ombudsman, as well as from the analysis of the documentation on the extracurricular activity, the report of the school principal and the interviews conducted by the inspector, the following extract and statement of facts can be drawn up:

**First.** - Mr. AJCR, father of the student ACD, has never submitted in writing to the IES AAA any request or complaint regarding the specialized health care that, in his opinion, his son should receive in the extracurricular activities organized by the school. However, he has made this request verbally on several occasions and in all cases he has received a response, also verbally, from the school. The student's father informs me that he has filed complaints on this same issue with other government agencies, before filing them with the Ombudsman, but he does not provide any corroborating documentation.

**Second.** - As I have been able to verify in the educational platform Rayuela, the student ACD is currently studying 1st of ESO in the Bilingual Section of the IES AAA, with remarkable academic achievement. The group tutor also informs me of the absolute normality in the personal evolution and social relations of ACD, regardless of his diabetic condition.

According to the report submitted by the school principal (see Document No. 2) and as evidenced by the record of extracurricular activities in Rayuela, this student has so far actively participated in all the complementary and extracurricular activities organized by the school for the students of 1st ESO, without ever needing, due to his condition of insulin-dependent, personal resources other than those that the school can make available to him and which do not include the resource of a school nurse..

**Third.**- The teachers of the 1st ESO-A group to which ACD belongs are informed of his health record; in addition, the observance by all school staff of the "Protocol for the care of children and adolescents with Diabetes at School",

established by the Regional Government of Extremadura, has so far proved to be a more than sufficient measure to ensure that ACD receives care in conditions of absolute normality and inclusion, both in regular school activities, as well as in complementary and extracurricular activities in which he wishes to participate.

A special mention should be made here to the teacher BCC, head of the Extracurricular Activities Department and, at the same time, educational health referent in the center, who, due to her personal experience as the mother of a diabetic child, knows perfectly well how to deal with this situation. This teacher, with the consent of ACD's parents, and although she does not teach this student, has always been in charge, up to now, of the attention and surveillance of the minor's health in the activities carried out within the school that could imply a greater risk to his health, a control that has always been carried out with absolute discretion, so as not to unnecessarily harm the student.

**Fourth.-** As for the activity that has raised the greatest concern among the parents of ACD and the complaint filed by the father with the Ombudsman, that is, the excursion to the Guadarrama mountain range, which involves spending several days away from home, and for which the father claims to have requested the accompaniment of a nurse to attend to his son, both the school management and the head of the Provincial Delegation of Education, who met —as recorded in the minutes drawn up by the school (attached as Document No. 3)— with ACD's family on November 29, 2022, informed them that there was no possibility that the Educational Administration could provide the school with a nurse to accompany the student in extracurricular activities.

However, the center's administration, always empathizing with the concern of ACD's parents about the risks that the extracurricular activity could pose to their health, has tried to reassure them by explaining that the teachers who will attend as chaperones have sufficient knowledge to attend to ACD in the event of a possible



risk situation. In particular, the teacher BCC, health referent at the center, who has volunteered to attend the activity with the main purpose of attending to the insulin needs that ACD could present at times of increased physical activity, as well as in the evenings. Likewise, the center has had the technical support, for the organization of the activity, of the Diabetes Nurse of the corresponding Health Center.

It should be added that the material development of the extracurricular activity is the responsibility of the company "LOA, S.L.", specialized in linguistic immersion programs, free time, and adventure, which has all the insurance and protocols required for this type of activities.

**Fifth.**- In the provision that regulates the complementary and extracurricular activities in the Autonomous Community of Extremadura, namely, the "Instruction n. No. 23/2014, of the General Secretariat of Education, on complementary and extracurricular activities organized by the centers sustained with public funds of the Autonomous Community of Extremadura", contemplates in point 4 of its eighth section the possibility that parents and legal guardians may accompany minors on trips and excursions outside the educational center, being the competence of the center's management to authorize such participation and mandatory communication of this circumstance to the Educational Inspection Service.

There is no record that this possibility has been requested to the educational center by the parents of ACD, nor that they have requested authorization to be accompanied in the extracurricular activity by a member of the Diabetic Association to which they belong, as this inspector knows has happened in similar cases, although it is true that with insulin-dependent students of younger age and less autonomous. The educational center is aware that ACD's mother has accompanied him in some extracurricular activities when the child was attending the Primary Education stage at CEIP ZZZ, in the same town.

**Sixth.** - The extracurricular activity to be held in the Sierra de Guadarrama has been approved by the School Board of the center and, at the request of the

management, received the approval of the Inspectorate of Education (as stated in the detail of the activity published in Rayuela attached as Document No. 4) to the exceptionality of the ratio established for trips of this type in point g. b) of section three of Instruction no. 23/2014, cited above, given that the ratio set in general is one teacher for every 20 students in the stage of Compulsory Secondary Education; in this case, although only 24 students participate, three teachers have been authorized to attend as chaperones (so that the ratio is 1/8), precisely because of the circumstances that concur in the student ACD.

**Seventh.** - After the informative meeting held by the management of the center with the families of the pupils to whom the activity was addressed, attended by Mr. AJCR and Mrs. CGR, father and mother, respectively, of the pupil ACD, who are legally separated, with shared custody, Mr. AJCR stated that he would not give his consent and written authorization for the participation of ACD in the excursion until the Administration assigned a nursing professional to accompany his son in the extracurricular activity. On the other hand, the student's mother stated that she would sign the authorization for her son to attend the field trip with his classmates and that she considered the measures that the center had established in the planning of the activity to be a sufficient guarantee.

## 2. VALUATION IN ACCORDANCE WITH THE APPLICABLE REGULATIONS

### 2.1. Normative

- *Constitución Española de 1978*<sup>1</sup> (BOE No. 311, of December 29, 1978)
- *Instrumento de Ratificación de la Convención sobre los derechos de las personas con discapacidad, hecho en Nueva York el 13 de diciembre de 2006*<sup>2</sup> (BOE No. 96, of April 21, 2008).

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<sup>1</sup> Spanish Constitution of 1978.

<sup>2</sup> Instrument of Ratification of the Convention on the Rights of Persons with Disabilities, done at New York on December 13, 2006.

- *Ley Orgánica 8/1985, de 3 de julio, reguladora del Derecho a la Educación*<sup>3</sup>. (BOE No. 159, of July 4, 1985)
- *Ley Orgánica 2/2006, de 3 de mayo, de Educación, modificada por la Ley Orgánica 3/2020, de 29 de diciembre*<sup>4</sup>. (BOE No. 106, of May 4, 2006)
- *Ley 4/2011, de 7 de marzo, de Educación de Extremadura*<sup>5</sup>. (BOE No. 70, of March 23, 2011).
- *Ley 1/1991, de 7 de enero, de modificación de los Códigos Civil y Penal en materia de responsabilidad civil del profesorado*<sup>6</sup>. (BOE No. 7, of January 8, 1991)
- *Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*<sup>7</sup> (BOE No. 281 of November 24, 1995).
- *Ley 15/2015, de 2 de julio, de la Jurisdicción Voluntaria*<sup>8</sup>. (BOE No. 158 of July 3, 2015)
- *Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil*<sup>9</sup>. (Gaceta de Madrid No. 206, of July 25, 1889)
- *Decreto 228/2014, de 14 de octubre, por el que se regula la respuesta educativa a la diversidad del alumnado en la Comunidad Autónoma de Extremadura*<sup>10</sup>. (DOE No. 202 of October 21, 2014)
- *Instrucción n.º 23/2014, de la Secretaría General de Educación, sobre actividades complementarias y extraescolares organizadas por los centros docentes sostenidos con fondos públicos de la Comunidad Autónoma de Extremadura*.<sup>11</sup>

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<sup>3</sup> Organic Law 8/1985, of July 3, 1985, regulating the Right to Education.

<sup>4</sup> Organic Law 2/2006, of May 3, 2006, on Education, as amended by Organic Law 3/2020, of December 29, 2006.

<sup>5</sup> Law 4/2011, of March 7, on Education in Extremadura.

<sup>6</sup> Law 1/1991, of January 7, 1991, amending the Civil and Criminal Codes regarding the civil liability of teachers.

<sup>7</sup> Organic Law 10/1995, of November 23, 1995, of the Penal Code.

<sup>8</sup> Law 15/2015 of July 2, 2015, on Voluntary Jurisdiction.

<sup>9</sup> Royal Decree of July 24, 1889, publishing the Civil Code.

<sup>10</sup> Decree 228/2014, of October 14, regulating the educational response to student diversity in the Autonomous Community of Extremadura.

<sup>11</sup> Instruction no. 23/2014, of the General Secretariat of Education, on complementary and extracurricular activities organized by publicly funded schools in the Autonomous Community of Extremadura.

[https://www.educarex.es/pub/cont/com/0047/documentos/Instruccion\\_Actividades\\_Complementarias\\_y\\_Extraescolares\\_23\\_09\\_2014.pdf](https://www.educarex.es/pub/cont/com/0047/documentos/Instruccion_Actividades_Complementarias_y_Extraescolares_23_09_2014.pdf)

- *Instrucciones de la Dirección General de Política Educativa de 27 de junio de 2006, por la que se concretan las normas de carácter general a las que deben adecuar su organización y funcionamiento los Institutos de Educación Secundaria y los Institutos de Educación Secundaria Obligatoria de Extremadura*<sup>12</sup>.

[http://sauce.pntic.mec.es/falcon/in\\_segreg.pdf](http://sauce.pntic.mec.es/falcon/in_segreg.pdf)

- *V Convenio Colectivo para el personal laboral al servicio de la Junta de Extremadura*<sup>13</sup>.
- *Orientaciones para la actuación de los centros docentes en los casos de progenitores o tutores legales divorciados o separados o parejas de hecho que han finalizado su convivencia. Servicio de Inspección General de Educación y Evaluación de la Consejería de Educación y Empleo de la Junta de Extremadura*<sup>14</sup>.

[https://www.educarex.es/pub/cont/com/0050/documentos/orientaciones\\_vfinal.pdf](https://www.educarex.es/pub/cont/com/0050/documentos/orientaciones_vfinal.pdf)

## 2.2. Evaluation and conclusions

After the proceedings carried out and the analysis and evaluation, in accordance with the regulations, of the information contained in the file, the undersigned inspector concludes the following:

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<sup>12</sup> Instructions of the General Directorate of Educational Policy of June 27, 2006, specifying the general rules to which the Secondary Education Institutes and the Compulsory Secondary Education Institutes of Extremadura must adapt their organization and operation.

<sup>13</sup> V Collective Bargaining Agreement for labor personnel in the service of the Regional Government of Extremadura.

<sup>14</sup> Guidelines for the action of educational centers in cases of divorced or separated parents or legal guardians or unmarried couples who have ended their cohabitation. General Inspection Service of Education and Evaluation of the Department of Education and Employment of the Regional Government of Extremadura).

**First.** - In favor of the precise delimitation of the rights of students and the obligations of teachers in public schools regarding participation in activities, it is necessary to bring up here the definition of extracurricular activities set forth in section Two.1.b) of Instruction No. 23/2014, already mentioned.

In this section, extracurricular activities are defined as “those educational activities that, being consistent with the Educational Project of the center and being able to be part of the school curriculum, have been organized by the center or by other entities to allow greater participation of the educational community by enhancing the life of the center and developing values related to socialization, participation, cooperation, and coexistence. These activities will take place outside school hours, either inside or outside the school grounds, and will be voluntary for teachers and students”.

This voluntary nature of extracurricular activities is also included in article 51 of Organic Law 8/1985, of July 3, 1985, in article 88 of Organic Law 2/2006, of May 3, 2006, and in point 40 of the Instructions of the General Directorate of Educational Policy of June 27, 2006.

In order to highlight the existing difference between the nature of complementary and extracurricular activities and to be able to establish the rights and duties that, both for the students and for the teaching staff and the Educational Administration -in terms of the provision for their development- derive therefrom, suffice it to point out that article 91, letter f), of Organic Law 2/2006, of May 3, contemplates as one of the functions of the teaching staff that of promoting, organizing and participating in the complementary activities programmed by the centers, but does not do the same with extracurricular activities.

**Second.**- It should be noted that, while the complementary activities, when carried out during school hours, whether inside or outside the school premises, are contemplated within the obligatory timetable of the teaching staff at the center (set at 25 hours per week, according to point 116 of the Instructions of June 27, 2006, For

this reason, the participation of the teaching staff in them is mandatory, according to what has been established in the Annual General Program, but this is not the case with extracurricular activities (as in the present case), since the latter are carried out, in whole or in part, outside the working day.

**Third.-** As extracurricular activities are not compulsory for students or teachers, they cannot, therefore, be considered *stricto sensu* as educational activities that should generate the same guarantee of full satisfaction of rights for all students and the corresponding obligations of provision of resources for the educational administration as those of other teaching activities and complementary educational services that are inherent to the full exercise and enjoyment of the right to compulsory education, which, as a right and a duty, is universal and free of charge.

In this regard, Law 4/2011, of March 7, in its article 36, referring to complementary educational services and their compensatory nature, states that the purpose of these services is to facilitate the access and permanence of students in the educational system under equitable conditions and to enable the reconciliation of work and family life. The Law, in its articles 37 to 40, considers as compulsory the provision in the educational system of transportation services, school canteens, morning classes and school residences, but does not include in them, due to their very nature, extracurricular activities.

**Fourth.-** In light of an objective analysis of the facts, it can in no way be maintained —contrary to what could be deduced from the complaint filed by Mr. AJCR before the Ombudsman— that neither the IES AAA, where the student ACD is studying, nor the Educational Administration of the Autonomous Community of Extremadura, to which this center belongs, have excluded, limited or undermined in a discriminatory manner the student's right to participate, with absolute normality and the same guarantees as those offered to other students, have excluded, limited or discriminatorily impaired the right of the student to participate, with absolute

normality and the same guarantees as those offered to the rest of the students, in any of the extracurricular activities organized by the educational center. Not only has the participation of the ACD student in the extracurricular activities not been impeded or hindered, due to his condition of diabetic, but, on the contrary, in a proactive manner, the center has provided the most adequate and competent personal resources available so that this student can participate in them together with his classmates.

**Firth.-** As well as having adopted the IES AAA all the measures of a general nature that, for the realization of extracurricular activities, prescribed by the applicable regulations, by virtue of the transfer of custody and de facto guardianship in the educational center that the parents institute when authorizing the participation of their children in an extracurricular activity, and whose assumption of responsibilities by the educational center is referred to in articles 22 of the Penal Code and 1903 of the Civil Code, it should be emphasized that, in the specific case of the language immersion and adventure trip to "Espacio Los Molinos", the educational center has taken extreme prevention and guarantees for the student ACD, by deciding to accompany the group participating in the activity, with special dedication to the control of glucose levels and supervision of food, the school has taken extreme precautions and guarantees for the student ACD, by deciding to accompany the group participating in the activity, with a special dedication to the control of glycemia and supervision of ACD's diet, the teacher BCC, who, as already stated in this report, has the solvency to act in case of an eventual alteration in the levels of glycemia, provided, of course, that the parents of the student provide the school with the specific medical prescription and an informed consent so that the accompanying teacher can, in case of emergency, provide the student with the necessary treatment.

The parents of ACD must also provide the BCC teacher with the rescue drugs and the glucagon kit that the student must carry with him and authorize in writing the



teacher's access to the glucometer installed in the child's mobile device. Therefore, it would be wrong to demand from the teaching staff the maximum zeal in the custody, control and monitoring of the health of diabetic students, without the correlative obligation of the family to inform about the health situation of the student and to provide maximum collaboration.

Conversely, if ACD attended the excursion and his parents did not authorize the access of the teacher BCC to the student's mobile device, we could be, on the part of the parents, faced with an abandonment of the duties inherent to parental authority (a crime typified in article 226 of the Penal Code), by consenting to the participation of their child in the extracurricular activity without having provided the accompanying teacher with the necessary means to attend to a possible metabolic crisis of the child; moreover, in the absence of this unavoidable parental collaboration, the undersigned inspector believes that the school would be entitled to not authorize the participation of the student in an activity that, as an extracurricular activity, is not mandatory; in the absence of this unavoidable parental collaboration, the undersigned inspector understands that the educational center would be entitled not to authorize the participation of the student in an activity which, as an extracurricular activity, is not compulsory, and, moreover, for the patrimonial, civil or criminal liability that could derive from that lack of collaboration for the teaching staff, the educational center and the Educational Administration, without the parents having provided the accompanying teachers with the necessary means to exercise the custody of the student with all the guarantees of health and with the due legal security.

**Sixth.-** We understand that the demand made by Mr. AJCR to the Educational Administration of the Autonomous Community of Extremadura —which the Ombudsman echoes— that in the extracurricular activities organized by the center his son be accompanied by a nurse, constitutes a claim that, in addition to lacking legal protection and administrative viability in our autonomous community,



may not even be convenient from an educational point of view, if we are to look for the full inclusion and normalization of the ACD student's school life, as will be justified later on.

Mr. AJCR's claim that the Administration should arrange for a nurse to accompany his son in the extracurricular activities carried out outside the school has no legal support, since the provision of this resource does not constitute —as we have already pointed out— an unavoidable requirement affecting the provision of the right to education under equal conditions, in the exact terms in which inclusion and equity are defined in the current Organic Law on Education and its regulatory developments, nor does the figure of the school nurse accompanying children in extracurricular activities have a correlate in the rest of Spain.

In Extremadura, under the "Collaboration Protocol between the Regional Ministry of Health and Social Policies and the Regional Ministry of Education and Employment, for the assignment, by the autonomous body Extremadura Health Service, of nursing staff to schools for the health care of students with specific educational support needs", there are little more than a dozen educational centers that have a school nurse as a resource of the center, but we must warn that, among its functions —which are performed exclusively during the school day—, it is not contemplated in any case to accompany the students affected by various pathologies in extracurricular activities outside the center and school hours.

According to the second section of the aforementioned protocol, and in order to comply with the provisions of Article 19 of Decree 228/2014, of October 14 -which considers students with specific educational support needs to be those who are in an unfavorable health situation-, the Department of Education has been temporarily hiring labor personnel with the professional category of middle grade degree, specialty ATS or DUE, to meet the health care needs of students who unavoidably require, during the school day (we emphasize this point),

permanent health care and attention, without which their schooling would not be possible under reasonable conditions of normality, a category which does not include the situation in which the ACD student finds himself.

Furthermore, as we have said, if attendance to extracurricular activities is not among the obligations of the teaching staff required by the legislation in force, neither could it be required —beyond the voluntary nature— to the nursing health personnel assigned to the educational centers, whose labor regime is regulated by the "V Collective Agreement for the labor personnel at the service of the Regional Government of Extremadura", the attendance to extracurricular activities that are carried out outside the educational center and the school timetable, and that exceed the limit of their working day, so that the claims of Mr. AJCR could not be satisfied either.

**Seventh.**- As stated in the Ombudsman's letter (see Document n. 1), if the student's father states that, as his son "is an insulin-dependent person, it is necessary for health personnel to carry out the controls at night on days when they cannot be carried out by his parents, as he has to spend the night away from his home", it can be inferred that, given that neither of ACD's parents are health professionals (the father is a cab driver and the mother works as an administrative assistant), it is logical to think that the same care that, for the monitoring of his diabetes, ACD is receiving from his parents at night, in the family home, can be received during the nights when he is going to spend the night away from his home, ACD is usually receiving from his parents during the nights at the family home, can be received during the nights when he is going to spend the night away from home by the teacher BCC, who —as we have said—, having a diabetic child and being the health referent of the center (advised, moreover, technically by the referent nurse of the center), can receive the same attention during the nights when he is going to spend the night away from home, she knows perfectly well the protocols and treatment guidelines, both in terms of glycemic control and for administering glucagon in a possible crisis situation. Furthermore, as an educator who, along with the rest of the teaching staff,

will be responsible for the student's care during the extracurricular activity, she is obligated, following jurisprudential criteria, to act in accordance with the standards of a "diligent parent" (*diligencia de un buen padre de familia*, terminology from the Civil Code, article 1104). This obligation is underscored by the duty of rescue and assistance (as specified in article 195 of the Penal Code) that applies to any member of the educational community responsible for the students under their care.

**Eighth.-** Given the impossibility of having a permanent public health representation in each school—a fact that does not occur anywhere in the State and that seems to exceed the reasonableness of what is required of the Administration, since it would be difficult to sustain such an educational system under the prism of the principles of necessity, proportionality and efficiency in the use of public resources—, and although teachers are not assigned as one of their functions of those listed in article 91 of Law 2/2006, of May 3, the health assistance to students, the Administration has established in the "Protocol of Action in case of Health Emergencies in Educational Centers in Extremadura" (for the case in question), pages 61 to 62, the Educational Administration of the Autonomous Community of Extremadura has established in the "Protocol of Action in case of Health Emergencies in the Educational Centers of Extremadura" (for the present case, pages 61 to 64 are of interest) and in the "Protocol of attention to children and adolescents with diabetes at school", that in each educational center there is a referent teacher of health, who will always act in accordance with the mandatory self-protection and emergency plans of the center and—in the case of diabetic students— will be in contact with the Diabetes Mellitus referral nurse of the primary care team in whose health area the school is located, especially in the case of urgent situations.

The established functions of the health referral teacher for the care of diabetic students are those of support in blood glucose control and insulin administration, always according to the age and degree of autonomy of the

person with DM and the diabetic control guideline established by the health services. These functions are safe and do not require specific medical knowledge, so they can be assumed by the teachers who accompany the ACD student on the excursion, after receiving minimal training. It should be noted that the ACD student injects insulin by him/herself during his/her stay at the school.

**Ninth.-** None of the aforementioned protocols, nor in the current regional regulations on health and education, includes the obligation - or even the possibility - that health personnel from health centers accompany diabetic students in extracurricular activities. It does state that schools and the professionals who work in them must know and apply these protocols, as well as adapt their organizational rules to the circumstances of diabetic students, as has been always done by the IES AAA with the student ACD. In this way, the possible responsibilities of the educational center for what the legal doctrine calls *culpas in organizando, in eligendo or in vigilando* that, if applicable, could be demanded, would be avoided.

**Tenth.-** In point 4 of the Ombudsman's letter (see Document No. 1) it is stated that "the Educational Administration should not exclude children with diabetes from this type of training activities, a problem that is constantly growing and requires solutions that allow progress in full educational inclusion and equity, guaranteeing equal opportunities for the full development of the personality through education, overcoming any discrimination and achieving better levels of accessibility to the educational system".

The undersigned inspector considers that, as far as the student ACD is concerned, the Ombudsman's admonition is irrelevant, since, as has already been explained here, at no time has IES AAA excluded the student from any educational activity —either school or extracurricular— and in all cases it has

proposed solutions to the family that guarantee the full inclusion of their son and the development of his academic life under normal conditions.

The actions of the educational center have always been respectful of the provisions of articles 9.2, 10.1, 14, 27.1 and 2, 39.4 and 43 of the Constitution, as far as the diabetic condition of the ACD student is concerned. There can be no doubt that his integration in the school environment is full, free of obstacles and develops under equal conditions with the rest of the students, and that his access to and permanence in the educational system prescribed in article 6. 3j) of Organic Law 8/1985, of July 3, 1985, and that neither the educational center, nor the educational administration to which the center belongs, have violated the premises established in Title II, "Equity in Education", of Organic Law 2/2006, of May 3, 2006.

**Eleventh.**- Regarding the core of this report, namely Mr. AJCR's request, submitted to the Ombudsman, for the administration to assign a nurse to assist his son during extracurricular activities organized by IES AAA, as the applicant does not consider the resources established by the educational institution to be sufficient, I would like to point out that the Ombudsman institution itself, in its response dated December 13, 2022, to Complaint No. 22008991 filed against the Mayor's Office of the City of Madrid regarding the provision of healthcare personnel in childcare centers, concludes that "it is not the role of this institution to determine whether the healthcare needs of students should be met through coordination between the education and healthcare administrations, by assigning educational institutions to healthcare centers or zones, or through the inclusion of healthcare personnel in childcare centers, among the various possible options". "This is part of the freedom of choice which, within the framework of political action, the competent authorities have to determine the mode of organization and provision of services and in which the Ombudsman cannot interfere", words that only reinforce the thesis supported here by the Education Inspectorate.

**Twelfth.-** Although it is humanly understandable the concern and legitimate interest of the parents of ACD to procure the best educational and health care for their son, it cannot be said that the Educational Administration of the Autonomous Community of Extremadura has not given in this case signs of interest in providing adequate attention to the student and, with regard to the extracurricular activities in which he has participated and will participate in the future, provide all the personal resources available to the Administration to prevent and attend with guarantees of effectiveness the health episodes that diabetes could cause, so there is no basis for administrative inactivity, nor is there any breach of the constitutional principle of equality or of the minor's right to education, since the necessary and sufficient measures have been taken to duly attend to the specific needs that the student ACD presents for his schooling and his full integration into the school environment.

**Thirteenth.-** As corollary of this report and from a strictly educational point of view, it is worthwhile to make the following reflection and ask ourselves if the demand of Mr. AJCR that his son has the resource of a school nurse to attend extracurricular activities, or any other solution outside the center that could have been arbitrated for this case —such as the assistance to the activity of one of the parents or that of a member of the Diabetic Association to which they belong—, would not go precisely, as overprotection of the minor, to the detriment of the full inclusion and the necessary normalization of the student's health situation. This measure could even undermine the autonomy that should be granted to a 13 year old adolescent in order for him to reach the maximum development of his personality, since it would unnecessarily signify him to the rest of the students, a risk that is avoided by the attendance to the activity of the teacher BCC, known by all the students and who will be at all times vigilant to the health risks of ACD, but who will do so with absolute discretion, so that no one can perceive ACD as unequal, a circumstance that could occur if —without requiring it in an

unavoidable way his diabetic condition— the student attended the excursion accompanied by his parents or by personnel outside the center.

After analyzing, assessing, and weighing the facts and circumstances described in this report, the inspector makes the following recommendations.

### 3. PROPOSALS AND ACTIONS

**First.-** That the Councilor for Education, endorsing —if she deems it appropriate— the terms and conclusions of the report of the Education Inspectorate, request the Ombudsman not to admit for processing the complaint filed with that institution by Mr. AJCR, as there are no circumstances at IES AAA that have prevented or undermined the participation of his son, on equal terms with the rest of the students, in the extracurricular activities organized by the center, and because both the school management and the head of the Provincial Delegation of Education have informed the parents of the student that, for the activity of linguistic immersion, leisure and adventure to be developed in the "Espacio Los Molinos", in the Sierra de Guadarrama, all the measures contemplated in the applicable regulations and in the protocols established by the Junta de Extremadura for the care of students with chronic illnesses have been taken, We would also like to highlight the commendable voluntary collaboration of the teachers of the accompanying school in the excursion, without prejudice to the punctual intervention that could be demanded, in case of a serious situation, to the nearest health services, so that the educational and health care of the student is guaranteed.

**Second.-** Since the attendance of the student ACD to a long-term extracurricular activity outside the school day is an aspect of parental authority that requires the authorization of both parents, as stated on page 6 of the document of the General Inspection Service of Education and Evaluation of the



Ministry of Education and Employment of the Junta de Extremadura entitled "Guidelines for the action of schools in cases of divorced or separated parents or legal guardians or unmarried couples who have ended their cohabitation", and given that the father of the student, Mr. AJCR, has not signed the authorization — as the mother has—, the education inspector will advise the school management to convey to both parents that it would be appropriate to submit this disagreement to the judicial authority and promote a voluntary jurisdiction file, regulated in art. 86 of Law 15/2015, of July 2, what is legally known as an incident of parental authority, regulated in article 156 of the Civil Code: "In case of disagreement in the exercise of parental authority, either of the two may go to the judicial authority, who, after hearing both and the child if he/she has sufficient maturity and, in any case, if he/she is older than twelve years, will attribute the power to decide to one of the two parents".

**Third.-** Regardless of advising the parents to proceed with the aforementioned legal process and, above all, in the best interest of the child (which, in my opinion, would involve ACD's participation, alongside his peers, in the linguistic immersion, leisure, and adventure trip to the Guadarrama mountains, given that the potential risks are low and would be adequately controlled), in the exercise of the mediating function entrusted to the Educational Inspection by article 151, section h of Organic Law 2/2006, dated May 3, in its current wording ("Guiding school management teams in adopting and monitoring measures that promote coexistence, community participation, and conflict resolution, and actively participating, when necessary, in mediation processes"), and also in line with the authority granted to education inspectors by article 183, section c of Law 4/2011, dated March 7 ("Mediating in situations of conflict that may arise among different actors in the education system"), my intention is to meet, in the presence of the school principal and ACD's tutor, with the student's father to advise him to consent to his son's participation in this extracurricular activity and to also sign the required authorization. This is to prevent the potential



emotional harm that the child's exclusion from the activity could cause and to contribute to his better personal, social, academic, and cultural development.

It is my duty to inform you and propose to you that, with your superior and legally grounded judgment, you will make the decision.

### III. REFERENCES. HEALTH CARE IN EDUCATIONAL CENTERS

#### ANDALUCÍA

-*Guía para la atención educativa a los alumnos y alumnas con enfermedad crónica.* 2004.

[https://www.juntadeandalucia.es/export/drupaljda/salud\\_5af9587000de8\\_diabetes\\_infancia.pdf](https://www.juntadeandalucia.es/export/drupaljda/salud_5af9587000de8_diabetes_infancia.pdf)

-Aguirre, P., Angulo, M. C., Estrella, G., Motero, I. y Prieto, I. (2013). *Manual de atención al alumnado con necesidades específicas de apoyo educativo por padecer enfermedades raras y crónicas.* Consejería de Educación, Junta de Andalucía. Tecnographic.

[https://www.juntadeandalucia.es/export/drupaljda/salud\\_5af958761659b\\_manual\\_atencion\\_alumnadoEERR.pdf](https://www.juntadeandalucia.es/export/drupaljda/salud_5af958761659b_manual_atencion_alumnadoEERR.pdf)

#### ARAGÓN

-*Ficha de Escolar con Diabetes.* 2012.

[https://www.fundaciondiabetes.org/upload/articulos/50/Ficha\\_escolar\\_DIABETES.pdf](https://www.fundaciondiabetes.org/upload/articulos/50/Ficha_escolar_DIABETES.pdf)

-*Resolución de 16 de marzo de 2015, de la Dirección General de Ordenación Académica, la Dirección Gerencia del Servicio Aragonés de Salud y la Dirección General de Salud Pública, por la que se dictan instrucciones relativas a la organización y el funcionamiento de la atención sanitaria no titulada en los centros docentes de la Comunidad Autónoma de Aragón.* BOA núm. 119, de 24 de junio de 2015.

<https://www.boa.aragon.es/cgi-bin/EBOA/BRSCGI?CMD=VEROBJ&MLKOB=861785925050>

#### CANARIAS

*Guía de Atención a Escolares con Diabetes*. 2010.

[Guía Didáctica. Diabetes Mellitus en la Infancia y Adolescencia \(gobiernodecanarias.org\)](http://gobiernodecanarias.org)

## **CASTILLA Y LEÓN**

*Protocolos de actuación ante urgencias sanitarias en los centros educativos de Castilla y León*. 2004.

<http://www.educa.jcyL.es/es/protocolos>

## **CASTILLA-LA MANCHA**

*-Protocolo de Diabetes en la escuela*. 2011.

<https://www.educa.jccm.es/profesorado/es/prevencion-riesgos-laborales/gestion-prevencion-riesgos-laborales-centros-educativos-pub/documentacion-informacion-formacion-trabajadores-as-centros>

-Valmaña, S., Galán, C. (2015). *Protocolo unificado de intervención con niños y adolescentes de Castilla La-Mancha*. Consejería de Sanidad y Asuntos Sociales. IMP Comunicación.

## **CATALUÑA**

*Modelo de atención a los niños y niñas con Diabetes en el ámbito escolar*. 2010.

[https://salutweb.gencat.cat/ca/ambits\\_actuacio/per\\_perfiles/centres\\_educatius/infancia\\_i\\_malaltia/diabetis\\_a\\_lescola/](https://salutweb.gencat.cat/ca/ambits_actuacio/per_perfiles/centres_educatius/infancia_i_malaltia/diabetis_a_lescola/)

## **CEUTA Y MELILLA**

*Guía de Actuación ante emergencias sanitarias en centros educativos de Ceuta*. 2013.

[https://ingesa.sanidad.gob.es/bibliotecaPublicaciones/publicaciones/internet/Guia\\_centros\\_educativos.htm](https://ingesa.sanidad.gob.es/bibliotecaPublicaciones/publicaciones/internet/Guia_centros_educativos.htm)

## COMUNIDAD VALENCIANA

*Resolución de 1 de septiembre de 2016, de la Conselleria de Educación, Investigación, Cultura y Deporte, y de la Conselleria de Sanidad Universal y Salud Pública, por la cual se dictan instrucciones y orientaciones de atención sanitaria específica en centros educativos para regular la atención sanitaria al alumnado con problemas de salud crónica en horario escolar, la atención a la urgencia previsible y no previsible, así como la administración de medicamentos y la existencia de botiquines en centros escolares.* DOCV núm. 7865, de 5 de septiembre de 2016.

[https://dogv.gva.es/datos/2018/06/18/pdf/2018\\_5900.pdf](https://dogv.gva.es/datos/2018/06/18/pdf/2018_5900.pdf)

## EXTREMADURA

*-Protocolo de atención al niño/a y adolescente con Diabetes en la Escuela.* 2010.

<https://www.educarex.es/pub/cont/com/0004/documentos/PROTOCOLO%282%29.pdf>

*-Protocolo de actuación ante urgencias sanitarias en los centros educativos de Extremadura,* Junta de Extremadura. 2016.

[https://www.educarex.es/pub/cont/com/0004/documentos/PROTOCOLO\\_URGENCIAS\\_en\\_CENTROS\\_EDUCATIVOS.pdf](https://www.educarex.es/pub/cont/com/0004/documentos/PROTOCOLO_URGENCIAS_en_CENTROS_EDUCATIVOS.pdf)

*-Protocolo de colaboración entre la Consejería de Sanidad y Políticas Sociales y la Consejería de Educación y Empleo, para la asignación, por parte del organismo autónomo Servicio Extremeño de Salud, de personal de enfermería a centros educativos para la atención sanitaria de alumnos con necesidades específicas de apoyo educativo.* 2016.

<https://www.educarex.es/pub/cont/com/0004/documentos/Protocolo%281%29.pdf>

## GALICIA

*Atención al Alumnado con Diabetes,* ANEDIA y Xunta de Galicia. 2015.

<https://www.edu.xunta.gal/portal/es/node/22670>

## **MADRID**

-*Guía informativa sobre Diabetes Mellitus tipo 1 en los centros escolares*. 2007.

<https://gestion3.madrid.org/bvirtual/BVCM017672.pdf>

-*Estrategia para la mejora de la atención al alumnado de Educación Infantil y Primaria que sufren determinadas patologías crónicas*. 2010.

[https://www.fundaciondiabetes.org/upload/articulos/75/estrategia\\_escuelaCAM.pdf](https://www.fundaciondiabetes.org/upload/articulos/75/estrategia_escuelaCAM.pdf)

-*Orden 629/2014, de 1 de julio, conjunta de la Consejería de Sanidad y de la Consejería de Educación, Juventud y Deporte por la que se establece la colaboración entre ambas para la atención sanitaria de alumnos escolarizados en centros públicos de la Comunidad de Madrid que presentan necesidades sanitarias de carácter permanente o continuado*. BOCM, núm. 73, de 23 de julio de 2014.

<https://www.bocm.es/2014-07-23-173210720140249>

## **PAÍS VASCO**

-*Protocolo de atención al alumnado con diabetes tipo 1 en el ámbito escolar*. 2020.

[https://www.euskadi.eus/contenidos/documentacion/inn\\_doc\\_esc\\_inclusiva/es\\_def/adjuntos/escuela-inclusiva/protocolo\\_escolar\\_diabetes\\_tipo\\_1\\_c.pdf](https://www.euskadi.eus/contenidos/documentacion/inn_doc_esc_inclusiva/es_def/adjuntos/escuela-inclusiva/protocolo_escolar_diabetes_tipo_1_c.pdf)

-*Urgencias Sanitarias en la escuela. Guía para centros docentes*. Gobierno Vasco. 2015.

<https://www.euskadi.eus/informacion/urgencias-sanitarias-en-la-escuela-guia-para-centros-docentes/web01-a3infan/es/>

