

5. How Should Needed Services and Accommodations Be Requested?

The process of deciding what services and accommodations will be provided to a student with diabetes cannot begin until the school is aware that the student may have a disability and may need such services. This Part discusses what is required to begin this process. Typically this process begins when parents or guardians inform school officials that their child has diabetes and request (often informally) that services be provided. However, schools also have an obligation under certain circumstances to independently identify and evaluate students who may have a disability

5.1 What obligation does a school have to identify students who may need modifications or accommodations?

The process for developing an accommodation plan for a student cannot begin until that student has been identified by or to the school as potentially having a disability that requires accommodation. In many cases, the parents or guardians will bring the fact of the student's diabetes to the attention of school officials, but schools must take some steps to locate and evaluate children with disabilities. Public schools must attempt to identify and locate those students who are not receiving a public education but who may need modifications or accommodations (an obligation known as the "child find" requirement). Schools must also initiate the evaluation process for a student, even one already attending the school, where it has reason to believe, based on information or observation, that the student may have a disability requiring aids or services. Students with diabetes may come to the attention of school personnel based on the initial diagnosis and the accompanying absences from school, or through other means. When a student is identified, schools should promptly initiate the process to determine and provide appropriate modifications or accommodations to the child with diabetes.

Notes

Section 504 and the Individuals with Disabilities Education Act (IDEA) require that public elementary or secondary schools undertake to identify and locate children with disabilities who are not receiving a public education and inform parents or guardians of those children of the public schools' obligation toward those who have disabilities. 34 C.F.R. § 104.32 (Section 504); 20 U.S.C. § 1412(a)(3) (IDEA state requirements); 34 C.F.R. § 300.111 (IDEA child find regulations).

However, schools are not required to screen students for diabetes or undertake outreach efforts targeted at diabetes or other specific diseases. *Akers v. Bolton*, 531 F. Supp. 300 (D. Kan. 1981) (district had no obligation to make specific efforts to identify children with epilepsy). The Supreme Court in *Vernonia School District 47J v. Acton*, 515 U.S. 646, 658 (1995), suggested (without deciding the question) that conducting random urine tests to identify which students had diabetes might violate a student's right to privacy. Nevertheless, every state requires that students undergo school health examinations and screening for

diabetes may be required as part of a school health examination. *See, e.g.*, 105 ILCS 5/27-8.1 (Illinois requirement).

Districts must also evaluate children to determine eligibility for special education or related services where the district knows or should know that the child may have a disability and may need such services. This amounts to a requirement that a district “find” particular children where there is reason to think they may be eligible for services. IDEA requires the district to ensure that all children with disabilities who need special education and related services are evaluated. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a)(1). Section 504 requires that “[a] recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation … of any person who, because of handicap, needs or is believed to need special education or related services”. 34 C.F.R. § 104.35(a). OCR has held that the fact a student has been diagnosed with diabetes and requires services outlined in a diabetes care plan at school is sufficient information to put a district on notice that a student may be in need of services under Section 504 and therefore is entitled to an evaluation. *See Batavia (OH) Local Sch. Dist.*, Complaint No. 15-11-1110, 111 LRP 70127 (OCR 2011); *Kettering (OH) City Sch. Dist.*, Complaint No. 15-07-1207, 109 LRP 32473 (OCR 2009); *Sandusky (OH) City Sch. Dist.*, Complaint No. 15-08-1062, 108 LRP 66797 (OCR 2008) (district knew student had diabetes and had a detailed treatment plan from the student’s doctor, and parents and school nurses had expressed concerns about the care the student was receiving); *Rock Hill (OH) Local Schs.*, Complaint No. 15-05-1181, 106 LRP 35138 (OCR 2005). Schools sometimes believe that a school-developed health plan is sufficient to avoid the need for a 504 evaluation, but this is incorrect. *See Question 7.4*. On the other hand, in *Clark County Sch. Dist.*, 114 LRP 45477 (Nev. State Educational Agency 2014), a state review officer found that a district did not violate its child find obligations under IDEA, where there was no evidence that the student’s diabetes affected his academic performance and therefore the district had no reason to suspect that the student required special education as well as related services. (This decision turns on the different legal standards for eligibility under IDEA, as discussed in Question 4.7).

In *Memphis (TN) City Sch. Dist.*, Complaint No. 04-10-5002, 112 LRP 26130 (OCR 2012), OCR found that a district violated Section 504 by having a practice of not referring students with diabetes and other conditions for 504 evaluations, based in part on evidence showing that only very small numbers of students with such medical conditions actually had 504 plans. *See also Sarasota County (FL) Sch. Dist.*, Complaint No. 04-09-1571, 60 IDELR 261 (OCR 2012) (district agreed to evaluate students with diabetes for 504 eligibility after OCR criticized its practice of refusing to evaluate students with diabetes unless they demonstrated limitations in learning); *San Jacinto (CA) Unified Sch. Dist.*, Complaint No. 09-13-1049, 113 LRP 12681 (OCR 2012) (district agreed to evaluate and develop 504 plans for students with diabetes in accordance with practices outlined in the NDEP guide (see Question 1.5)); *Forest Hills (OH) Local Sch. Dist.*, Complaint No. 15-09-1280, 58 IDELR 114 (OCR 2011) (district agreed to overhaul its 504 evaluation policies and practices, which provided for 504 evaluations only when parents requested them). Cf. *Hamilton (OH) Local Sch. Dist.*, Complaint No. 15-10-1123, 58 IDELR 82 (OCR 2011) (district had a practice of not evaluating students even when it had evidence that the students’ medical conditions were causing significant attendance problems).

School officials should seek out those students who may need accommodations, rather than waiting to be contacted by parents or guardians. *See Isle of Wight County (VA) Pub. Schs.*, Complaint No. 11-10-1044, 56 IDELR 111 (OCR 2011) (rejecting argument that district had no duty to evaluate for 504 eligibility where parent never requested an evaluation, and expressing concern over district’s over-reliance on parent requests for evaluations); *Opelika (AL) City Sch. Dist.*, Complaint No. 04-09-1182, 111 LRP 47376 (OCR 2011) (Section 504

coordinator's belief that a student was adequately served by a health plan and that the parent had never expressed any concerns despite being asked to do so did not excuse the district's failure to conduct a 504 evaluation). Teachers, nurses, and counselors must be prepared to make referrals for possible services based on personal observations of a student's behavior and performance or information received from parents or others. *Fayette County (KY) Sch. Dist.*, Complaint No. 03-05-1061, 45 IDELR 67 (OCR 2005) (district violated Section 504 by failing to evaluate student with diabetes who had recently transferred into the district because, even though student received some health care services under a school health care plan, he was experiencing depression and behavior problems and had attempted suicide); *Hamilton Heights (IN) Sch. Corp.*, Complaint No. 05-02-1048, 37 IDELR 130 (OCR 2002) (finding that Section 504 satisfied where referrals were made by teachers, nurses, and counselors, based on "those individuals' personal observations of the students' behaviors and requests from parents, and information from physicians").

5.2 Are schools required to notify parents of the availability of services under Section 504 and the Americans with Disabilities Act?

Yes. Schools must make efforts to inform parents/guardians and students of the school's obligation to provide services under Section 504 and the ADA. Notice must be given of the school's obligation to provide a free, appropriate public education to students with disabilities and to provide related aids and services needed by those students. However, schools need only make efforts to provide public notice of these rights and obligations; schools are not required to ensure that every parent/guardian and student actually is aware of them.

Notes

Schools are required to provide appropriate notice to parents or guardians of all students enrolled of the availability of services pursuant to Section 504 and the ADA. 34 C.F.R. § 104.32 (Section 504); 28 C.F.R. § 35.106 (ADA Title II). The notice must include information regarding the parents' or guardians' right to request an individual evaluation of their children to determine a student's eligibility for services. See *Elkhart (IN) Community Sch. Corp.*, Complaint No. 05-00-1026, 34 IDELR 13 (OCR 2000) (requiring that notices be given as part of voluntary resolution; specific notice required of all students with diabetes at time of resolution).

5.3 Must a parent or student make a formal request to trigger a school's obligation to provide accommodations?

No. As discussed earlier (see Question 5.1), Section 504 requires that an evaluation be initiated where a school knows or believes a child may need special education or related services. No formal request is required, and in fact a child may be evaluated and services provided even if the parent or guardian objects. However, it is a good idea for the parent/guardian or student to make a formal request for accommodations and services, rather than waiting for the school to act, especially for disabilities like diabetes which may not be readily observable by others.

5.4 To whom are requests for modifications or accommodations made?

As a practical matter, initial requests for modifications or accommodations are often directed to the school's principal or school nurse. However, school districts (except those which are very small) must designate individuals to coordinate efforts to comply with Section 504, the ADA and the IDEA. School districts frequently designate the same individual to coordinate compliance efforts under all three laws, although this is not always the case. Frequently these individuals are responsible for processing requests for modifications. While teachers, principals, or nurses should forward such requests to these individuals where appropriate, it can be helpful for parents or guardians to make the request directly to the person who is responsible for processing it. The school's student handbook should include contact information for individuals who are responsible for compliance with anti-discrimination laws.

Notes

Section 504's regulations require that a recipient that employs 15 or more persons must designate at least one person to coordinate its efforts to comply with the law's requirements. 34 C.F.R. § 104.7(a). The regulations also require that a recipient take appropriate initial and continuing steps to notify participants in school programs and activities and other interested persons of the identity of the recipient's 504 coordinator. 34 C.F.R. § 104.8. Sometimes the person who is designated as the 504 coordinator holds another primary job title.

Most school districts also have a special education coordinator who can be contacted about issues relating to students who are eligible for special education under IDEA.

5.5 How should an accommodation request be initiated?

Parents or guardians are not required to suggest modifications or accommodations to begin the process for determining what services will be provided. It is enough to bring to the attention of school officials that the child has diabetes; school officials then have the duty to find appropriate accommodations. However, it is strongly recommended that parents or guardians request specific modifications and accommodations. This can eliminate confusion about what the child needs and wants, and can speed the process of determining what should be provided. Indeed, without specific accommodation requests and documentation to support them, schools have no reliable information on which to base health-related accommodation decisions for students with diabetes. An accommodation request may be submitted orally, and need not mention "modifications," "Section 504," or any other specific legal terminology. However, it is best to submit the request in writing. The request should include:

- Purpose of the request.

For example: I am the parent of [name], whose date of birth is [date] and am submitting this request to obtain accommodations under Section 504 of the Rehabilitation Act and the American with Disabilities Act. My child attends [school] and has type 1 diabetes.

- The limitations caused by the disability.

For example: As a result of my child's diabetes, her endocrine system does not function properly and she is at risk of serious health problems and even death if her condition is not properly treated. She is required to monitor blood glucose levels, take insulin, eat snacks, and have access to the restroom.

- How the condition will affect the skills and abilities expected of the student – including both life and academic skills and abilities.

For example: My daughter may at times have high or low blood glucose levels that may affect her concentration or ability to do school work, to eat, to walk or to care for herself.

- The types of accommodations requested.

For example: I am seeking for my daughter appropriate accommodations. Among others, she should be permitted to carry and use blood glucose monitoring supplies, snacks, water, and insulin as per her Diabetes Medical Management Plan (DMMP).

- Provide medical documentation of the disability.

For example: Enclosed is a letter from my daughter's physician confirming her diagnosis of diabetes. Also provided is the Diabetes Medical Management Plan developed for my daughter.

- Offer to participate in any needed evaluation or meeting to discuss accommodations.

For example: Because of the immediate and chronic needs my daughter has, I ask that you promptly consider this request. My daughter is available for any further evaluation you may need. Also, I am prepared to meet at your earliest convenience to discuss her situation.