



## **THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT (ADAAA) AND ITS IMPACT UPON CHILDREN WITH DIABETES**

### **FREQUENTLY ASKED QUESTIONS**

#### ***1. Why was the Americans with Disabilities Act (ADA) amended?***

In the past, some people with serious medical conditions, including diabetes, had difficulty in proving that they were protected by the Americans with Disabilities Act (ADA). The Americans with Disabilities Act Amendments Act (ADAAA), which went into effect on January 1, 2009, broadens the scope of ADA coverage to protect individuals with serious medical conditions even if they use mitigating measures – such as insulin and other medications – to treat their health conditions.

#### ***2. How does the ADAAA impact children with diabetes?***

The Americans with Disabilities Act Amendments Act (ADAAA) affects students with diabetes because it makes it even easier to prove that diabetes is a disability. The ADAAA amended the law in a number of ways, and the changes also apply to Section 504 of the Rehabilitation Act. Most notably for students with diabetes, ADAAA requires that when determining eligibility under Section 504, a school may not consider the use of medication (such as insulin) when determining whether a student is substantially limited in a major life activity. The ADAAA also expanded the list of major life activities to include major bodily functions – including the functioning of the endocrine system – as major life activities.

There is not much difference in eligibility determinations for students with diabetes as a result of the ADAAA. One reason for this is that the Office for Civil Rights at the U.S. Department of Education has long taken the position that “mitigating measures” such as insulin could not be considered when determining whether a student has a disability. Even though students with diabetes have had few problems showing they were covered by Section 504, the ADAAA makes it even easier to establish eligibility.

#### ***3. What changes does the ADAAA provide?***

The ADAAA changes the way a person can prove he or she is covered by the ADA and Section 504. The general requirement of proving eligibility stays the same: a child with diabetes qualifies for services, modifications, and protection from discrimination if his or her impairment - diabetes - substantially limits a major life activity. An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

The ADAAA also provides that certain bodily functions such as the function of the endocrine system are major life activities. Another key change is that, unlike the original law, the ADAAA provides a list of major life activities that include, but are not

limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

Additionally, the ADAAA provides that a child qualifies for services, modifications and protection from discrimination if he or she is substantially limited in a major life activity when a condition is active (i.e., during hypoglycemia or DKA) and when untreated – that is, how the child would be without insulin. The ADAAA requires school districts to make disability determinations without considering mitigating measures such as insulin or other medications.

However, the ADAAA does not change what a child is entitled to once he or she qualifies; for example, if a school previously agreed that a child was covered, but did not excuse the child from classroom or homework assignments, the ADAAA does not mean that now the child should be excused from these assignments. The focus of the statute is who is covered, not what happens when coverage is established.

**4. *Under the ADAAA, does any special evidence need to be shown that a child is covered, or can the parent just say he or she has diabetes?***

The ADAAA still requires schools, daycare centers, and other entities to consider whether the individual child qualifies for services under the ADA and Section 504. Although some schools do not question whether a child with diabetes qualifies for services, parents or guardians making a request for assessment under Section 504/ADA should explain why the child's diabetes is a disability under the law. You must do more than just state that the child has diabetes. You should start by stating that your child has a disability because he or she is substantially limited in their endocrine function. You can back this up by presenting a doctor's note that explains that your child has been diagnosed with diabetes and that the child is substantially limited in endocrine function because he or she does not produce insulin or does not properly utilize insulin. The doctor's note can further explain what would happen to your child if he or she didn't receive insulin – that his or her blood glucose will rise leading to DKA and rapid deterioration, and that the child will die within a matter of days if not given insulin. The doctor can also explain how your child is limited in thinking, concentrating, and caring for him/herself during hypoglycemia and hyperglycemia.

**5. *Is a student with diabetes still eligible for services under Section 504 if he/she is academically performing and has no trouble learning?***

Yes. Unlike the Individuals with Disabilities in Education Act (IDEA), which considers whether a student's disability makes it difficult for them to learn, Section 504 is a broad civil rights law applying to all recipients of federal financial funding (including public schools) and eligibility does not require that a student have trouble learning. As discussed above, students with diabetes are eligible under Section 504 because they are substantially limited in several major life activities and the major bodily function of the endocrine system.