**BULLETIN**

**STUDENTS WITH LIFE-THREATENING MEDICAL CONDITIONS**

There is a growing number of students enrolled in New Jersey schools with medical conditions that are potentially life-threatening such as epilepsy, diabetes, and nut allergies. This bulletin serves as general guidance for parents to ensure the safety of those students at school and during school functions.[[1]](#endnote-1)

**What Are Schools Obligated To Do?**

Public and non-public schools are required to have policies that foster a safe and healthy learning environment for students.[[2]](#endnote-2) The policies include guidelines for managing students’ medical conditions like monitoring the student’s glucose level and the emergent administration of epinephrine for a student with a nut allergy. The policies can be obtained from the school’s website or front office.

**What Is An Individualized Health Plan (IHP)?**

Typically, schools offer an Individualized Health Plan (IHP)[[3]](#endnote-3)that outlines (a) the student’s medical condition, (b) accommodations for the student in the school setting and during school-related activities (e.g., field trips, after-school activities, and class parties), and (c) action plan to address the condition in the event of an emergency.[[4]](#endnote-4) Examples of accommodations include, but are not limited to, school personnel training, serving food or using class materials without ingredients that cause allergic reactions, frequency of blood glucose testing, having designated personnel accompany student during field trips, monitoring and encouraging students to wash their hands and to avoid sharing their food.[[5]](#endnote-5)

The parent needs to notify the school of the student’s condition and work with the school to develop the IHP. The parent should furnish written medical documentation and instructions directed by the student’s physician. Once the school has reviewed the necessary documentation, the school’s nurse develops the IHP for the student.[[6]](#endnote-6)

**What Is A Section 504 Plan?**

Students with medical conditions may also qualify for a Section 504 Plan that is similar to an IHP in the sense that it outlines the necessary accommodations and action plan. The 504 Plan is mandated by Section 504 of the Rehabilitation Act of 1973 (Rehab Act), an anti-disability discrimination law that applies to any school that receives federal funds.[[7]](#endnote-7)

To qualify for a 504 Plan, the student must have a disability that substantially limits one or more major life activities as defined by the Rehab Act.[[8]](#endnote-8) Major life activities include breathing, learning, reading, and concentrating as well as operation of major bodily functions such as bowel, bladder, digestive, respiratory, and circulatory.[[9]](#endnote-9) Corrective measures like medication cannot be considered for the determination as to whether the student is disabled under the Rehab Act.[[10]](#endnote-10) Furthermore, a student’s impairment may also be covered under the Rehab Act even if the impairment is in remission or episodic in nature (e.g., allergic reaction) as long as the disability substantially limits a major life activity when active.[[11]](#endnote-11)

To obtain a 504 Plan, the parent should alert the school of the student’s need for it. The school’s Section 504 team needs to consider all the available information as part of the evaluation of the student’s eligibility for a 504 Plan.[[12]](#endnote-12) The information can include the student’s grades over the past several years, teacher’s reports, information from parents or other agencies, state assessment scores or other school administered tests, observations, discipline reports, attendance records, health records and adaptive behavior information.

If need be, the Section 504 team should have the school perform a medical assessment to determine eligibility for a 504 Plan.[[13]](#endnote-13) If the school does not have a qualified professional on staff who can perform the necessary medical assessment, then it should contract with one who can as is typically the case with psychiatric assessments.[[14]](#endnote-14) The school cannot force parents to pay for the assessment.[[15]](#endnote-15) Once the Section 504 team has completed its entire evaluation, then it should provide formal notice to the parent as to whether the student is entitled to a 504 Plan.

**Why Are Schools Often Reluctant To Provide Section 504 Plans?**

Regretfully, it is all too common that schools attempt to bypass the evaluation process mandated by the Rehab Act and instead insist that the parent accept an IHP. This is evident by the multiple investigative findings of the U.S. Office for Civil Rights (OCR), which enforces the Rehab Act, over the years.[[16]](#endnote-16)

The reason why many schools are hesitant to provide 504 Plans is because such plans present a bigger hassle for schools if they violate them. Unless an IHP is incorporated into a 504 Plan, an IHP is not considered a legal contract between the student and the school.[[17]](#endnote-17) The school is not held accountable if it fails to comply with an IHP.

Whereas, a 504 Plan is a legal document that guarantees certain rights and procedural safeguards afforded to students and their parents under the Rehab Act. As already indicated, the rights include necessary medical assessments at the school’s expense and official notices to parents of any decision or action the school intends to take with respect to the 504 Plan.[[18]](#endnote-18) If the school violates the 504 Plan, the parent may file a due process petition with the New Jersey Office of Special Education Policy and Dispute Resolution within the New Jersey Department of Education to seek remedies available under the Rehab Act.[[19]](#endnote-19) In the alternative, the parent may file an administrative complaint with the OCR.[[20]](#endnote-20)

**What Are The Best Practices For Parents?**

Disability Rights New Jersey strongly encourages parents to take additional steps to make sure the school is carrying out its obligations under the Rehab Act with respect to the student’s medical condition. First and foremost, the parent should correspond with the school in writing (e.g., e-mail, letters) as much as possible to generate documentary evidence of what the school has done to address the student’s condition. The parent should also memorialize in writing what was discussed and agreed to during the Section 504 meeting and then send the letter to the Section 504 team to confirm the letter’s accuracy. Furthermore, the parent should insist that the Section 504 team respond in writing as to why it believes the student’s condition meets or fails to meet the Rehab Act’s definition of disability.

The parent cannot allow the school to employ the tactic of simply stating that the student’s needs would be better served under an IHP without articulating whether the student’s condition qualifies for a 504 Plan. Furthermore, the parent cannot allow the school to claim that a 504 Plan is unnecessary on the basis that the student’s grades are decent because grades, in and of themselves, do not dictate whether the student is disabled under the Rehab Act.[[21]](#endnote-21)

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1. Given the unique nature of every student’s medical condition and circumstance, this memorandum is not intended to be exhaustive or considered legal advice. [↑](#endnote-ref-1)
2. N.J.S.A. 18A:40-12.5 (policy for emergency administration of epinephrine to nonpublic school pupils); N.J.S.A. 18A:40-2.6(a)-(c) (policy for emergency administration of epinephrine to public school pupils). [↑](#endnote-ref-2)
3. The IHP is sometimes referred to as an Individualized Health Care Plan (IHCP) or Emergency Care Plan (ECP). [↑](#endnote-ref-3)
4. N.J.S.A. 18A:40-12.5, -12.12; N.J.A.C. 6A:16-1.3 (defining an IHP as “a plan written by the certified school nurse that specifies the delivery of healthcare accommodations and services needed by a student in the event of an emergency”). [↑](#endnote-ref-4)
5. N.J.S.A. 18A:40-12.13.

 [↑](#endnote-ref-5)
6. N.J.S.A. 18A:40-12.12 to -13. [↑](#endnote-ref-6)
7. 29 U.S.C.A. §§ 701-796.

 [↑](#endnote-ref-7)
8. 42 U.S.C.A. §§ 12101(2)(A)-(B) and (4); 28 C.F.R. Part 35.108(d)(1)(v). [↑](#endnote-ref-8)
9. 42 U.S.C.A. § 12102(2)(A)-(B). [↑](#endnote-ref-9)
10. 42 U.S.C. § 12102(4)(E)(i). [↑](#endnote-ref-10)
11. 42 U.S.C. § 12102(4)(D). [↑](#endnote-ref-11)
12. 34 C.F.R. § 104.35(b) (stating that “[t]ests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient . . . .”). [↑](#endnote-ref-12)
13. *Letter to Veir*, 20 IDELR 864 (OCR 1993) (stating that”[i]f a school district determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to make an appropriate evaluation consistent with 34 C.F.R. §§ 104.35(a) and (b), the district must ensure that the child receives this assessment at no cost to the parents). [↑](#endnote-ref-13)
14. *Dear Colleague Letter*, 68 IDELR 52 (“If a school district does not have the appropriate personnel on staff to conduct a medical assessment for diagnostic and evaluative purposes, the district must make arrangements for the medical assessment at no cost to the parent.”). [↑](#endnote-ref-14)
15. *Dear Colleague Letter*, 68 IDELR 52 (“It is the district’s obligation to evaluate [under Section 504 pursuant to 34 C.F.R. § 104.35]; it cannot shift the burden of that cost or obligation onto the parent). [↑](#endnote-ref-15)
16. *See, e.g.,* *Tyler (TX) Indep. Sch. Dist.*, 56 IDELR 24 (OCR 2010) (finding that the district issued IHPs rather than referring students for evaluations to determine their Section 504 eligibility); *Forest Hills (OH) Local Sch. Dist*., 58 IDELR 114 (OCR 2011) (finding that the district had the improper practice of issuing IHPs and not performing Section 504 evaluations unless the parents specifically required them). [↑](#endnote-ref-16)
17. *E.I. & R.H. o/b/o L.H. v. Fair Lawn Bd. of Educ.*, OAL Dkt. No.: EDS 02906-15 and EDS 043330-15, 2015 WL 8012797, at \*5 (N.J. Adm. Oct. 20, 2015). [↑](#endnote-ref-17)
18. 34 C.F.R. §§ 104.35, -104.36. [↑](#endnote-ref-18)
19. N.J.A.C. 6A:14-2.7(w). [↑](#endnote-ref-19)
20. Protecting Students with Disabilities (last modified Sept. 25, 2018), https://www2.ed.gov/about/offices/list/ ocr/504faq.html. [↑](#endnote-ref-20)
21. *Dear Colleague Letter*, 68 IDELR 52 (OCR 2016) (stressing that “good academic performance does not meant that a student does not have a substantial limitation in a major life activity, or does it eliminate a district’s need to evaluate the student under Section 504”). [↑](#endnote-ref-21)