

# School Responsibilities Under Federal Laws

The Federal laws described in this section apply to a school's responsibility to help students manage diabetes, including confidentiality requirements. A particular student with diabetes could be covered under only one law or more than one law.

## How to Use the Laws Section

- Use the section on Federal laws for planning and implementing effective diabetes management and for preparing the student's education plan.
- Determine whether applicable State and local laws impact the rights of the student with diabetes.
- Create a supplement to this guide containing the applicable State and local laws.
- Copy and distribute the section on laws to appropriate school personnel.
- Review the section on laws when training school personnel on how to comply with the Federal laws pertaining to students with diabetes.

## Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA)

Section 504 prohibits recipients of Federal financial assistance from discriminating against people on the basis of disability. Title II of the ADA prohibits discrimination on the basis of disability by public entities, including public elementary, secondary, and postsecondary educational institutions, regardless of whether the public entities receive Federal financial assistance. Public school districts that receive Federal financial assistance are covered by both Title II and Section 504.<sup>2</sup> For schools, Section 504 is enforced by the Office for Civil Rights (OCR) in the U.S. Department of Education (ED). OCR shares Title II enforcement responsibilities with the U.S. Department of Justice (DOJ).

Section 504 outlines a process for schools to use in determining whether a student has a disability and in determining what services a student with a disability needs. This evaluation process must be tailored individually, because each student is different and his or her needs will vary. Diabetes will virtually always be found to be a disability under Section 504 and the ADA, because it substantially limits the functioning of the endocrine system.

Under Section 504 and the ADA, students with disabilities must be given an equal opportunity to participate in academic, nonacademic, and extracurricular activities. This includes, generally, an equal opportunity to attend the school the student would otherwise attend (for example, the local zoned school or school of choice).

In addition, as outlined in ED's Section 504 regulations, in order to ensure equal opportunity, school districts must identify all students with disabilities and provide them with a free appropriate public education (FAPE). Under Section 504, FAPE is the provision of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students who do not have disabilities are met. A student does not have to receive special education services, however, in order to receive related aids and services under Section 504.

---

<sup>2</sup> As a general rule, because Title II does not provide less protection than Section 504, violations of Section 504 by public entities also constitute violations of Title II. To the extent that Title II provides greater protections, schools must also comply with Title II and provide those additional protections.

Section 504 and Title II require schools to consider whether they can reasonably modify policies, practices, or procedures to ensure that a student has an equal opportunity to participate in and benefit from a school's services and programs, including extracurricular activities.

Administering insulin or glucagon, providing assistance in checking blood glucose levels, and allowing the student to eat snacks in school are a few examples of related aids and services or reasonable modifications that schools may have to provide for a particular student with diabetes.<sup>3</sup> The most common practice is to include these related aids and services as well as any needed special education services in a written document, sometimes called a "Section 504 Plan."

Under Section 504, private schools that receive Federal financial assistance may not exclude an individual student with a disability if the school can, with minor adjustments, provide an appropriate education to that student. Private, nonreligious schools, regardless of Federal funding, are also covered by Title III of the ADA, which is enforced by DOJ and prohibits disability discrimination by certain private entities.

## Individuals with Disabilities Education Act (IDEA)

IDEA provides Federal funds to assist State educational agencies and, through them, local educational agencies in making special education and related services available to eligible children with disabilities. IDEA is administered by the Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education.

A child with a disability must meet the criteria of one or more of 13 disability categories and need special education and related services. The IDEA category of "other health impairment" includes diabetes as one of the health conditions listed. To qualify under IDEA, the student's diabetes also must adversely affect educational performance to the point that the student requires special education and related services, as defined by State law. An example of a child with diabetes who may qualify under IDEA is a student who may have difficulty paying attention or concentrating in the learning environment because of recurring high or low blood glucose levels that adversely affect the student's educational performance.

IDEA requires school districts to find and identify children with disabilities and to provide them a free appropriate public education (FAPE). Under IDEA, FAPE means special education and related services that meet State standards and are provided in conformity with an individualized education program (IEP). The IDEA regulations specify how school personnel and the parents/guardians, working together, develop and implement an IEP.

Each child's IEP must include the supplementary aids and services to be provided for or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided for the child to make progress and to be involved in the general education curriculum. Administering insulin or glucagon, providing assistance in checking blood glucose levels, and allowing the student to eat snacks in school are a few examples of related services, supplementary aids and services, or program modifications or supports that schools could provide for a student with diabetes who is eligible under IDEA.

Generally, if a child with diabetes needs only a related service and not special education services as defined by State law, that child is not a child with a disability under IDEA and therefore is not eligible for any services under IDEA. Such a child will virtually always have a disability under Section 504 and the ADA, however, and would be eligible for services and/or modifications under Section 504 and the ADA. In general and consistent with the Family Educational Rights and Privacy Act (FERPA), IDEA's confidentiality provisions require prior written consent for disclosures of personally identifiable information contained in education records, unless a specific exception applies.

---

<sup>3</sup> State and local laws, including those concerning who can administer medications, cannot interfere with the rights of students with disabilities guaranteed by Section 504 and the ADA.

## Family Educational Rights and Privacy Act (FERPA)

FERPA generally prohibits schools from disclosing personally identifiable information in a student's education record, unless the school obtains the prior written consent of the student's parents/guardians or the eligible student (i.e., a student who is 18 years old or older or who attends an institution of postsecondary education). However, there are a number of exceptions to this requirement of prior written consent, several of which are discussed in more detail below. One such exception permits schools to disclose personally identifiable information in a student's education record without obtaining prior written consent to school officials, including teachers, who have been determined to have legitimate educational interests in the information, including the educational interests of the student. Schools that do this must include in their annual notification of FERPA rights to the parents/guardians and eligible students the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. If the school determines that particular school officials have a legitimate educational interest in information about a student's diabetes, the school may disclose such information to said school officials without obtaining the prior written consent of parents/guardians or, if applicable, the eligible student. This exception for school officials with a legitimate educational interest also applies to a contractor, consultant, volunteer, or other party to whom a school has outsourced institutional services or functions, provided that the outside party:

1. **Performs an institutional service or function for which the school would otherwise use existing school employees;**
2. **Is under the direct control of the school with respect to the use and maintenance of education records; and**
3. **Is subject to the requirements in FERPA governing the use and redisclosure of personally identifiable information from education records.**

Another exception to the requirement of prior written consent permits schools to disclose personally identifiable information from an education record to appropriate parties, including the parents/guardians of an eligible student, in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals. Under this exception, a school may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If a school determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the United States Department of Education will not substitute its judgment for that of the school in evaluating the circumstances and making its determination.

Another exception to the requirement of prior written consent permits schools to disclose personally identifiable information from an education record to ED or to the DOJ for the enforcement of Federal legal requirements that relate to Federally supported education programs. For example, this exception would permit a school to disclose, without obtaining prior written consent, education records to DOJ so that DOJ can conduct an investigation of the school's compliance with the ADA.

In addition, under FERPA, the parents/guardians or eligible students must be given the opportunity to inspect and review the student's education records. A school must comply with a request for access to the student's education records within a reasonable period of time, but not more than 45 days after it has received the request. FERPA also permits the parents/guardians or eligible students to request that a school correct education records that they believe to be inaccurate or misleading, or in violation of the student's right of privacy. If the school decides not to amend the education records, the school must notify the parents/guardians or eligible students of its decision and the parents/guardians or eligible students then have the right to a formal hearing.

After the hearing, if the school still decides not to amend the education records, the parents/guardians or eligible students have the right to place a statement with the education records setting forth their views about the contested information or stating why they disagree with the school's decision not to amend the records, or both. Similar requirements also apply to education records collected, maintained, or used under Part B of the IDEA.

## How Can I Get Copies of the Federal Laws?

The statutes are found in the United States Code (U.S.C.). The regulations implementing the statutes are found in the Code of Federal Regulations (CFR).

- **Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, implementing regulations at 34 CFR Part 104.**
- **Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12134 et seq., implementing regulations at 28 CFR Part 35.**
- To obtain copies of the Section 504 and Title II regulations, you also may contact the Customer Service Team of the Office for Civil Rights, U.S. Department of Education, toll-free at 1-800-421-3481. For TTY, call 1-800-877-8339.
- **Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., implementing regulations at 34 CFR Part 300.**
- For copies of the IDEA regulations, you also may contact ED Pubs at 1-877-433-7827.
- **Family Educational Rights and Privacy Act (FERPA), 20 U.S.C.1232g, implementing regulations at 34 CFR Part 99.**

## How Can I Get More Information?

The Office for Civil Rights (OCR) and the Office of Special Education Programs (OSEP) in the U.S. Department of Education can answer questions and provide technical assistance.

- For more information from OCR, contact OCR's Customer Service Team toll-free at 1-800-421-3481. For TTY, call 1-877-521-2172. Information is also available on the **OCR website**. You may also contact one of OCR's 12 Enforcement Offices around the country. Contact information is available from the OCR Customer Service Team and from the OCR website.
- For more information from OSEP, call 202-245-7459. For TTY, call 202-205-5637. Information is also available on **OSEP's website**.
- More information about **FERPA** is available at ED's Family Policy Compliance Office website. School officials may also direct questions to **FERPA@ed.gov**.
- The Department of Justice (DOJ) can answer questions and provide technical assistance about the Americans with Disabilities Act. For more information, call 1-800-514-0301. For TTY, call 1-800-514-0383. Information is also available on DOJ's **ADA website**.