

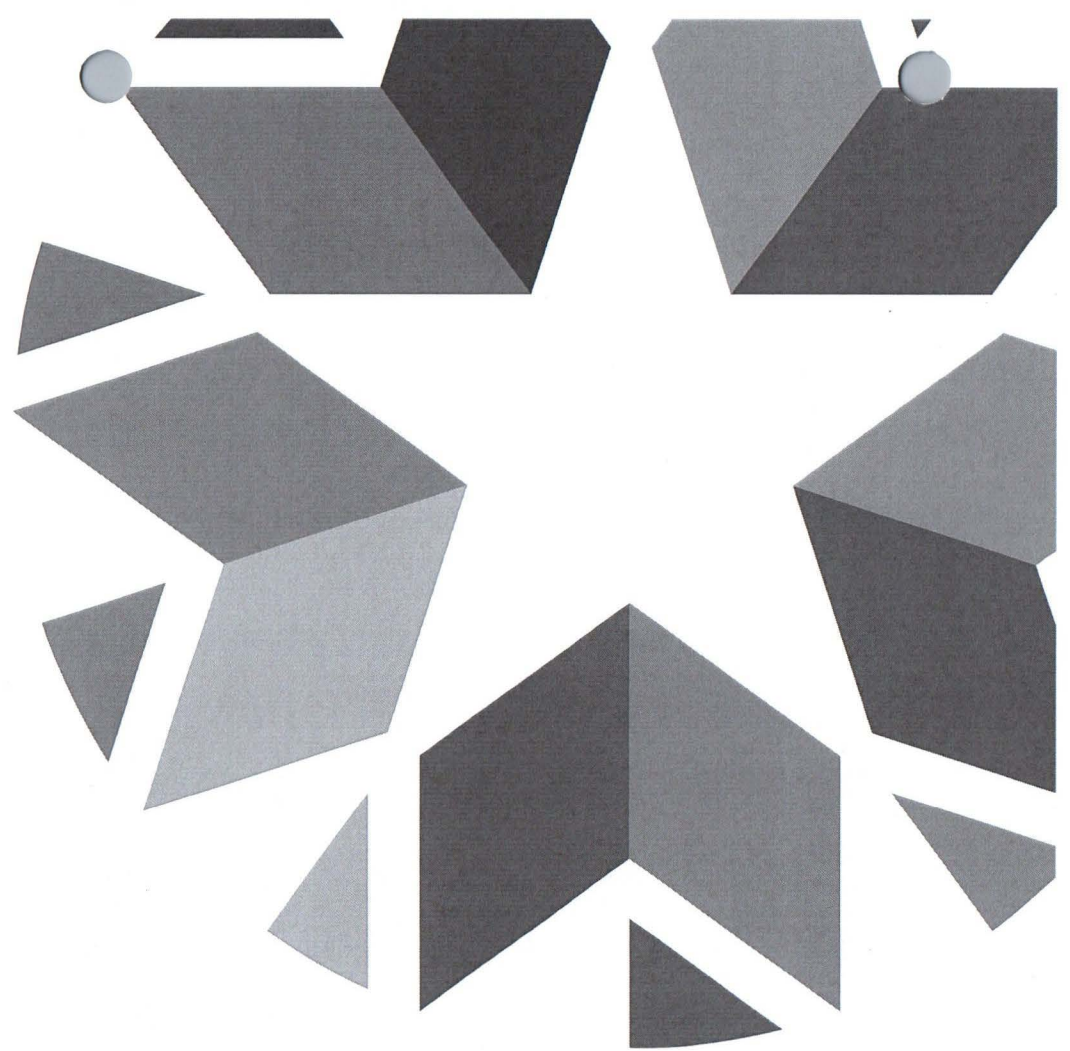
Differences Regarding Section 504 and IDEA– Nurse’s Role

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OKLAHOMA
Education



IDEA and Section 504/Title II

History of Federal Laws



IDEA – Individuals
with Disabilities
Education Act of
1975

Section 504 of the
Rehabilitation Act of
1973 and Title II of
the 1990 Americans
with Disabilities Act

Similar

- Both IDEA and 504 require the existence of a disability with documentation to support the eligibility criteria surrounding the disability which indicate a certain substantial limitation/severity level needing accommodations and/or services.
- Just having a medical condition may not necessarily make the student eligible under IDEA nor under Section 504.
- It Depends.

Section 504

Section 504 falls under the U.S. Department of Education, Office of Civil Rights (OCR) authority for public schools across the nation.

Prohibits Discrimination Based on Disability

- Section 504 is a civil rights law that prohibits discrimination on the basis of an individual with a disability by programs and activities that receive federal financial assistance from the U.S. Department of Education, like public schools.
- Section 504 is also under the authority of other offices such as U.S. Department of Labor and the U.S. Department of Justice.
- Section 504 was the first civil rights disability law to be enacted and set the stage for the Americans with Disabilities Act.

Section 504 Related to Title II-ADA Prohibiting Discrimination Based on Disability

Section
504

1973

Receive
Federal Financial
Assistance

Title II-
ADA

1990

Whether or NOT
Receive
Federal Financial
Assistance

504
&
Title II

Provide
Zero
Funding

To Support Compliance
504 Fail to Comply-
LOSE Federal Funding

Section 504 - Compliance

- OSDE does **not** have authority over Section 504; and therefore, there are **NO** 504 State Policies and Procedures governing elementary and secondary schools.
- Same for Title II.
- If a parent files a formal complaint regarding a 504-discrimination allegation involving the student's 504 Plan, the complaint will be to the U.S. Department of Education, Office of Civil Rights.

Section 504 - Evaluation

- Section 504 does not specify forms for reviewing existing data nor a form for parent consent required before the evaluation, but OCR has accepted written consent as compliance.
- No specific time to complete the evaluation is noted in Section 504 after parent consent is obtained.
- The district could create their own Section 504 forms. OSDE-SES has created sample 504 forms in EDPlan for districts to use. By using the 504 forms in EDPlan it assists when students move from district to district and provides consistency for compliance.

Section 504 – Referral and Evaluation

- Must refer a student for a 504 evaluation, because the student has a disability or has a suspected disability that needs or is believed to need:
 - Accommodations
 - Modifications
 - Special Education or Related Aids and Services

Section 504 – Evaluation Components

- Section 504 does not have specific required evaluation components.
- However, under the **IDEA** and **Section 504**, a physician's medical diagnosis **ALONE** is **not** a sufficient evaluation.
- A medical diagnosis of illness does **not** automatically make a student eligible for services under either the **IDEA** or **Section 504**.
- The gathering of additional assessments must not be at any cost to the parent.

Section 504 – Evaluation Group

- Under Section 504 the group of qualified professionals should include persons knowledgeable about the student's condition or the meaning of the evaluation data in order to provide interpretation of the data/information.
- The evaluation must draw on information from a variety of sources to minimize the possibilities of error – meaning not identifying all of the needs of the individual.
- Cannot rely on the presumptions and stereotypes of a person's disability – No one size fits all concept.

Section 504 – Evaluation and 504 Member

- A school nurse will be able to ask questions regarding a student's impairment and interpret a treatment plan, communicating that back to other team members.
- The school nurse will also know how a student's impairment may manifest in school and what accommodations may be necessary.

Is a Medical Assessment Necessary for All 504s?

- It Depends. Some may need a physician's diagnosis, some may not – depends on the suspected disability.
- ADHD could have a medical diagnosis from a physician but if a parent or teacher suspects ADHD, then a school psychologist could provide rating scales to home and school to complete for the ADHD determination under Section 504 evaluation.
- 504s are not just for medical diagnosis.

Section 504 - Eligibility

- Eligibility requires a group of qualified professionals and the parent to determine whether the student has (or is regarded as having or has a history of having) **a physical or mental impairment that substantially limits their ability to perform one or more major life activities.**
- The student's disability condition/impairment does **not** have to substantially limit their educational performance.
- The student may not need special education, but may need only a related service.

Major Life Activities Include (but are not limited to):

- Caring for oneself
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working
- Eating
- Sleeping
- Standing
- Lifting
- Bending
- Reading
- Concentrating
- Thinking
- Communicating

Non-Exhaustive List of Major Bodily Functions

- September 25, 2008, the Americans with Disabilities Act Amendments Act (**ADAAA**) was signed into law.
- Congress also provided a **non-exhaustive list** of examples of “**major bodily functions**” that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, internal organs—operation of kidney, liver, pancreas, etc., and reproductive functions.
- The Section 504 regulatory provision’s list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

Section 504 – No Specific Categories

- Eligibility must be based on the student's unique circumstances and the determination of a substantial limitation is based on a case-by-case basis.
- No specific “categories” are listed under Section 504.
- A student may not be eligible under Section 504 if there is not a substantial limit on one or more major life activities and is functioning with only a minor limit with no need of accommodations, modification, or services.

Can Impairments that are Episodic or in Remission be Considered a Disability?

- Yes, for example:
- Epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder, etc. may be episodic but still is covered under Section 504.
- An impairment such as cancer that is in remission that may possibly return in a substantially limiting form may also be considered a disability.

No IEE Requirement

- Under Section 504, there is no provision requiring an independent educational evaluation (IEE) at the district's expense IF the parent disagrees with the evaluation, like there is under IDEA.
- Recommend providing the parent a 504 Written Notice regarding the reasons why (based on the evaluation data/information) the student did not qualify for Section 504 Accommodation Plan, along with a copy of the Section 504 procedural safeguards/parent rights.

Section 504 - Reevaluation

- Under Section 504 the district must conduct “periodic reevaluations”.
- It is recommended to use the same timeline in accordance with IDEA regulations, which is every three years.
- A reevaluation under Section 504 is required before any significant change in the student’s placement. Any need to terminate or significantly reduce a related service is considered a significant change of placement and would require a reevaluation.

Section 504 – FAPE

- Free Appropriate Public Education (FAPE) is required for both IDEA and Section 504, including providing FAPE in the Least Restrictive Environment (LRE).
- FAPE also includes similar to IDEA that if a student is going to be suspended for more than 10 school days the district must conduct a 504 Manifestation Determination before conducting a disciplinary removal that constitutes a change of placement (e.g., more than 10 school days).

504 Accommodation Plan

- Accommodation Plans should be written on an individual basis and focused on the student's unique circumstances.
- Be careful **not** to add too many accommodations that are not necessary.
- Whatever is written as an accommodation must be provided to the student.

What is an “accommodation”

For Example:

- Changes to the environment
- Changes to instruction or how curriculum is presented
- Changes to how the student responds

The goal is to remove barriers and to provide students access to learning or support for an activity.

Section 504 – Nonacademic & Extracurricular Services & Activities

- Under **Section 504**, children with disabilities must be afforded an equal opportunity to participate in nonacademic and extracurricular services and activities such as:
 - Sports
 - Sponsored Clubs
 - Competitive Activities (e.g., cheer/pom, academic team, etc.)
- A district that offers extracurricular athletics must do so in the manner necessary to afford qualified students with disabilities an equal opportunity for participation. Must provide “reasonable” accommodations.

Unreasonable Accommodation

- On December 9, 2013, the U.S. Supreme Court declined to hear an appeal filed by the mother of a 7th grade NYC boy with Type I diabetes. Parent had argued that her son would skip meals unless his school accommodated his disability by heating his lunches. She also argued that this would help him adjust to his disability. Previously, both the federal district court and the U.S. Court of Appeals for the Second (2nd) Circuit had held that **neither** the ADA nor Section 504 **required this “optimal” accommodation**. The Second Circuit had noted that individuals with diabetes didn’t need to eat hot food to manage their diabetes successfully and stated, *“The accommodations the school had provided – lunch menu options and monitoring of [his] blood glucose level – afforded [him] meaningful access to the benefit to which he was entitled: public school lunches.”*

Practical Pointers for Section 504s

- Obtain a Release of Confidential Information (signed by parent) to and from the licensed physician or ARNP or other licensed authority to diagnose/treat the condition.
- Document discussions with parents, licensed physicians, ARNP, etc.
- Include and inform staff on all matters involving the student.
- Review issues surrounding extracurricular activities, field trips, etc. to make certain the student's accommodations continue in all school related events.
- Be proactive on how to problem solve to accommodate so the student has equal opportunity to participate in and have access to the activity.
- Make individual decisions based on the student's unique needs and document all options discussed, as well as reasons determined not appropriate.
- Provide parent with a 504 Written Notice to Parent every time there is a meeting.

Individuals with Disabilities Education Act – IDEA

IDEA is a federal law that is a grant statute and attaches lots of specific conditions to state and local education agencies (LEAs – aka school districts) who receive federal IDEA funds to assist in paying for some of the special education program services.

IDEA – Federal and State Requirements

- The U.S. Department of Education has developed extensive regulations to govern how State Department of Education and Local Education Agencies implement IDEA.
- Oklahoma has also developed State Special Education Policies and Procedures that define school responsibilities for children with disabilities, including extensive procedures to govern how districts must implement IDEA.

IDEA § 300.111 Child Find (Identify, Locate and Evaluate)

(a)(1) The state must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the state, including children with disabilities who are **homeless** children or are **wards of the State**, and children with disabilities attending **private schools**, regardless of the severity of their disability and who are in need of special education and related services are identified, located and evaluated between the ages of 3 through 21.

All Children Who Are Residents

The Child Find system includes all students who reside within the LEA's geographic boundaries including students who are:

- Enrolled in public schools including, charter schools, virtual charter schools, and alternative schools; private schools, homeless, and wards of the State.
- Homeschooled.
- Enrolled in educational programs in juvenile correctional/detention facilities located in the LEA.
- Enrolled in Head Start.
- Enrolled in State Institutions.
- Enrolled in other child care residential or treatment facilities.
- Not enrolled in elementary or secondary school (Extended Transition Program 18-22), including children ages 3 through 5 (not yet KG eligible).

Charter Schools

- If a child is enrolled in a charter school that is part of an LEA, the LEA would be responsible for implementing child find requirements for children attending the charter school, unless State law assigns responsibility to some other entity. 34 C.F.R. § 300.209(b)(2)(i).
- If the child is attending a charter school that operates as its own LEA, the charter school LEA would be responsible for implementing child find requirements, unless State law assigns responsibility to some other entity. 34 C.F.R. § 300.209(c).

IDEA § 300.111 Child Find

(c) Other children in Child Find.

Child Find also must include –

- (1) Children who are suspected of being a child with a disability under 300.8 and in need of special education, even though they are advancing from grade to grade; and
- (2) Highly mobile children, including migrant children.

Oklahoma Special Education Policies and Procedures Chapter 2

- Child Find is **not** a passive process. LEAs should not wait for others to refer students for an initial evaluation for special education services under IDEA. LEAs should have written procedures and data driven decision making processes to help determine which students are at-risk. All school personnel should be trained on these procedures.
- Special education referrals for evaluation may be made for a variety of reasons, including but not limited to **academic and/or behavioral concerns, including health concerns.**

IDEA – Specific Categories

- Autism
- Deaf-Blindness
- Developmental Delays
- Emotional Disturbance
- Hearing Impairment, Including Deafness
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment, Including Blindness

Required Members Must Review and Sign Review of Existing Data (RED) Form

- Signatures from members reviewing existing data and determining whether additional assessments are needed (if any):
 - Parent(s) (at least one parent)
 - General Education Teacher(s) (at least one teacher)
 - Special Education Teacher; or when the suspected disability is Speech Language Impairment (SLI) then a speech-language pathologist (SLP) may be the special education teacher.
 - LEA Administrator
 - Qualified Professional(s) might be a nurse if health condition exists

Oklahoma Policy

- From the date of parent consent for the initial evaluation to the date of the eligibility meeting must be **within 45 school days**.

(20 USC § 1414(a)(1)(C)(i)) and
34 CFR § 300.301(c)(1)(i)(ii)):

(c) Procedures for initial evaluation. The initial evaluation—

(1)

(i) Must be conducted **within 60 days** of receiving parental consent for the evaluation; **or**

(ii) If **the State establishes a timeframe** within which the evaluation must be conducted, within that timeframe;

Special Rule for Eligibility Determination

A child must not be determined to be a child with a disability—

- Lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or limited English proficiency (LEP) **must not be the determinant factor** when making eligibility decisions for **any of the suspected disability categories**, including preschool children regarding a lack of appropriate early literacy and math development.

Prong Test

- Are there sufficient key eligibility indicators that meet the criteria for one or more of the disabilities defined in IDEA and the Oklahoma Eligibility Standards?
- Is the nature and severity of the disabling condition **adversely impacting the student's educational performance or progress** (which includes their ability to actively and effectively participate in classroom-based, group instructional activities)?; **AND**
- Because of the disability and its adverse impact on the student's education, does the student **need specially designed instruction that requires special education and related services?**

New Oklahoma Policy

- As part of Oklahoma policy, each suspected category of disability has a list of required evaluation components that make up a comprehensive evaluation.
- Required evaluation components defined per category of suspected disability.
- (34 C.F.R. § 300.304(b)(1)(i)(2)(3))

Evaluation Components Required per Category of Disability

Divided as Required or As Needed for each category of disability –

Example for OHI category

Components of a Comprehensive Evaluation for Other Health Impairment	
REQUIRED	AS NEEDED
• Health/Medical • Academic Achievement • Developmental • Background (Cultural and Educational) • Observation in Classroom/ Other Environment • Vision Screening • Hearing Screening	• Vision Evaluation • Hearing Evaluation • Motor • Communication/ Language • Intellectual/Cognitive • Perceptual Processing • Psychological • Social/Emotional • Behavior • Adaptive Behavior • Assistive Technology • Other Intervention Documentation • Vocational

Do reevaluations have to be completed within 45 school days?

No, reevaluations are not held to the same timeline as an “initial” evaluation

Reevaluations must be completed **within 3 years** of the previous eligibility date (MEEGS).

Did Not Qualify – Recommendation(s) to Fulfill the Needs:

- The group of qualified professionals and the parent should consider the possibility of referring the student for an initial evaluation under Section 504.
- A disability still must exist under Section 504.
- An impairment in and of itself is not a disability. The impairment must “*substantially limit one or more major life activities*” in order to be considered a disability under Section 504.

Independent Educational Evaluation

- Under the **IDEA**, the parent may request an independent educational evaluation (IEE) at public expense if the parent disagrees with the district's evaluation.
- District must either pay for the IEE or file a due process and defend their evaluation to a hearing officer.

If Eligible – Develop an Individualized Education Program (IEP)

- Specially Designed Instruction (SDI) means adapting the content, methodology, or delivery of instruction to:
- Address the unique needs of the student that result from their disability; and
- Ensure access to the general curriculum so that the student can meet the academic standards that apply to all students.

Nurse's Role in 504s and IEPs

Advocate for student's health condition(s)

Review Existing Data

- Be a required qualified professional to sign the Review of Existing Data (RED) form if there is a health condition.
- Determine what medical information is needed.
- Obtain parents written consent for the release of confidential information and to speak directly to the physician(s) to obtain clarification on doctor's orders.

Participate in the 504 and IEP Meetings

- Whenever a student has a health condition the school nurse needs to be involved.
- IDEA 34 CFR § 300.321 IEP Team members required:
 - Parent
 - General Education Teacher
 - Special Education Teacher
 - Administrator
 - Other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate (e.g., School Nurse)

Help Make Decisions

- Can a student be tube fed in the general education classroom?
- Does a nurse need to be with a child on the bus if they have a trach?
- Can a student check glucose levels and self-administer insulin injections? Can the student do this in the classroom?

Training Staff

- Train staff on the implementation of emergency response protocols explaining how school personnel should hand and administer medication in the event of an emergency (e.g., administer and epi-pin in the event of an anaphylactic or other serious allergy-related reaction).
- What to do during athletic events, field trips, transportation to and from school, etc.
- Make certain to train bus drivers, bus monitors, paras, special ed teachers, general education teachers, administrators, cafeteria workers, recess monitors, secretaries, etc.

What does OCR say?

Individual Health Plan or Section 504 Accommodation Plan? That is the question.

IHP vs 504 Plan or IEP

- Districts may not delay a 504-evaluation based merely on the existence of an IHP.
- Just because a specific student's health needs can be accommodated with an IHP does **not** necessarily mean the district is relieved of its obligation to create a 504 plan for the student, if eligible.
- Can a student have both an IHP and an IEP?
- OCR is likely to turn a critical eye to any district that has a policy or practice of providing IHPs to students with a particular health issue, such as diabetes, instead of determining their eligibility for a 504 plan.

Diabetes

- “Diabetes will virtually always substantially limit endocrine function (Americans with Disabilities Act 28 CFR 35.108 (d)(2)(ii)(H)). See *also Dear Colleague Letter*, 58 IDELR 79 (OCR 2012) (stating that diabetes is an impairment that should result in a finding of disability **“in virtually every case”**).
- Students with diabetes who are eligible under Section 504 are likely entitled to a Section 504 plan that provides for the administration of insulin and the provision of emergency procedures in the event of a hypoglycemic episode. See *Lee County (FL) Sch. Dist.*, 46 IDELR 228 (OCR 2006).”

Diabetes - 2

- “In addition to its effect on the endocrine system, diabetes may substantially limit the major life activities of caring for oneself, walking, eating, and seeing. See *Kettering (OH) City Sch. Dist.*, 109 LRP 32473 (OCR 03/03/09) (finding that the district should have suspected that the student with diabetes had a physical impairment serious enough to limit his ability to care for himself and to eat); and *Hughson (CA) Unified Sch. Dist.*, 112 LRP 24929 (OCR 03/07/12) (noting that the school's principal erroneously believed diabetes doesn't affect a major bodily function).”

Cancer

- “**Cancer** is one of the conditions that, per the 2016 amendments to the regulations implementing Title II, **almost always will result in a finding of eligibility**.
- Cancer will virtually always substantially limit normal cell growth (Americans with Disabilities Act 28 CFR 35.108 (d)(2)(ii)(F)).
- However, it also may substantially limit other major life activities. See *Union City (MI) Cmty. Schs.*, 54 IDELR 131 (OCR 2009) (finding that because the student's bone cancer impacted the major life activity of walking, the district should have conducted a 504-eligibility determination as soon as her parent requested accommodations).”

Contagious Diseases

- “Students afflicted with a contagious disease are likely students with disabilities under Section 504, particularly given that the list of major life activities under the ADAAA includes the operation of a major bodily function. 42 USC 12101 (2)(B). See also *OCR Staff Memorandum*, 16 IDELR 712 (OCR 1990). Furthermore, those students **must** be placed in the regular education environment unless it is demonstrated that the student cannot be educated there, even with the use of supplementary aids and services. 34 CFR 104.34 (a).”

Contagious Diseases - 2

- “HIV is one of the conditions that will result in a **finding of eligibility in nearly every case**. Per the 2016 amendments to the Title II implementing regulations, HIV “virtually always” substantially limits immune function. 28 CFR 35.108 (d)(2)(ii)(J). See also SmartStart: Chronic or Acute Health Conditions (Eligibility).
- Students infected with HIV or an HIV-related condition, including those who are asymptomatic, are people with a disability within the definition of Section 504 and the departmental implementing regulations. *Fairfax County (VA) Pub. Schs.*, 19 IDELR 649 (OCR 1992); and *OCR Staff Memorandum*, 16 IDELR 712 (OCR 1990) (“No case law has been identified, either in school or employment contexts, in which a person with AIDS was not considered handicapped according to the Section 504 definition.”).

Food Allergies

- “Because food allergies may substantially limit the major bodily functions of breathing, respiratory function, and immune system function, among others, a student with food allergies may be eligible under Section 504. See *Prince William County (VA) Pub. Schs.*, 64 IDELR 153 (OCR 2014) (Because the student's medical records and treatment plan indicated that he had severe allergies, the district should have considered whether he was eligible for Section 504 services.).”

Food Allergies - 2

- “In *Akron (OH) Public School District*, 79 IDELR 47 (OCR 2021), an Ohio district promised to resolve OCR's concerns that its policies, procedures, and manuals relating to students with food allergies violated ADA Title II and Section 504. It will seek consent to evaluate students with nut allergies, if a student receives medication or has a healthcare plan, and it will require 504 teams to consider substantial limitation in all major life activities, **not just learning**, when making a disability determination.
- “OCR noted that “other life activities” that must be considered include performing manual tasks, eating, breathing, concentrating, and thinking. An impairment may substantially limit a major activity regardless of whether the student performs well academically and the student may need special education because of that disability, it added.”

You Be The Judge

Source LRP

Does lax enforcement of allergen ban in classroom raise FAPE concerns?

- A Michigan district developed a Section 504 plan for a student with a severe food allergy. According to the 504 plan, the student would receive instruction in an allergen-free classroom and eat lunch at an allergen-free table in the school cafeteria. However, there were several incidents where inappropriate foods were brought into the classroom.

During one incident, a classmate brought treats for the whole class. Because the student was allergic to an ingredient in the treats, a staffer provided the student an alternative snack. In another instance, a parent brought food to the classroom even though it contained banned ingredients. To protect the student, staffers removed him from the classroom and took him to the cafeteria. Subsequently, the district sent an email to the parents of all children in the allergen-free classroom stating that they were not to bring allergens to the program.

The parent filed a complaint with the Office for Civil Rights, alleging that the district denied the student FAPE. Under Section 504 and Title II, a district must provide a student with a disability FAPE by implementing his Section 504 plan as written.

Did the district properly adhere to the student's Section 504 plan?

Answer: No

- **No.** Individuals brought allergens into the classroom on multiple occasions.
- How OCR found:

In *Holt (MI) Public Schools*, [122 LRP 9446](#) (OCR 01/27/22), OCR expressed concerns that the district may have deviated from the student's Section 504 plan. Although the 504 plan stated that the student would receive instruction in an allergen-free classroom, OCR observed that there were at least two incidents where the district failed to properly enforce the allergen ban. During one incident, staffers allegedly permitted a classmate to share treats containing banned ingredients with the rest of the class. In the second instance, staffers had to remove the student from the classroom and take him to the cafeteria when another parent brought allergen-containing foods to the classroom. Accordingly, OCR expressed concerns that the district's lax practices may have endangered the student's health and denied him FAPE. To remedy the potential Section 504/Title II violation, OCR instructed the district to conduct staff training.

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