Accommodating Students with Disabilities in Child Nutrition Programs

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Legal Obligation to Students with Disabilities

- Federal law provides that students with disabilities be provided the same rights and privileges, and the same access to benefits, such as school meals, as students with disabilities.

- Schools which do not make appropriate program accommodations for students with disabilities could be found in violation of Federal civil rights law.
Sources of Legal Authority

- **Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act.**
  - Prohibits discrimination on basis of disability by programs receiving federal funding such as funds secondary to school meal programs.

- **Individuals with Disabilities Education Act.**
  - Requires public schools to provide a free appropriate public education to eligible students with disabilities.
Reasonable Accommodations

- The dietary needs or restrictions of a student with a disability will be specified in the student’s Section 504 plan or Individual Education Plan (IEP).

- Students without disabilities may also have dietary needs or restrictions which are specified in a health care or nursing care plan.
Reasonable Accommodations

Neither Section 504 nor the IDEA define what types of accommodations are “reasonable” instead leaving the decision to the school district on a case by case basis. The dietary needs or restrictions of a student with a disability will be developed by the student’s team and specified in the student’s Section 504 plan or Individual Education Plan (IEP).
An accommodation may be “unreasonable” if it:

- Causes a fundamental alteration to a program,
- Imposes an undue financial or administrative burden, or
- Poses a threat to personal or public safety.
Parent Remedies Under Section 504/IDEA

- U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS

- LOCAL DUE PROCESS HEARING/GRIEVANCE COMPLAINT

- JUDICIAL REMEDIES
  - Parent must establish “deliberate indifference”.
Saluda Sch. Dist., (S.C.), (School violated Section 504 in its providing of a plan that failed to address student’s food allergies and dietary needs in other locations than the classroom.)

Tolland Sch. Dist., (CT), (School district complied with Section 504 plan requirements to provide gluten-free snacks; however, such was not provided to the student on one particular field trip. District’s incidental failure did not rise to the level of a Section 504 violation.)
Case Law and OCR Rulings

- **Franklin Co., TN BOE** (District’s offered plan that allowed student to carry EpiPen and cell phone with her at all times but that did not guarantee that no latex items would be brought onto school property deemed legally compliant under Section 504.)

- **Mystic Valley Regional Sch. (Mass).,** (School’s decision to refuse parent’s request that it establish a ban on peanut/tree nut products from the classroom attended by younger disabled student violated Section 504.)
Case Law and OCR Rulings

- *Libeau v Romeo Comm. Sch. (Mich.)*, School-wide ban on tree nut products did not violate general education student’s Fourth amendment right to be free of unreasonable searches.
Case Law and OCR Rulings

*Porta Comm. Sch. Dist. IL*, (School did not discriminate against disabled student when it provided student with two pieces of hard candy as an alternative sack during a school movie while her classmates received popcorn. The substitute snack was appropriate and comparable.)
Case Law and OCR Rulings

- **Zandi v Fort Wayne Comm. Sch. (Ind.),**
  (Schools refusal to provide parent’s requested food allergy accommodation found to be reasonable when parent failed to provide sufficient information that requested accommodation would have prevented the student's allergic reactions.)
Case Law and OCR Rulings

- **Upper Dublin Sch. Dist., PA.,** (School district not ordered to “wash down” complete cafeteria area prior to the student’s use as the request was not reasonably in proportion to the documented needs of the student and student had never had an allergic reaction following his use of the cafeteria without this accommodation.)
Wooster (OH) City Sch. Dist. 61 IDELR 114 (OCR 2010) (School District’s agreement to review food ingredient labels with parent allowed District to avoid Section 504 liability.)
Practical Tips for IDEA/Section 504 Compliance

- Schools should consider inviting the CND to relevant IEP or Section 504 meetings.

- Provide online information as to menus with supplemental information such as whether items contain common allergens, carbohydrate content, substitutions available, etc.
Practical Tips for IDEA/Section 504 Compliance

- Teach advocacy skills to students with food allergies or dietary restrictions.

- Regulate snacks in classroom.
  - Avoid home made snacks for parties or to share with class due to absence of ingredient label.
  - Make parents aware of common allergen prohibitions (to include derivatives) such as nuts, wheat, eggs, etc.
Practical Tips for IDEA/Section 504 Compliance

- Make parents and other students aware (without identifying the student) of fact that student(s) with specific allergies presently attend the school.

- Avoid designating your school as a “peanut free”, “gluten free”, etc. environment. Such a school environment does not exist.
Practical Tips for IDEA/Section 504 Compliance

- Provide staff training.
  - Make relevant staff aware of students with special dietary needs or restrictions.
  - Train staff on signs and symptoms of allergic reactions, who is responsible for providing emergency interventions, location of student’s medications, etc.
  - Seek independent input from medical care providers when needed.
Practical Tips for IDEA/Section 504 Compliance

- Provide student/parent training.
  - Informational disclosures.
  - Safety precautions such as not to share food, to wash hands, general indicators of allergic reactions.

- Decisions to deny a parent requested accommodation can only be made by the Section 504 or IEP team and not by a sole administrator, teacher etc. If accommodation is denied, provide some alternate “reasonable” accommodation if possible.
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