



Section 12: Student Rights

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Laws

Students with diabetes are protected by three federal laws:

- 1. The Americans with Disabilities Act, as amended by the Americans with Disabilities Amendments Act (collectively, “ADA”):** this law prohibits all schools and day care centers, except those run by religious organizations, from discriminating against children with disabilities.
- 2. Section 504 of the Rehabilitation Act (Section 504):** this law protects individuals with disabilities against discrimination in any program or activity receiving federal financial assistance.
- 3. Individuals with Disabilities Education and Improvement Act of 2004:** this law, commonly known as the Individuals with Disabilities Education Act (IDEA) enables children with disabilities to receive a free, appropriate public education.

These three laws generally require that school districts provide access to educational opportunities for students with diabetes without discrimination in a medically safe environment. Students with diabetes must receive reasonable modifications to policies and procedures or accommodations as necessary to allow participation in academic, non-academic, and school-sponsored activities. Required services are determined on an individual basis.

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The Americans with Disabilities Act and Section 504 of the Rehabilitation Act

Students with diabetes are covered by the Americans with Disabilities Act, as amended by the Americans with Disabilities Amendments Act (ADA)³² and Section 504³³ because diabetes is a physical impairment that substantially limits one or more major life activities.³⁴ Major life activities include, but are not limited to, operation of bodily systems (e.g., endocrine), eating, walking, seeing, learning, reading, thinking, hearing, concentrating, communicating, working, caring for oneself, and performing manual tasks.³⁵

Tools to assist with diabetes self-management, such as the use of blood glucose monitoring or insulin may not be used in making this determination,³⁶ which must be made on a case-by-case basis. Determination should never be made by how a student manages his or her diabetes, as diabetes can always pose risk of low blood glucose, high blood glucose, and other symptoms and unforeseen consequences. In a school environment, a student's ability to learn (e.g., concentrate, pay attention, recall information, or study) can be substantially limited when blood glucose levels become too low or too high, regardless of a student's academic performance.

Section 504 is an anti-discrimination law that requires school districts to ensure that students with a disability, including diabetes, have an equal opportunity to participate in academic, non-academic, and extra-curricular activities available to other students enrolled in the school district. Section 504 was the basis for many of the provisions of the ADA, with both statutes construed to establish "nearly identical" rights.³⁷

To ensure equal opportunities for students with diabetes, school districts should develop a plan to meet that student's health needs in the school setting. This plan is usually called a Section 504 Plan, which may also include a Healthcare Plan. The Healthcare Plan can not be a Section 504 Plan by itself, as it usually does not include accommodations contained in a Section 504 Plan.

A school covered by ADA and/or Section 504 may not assist in supporting groups that do not provide equal opportunity for students with diabetes (e.g., after school events and activities, field trips, before and after school programs, clubs, parent-teacher organizations).³⁸

32 The ADA provides protection in employment, state and local government programs, and in places of public accommodation. It applies to all schools and day care centers except those run by religious entities. See 42 U.S.C. §§12101-12213. The ADA states "The definition of disability shall be construed in favor of broad coverage to the maximum extent permitted by the terms of this Act."

33 Section 504 was the basis for many of the provisions of the ADA, with interpretation of both statutes treated similarly. Section 504 applies to all schools that receive federal financial assistance. Students with diabetes who attend private schools operated by religious organizations are entitled to the legal protections of the ADA and Section 504 only if such schools receive federal funding, either directly or indirectly. See, Waterbury (CT) Sch. Dist., Complaint No. 01-07-1280, 51 IDELR 198 (OCR 2008); see generally 29 U.S.C. §794.

34 28 C.F.R. §§35.104, 36.104.

35 34 C.F.R. §104.3(j)(2)

36 The focus must be on the underlying condition as it exists in its unmedicated state. See *Rohr v. Salt River Project Joint Agric. Improvement & Power Dist.*, 550 F. 3d 850, 862 (9th Cir. 2009).

37 *Rothman v. Emory Univ.*, 123 F. 3d 446, 451 (7th Cir. 1997).

38 See *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-93-1043, 19 IDELR 883 (OCR 1993).

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Individuals with Disabilities Education and Improvement Act

The Individuals with Disabilities Education and Improvement Act of 2004,³⁹ more commonly known as the Individuals with Disabilities Act (IDEA), provides federal funds for special education services. Wisconsin meets the necessary requirements and is, therefore, eligible for these federal funds. The IDEA ensures all students with disabilities are given a free, appropriate public education through an Individualized Education Program (IEP). To be covered under the IDEA, a student with diabetes must have an impairment⁴⁰ that negatively affects the student's ability to learn, requiring special education and related services.

Students with frequent blood glucose fluctuations causing difficulty with concentration or paying attention that adversely affects their academic performance could qualify for services under the IDEA. Students with diabetes may also have other disabilities covered by the IDEA. The school district must proactively evaluate students for disabilities and then determine eligibility for other special education or related services.

Confidentiality

Schools must protect the confidentiality and privacy of all student medical records and health conditions. Disclosure of information is allowed in the case of a health or safety emergency. Parents/guardians must provide signed Release of Information forms to school officials to allow communication between the school and health care provider(s).

All students, including those with diabetes, may be required to sign a special release form to participate in select activities such as athletics or field trips. Parents/guardians are not required to sign a release of liability supplied by the school district for attendance at school and related events.

Additional federal laws exist to govern privacy issues for students with diabetes. The Family Education Rights and Privacy Act (FERPA) applies to privacy issues related to education records and the Health Insurance Portability and Accountability Act (HIPAA) applies to privacy issues related to health records. *Section 16: Resources* provides additional linkages to more specific information about these laws.

Identifying Services and Accommodations

Schools must provide reasonable accommodations for students with diabetes under the ADA and Section 504 and notify parents/guardians of available services.⁴¹ **Schools are required to locate and identify any students with disabilities in the district.** This information is commonly requested through letters to parents/guardians through the emergency contact form sent home on the first day of school or given to parents/guardians (upon enrollment). A health care provider may also provide this information to the school. In addition, as diabetes management tools are utilized and medical treatment of diabetes continues to advance, school districts commonly detail these services and accommodations in a 504 Plan. (A sample form is included in *Section 13: Forms*.)

To ensure the safety of students with diabetes, contact school personnel promptly after diagnosis and at the beginning of each school year thereafter. This early or advance notification will initiate planning steps for collecting, reviewing, and deciding appropriate services and accommodations for the student with diabetes.

³⁹ 20 U.S.C. §§1400-1482, implemented in Wisconsin through Wis. Stat. §§115.758, et seq.

⁴⁰ 34 C.F.R. §300.8.

⁴¹ 34 C.F.R. §104.32 and 28 C.F.R. §35.106.

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School districts must designate an individual to coordinate services and accommodations in accordance with the ADA, Section 504, and the Individuals with Disabilities Education Act (IDEA) unless the school employs less than 15 people. The designated person to coordinate services should be identified and listed in the student handbook.

At times, school staff will receive requests for services and accommodations. These requests must be forwarded to the designated coordinator. Verbal requests are acceptable; however, documenting any specific request for services and/or accommodations in writing is standard procedure in most districts. The following checklist indicates critical elements that should be documented when requesting services.

Request for Services Checklist

- Date of the request**
- Who is requesting**
- Purpose of the request**
- Types of accommodations requested**
- Limitations caused by diabetes, such as how diabetes may affect the student's skills and abilities, including physical, emotional, and academic performance**
- Accompanying medical documentation, such as a Diabetes Medical Management Plan (DMMP), prepared by the student's health care provider and parents/guardians**
- Who is available to participate in any needed evaluation or meeting to discuss stated request**

All students with diabetes will only qualify for an Individualized Education Program (IEP) if their diabetes significantly affects their ability to learn. All students with diabetes do qualify for services and accommodations to meet diabetes care needs. These needs are typically contained in a Section 504 Plan. In many cases, the Section 504 Plan will also contain the student's Healthcare Plan.

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Process for Determining Services and Accommodations

The process for determining appropriate services and accommodations begins once a student is identified as having diabetes. Parents/guardians and health care provider(s) need to request specific reasonable, necessary, and appropriate services and accommodations based on a student's individual needs and circumstances. Parents/guardians can assist schools in determining needed services and accommodations by providing the following information:

- Documentation stating diagnosis of diabetes
- Description of the diabetes health care needed during school or school-sponsored activities
- Statement regarding the student's ability to self-monitor blood glucose or self-administer insulin either by injection or insulin pump
- Authorization form for administering medication and providing other diabetes care services to the student
- Instructions from the health care provider through the completed Diabetes Medical Management Plan (DMMP)
- Signed Release of Information form(s) to disclose applicable education and medical information

Parents/guardians are responsible for having their child's health care team complete the DMMP, with parental input as appropriate. The identified diabetes care and regimen contained in the DMMP is the foundation for diabetes care needed during school and school-sponsored activities. The Section 504 Plan and Healthcare Plan are developed by the school based upon information provided in the DMMP.

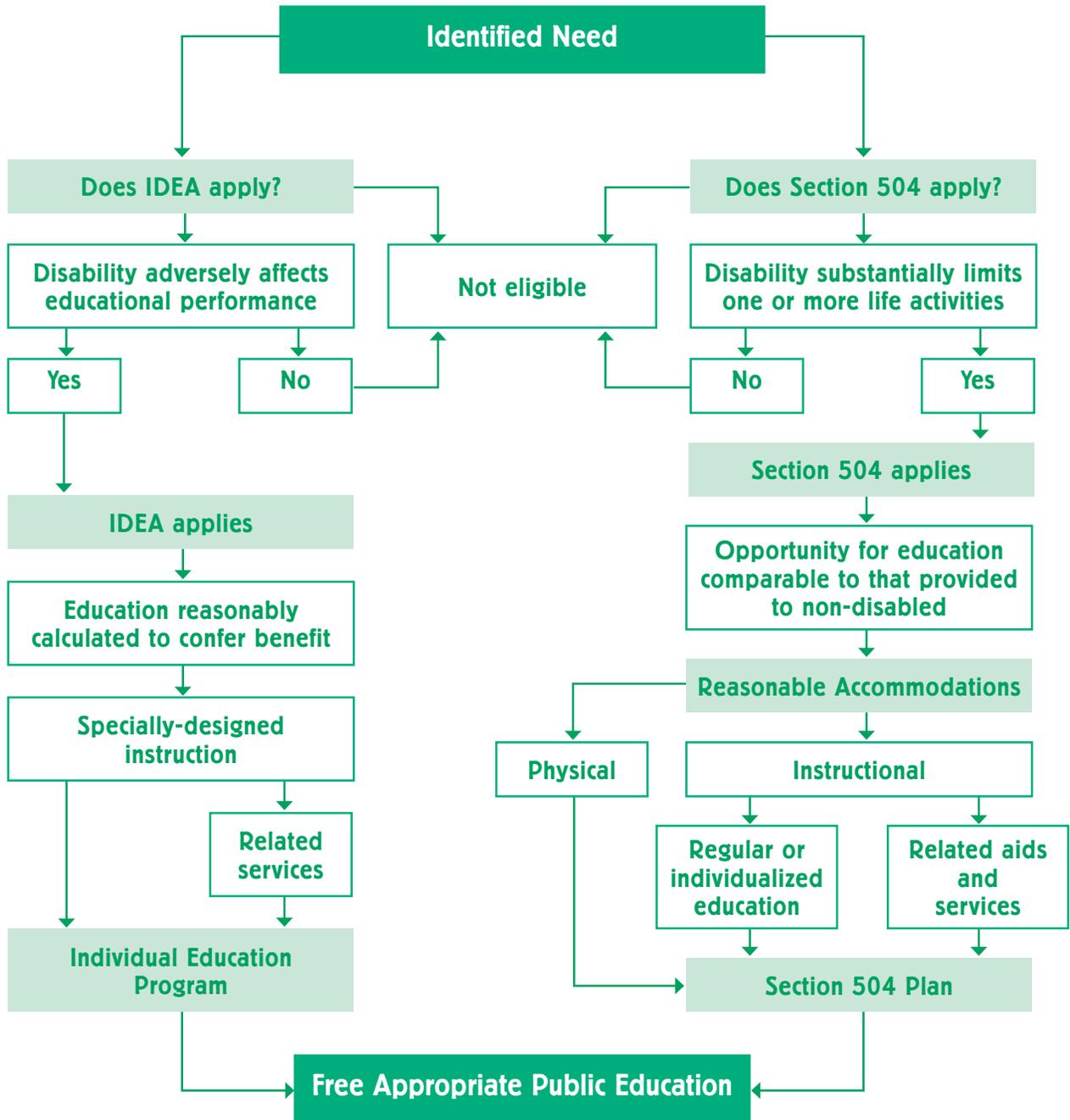
Ultimately, the school staff is responsible for deciding on and implementing accommodations after receiving and reviewing information documented in the DMMP. Because parents/guardians understand the details of their child's diabetes care, school personnel must consider the preferences and information provided by the parent/guardian when determining services and implementing appropriate accommodations.

The school nurse or other school personnel may, at any time, provide input regarding the appropriateness of a student's care and treatment plan. School personnel are instrumental in identifying potential unsafe situations and are instrumental in helping to avoid situations where safety may be compromised.

The Individuals with Disabilities Education Act (IDEA)/Section 504 Process Flow Chart in Figure 8 is a visual diagram of the process for determining services and accommodations under IDEA or Section 504.

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Figure 8: Individuals with Diabetes Education Act (IDEA)/Section 504 Process Flow Chart



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Documenting Services and Accommodations

The Diabetes Medical Management Plan (DMMP), the Healthcare Plan, and the Section 504 Plan are three separate items that serve different purposes. In many cases, the Section 504 Plan will also contain the student's Healthcare Plan and the DMMP. The DMMP is developed by the student's health care provider(s) with parent/guardian input. The Healthcare Plan is developed by a school nurse with input from other school personnel and parents/guardians. The Section 504 Plan is completed by school personnel in collaboration with parents/guardians. Together, these plans:

- Document diabetes care and management in the school setting
- Provide a detailed assessment of the student's health care needs
- List specifics of how the student's needs will be met
- Ensure that specific parameters and accompanying actions are in place to provide an equal opportunity for education

Schools are required to provide services and accommodations related to the health care needs of students with diabetes.⁴² Section 504 and the ADA require a school to develop and implement the Section 504 Plan within a reasonable period of time, based on the specific facts and circumstances of each student. In most cases, a meeting should be held no later than 30 calendar days after parents/guardians provide the school with their student's completed DMMP. Many times, the student will participate in this process, but this depends on the student's level of maturity and ability, as well as his or her self-care capabilities. Sometimes, compromise is needed between parents/guardians and school personnel over specific contents of the Section 504 Plan or specific planned services and accommodations.

A written Section 504 Plan is strongly recommended but not required, as it formally documents and identifies a student as having a disability and therefore, entitlement to reasonable accommodations. Written plans can also assure that parents/guardians and school personnel are aware of roles, responsibilities, and accommodations that are to be provided. A Section 504 Plan need not be signed,⁴³ however, signing a Section 504 Plan clearly shows respective agreed-upon responsibilities.

Schools must consider individual circumstances of each student's specific needs in developing a Section 504 Plan, meaning that "general" rules applying to all students with diabetes should not be used even when safety concerns are raised to justify them.⁴⁴ For example, sending all students with diabetes to one school in the district so that they may receive "focused" health care services is not permitted, as it denies these students the benefits of a "free, appropriate public education."⁴⁵

If a student qualifies for an IEP, school personnel must develop the IEP within a specified time period. When an initial evaluation is requested by a parent/guardian, the evaluation process and determination of whether a student has a disability must be completed within 60 calendar days of receiving the consent for the evaluation.⁴⁶ An IEP meeting must be held within 30 calendar days of a determination that a student needs special education and related services,⁴⁷ with the IEP implemented as soon as possible.⁴⁸ The school is responsible for preparing the written IEP for a student with diabetes. A delay in the IEP development process is not a reason to restrict education or deny meaningful access to school. All team members must agree to and sign the written IEP.

42 34 C.F.R. §104.37(a)(2); *Cedar Rapids Community Sch. Dist. v. Garret F.*, 526 U.S. 66, 119 S. Ct. 992 (1999).

43 See *Bradley County (TN) School Dist.*, Complaint No. 04-04-1247, 43 IDELR 44 (OCR 2004).

44 See, e.g., *Irvine (CA) Unified Sch. Dist.*, Complaint No. 09-94-1251, 23 IDELR 1144 (OCR 1995) and *Waterbury (CT) Sch. Dist.*, Complaint No. 01-07-1280, 51 IDELR 198 (OCR 2008) (requirement that all blood glucose testing be conducted in nurse's office violated Section 504).

45 Section 504, the ADA, and the IDEA all require that the student be educated with persons who are not disabled and in the least restrictive environment. 34 C.F.R. §104.34; 42 U.S.C. §12182(b)(1)(B)-(C); 20 U.S.C. §1412(a)(5).

46 20 U.S.C. §1414(a)(1)(C).

47 34 C.F.R. §300.323(c)(1).

48 34 C.F.R. §300.323(c)(2).

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Implementation of Needed Services and Accommodations

School personnel are responsible for implementing accommodations after considering the student's documented health care needs and the preferences of the parents/guardians and student. Meetings between parents/guardians, school nurse, teachers, principal, and other concerned school personnel will ensure the best results for implementation of an agreed Section 504 Plan.⁴⁹ A school nurse or appropriately trained school personnel must provide individualized health care according to the Diabetes Medical Management Plan (DMMP) outlined by the student health care provider, the Healthcare Plan, Individualized Education Program (IEP), and/or Section 504 Plan.

If a student cannot attend school due to a lack of available school care, a school may accelerate the evaluation process alternative educational arrangements. A school may not delay acting upon a parent's/guardian's notification/request for services/accommodations.⁵⁰

Once decisions regarding services and accommodations are determined and implemented, a periodic review is needed. Reviews may occur annually or more frequently, especially if a student's diabetes management and treatment plan changes. A review of plans may be initiated by the parents/guardians or school staff.

At times, school personnel may be required to monitor the provision of snacks to a student with diabetes.⁵¹ School personnel should always apply sound judgement in implementing a Section 504 Plan. As an example, if a student's Section 504 Plan or IEP states a specific snack time, but the student's blood glucose level is high, the snack may be withheld without violating Section 504, the IEP, or the Americans with Disabilities Act since "a legitimate nondiscriminatory reason (i.e., the nature of the student's disability and concern for the student's health and safety) for treating the student differently on these occasions" would exist.⁵²

Ensure a smooth transition from home to school for services and accommodations by:

- Assuring that trained school personnel are available to provide routine and emergency diabetes care at school and school-related activities
- Requiring diabetes care training guidelines and the training of school personnel
- Permitting independent monitoring and treatment by students who are mature and capable of doing so themselves
- Requiring a Section 504 Plan or IEP developed by the school based on a DMMP completed by the student's health care team
- Healthcare Plan developed by the school nurse to document the student's care needs in the school setting

Academic Standards, Requirements, and Discipline

Students with diabetes must have an equal opportunity to participate in a school's normal educational environment. The school district will typically make supplementary aids, services, and modifications to its academic program as required, all of which need to be documented in a Section 504 Plan or Individualized Education Program (IEP).⁵³

⁴⁹ See Chapter 9, *Managing Diabetes at School*.

⁵⁰ *Cabell County Sch. Dist.*, Docket No. 03-92-1062 (OCR 1992).

⁵¹ *Renton (WA) Sch. Dist.*, Complaint No. 10-93-1079, 21 IDELR 859 (OCR 1994).

⁵² See *Rock Hill (OH) Local Schs.*, Complaint 15-02-1034, 37 IDELR 222 (OCR 2002).

⁵³ 34 C.F.R. §104.34(a).

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A student may require other academic accommodations and modifications under Section 504 and the ADA, including:

- Supplementary aids and services in the academic program individualized for each student with diabetes
- An alternate time to take academic exams due to diabetes (e.g., blood glucose levels are out of target range) or an illness exacerbated by diabetes⁵⁴
- Extra time to complete standardized or similar tests⁵⁵
- Documentation of no penalty for diabetes-related absences or tardiness
- Reasonable time to make up missed or late assignments and exams
- Opportunity to receive missed classroom instruction
- Access to water, restroom, diabetes supplies, snacks, and health care during the administration of standardized or other tests, or upon request
- Full participation in all school-sponsored activities, such as field trips and extracurricular events
- Ability to receive services in the least restrictive environment

When appropriate, modification of school policy to adjust academic and other penalties for an absence or tardiness related to diabetes care and management requirements is necessary.⁵⁶ Even though the student with diabetes has documented needs and required accommodations, once these are implemented as indicated in the student's Section 504 Plan or IEP, all other normal academic regulation, discipline, and sanctions continue to apply.⁵⁷ For academic honors, awards, and other recognition programs, a school may not discriminate against students with diabetes.⁵⁸

Students with diabetes are subject to the same disciplinary standards as any other students, provided that their diabetes does not cause the violation of such standards.⁵⁹ Thus, schools must determine and evaluate whether a connection between diabetes and the violation might exist.⁶⁰ Students have the right to present evidence the violation was diabetes-related prior to disciplinary action or penalties as a matter of due process.⁶¹

The Individuals with Disabilities Education Act (IDEA) has specific and detailed requirements when students with disabilities are disciplined, which the Office for Civil Rights has determined should apply to all students.⁶²

⁵⁴ Minimally, students with diabetes must be provided with no less assistance than other students who are ill.

⁵⁵ While most students with diabetes will not need additional time, some students may need to take extra breaks during tests to treat symptoms of hypoglycemia and hyperglycemia or perform other diabetes care tasks as specified in the student's Section 504 Plan or IEP. When standardized tests are involved, the best practice is to make this request in writing to the administering testing agency or school prior to the test.

⁵⁶ Where diabetes-related, the absence or tardiness should be excused. If appropriate, the parents/guardians must confirm the reason. *Prince George's County (MD) Schools* Complaint No. 03-99-1098, 33 IDELR 70 (OCR 1999); *Loudoun County (VA) Pub. Schools*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999).

⁵⁷ See *Hernando (FL) County Schools*, Complaint No. 04-98-1412, 31 IDELR 89 (OCR 1999) and *Hornstine v. Moorestown Board of Educ.*, F.Supp. 2d 887 (D. N.J. 2003) and *Perry (OH) Public Sch. Dist.*, Case No. 15-03-1148, 41 IDELR 72 (OCR 2003).

⁵⁸ See *Hornstine v. Moorestown Board of Educ.*, 263 F. Supp. 2d 887 (D. N.J. 2003) and *Perry (OH) Public School Dist.*, Complaint No. 15-03-1148, 41 IDELR 72 (OCR 2003).

⁵⁹ See e.g., *Brown v. Metropolitan School Dist. Of Lawrence Township*, 945 F. Supp. 1202 (S.D. Ind. 1996), *adopting magistrate's judgment*, 1996 U.S. Dist. LEXIS 17101, 25 IDELR 393 (S.D. Ind. 1996); *Eureka (CA) City School Dist.*, Complaint 09-95-1020, 23 IDELR 238 (1995); and *Community (IL) Unit Sch. Dist. #300*, Complaint No. 05-98-1039, 30 IDELR 148 (OCR 1998).

⁶⁰ The Individuals with Disabilities Education Act (IDEA) contains elaborate procedures for evaluation of such cases, particularly where a pattern of behavior that may lead to disciplinary action indicates that a disability exists. 20 U.S.C. §1415(k).

⁶¹ *Goss v. Lopez*, 410 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975). See also *Gasconade County (MO) R-I Sch. Dist.*, Complaint No. 07-91-1061, 18 IDELR 313 (OCR 1991) and *Community (IL) Unit. Sch. Dist. #300*, Complaint No. 05-98-1039, 30 IDELR 148 (OCR 1998).

⁶² See 20 U.S.C. §1415(k). See also *Santa Ana (CA) Unified Sch. Dist.*, Complaint No. 09-92-1185, 19 IDELR 501 (OCR 1992); *Petaluma Unified Sch. Dist.*, Complaint No. 09-95-1158 (OCR 1996); and *Gasconade County (MO) R-I Sch. Dist.*, Complaint No. 07-91-1061, 18 IDELR 313 (OCR 1991).

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Accommodations Outside of the Classroom or School

School-sponsored activities are fun and important aspects of a student's education; therefore, these activities must never be curtailed or made difficult for students with diabetes.⁶³ All students are eligible to participate in all school-sponsored activities (e.g., field trips). Schools must provide necessary accommodations to students with diabetes so that they may safely participate in these activities. A student's Section 504 Plan or Individualized Education Program (IEP) must include plans for a school nurse or other trained school personnel to respond to a student's diabetes care needs, so a student can enjoy full participation in school-sponsored activities. Where rules or standards exist for who can participate in an activity (such as athletics), a student with diabetes must meet, with or without necessary accommodations, the required rules or standards.⁶⁴

The school may not require the parent/guardian to attend a school-sponsored event as a prerequisite for participation by the student with diabetes.⁶⁵ The school may also not exclude a student with diabetes because of the extra supervision required.⁶⁶ Similarly, a public school may not impose additional fees for students with diabetes who participate in these activities, even where the school incurs additional costs in providing the necessary accommodations outlined in the student's Section 504 Plan or IEP.⁶⁷ Private schools may adopt an additional charge if "justified by a substantial increase in cost" to the school.⁶⁸ In settlements, the Office for Civil Rights has not required coverage at school events where a student is a spectator.⁶⁹

Accommodations on school buses and other transportation are required when necessary. Schools must ensure that students with diabetes receive transportation services with accommodations just as any other student does in the school environment.⁷⁰

Dispute Resolution Options

This Section provides a brief overview of options available under the laws protecting students with diabetes. School personnel and parents/guardians must make every reasonable effort to reach agreement regarding the accommodations provided to students with diabetes.

Experience shows that when parents/guardians and school personnel work cooperatively and communicate openly, the best educational environment for a student with diabetes is achieved. If school personnel and parents/guardians cannot reach agreement and consensus, a number of options are available to resolve disagreements and disputes.

63 34 C.F.R. §104.37(a); *A.P. v. Anoka-Hennepin Indep. Sch. Dist.*, 538 F. Supp. 2d 1125, 1142 (D. Minn. 2008); *Elkhart (IN) Community Sch. Corp.*, Complaint No 05-00-1026, 34 IDELR 13 (OCR 2000); and *Plymouth-Canton Community Schs.*, Complaint No. 15-99-1113 (OCR 1999).

64 See *New York City (NY) Bd. Of Educ.*, Complaint No. 02-89-1128, EHLR 455 (OCR 1989).

65 *Clovis (CA) Unified Sch. Dist.*, Complaint No. 09-08-1395, 52 IDELR 167 (OCR 2009).

66 See *OCR Senior Staff Memorandum*, 17 EHLR 1233 (OCR 1990) (Guidance on the Application of Section 504 to Noneducational Programs of Recipients of Federal Financial Assistance) and *Nyack (NY) Unified School Dist.*, 43 IDELR 169, Complaint No. 02-04-1065 (OCR 2004).

67 34 C.F.R. § 104.33(c)(1); *OCR Senior Staff Memorandum*, 17 EHLR 1233 (OCR 1990). However, fund-raising requirements for extracurricular activities expected of other students will not relieve a student with diabetes from these requirements.

68 34 C.F.R. §104.39(b).

69 See *Buchanan County (VA) Public Schs.*, Case No. 11-03-1051 (OCR 2003).

70 34 C.F.R. §104.33(c)(2) (Section 504) and 20 U.S.C. §1401(26)(A) (IDEA). See also *Jamestown Area (PA) Sch. Dist.*, Complaint 03-02-1117, 37 IDELR 260 (OCR 2002) and *Loudoun County (VA) Pub. Schs.*, Complaint Nos. 11-99-1003, 11-99-1064, 11-99-1069 (OCR 1999).

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The available options may differ depending on which law applies, with the Individuals with Disabilities Education Act (IDEA) providing more elaborate administrative procedures than Section 504 or the Americans with Disabilities Act, as amended by the Americans with Disabilities Amendments Act (ADA).

Should the parents/guardians disagree with the accommodation(s) provided by the school, the ADA, Section 504, and the IDEA all provide resolution procedures. If an agreed upon Section 504 Plan is not being followed, concerns should be presented to appropriate school officials and/or the Section 504 Coordinator. School personnel and parents/guardians may need to convene additional meetings in an attempt to resolve concerns and differences.

If problems are not resolved and parents/guardians continue to believe their child's rights were violated, a number of options are available, including:

- An internal school or district grievance procedure
- Mediation
- Due process hearings
- Complaints to state or federal enforcement agencies
- Lawsuits in state or federal court

Most schools have informal grievance procedures available for resolving concerns about a student's individualized accommodations. Decisions on grievances filed using these informal procedures are often made by school district personnel, such as the superintendent or the school board. Schools must designate an employee to oversee compliance with disability discrimination laws.⁷¹ Complaints or disagreements should be directed to this person. The parent/guardian may contact the principal or superintendent if they do not know who the school has appointed.

School district grievance procedures are different from the impartial hearings provided to resolve disputes under Section 504 and the IDEA. Following a district's informal procedures does not prevent parents/guardians from requesting a hearing or pursuing other remedies with state or federal agencies.⁷²

Section 504 regulations require that schools or districts receiving federal funding adopt grievance procedures incorporating due process standards and providing for prompt and equitable resolution of complaints.⁷³ Schools must inform parents/guardians about their hearing rights; failure to inform parents/guardians can violate Section 504 and the ADA.⁷⁴ A student's rights under Section 504 may be enforced through administrative complaints to the Department of Education's Office for Civil Rights (OCR) through an impartial hearing or through a private lawsuit in state or federal court.

The OCR will only investigate complaints filed within 180 days of the discriminatory action.⁷⁵ In addition, schools must provide for impartial hearings (sometimes known as "due process" hearings) to address Section 504 complaints and violations. The hearing officer must be impartial and cannot be employed by or have a significant business relationship with the school district or Department of Public Instruction. Parents/guardians can file an OCR complaint by mail, fax, online, or in person at an OCR office. No special form is required, but the complaint must be in writing.⁷⁶ The required elements of an OCR complaint are specified in *Appendix B*.

71 Section 504 requires this for districts employing 15 or more employees, 34 C.F.R. §104.7(a); the ADA requires this for public entities employing 50 or more employees, 28 C.F.R. §35.107(a).

72 *Sycamore (OH) Community City Sch. Dist.*, Complaint No. 15-01-1188, 36 IDELR 245 (OCR 2002).

73 34 C.F.R. §104.7(b) (required only for entities employing 15 or more).

74 *Yuba City (CA) Unified Sch. Dist.*, Complaint No. 09-94-1170, 22 IDELR 1148 (OCR 1995).

75 A complaint may also address earlier matters where continuing discriminatory policies or practices are alleged. See *OCR Case Resolution and Investigation Manual*, Section 107.

76 See <http://www.ed.gov/about/offices/list/ocr/complaintprocess.html>.

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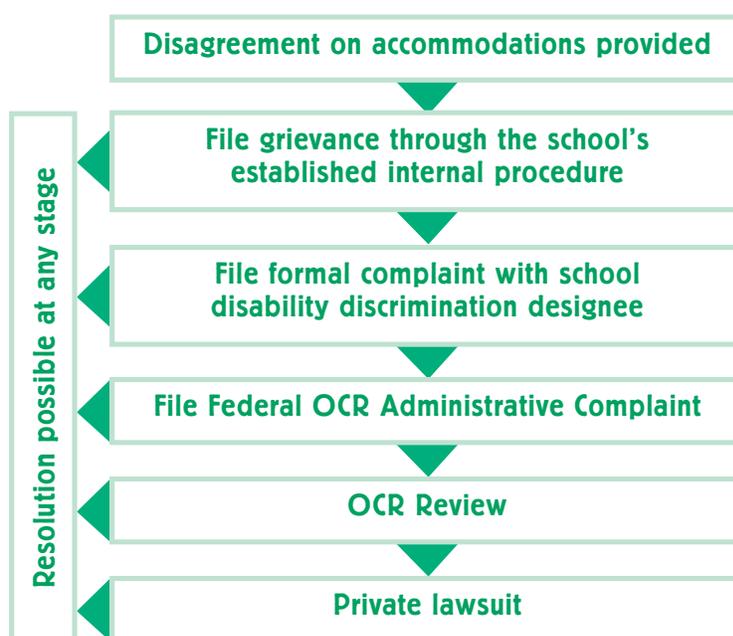
The OCR may decline to process a complaint being addressed through a school's formal grievance procedure if the OCR anticipates the school will provide a comparable resolution process.⁷⁷ Once completed, the OCR will review the results and determine whether the comparable process and legal standards were in fact applied.

After the complaint is filed, the OCR will investigate by gathering information from all parties. Generally, the OCR will contact the school district within 15 days and make a determination within 105 days. If the investigation indicates that violation(s) may have occurred, the OCR will attempt to work with the school district to achieve a voluntary resolution, generally by negotiating a resolution agreement. These agreements can include general provisions about district policies or procedures as well as specific relief to address the student on whose behalf the complaint was filed.⁷⁸ If an agreement cannot be reached, the OCR may initiate proceedings to cut off federal funding or may refer the matter for litigation. The OCR may also decide not to continue an investigation due to lack of cooperation by the complaining party or a determination that the matter is more appropriately addressed through another forum.

The ADA requires that grievance procedures be adopted and published by school districts employing 50 or more employees.⁷⁹ Like Section 504, the ADA may be enforced through administrative complaints and private lawsuits, using the same procedures.⁸⁰

Parents/guardians may choose to resolve disputes locally, by filing a complaint through the OCR, or by instituting private litigation. The process for resolving disputes under the ADA or Section 504 is outlined in Figure 9.

Figure 9: Resolution of Disagreements Under ADA or Section 504



⁷⁷ See U.S. Dept. of Educ., Office for Civil Rights, *OCR Case Resolution and Investigation Manual*, Section 109.

⁷⁸ *OCR Case Resolution and Investigation Manual*, Section 303.

⁷⁹ 28 C.F.R. §35.107(b).

⁸⁰ 42 U.S.C. §12133; for non-public schools, the Department of Justice continues to be responsible for investigating complaints.

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Schools are prohibited from taking actions that intimidate, threaten, coerce, or discriminate against students who exercise their rights under applicable law.⁸¹

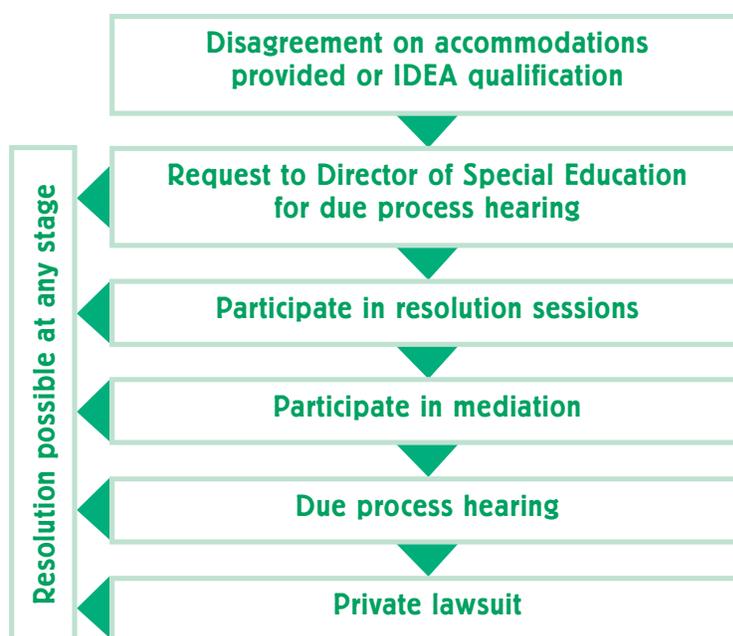
Under the IDEA, the school district or parents/guardians have the right to request a due process hearing whenever a dispute exists between the parent and the school district over the district's proposal or refusal to initiate or change the identification, evaluation, proposed Individualized Education Program (IEP) or portion thereof, the implementation of the IEP, educational placement, or the provision of a free, appropriate public education. Each state must establish an impartial due process hearing system.⁸²

Make requests to the director of special education for the district. Before the hearing is initiated, resolution sessions must take place to encourage agreement among the parties. Mediation is encouraged and must be made available by the state. If a hearing is held, parents/guardians have the right to representation by an attorney or advocate. The hearing officer must allow for the introduction of evidence by the parties and must issue a written decision.

Only after this hearing (and any applicable appeal or review) may the parent/guardian file a lawsuit in state or federal court.

The process for resolving disputes under the IDEA is outlined in Figure 10.

Figure 10: Resolution of Disagreements under IDEA



Resolving disagreements and disputes is complicated and requires expert legal assistance. The American Diabetes Association has volunteer attorneys available to assist students with diabetes and their parents/guardians in resolving issues relating to diabetes in the school setting. Detailed help and information is available by calling toll free: 1-800-DIABETES (342-2383). Helpful information is also available at www.diabetes.org/advocacy.

⁸¹ See 34 C.F.R. §100.7(e) (Section 504) and 28 C.F.R. §§35.134, 36.206 (ADA).

⁸² See Wis. Stat. §§115.758, et seq.; it should be noted that the OCR has no jurisdiction under the IDEA.

