

An Overview of the Americans with Disabilities Act and the Rehabilitation Act, and the Protections they afford to People with Type 1 Diabetes at School

Daniel O. Phelan, Esq.

The American's with Disabilities Act

The Americans with Disabilities Act, 142 U.S.C. § 12101 et seq. (hereinafter referred to as the “ADA”), is a federal law prohibiting discrimination against qualified individuals with disabilities. Under the ADA, because Type 1 Diabetes (hereinafter referred to as “T1D”) limits a major life function, the endocrine system, it is a qualified disability, regardless of whether or not the individual’s diabetes is well managed or not. The ADA also prohibits retaliation for asserting the right not to be discriminated against. The ADA provides protections for individuals with disabilities in employment through Title I of the ADA, in state and local government programs through Title II of the ADA, and in places of public accommodation operated by private entities through Title III of the ADA. All public schools must comply with Title II of the ADA, and all private schools, except religious schools, must comply with Title III of the ADA. The provisions contained in the ADA are substantially similar to those contained in Section 504 of the Rehabilitation Act with regard to schools. A major difference however is that the ADA is a little broader in its ability to protect individuals with disabilities against discrimination by employers and private entities. Moreover, a big difference between the ADA and the Rehabilitation Act is that the condition requiring the receipt of federal funds in order to be bound by the Rehabilitation Act does not exist with regards to the ADA.

Under the ADA, a school must not discriminate against a child with a disability, and is also required to make reasonable accommodations in its practices and policies to avoid discrimination and to afford children with disabilities an equal opportunity to participate in school activities, unless doing so would impose an unreasonable burden on the institution. Generally, schools will meet their obligations under the ADA by meeting their obligations under Section 504 of the Rehabilitation Act. Pursuant to both Acts, schools may not deny a person who has a disability, such as diabetes, the opportunity to participate in or benefit from an aid, benefit or service that is afforded to non-disabled students. A student with a disability must be given an equal opportunity to participate in school programs or activities, and must be provided reasonable modifications and/or reasonable accommodations as necessary to allow participation in the school programs or activities.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794

Section 504 of the Rehabilitation Act is a federal civil rights law that prohibits discrimination on the basis of disability. The Act states:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

Under Section 504 of the Rehabilitation Act, schools that receive federal funding must meet the needs of students with disabilities as well as they meet the needs of students without disabilities. Often, schools must provide reasonable accommodations in order to meet those needs of the students with disabilities. This includes reasonable modifications and accommodations to school policies and procedures, as well as providing related aids and services to disabled students so that they are given an educational opportunity that is equal to the educational opportunity that a non-disabled student receives. In contrast with the ADA, only schools that receive federal funding are required to comply with Section 504 of the Rehabilitation Act, so private schools that receive no federal funding are not required to comply with the Act.

The best way to make sure that the needs of students with diabetes are met is to negotiate and implement a 504 Plan with the school. A 504 Plan puts school staff, the student, and parents or guardians on the same page. A well-drafted 504 Plan helps everyone work together as a team and avoid misunderstandings. At the beginning of the school year a parent or guardian should have a 504 meeting with the appropriate school administrators, usually the school's Committee on Special Education, in order to iron out the details of the 504 Plan. Parents should really see the 504 meeting as a contract negotiation with their school, in which they are negotiating with school officials to provide the reasonable accommodations that the parent is requesting. It is important to note that the school is not required to grant every single accommodation request that a parent makes in their 504 Plan, they are only required to provide reasonable accommodations. What is reasonable may vary depending on the particular school. A school is not required to provide an accommodation to a disabled student that would be unreasonably burdensome on the school.

Accommodations at School

The following are some reasonable accommodation requests typically found in 504 Plans:

- Requiring that staff members be trained to check blood glucose levels and administer both insulin and glucagon.
- Requiring that staff members with immediate custodial care of students with diabetes are trained to recognize high and low blood sugar levels and know what to do in an emergency. This includes gym teachers and bus drivers.
- Students are allowed to self-manage their diabetes if they are capable of doing so.
- Students can fully participate in all sports, extracurricular activities, and field trips. This may require that trained staff are available to supervise or provide diabetes care. (Parental attendance cannot be required as a condition of participation.)
- Students may take extra trips to the bathroom or water fountain.
- Extra absences for medical appointments and sick days are permitted.
- Academic adjustments for classroom time missed for medical appointments, testing, or because of periods of high or low blood sugar are made.

Diabetes Self-Management While at School

Students must be allowed to perform diabetes self-management in the classroom, and at all other locations where school activities occur as well, as long as the student is able to properly manage their diabetes on their own. Schools are not allowed to require students who have type 1 diabetes to go to another location, such as the school nurse's office, school clinic, or an administrator's office, when diabetes management can safely and quickly be performed in the classroom. Common self-care tasks that occur in the classroom include blood glucose

monitoring, administering insulin, treating hypoglycemia, eating snacks, and drinking liquids. It is also important that diabetes management be performed in the classroom, when possible, for the student's health and safety, and also to minimize the amount of instructional time that students miss while traveling to another location to perform routine self-management. It is important to note that blood glucose monitoring, insulin administration, and sharps are safe in the classroom, and there is no risk of transmitting disease or blood-borne pathogens through conducting diabetes care tasks in the classroom.

With the aforementioned in mind, a 504 Plan should still permit students to leave class for diabetes care if that student wishes to do so. Evaluating whether allowing the child to leave is appropriate or not will depend on why the child is leaving, whether he or she is able to perform self-care tasks, and whether he or she needs to be accompanied when leaving. In no circumstances should a child be permitted to leave the classroom unaccompanied during an emergency situation, such as severe hypoglycemia. Some children, usually those who are younger or less mature with their diabetes self-management, are unable or unwilling to perform self-management tasks independently, or otherwise require supervision or assistance when doing so. In these cases, it may be necessary to require that the student go to the school nurse's office, clinic, or another place in the school for their diabetes management. This decision, however, only may be made as part of the individualized evaluation and assessment of the child. The school may not have a blanket policy requiring all students to go to a certain location for their diabetes management.

When a student misses instruction or other activities because of something related to their diabetes, other services or modifications may be necessary to ensure that the student receives a full educational opportunity. Students with type 1 diabetes may not be penalized for absences

related to their type 1 diabetes, including but not limited to absences for medical appointments or because of illness.

With parent/guardian and health care team consent, students with type 1 diabetes should be allowed to carry all supplies related to their diabetes management where they demonstrate sufficient maturity and responsibility. If a young child with type 1 diabetes has not demonstrated sufficient maturity and responsibility, the school may refuse to allow the child to carry their supplies. This typically occurs with much younger children, where there is a reasonable concern for the safety of both the child with type 1 diabetes, as well as their classmates. This type of situation is well within the law.

Schools are also obligated to provide services to students with diabetes, and may not require a student's parent or guardian to assume this responsibility. Parents or guardians may not be required to provide diabetes care services at school. Despite the foregoing, however, a child's parents or guardians, and school officials may agree in the 504 Plan that the parent or guardian may provide services at school if they wish. Although each child's situation must be evaluated individually, requiring the school to provide a one-on-one aide for a child with type 1 diabetes is generally not necessary, and schools typically will not agree to provide a one-on-one aide except in situations with very young children who have not yet learned how to recognize the various signs of high and low blood sugars, and who have not begun to learn how to count carbohydrates on their own. Outside of the foregoing scenarios, type 1 diabetes alone may not entitle the student to a one-on-one aide unless that student has other disabilities that may require the assistance of a one-on-one aide.

Teachers of students with type 1 diabetes, and/or staff that work with, or supervise the student should receive some training or instruction regarding type 1 diabetes. While the level of

instruction may vary depending on the position or role of the teacher or staff member, all school personnel having regular contact with a student with diabetes should be trained to recognize problems relating to type 1 diabetes, such as hypoglycemia and hyperglycemia, and know who to contact when problems arise. A few school staff members should receive training in specific diabetes care tasks in order to assist a student who cannot adequately self-manage these tasks, and to provide necessary emergency care to any student with diabetes, should an emergency situation arise. Which teachers and school personnel who are educated and trained in diabetes care, and which level of education or training they receive, is something that is typically discussed in a 504 meeting, and often is formally written in the 504 Plan.

With regard to administering insulin at school, insulin dosages must naturally be prescribed by a student's physician, and directions to school nursing staff on how to properly administer the insulin dosages should ordinarily come from the physician. Nevertheless, parents or guardians are usually well versed in their child's diabetes management, and can provide input, guidance, and explanations of the physician's directions. A physician can also authorize a parent or guardian's adjustment of insulin dosages in a student's Diabetes Medical Management Plan, and this is something that should typically be done due to the constant modification of insulin dosages that is necessary for the proper management of type 1 diabetes. The school nurse must then follow the directions in the Diabetes Medical Management Plan, as well as the student's 504 Plan, with regards to administering insulin to the student, and should never adjust the student's insulin dosages on their own without consulting either a parent/guardian, or the child's endocrinologist.

Schools must also allow alternate times for academic examinations if blood glucose levels are significantly out of target range, and students should also be allotted stoppage time during

timed examinations, in order for them to properly manage their diabetes while receiving the same amount of time on the examination that an otherwise non-disabled student is receiving. Students with type 1 diabetes should never be required to take examinations while experiencing hypoglycemia, or hyperglycemia because their academic performance would be significantly impaired during these occurrences. Students must also have unlimited and unhindered access to all diabetes management supplies, snacks, water, the water fountain, and the restroom, if necessary to treat the student's diabetes throughout the school day, including during academic or standardized examinations. Where modifications may be required on standardized examinations, it is important to make this request in writing in advance to the testing agency or school, whichever is appropriate.

Extracurricular Activities

Students with type 1 diabetes are entitled to participate in all school extracurricular activities, including but not limited to field trips, school sports and other similar activities. The non-discrimination obligation under Section 504 of the Rehabilitation Act, as well as the Americans with Disabilities Act, applies to all school programs and activities, including extracurricular ones. A student with type 1 diabetes may never be excluded from extracurricular activities, field trips, or similar activities that they can otherwise participate in, solely due to the student's disability. Where all students are eligible to participate in an activity, such as, for example, school field trips, the student must be given the necessary reasonable accommodations needed to participate. Where the school imposes rules or standards for who can participate in an activity, such as with most athletic teams, a student with diabetes wishing to participate must be able, with or without reasonable accommodations, to meet these requirements. The school is required

to provide reasonable accommodations for the student with diabetes to participate in a particular extracurricular activity. Therefore, because failing to provide coverage by trained diabetes personnel at extracurricular activities would exclude many students with type 1 diabetes from participating in these activities for safety reasons, just as failure to provide coverage during the school day would exclude these students from in-school activities, if reasonable, schools must provide coverage by trained diabetes personnel while a student with type 1 diabetes participates in these aforementioned extracurricular activities, in order to allow that student with type 1 diabetes to participate in the same activities as an otherwise non-disabled student. Again, these accommodations must be reasonable, based on the circumstances. With regard to school sports teams, federal anti-discrimination laws forbid unequal treatment of people with disabilities, however, they do not guarantee a student with a disability a right to play a particular sport. Also, not every student with type 1 diabetes will need special accommodations to be able to participate in school sports.

Schools also may not require parents to attend an extracurricular activity, field trip, after school athletics, or other similar activity, as a requirement in return for allowing a student with type 1 diabetes to participate. Furthermore, additional costs may not be imposed beyond those costs, which are charged to non-disabled students, to cover any additional costs associated with a type 1 diabetic's participation in extracurricular activities, field trips, sports, or similar activities.

School Related Bus Rides

Students with type 1 diabetes are also entitled to the same accommodations that they receive at school while they are on school-related bus rides. The same right to accommodations exists while on school buses just as it does in school. It is particularly important that students with type

1 diabetes, who ride the bus to school each day, have access to food and drink, and all other diabetes management supplies, as well as access to emergency care while riding the bus. School bus drivers who have a student riding the bus each day to or from school may also be required to be educated and trained to recognize problems relating to type 1 diabetes, such as hypoglycemia and hyperglycemia, and know who to contact when problems arise, similar to the education and training provided to school teachers who have a student with type 1 diabetes.

School Discipline

Students with type 1 diabetes are generally subject to the same disciplinary rules as other students. If a student's misconduct is the result of their type 1 diabetes, however, a student may not be disciplined for that misconduct. Discrimination laws prohibit punishing a student because of the student's disability, and misconduct that is the result of a severe hypoglycemia or severe hyperglycemia shall not expose that student to discipline. Nevertheless, despite the foregoing, the fact that a student happens to have type 1 diabetes is not an excuse for misconduct that is entirely unrelated to that student's disability. This is generally the same with criminal offenses occurring at school. Often, the mental element of a crime can be negated if that crime occurred while a type 1 diabetic was not of sound mind, as is the situation involving a crime committed by a student who is experiencing severe hypoglycemia or severe hyperglycemia. Where the type 1 diabetic is suffering from severe hypoglycemia or severe hyperglycemia, that person with type 1 diabetes cannot form the requisite intent to commit a voluntary act and, therefore, the person with type 1 diabetes should not be held responsible for committing the misconduct, whether it be criminal in nature, or simply a school disciplinary violation. Where this issue arises, schools are to evaluate whether there is a connection between the student's type 1 diabetes, and the

misconduct, and, if there is a connection, the person with type 1 diabetes should never be held responsible for that misconduct.

Students with type 1 diabetes also may not be disciplined or penalized without being afforded the right to present evidence that the misconduct was related to their disability. Although, less formal procedures are permitted where a student's punishment is suspension for ten or fewer days, the right to provide an explanation for the misconduct exists as a matter of right under the Due Process Clause in the Fifth Amendment to the United States Constitution, regardless of the length of the suspension.

Grievance Procedures

If you feel that your child has been discriminated against because of their type 1 diabetes, such as where the school is refusing to grant reasonable accommodations for your child, or if the school is not following the 504 Plan or the Diabetes Medical Management Plan, there are different options available, including but not limited to mediation, internal school grievance procedures, all the way up to filing a legal action in federal or state court.

A student's rights under Section 504 of the Rehabilitation Act may be enforced through various avenues. These avenues include, but are not limited to, filing administrative complaints with the United States Department of Education's Office for Civil Rights, through an impartial hearing at the district or state level, or through a private lawsuit in federal or state court.

The United States Department of Education's Office for Civil Rights (hereinafter "Office for Civil Rights") accepts and investigates complaints of violations of Section 504 of the Rehabilitation Act by schools that receive federal funding. The Office for Civil Rights will only investigate complaints that are filed within 180 days of the alleged discriminatory acts, unless

certain conditions permit granting a waiver of this requirement. After a complaint is filed, the Office for Civil Rights will investigate the complaint by gathering information from the complaining party, as well as the school district. If this investigation indicates that a discriminatory act that violates Section 504 of the Rehabilitation Act may have occurred, the Office for Civil Rights will attempt to work with the school district to achieve a voluntary resolution of the matter, generally by negotiating a resolution agreement. If an agreement cannot be reached, the Office for Civil Rights may initiate proceedings to cut off federal funding to the school, or may refer the matter for litigation. The latter is uncommon, however, as the main goal is to resolve the misconduct and ensure that it does not continue.

Schools that receive federal funding must also have in place a procedure for impartial hearings, sometimes referred to as due process hearings, to address violations of Section 504 of the Rehabilitation Act, and complaints may also be addressed through this hearing process.

Similar to Section 504 of the Rehabilitation Act, the ADA provides for administrative remedies for discrimination complaints, as well as for the filing of lawsuits. The procedures used to address violations of the ADA are very similar to those available under Section 504, although one difference is that the United States Department of Justice, rather than the Office for Civil Rights, holds the authority to investigate ADA violations. While the Department of Justice has general jurisdiction over ADA complaints, it has designated the Department of Education to be responsible for investigating complaints of ADA violations against public schools. This means that a discrimination complaint against a public school that alleges a violation of the ADA, even if made to Department of Justice, will actually be investigated by the Office for Civil Rights anyway. Where a private school does not receive federal funding and therefore is not subject to Section 504 of the Rehabilitation Act, but is subject to the ADA, the Department of Justice will

investigate discrimination complaints using a procedure similar to that used by the Office for Civil Rights.

The strongest and most utilized avenue is filing a legal action in federal or state court, regardless of whether or not other administration processes have been utilized. It is not required that you exhaust all administrative remedies prior to filing an action in federal or state court based on a violation of Section 504 of the Rehabilitation Act, or a violation of the ADA. Both federal and state courts are able to exercise jurisdiction over the action if the lawsuit is filed based on a violation of Section 504 of the Rehabilitation Act, or a violation of the ADA.