Section 504: Students with Hidden Disabilities/Medical Disabilities

Utah State Board of Education

- Momi Tu’ua momi.tuua@schools.Utah.gov (USBE)
- Jennifer Slade jslade@pcschools.us (PCSD)
- Betty Sue Hinkson bhinkson@Utah.gov (DOH/USBE)
# Student Advocacy Services

**Ann G. White - Director**  
**Tandalaya Stitt - Administrative Secretary**

### Coordinator – Lillian Tsosie-Jensen
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  - Crisis & Safety (Bullying, Suicide, Gang, and Drug Prevention)
  - School Based Mental Health
  - School Climate, Dropout Prevention, Absenteeism
  - Student Services Leadership for LEAs
  - Equity, Diversity, & Intercultural Education
  - UtahFutures

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  - Adult Education, YIC, GED, Corrections & Alternative Education
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### Coordinator-Rebecca Donaldson
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  - Title III A and Immigrant
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  - Title VII A Indian Education
  - Title VII B McKinney-Vento Homeless

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- **Cathy Davis**, Suicide Prevention
- **Jennifer Slade**, 504 & Office of Civil Rights (OCR)
- **Mike Cottam**, Prevention Dimensions (.25)
- **Momi Tu’ua**, Comprehensive School Counseling Specialist
- **Holly Todd**, Comprehensive School Counseling Specialist
- **Betty Sue Hinkson**, School nurses
- **Verne Larsen**, Prevention, Sexual Abuse & Violence (DHS .5, PFS .5)
- **Glo Merrill**, CCR Development Manager

### Danielle Pedersen, Adult Education
- **Laurieann Thorpe**, Research YIC (.4)
- **Rita Brock**, Enhancement for At-Risk Students
- **Stephanie Patton**, Adult Education & Corrections
- **Steve Kaelin**, Youth in Custody
- **Travis Cook**, Youth in Custody, Gang Prevention

### Education Specialists
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- **Christelle Estrada**, Title III, Immigrant, and Refugee
- **Harold (Chuck) Foster**, Title VII-Indian Education
- **Jeff Ojeta**, School Imp, McKinney-Vento, Title III
- **Kreig Kelley**, Title I monitoring (.5)
- **Lisa Wisham**, Title IV, Afterschool Network, IGP
- **Max Lang**, School Improvement, Migrant
- **Murray Meszaros**, Title I Part D Neglected & Delinquent (.5)
- **Sandi Grant**, Title Monitoring, Fiscal compliance, RLIS
- **Sheryl Garner**, School Turnaround (SB235)

### Other Technical and Support Staff
- **Amanda Charlesworth**, Trainer I (new coordinator, Lillian, Momi)
- **Daphne Prince**, Office Specialist I (.5 504 & OCR) (Jennifer)
- **Leslee Ron**, Office Specialist (Verne, Cathy, Mike)
- **Vacant Position**, Fiscal Analyst

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- **Stephanie Preston**, Trainer I (Travis, Steve, Laurieann)
- **Adam Little**, IT Analyst II – Adult Education
- **Mistyamber Reynolds**, IT Analyst II – Adult Education
- **William Clyde**, IT Analyst - YIC

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- **Kellie Smith**, Office II (.5 UCA Help Desk and training, Out-of-state travel)
- **Renée Medina**, Office Specialist II (In-state travel) (DMI Manager)
- **Samuel Paredes**, Fiscal Analyst
Utah State Board of Education Student Advocacy Services

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Counseling, Equity, & Prevention

• Comprehensive School Counseling
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Holly Todd, Comprehensive School Counseling Specialist
Kim Herrera, Comprehensive School Counseling Specialist
Momi Tu’ua, Equity & Advocacy Specialist
Carol Anderson, School Based Mental Health & PBIS (.5)
Cathy Davis, Suicide Prevention
Betty Sue Hinkson, School Nurses
Vacancy, Prevention, Sexual Abuse and Violence (DHS .5, PFS .5)
Kalee Crandall, Trainer
Mike Cottam, Prevention Dimensions (.25)
Disability-Related Education Complaints Trending Up

Across the nation, disability-related education civil rights complaints are on the rise

2009: 3,900

2015: 10,392

Factors in the rise of complaints:
- Increased awareness of civil rights laws
- Increased confidence in the Office for Civil Rights
IDEA
Sec
Special
Education
IDEA
Student Focus
Section 504
Facilities
Parents
Other
Individuals
IDEA
Student Focus
School Focus
Extracurricular Activities
Community Focus
Employees
Public Buildings
Public Transportation
Americans with Disability Act
Business
Students
What Is Section 504?

Section 504 is available to students with disabilities who are not already eligible and receiving special education services under the eligibility requirements of the Individuals with Disabilities Education Act (IDEA).

Section 504 is designed to provide equal access and fairness in general education to students with disabilities, thereby leveling the playing field for them through what is known as a Section 504 Accommodation Plan.

This is NOT a plan designed to enhance a student‘s performance. It is a plan to provide fairness and equal access to education.
What Are the Parts of the Section 504 Regulations?

Section 504 has several areas of particular importance for schools:

- Subpart B: Employment Practices
- Subpart C: Program Accessibility
- **Subpart D: Requirements for Preschool, Elementary, and Secondary Education**
- Subpart E: Requirements for Post-Secondary Education
How Does Section 504 Relate to Schools?

Students in school settings fall under the protection of Section 504, which prohibits discrimination on the basis of disability from all school programs and activities in public, charter, and private schools receiving direct or indirect federal funding.
Is Section 504 funded like other federal programs?

**NO**... There is no State or Federal funding provided to assist in complying with section 504.

**All** costs are the obligation of the general school district/charter budget.

**Many schools** have established a Section 504 line item in their general fund budget to cover necessary accommodations for individuals with disabilities.
Section 504 Requirements

**FAPE:** 34 CFR 104.33 (c) *Free education*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements.
Section 504 Requirements

**Child Find:** 34 CFR 104.32 (a), to identify, locate and evaluate children that might have a disability.

**For example:** A student is struggling in several classes. RTI interventions have been in place the student is doing better in some classes. However if the interventions are removed, the child returns to struggling.

This would be a red flag that the child needs to be evaluated for IDEA or Section 504.
The Following Are Criteria for Identification Under Section 504:

1. Has a mental or physical impairment that substantially limits one or more of such person’s major life activities.

“Major life activities” include, but are not limited to:

Walking, Seeing, Learning, Breathing, Operation of a bodily function, continued...

Lifting, Reading, Concentrating, Sleeping

Eating, Bending, Thinking, Standing
The Following Are Criteria for Identification Under Section 504: (continued)

Self-care  Performing manual tasks  Hearing
Sitting  Reaching  Speaking
Writing  Communicating  Working
Interacting with others

***The Department of Justice significantly expanded definition of “major life activities” in the 2016 amendments to Title II. Fed. Reg. 53,228.

continued...
The Following Are Criteria for Identification Under Section 504: (continued)

Major bodily functions such as:
- Immune system function
- Normal cell growth
- Genitourinary function
- Bladder function
- Brain function
- Circulatory function
- Endocrine function
- Lymphatic function
- Special sense organs & skin
- Digestive function
- Bowel function
- Neurological function
- Respiratory function
- Cardiovascular function
- Hemic function
- Musculoskeletal function
- Reproductive System function

***The Department of Justice regulations also include operation of major bodily functions in the 2016 amendments to Title II. Fed. Reg. 53,228.***
The Following Are Criteria for Identification Under Section 504: (Cont.)

2. Has a record of such an impairment.
3. Is regarded as having such an impairment.

Important: The second and third prongs of the definition become a factor if discrimination or negative action has occurred because of the “record” or “history” of being regarded as having an impairment.
How Significant Is the Disability? Is It Substantially Limiting?

Definition of “substantial limitation”: The disability substantially limits the ability of an individual to perform a major life activity” compared to the average person in the general population.

(29 CFR 1630.2 (j), May 25, 2011)

Educators must rigorously review and discuss all available information regarding to the student. Resources consist of current academic status, behavioral performance, progress monitoring, classrooms assessments, work samples, student’s progress reports, and school history such as attendance, transiency, student’s end of level results, and/or a medical diagnosis.

(© Sraga Hauser LLC, 2011)
Major life activity addressed by Office for Civil Rights (OCR) Example:

OCR concluded in *North Royalton (OH) City School District*, 52 IDELR 203 – 2009, noted major life activities had expanded and that life activities are not limited to those identified in statute. *(Remember that the list expanded in 2016)* The district developed an individual health plan for student who had an anxiety disorder and a life-threatening nut allergy but did not find student eligible for 504 services because student was doing well academically. The district policy stated that a student whose impairment does not limit his learning is not entitled to a Section 504 Plan.

Findings were:

• District violated Section 504 & title II when it evaluated student based solely on disability impacting learning
• District written policies were noncompliant because it limited eligibility to impairments that impacting learning only.
Follow 9 Rules on ‘substantial limitation’:

1. “Substantially limits” is not intended to be a demanding standard.
2. The threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis.
3. An impairment does not need to substantially limit more than one major life activity.
4. An impairment that is episodic or in remission qualifies as a disability if it would substantially limit a major life activity when active.
5. An impairment does not need to prevent or significantly or severely restrict an individual from performing a major life activity to be substantially limiting; the question is how the impairment limits the person’s ability to perform major life activity compared to most people in general population.
6. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. (ex: inattentive vs. hyperactive student)
7. An individual with an impairment generally does not need to produce scientific, medical, or statistical evidence to show how his performance of a major life activity compared to the performance of most people in the general population.
8. Schools may not consider ameliorative effects of mitigating measures when determining whether an impairment substantially limits a major life activity.
9. The effects of an impairment lasting or expected to last less than 6 months can be substantially limiting to establish disability or a record of disability.
Updates of Section 504 in 2016 via Dear Colleague Letters:

1. Providing guidance to students with ADHD and implementing regulations. (DCL, July 26, 2016)

2. Students with disabilities enrolled in public charter schools, like students with disabilities enrolled in other public elementary or secondary schools, have important rights under Section 504 and IDEA. (DCL, December 28, 2016)

3. Use of restraint and seclusion may result in discrimination against students with disabilities and violation of Federal laws that prohibit disability discrimination.
4 take-aways from OCR’s guidance to students with ADHD

1. Students who perform well academically can still be eligible for 504

2. OCR presumes eligibility with ADHD diagnosis. An evaluation requires multiple sources of information and sometimes the diagnosis is not well framed. Don’t spend too much time analyzing whether student qualifies.

3. Medical assessment not required, but if necessary, parent can’t be charged.

4. RTI, MTSS, or PBIS cannot delay evaluation. These cannot be used as a prerequisite to a 504 evaluation. Provide interventions during evaluation process.
Include only “non-negotiables” in ADHD accommodation plan:

“’More is better’ could create implementation problems for teachers. Everything in a student’s plan needs to be implemented. If the one accommodation that the teacher ignores happens to be the one that is absolutely is necessary for student access his education, the school might be in violation of denying FAPE.” (Kleen, 2016 LRP 5:36)

Accommodations are NOT optional or ideas for teachers to use as needed.

OCR recently addressed several beliefs that can lead to implementation failures

X Services in an IEP or 504 plan are optional
X Accommodations are unnecessary because student is academically gifted
X The student needs to specifically request accommodations on an as-needed basis
What is considered a “hidden disability”? 

• A physical or mental impairment that is not readily apparent to others.

• They include such conditions as specific learning disabilities, diabetes, epilepsy, allergies, low vision, poor hearing, heart disease, or a chronic illness.

• A chronic illness involves a reoccurring or long term disability which can include diabetes, heart disease, kidney and liver disease, high blood pressure, cancer or ulcers.
Examples Accommodations for students with Hidden Disabilities

• A student with cancer may need a class schedule that provides opportunities to rest and recuperate after chemotherapy.
• A student with a learning disability may need oral testing, extended time on test, or testing in a setting without distractions.
• A student with impaired vision may need a note taker or tape recorder.
• A student with a chronic medical condition may have difficulty climbing stairs, moving quickly from one class to another. This student may need extra time to get to next class or class schedule that does not require the student to climb stairs.
Examples Accommodations for students with Hidden Disabilities

• A student with diabetes may need schedule that accommodates their medical needs.
• A student with mental illness may need time allowed for regular counseling or therapy, a modified schedule which could be a mix of home instruction and part school day.
• A student with arthritis may need a modified physical education program.
What disabilities are eligible almost in almost every case?

- Diabetes
- Epilepsy
- Bipolar Disorder
- Autism.

Students with these disabilities should not need extensive documentation or analysis to determine them eligible.
How Do You Address the Medical Needs of Students?
What Is Considered a Major Life Activity When Evaluating a Student With a Medical Need for Section 504?

In Oxnard (CA) Union High School District, 55 IDELR 21 (OCR, 2009), a student who was diagnosed with irritable bowel (IBS) and another digestive condition was denied eligibility for a Section 504 plan. The OCR found the school in violation of the law because the school only considered “learning.” OCR said they should have also considered the major life activity of the digestive system. OCR also found that the school did not consider that the condition caused frequent absences and a declining GPA when they determined that his condition did not substantially limit his learning.

Section 504 Update, Richards Lindsay & Martin, L. L. P., Utah Institute Summer, 2013.
Should a district informally accommodate a student with a medical disability?

A district allowed a student with medical disabilities bathroom breaks, late arrival to class, and long term homebound instruction instead of completing a Section 504 evaluation to determine accommodations student needed.

- Staff should be trained on “Child Find” duty.
- Do not deny evaluation/eligibility considering only good grades.
- Are excessive absences related to students disability?
- Parents should not have burden of requesting a Section 504 evaluation.
  - Also, take into consideration request for a Section 504 evaluations from other sources, such as medical providers.

*Craven County (NC) Schools, 114 LRP36292 (OCR 03/28/14)*

*Section 504 Compliance Advisor, Vol. 19, Is. 2, April 2015*
What Steps Should You Take to Evaluate a Student With a Medical Disability?

1. **Train your staff on its child find duty:** When a staff member has knowledge that a student has a medical condition, he/she should refer the student to the 504 coordinator or team that assesses at-risk students.

2. **Communicate often with the attendance office:** The attendance office not only knows when a student is absent, but why he/she is absent. They know if a child exceeds a certain number of absences or if there is a pattern, such as a student with frequent absences due to migraines.

3. **Contact the parents and let them know of the school’s obligation to evaluate:** Inform them the district can help if a disability or medical condition is the reason for the absences.

What Steps Should You Take to Evaluate a Student With a Medical Disability? (Cont.)

Gather information from parents: Teachers and staff can often report whether the child presents symptoms that suggest a disability. However, the school must do its best to gather information from parents. Keep documentation of all efforts through phone calls, e-mail, or letters to gather information. If parents file a complaint with OCR over the district pursuing state truancy proceedings, the district can show that it made an effort to conduct an evaluation.

5. Evaluate a student for Section 504 eligibility even if the student has a health plan: Some students with medical needs may already have an Individual Health Plan (IHP). Remember, do not take mitigating measures into account when determining eligibility.

June, 2012, Section 504 Compliance Advisor, Volume 16, Issue 4
What Steps Should You Take to Evaluate a Student With a Medical Disability? (Cont.)

6. **Ask for consent to speak to the student’s medical provider:** Ask parents for a list of medical providers treating the student and permission to speak with them.

7. **Convene a Section 504 team with those who have knowledge about the child:** This team would most likely consist of the principal, school nurse, parents, and teachers. This team would know about how the student’s medical condition affects his/her learning and attendance.

June, 2012 *Section 504 Compliance Advisor, Volume 16, Issue 4*
What Is the Districts/Charter School’s Duty When Evaluating Students With Medical Needs and Excessive Absences?

• In Hamilton (OH) local School District, 58 IDELR 82 (OCR 2011), The school was aware of a first grade student who had absences related to her chronic hypoglycemia and migraines. The district began truancy proceedings against her and reassigned her to an online program.
• Her parent filed due process, alleging that the district denied her daughter FAPE.
• OCR stated that Section 504 requires districts to provide qualified students with disabilities with FAPE.
• The investigation found that the school district habitually failed to evaluate students for 504 eligibility after becoming aware of the students’ physical and mental impairments that impacted their attendance.
## Sample Procedures for Evaluation Students With Medical Conditions for Section 504

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<tr>
<th>Procedure</th>
<th>Date</th>
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<tbody>
<tr>
<td>1. Student at-risk team should be convened within 10 days of parents’ notification that their child has a medical need that may affect attendance and school performance.</td>
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<td>2. Request permission to speak to medical providers regarding appropriate interventions, such as ways to prevent the condition from escalating. Have parents sign a form releasing child’s medical records to school.</td>
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<td>3. Make a suggestion that parents get notes from the doctor to excuse the student’s absences because of a medical condition. Provide missed work for the child to make up.</td>
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<td>4. Convene Section 504 team meeting to determine child’s eligibility. If the medical condition substantially limits the ability to perform one or more major life activity or bodily functions, then develop a Section 504 plan with appropriate classroom supports and accommodations.</td>
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<td>5. Consider accommodations such as reducing or modifying assignments or allowing extended or adjusted time to complete assignments, when condition is active. Consider using technology to fill the gaps caused by missed instruction (such as recording lessons when taught).</td>
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<td>6. If not already done, have school nurse complete an Individual Health Plan (IHP) with strategies for addressing symptoms of the medical condition, medication administration and their side effects. Attach the IHP to the Section 504 plan.</td>
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<td>7. Discuss how to avoid or reduce occurrences of the condition (e.g., by controlling exposure to foods, sounds, odors, stress, or weather changes).</td>
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<td>8. Be specific in the plan as to who will assist the student in using techniques and strategies to ease the symptoms of the condition.</td>
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<td>9. Revise the plan after six weeks to determine whether it is effective, and to make needed adjustments. Review data on grades, absences, and medical management.</td>
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<td>10. If the child continues to miss extended periods of school, the 504 team may want to reevaluate the child and consider temporary homebound instruction. Determine whether homebound instruction is the Least Restrictive Environment (LRE) to meet the child’s needs.</td>
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School Nurses

BettySue Hinkson MSN, RN, NCSN
bhinkson@Utah.gov
(801) 419-1078
The Role of the School Nurse in Section 504

- Assist in identifying students who may need services
- Assess the identified student’s functional and physical health status
- Develop an IHP or EAP based on a nursing assessment
- Recommend health-related accommodations
- Provide training for school staff on individual health needs
- Provide and/or supervise UAP giving specialize healthcare services
- Evaluate and make revisions as necessary
“The school nurse is an essential member of the team participating in the identification and evaluation of students who may be eligible for services through the implementation of Section 504 ... and IDEA.”
NPA Act vs Rules

Nurse Practice Act

- UCA 58-31b-101
  - Definitions
  - Scope of Practice
  - Licensure requirements
  - Discipline
  - Penalties

Nurse Practice Act Rules

- R156-31b
  - Delegation
    - Must have IHP for delegated tasks
    - Tasks must be identified in IHP
  - Supervision
    - RN shall personally train UAP
      - UAP must be competent, as determined by RN
  - Evaluation
    - RN required to “maintain continued competence through ongoing learning”
Medication Laws

53a-11-601 (Medication)
• Does not differentiate between OTC and RX
• Allows for “volunteer employees” to administer
• Must have written authorization from parent and licensed healthcare provider that it is “medically appropriate”

53a-11-602 (Asthma)
• Allows for student to “possess and self-administer” if:
  • Must have written authorization from parent and licensed healthcare provider that it is “medically appropriate”
Medication Laws (continued)

53a-11-603 (Glucagon)
- Requires schools to identify and train volunteer school personnel to administer glucagon
- After receiving authorization form

53a-11-603.5 (Seizure Rescue Medication)
- Requires schools to identify and train volunteer school personnel to administer seizure rescue medications
- Parent must have previously administered
- Student must have ceased having “full-body prolonged or convulsive seizure activity” due to medication
Medication Laws (continued)

53a-11-604 (Diabetes Medication – Possession/self-administration)
• Allows a student to possess and self-administer diabetes medication
• Must have written authorization from parent and licensed healthcare provider that it is “medically appropriate”

26-41-101 (Epinephrine)
• Requires public/private schools to have at least EAI
• Allows a student to possess and self-administer EAI
• Must have written authorization from parent and licensed healthcare provider that it is “medically appropriate”
Health and Safety

R392-200-9

- Clinic room must be provided
- Must have a cot/bed
- Must have hot and cold running water, soap, lockable cabinet for first aid supplies
- Must have at least two individuals on site that have CPR/First Aid training
- Medication must be kept secure (refrigerator, cabinet, drawer)
- School bus drivers must be CPR/first aid trained
Are schools required to have a school nurse?

- No. (53a-11-203) States “students... *may* be better protected ... if schools were to have registered nurses readily available ...”
- School districts are *encouraged* to have 1 RN for every 5,000 students

*However,*

If a school nurse is a “related service” that is needed in order for a student to access FAPE, then it becomes a requirement under Section 504. An IHP cannot take the place of a 504 plan.
Who can write an IHP?

“Development of IHPs is a nursing responsibility, based on standards of care regulated by state nurse practice acts and cannot be delegated to unlicensed individuals.”

For School Nurse to provide/delegate care:

Must have an order signed by healthcare provider

- Medication Authorization (or DMMO/SMMO)
- Procedure Order
- Can be included in EAP if HCP signs
  - Epinephrine/anaphylaxis
  - Inhaler/asthma
- LEA policy may further define requirements

Examples

- Medication Administration
  - Routine
  - Emergency
- Procedures (i.e. catheterization, tube feeding, etc.)
- Diabetes care
IHP or EAP (or both?)

IHP – Individual Health Plan

• Written by and for the SN
• Follows ADPIE
• Detailed
• HCP and parent signature not required
• May be several pages

EAP – Emergency Action Plan

• Written by SN for staff
• “If you see this – do this”
• Simplified
• Parent signatures recommended
• One page
Unprofessional Conduct

- Non-licensed staff saying they are a nurse (3rd degree felony and up to $8,000 fine)
- Unlawful or inappropriate delegation of nursing care by nurse
- Failure to exercise appropriate supervision of UAP by nurse

- “A registered nurse who, in reliance on a school’s policies or the delegation rule, ... delegates or trains an unlicensed assistive person to administer medication .... shall not be considered to have engaged in unprofessional conduct for inappropriate delegation”.
Questions?

• At what point does a parent’s request become ‘unreasonable’?
  • Jennifer? Momi?

• If a physician refuses to write a note, order, or recommendations for accommodations to be made at school per parent request, does the school still have to include parent’s request in the 504 plan?
  • For 504 you cannot require documentation of the condition for accommodations, but if they are medical procedures being delegated, including medication administration, there needs to be an order (medication authorization or order for procedure) before delegation can occur
More Questions?

• Are schools allowed to ask for a physician’s recommendations or orders before signing a 504 plan?

• Peanut Free? Or Peanut Aware?
  • No guarantees that a class/school is peanut free (cannot control other parents, just ask for their cooperation). Peanut Aware (or allergy aware) is more appropriate.

• Hand sanitizer for allergies?
  • These do not work for peanut residue, and most allergens. Need soap and water.
More Questions

• As 504 plans becomes more complicated, and since they are education accommodation plans, can we say “refer to care plan”?
  • You can attach the IHP to the 504 plan
• Do nurses need to attend all 504 meetings?
  • Not all, just for those students needing medical accommodations
• Is it possible for a child to need both an IEP and a 504?
• What about lack of proper immunizations and student is sent home?
Students with Diabetes

Park City SD – Jennifer Slade
State School Nurse – Betty Sue Hinkson
Will All Students With Diabetes Qualify for a Section 504 Plan?

“Many if not all students with diabetes should qualify under Section 504.” —M. DeSisto, Section 504 coordinator and Director of Nurses for Waltham (Mass) Public Schools

Evaluate students with diabetes for Section 504:
- Do not consider mitigating measures such as insulin in making your decision.
- When the evaluation is complete, convene a team of people who are knowledgeable about the student. This should include the school nurse, the child’s parents, and the child’s teachers.
- Include the student in the 504 plan. This gives the student the opportunity to share information such as which teacher will not allow him/her to bring his/her backpack containing diabetes supplies to class, and which times of day he/she is tired or thirsty.
**Section 504 Eligibility Consideration**  
for a student with an Individual Health Plan

| Student Name: ___________________ | Student ID: ____________ |
| Health Condition: ___________________ | Date: _______________ |

### What to Consider

<table>
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<tr>
<th>What to Consider</th>
<th>Students Data/Information to Consider</th>
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<tr>
<td>The <strong>Frequency</strong> of required IHP services. (For example; a student who rarely needs services during the school year is less likely to require a Section 504 Plan than a student who requires services on a daily or weekly basis.)</td>
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<td>The <strong>Intensity</strong> of required IHP services (For example; a student who self-administers medication for diabetes and needs infrequent assistance is less likely to require a Section 504 Plan than a student who relies on staff to assist with daily testing and medication.)</td>
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<td>The <strong>Complexity</strong> or the required IHP services (Whether services are complex or require a systematic approach to integrate or coordinate efforts of staff and others to meet the student’s needs. For example; a student who requires constant monitoring and exchange of information between staff, parents and doctors across different environments to meet health needs, the more likely a Section 504 Plan is needed.)</td>
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<td>The <strong>Health &amp; Safety Risk</strong> if IHP services are provided incorrectly (For example; the greater risk of serious injury or death to the student from the failure to provide appropriate IHP services across all environments, the more likely the student requires a Section 504 plan.)</td>
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<td>In <strong>Analyzing</strong> student’s data, the weight to be given any factor is to be determined by the school as appropriate in its case-by case determination following the regulations.</td>
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*Remember to get parent/guardian permission to complete a Section 504 Evaluation.*

**The Section 504 Team met on ___________** and determined that the student’s health condition is: **Substantially Limiting ___________** is **NOT** Substantially Limiting ___________

**Section 504 Team Meeting Signatures:**
**Name and Title;** (i.e. Admin, Parent etc.)

__________________________________________  ____________________________________________  ____________________________________________

__________________________________________  ____________________________________________  ____________________________________________

__________________________________________  ____________________________________________  ____________________________________________

__________________________________________  ____________________________________________  ____________________________________________

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Resource: Section 504 Update Utah Institute Richards Lindsay & Martin LLP pg 23
Recognize discriminatory practices that impact students with diabetes:

American Diabetes Association recommends:
1. Basic diabetes training for all staff
2. Shared responsibilities for care with leadership by school nurse
3. Self-management is allowed in all school setting for students with capacity

Avoid following practices:
1. Basing eligibility solely on effect of diabetes on student’s learning.
2. Assuming students must attend “diabetes school.”
3. Having no one available to administer insulin or glucagon.
4. Expecting the parent to be responsible for the student’s care during field trips, extracurricular activities.
5. Prohibiting student from self-administering insulin.
6. Substituting doctor’s orders or an individual health plan for a 504 plan.

Section 504 Compliance: The Complete K-12 Handbook 6:31-32
Districts may choose to offer an IHP to address a student’s diabetes or other medical conditions.

However, that is not a substitute for completing a Section 504 evaluation when there is reason to suspect that, because of the student’s condition, he/she needs special education or related aids and services.
Insulin Pump Site Changes

Routine
- Must be done by parent/guardian, usually at home (done every 3 days or so)

Failure
- Request parent come in to change
- Allow independent student to change
- Give minimal assistance to student (i.e. hold their arm)
- SN can change
  - Only if trained
- Administer insulin via syringe/vial or pen until site can be changed

ALL students with a pump should have a written plan on how to handle pump failure!
Can Nurses Delegate Diabetes Care?

It depends....

- NPA Rule specifically allows for delegation of glucagon and ‘scheduled dose of insulin’, HOWEVER, it also states that RNs cannot delegate:
  - Medication ‘with known, frequent side effects that can be life threatening’
  - Medication that requires a nursing assessment before/after administration
- Individual nurses and districts must determine the level of delegation
Requirements from OCR Regarding Students with Diabetes

Park City School District
Know your duty to provide transportation for students served under Section 504 – Transportation is considered a “related aid and service” under Section 504 and failing to provide appropriate transportation for 504-eligible students could lead to a discrimination or denial of FAPE complaint. See Montgomery Cty (AL) Pub. Schs., 68 IDELR 282 (OCR 2016)
Jennifer Slade, special education director for Park City (Utah) School District, said she often sees a lack of knowledge regarding districts' transportation obligations toward students served under Section 504. As a baseline, consider this point, she advised: What accommodations does the student need to access FAPE? If transportation is one of them, then you must provide it, she said

**Consider 3 points when making transportation decisions:**
- Students with disabilities must have same access to other students w/o disabilities.
- Districts must provide students with disabilities with related aids and services.
- If a student’s 504 plan offers aids, benefits, or services at a non-district location, the district must provide transportation to and from that location at no greater cost than would be incurred at a district location. 34 CRF 104.33 (c)(2)

**Assess student’s individual needs** – consider effects of student’s disability. Does mobility issues impede access? Is lack of transportation a hardship? Consider even mental health impairments.
Determine accommodations on bus – Consider whether student needs assistance with behavior, medical needs, or another issue to determine need. Student with diabetes may need an adult trained or nurse to administer medication.

Include transportation staff in 504 team meeting.

Emergency Plans (Jennifer Slade)

Develop bus emergency plans for medically fragile students

What should plan include?

Who can perform emergency medical procedures on the bus?

How should medication or medical equipment be stored on the bus?

What type of training should be provided for transportation staff?
Students with Allergies

- Yes, it is possible that many students with food allergies should be evaluated for Section 504.
- Consider the following steps:
  - Make sure the team understands the difference between the IHP and the Section 504 plan.
  - Refer and evaluate students with health plans.
  - Work closely with your child nutrition department to identify students with food allergies.
  - Don’t wait for parent referrals; the school should identify the student (i.e., the Child Find Law).
Provide Training

Include all staff responsible for caring for the student (teachers, administrators, librarians, food service staff, coaches, bus drivers, librarians, and security staff)

- Overview of food allergies
- Definitions of key terms
- The difference between a potentially life-threatening food allergy and other food-related problems
- General strategies for reducing and prevention exposure to allergens
- Signs and symptoms of a food allergy reaction
- The school’s emergency plans
- How to responds to a food allergy emergency
- How to administer EpiPen
- The prohibition of retaliation and harassment and how it applies to children with food allergies
S Schools must take steps to make school environments safe for students with allergies and chemical sensitivities, however, hearing officers in IDEA cases have rejected the notion that an appropriate education program requires a completely risk-free environment.

IDEA’s legal standard “does not require a risk free environment, but a reasonably safe environment”

**Reason:** there is no environment which could be kept entirely peanut free when airborne allergens are considered.

- Include in the 504 Plan
  - Safety procedures implemented to protect student from accidental exposure
  - Persons responsible for emergency responses
  - Training to be provided to staff
Include in the 504 Plan

- Safety procedures implemented to protect student from accidental exposure
- Persons responsible for emergency responses
- Training to be provided to staff

**Plans must meet the student’s individual needs taking into consideration each school program or activity where student participates, including classrooms and common areas, gym, cafeteria, hallways, recess, extracurricular activities, field trips, and school-related activities. Plan should include procedures to follow when exposure occurs.**
Types of accommodations:

- Provide allergen-free table
- Requiring students to wash their hands before entering classroom
- Banning particular food items from classroom
- Restricting types of foods served in cafeteria
- Training staff member
- Modifying attendance policies (seasonal allergies)
- Providing access to an epinephrine auto-injector
- Planning for emergencies
- Notifying parents of classroom activities involving food
- Notifying parents of lunchroom menus
- Providing parents with ingredients lists
- Notifying other parents to remind their children not to share food at school
- Monitoring of student during lunch by a school nurse or other qualified person
- Holding an informational session for classmates, setting guidelines
Allergen-free Tables

- Offending allergens are prohibited at table
- Be careful not to set student’s allergen-free table far away from other students
- Consider allowing a limited number of student peers to sit at allergen-free table

Food Bans

- A complete ban of offending food in a classroom is a reasonable accommodation
- Train staff and students regarding potential discriminatory remarks due to routine cleaning throughout the day
Substitute Snacks

- Schools need to supply substitute snacks to students with food allergies
- Avoid subjecting students with food allergies to discrimination
- A comparable snack is reasonable (quantity comparisons non-issues)
Wheat/gluten allergy

OCR found that Tolland (CT) SD meet compliance standards regarding student with wheat/gluten allergy because the plan provided:

- Permanent laminated bathroom pass
- A lunch menu with gluten-free choices
- Gluten-free curriculum for cooking class
- A letter advising parents of the presence of a student with wheat and gluten allergies
- A list of safe snacks for the student’s teachers
- Use of signed agenda to help with organizational issues due to absenteeism
- Parent ability to call school regarding late or missed assignments and to alert staff regarding issues regarding student performance that day
- Regular review of plan with the student to help student develop advocacy skills
- Notification procedures where parents could notify groups hosting activity regarding disability and needs
Disabilities in Remission:

• Doctors diagnosed Omar with cancer at the beginning of the summer break, between fourth grade and fifth grade. When initially diagnosed, Omar was weak and tired all the time, and, at times, unable to even get out of bed or dress or feed himself. He received chemotherapy in July and August and returned to school, without any symptoms of his disease, at the beginning of the school year.

• At that time his parents informed the school of Omar’s cancer diagnosis. It is now November and doctors have informed Omar’s parents that his disease appears to be in remission. Omar’s mom notes that he runs and plays like all the other children and his grades are great. How would a group of knowledgeable persons determine if Omar has a disability?
A student who has an impairment that is episodic (for example, epilepsy or post-traumatic stress disorder) or in remission is considered to be a person with a disability if, when active (that is, when symptoms are evident or reoccur), the impairment substantially limits a major life activity.

When active, Omar’s illness left him weak and unable to get out of bed. In other words, when active, cancer substantially limits his ability to care for himself which, under Federal law, is a major life activity.

The cancer substantially limits the major bodily function of normal cell growth, which is also a major life activity under Federal law. For this reason, the group of knowledgeable persons would determine that Omar is a student with a disability.

He may or may not require special education or related aids and services that are designed to meet his individual educational needs as adequately as the needs of non-disabled students are met.

Even if Omar does not need special education or related aids and services, he would still be protected under Section 504, for example, from bullying and harassment based on his disability.
How Do You Address Episodic Impairments?

- Episodic impairments can include, but are not limited to, *seasonal allergies or asthma, migraines and cystic fibrosis*.
- Schools don’t commonly qualify students under Section 504 if the condition rises to the level of substantially limiting a major life activity, even if it is episodic.
- Data should be considered over time. For example, a student who has heat-induced asthma that may occur in August, September, April, and May, should not be evaluated in January, when the medical condition is not substantially life limiting, without also considering its impact when the asthma is active.

Section 504 Update, Richards Lindsay & Martin, L. L. P., Utah Institute Summer, 2013
Episodic Impairments

- Determine if condition is likely to reoccur
- Look at impact when condition is active
- Use information from previous episodes
- Evaluate each case individually
- Acknowledge irregular need for accommodations
Thoughts about Senate Bill 61 – Students with Disabilities Accommodations Funding

- Reimbursement to LEAs according to 504 students whose expenditures exceed 150% WPU
- Reimbursement to LEAs are pro-rated based on amount of applications submitted at end of school year.
- Cross-check of funding and eligibility built into Utrex
• Momi Tu’ua momi.tuua@schools.Utah.gov (USBE)
• Jennifer Slade jslade@pcschools.us (PCSD)
• Betty Sue Hinkson bhinkson@Utah.gov (DOH/USBE)