



Make sure everyone is on the same page regarding diabetes care

A lack of consensus among school staff about who was responsible for a student's diabetes care caught OCR's attention in *Wake County (NC) Public School System*, 53 IDELR 129 (OCR 2009).

Here, interviews with the student's teacher, aide and front-office staff suggested there was no clear, agreed-upon primary diabetes care provider for the student. Moreover, the student's teacher and the teacher's aide were in need of additional diabetes care training. The district agreed to take remedial action to comply with Section 504.

Care provisions for a student with diabetes should address key issues, such as who is responsible for the student's needs during the school day. Learn what other provisions you must consider when planning for a student with diabetes and why the American Diabetes Association says students with diabetes need a medical management plan and a 504 plan.

"This case is a good reminder, in the wake of the ADA Amendments Act, that districts need to take a look at kids with health care plans and consider them under the umbrella of 504," said Julie Fay, a school attorney with Shipman & Goodwin LLP in Hartford, Conn. "I think we will have more kids who currently have health care plans who now may be eligible under 504."

The ADA, which took effect Jan. 1, 2009, amended the definition of "disability" in the ADA and the Rehabilitation Act of 1973, of which Section 504 is a part. The changes mean districts cannot consider mitigating measures, such as medication, in eligibility determinations. In addition, districts must consider an expanded list of major life activities, including endocrine function, when determining if a student's impairment substantially limits a major life activity.

Address these areas to build consensus about diabetes care

A North Carolina district quickly found itself in violation of Section 504 when staff members were not on the same page about how to meet the needs of a student with diabetes. *Wake County (NC) Pub. Sch. Sys.*, 53 IDELR 129 (OCR 2009).

Take these steps when planning for students with diabetes to help build consensus among staff and to avoid a similar situation in your district:

- **Review procedural requirements.** There is some confusion among districts about how to serve students with chronic health conditions, such as diabetes, in line with the ADA Amendments Act. Before the law took effect almost a year ago, some districts simply provided a health care plan to meet these students' needs. "Given the child find obligation under 504, it's important to go through the 504 process [for students with diabetes] on 504 forms and determine eligibility," said Julie Fay, a school attorney with Shipman & Goodwin LLP in Hartford, Conn. If your team finds a student eligible for 504 services, it might cross-reference the health care plan in the 504 plan or incorporate the existing health care plan (assuming services are still appropriate) into the 504 plan. "In this way, it's conceivable a student might have two plans," Fay said. "It's only when a student is found ineligible under 504 that she should have only a health care plan." Click here to read recommendations from the American Diabetes Association on this topic.

- **Designate a primary care provider.** A diabetic student's health care plan must designate a primary person to attend to the student's diabetes care during the school day, OCR determined in *Wake County*. What's more, a student's plan should include contingency plans for when the primary provider is not on campus, Fay said. State laws on the delegation of diabetes care tasks and administration of medication should drive such decision-making, she noted. In some states, for example, insulin administration can be delegated to trained, non-licensed staff. In others, only a school nurse can perform such duties. "Regardless of what 504 deems is appropriate, you still need to interpret it through the lens of your state's legal requirements," Fay said.

- **Address parent concerns.** Parents of students with diabetes may have concerns about your school's ability to care for their child during the school day. This was an issue in the *Wake County* case. Careful planning is one of the best ways to



address such concerns, Fay said. For example, planning teams should anticipate and plan for times during the year when special provisions may be needed, such as when substitutes are present and during special events and field trips, she said. Give parents have a copy of this information and an opportunity to contribute to the decision-making. Overall, "it takes a collaborative approach between the district, parents and medical professionals," Fay said.

American Diabetes Association: Students need both DMMP, 504 plan

The ADA Amendments Act, which took effect Jan. 1, 2009, broadened the definition of "disability" in the Americans with Disabilities Act and the Rehabilitation Act of 1973, of which Section 504 is a part. These changes marked a shift in how districts determine Section 504 eligibility.

In an interview with *Special Ed Connection*®, Victoria Thomas, Novo Nordisk Legal Advocacy Fellow for the American Diabetes Association, discussed how districts might serve students with diabetes since the passage of the ADA Amendments Act. Here are a few of her answers, edited for length and clarity.

Q: *According to the American Diabetes Association, should schools have diabetes medical management plans and 504 plans for students with diabetes who are eligible under Section 504?*

A: Yes, schools should have both DMMPs and 504 plans for students with diabetes who are eligible under Section 504. The DMMP contains the doctor's orders and includes specific medical information about things like insulin dosages. The 504 plan states the who, when, where and how of the diabetes care outlined in the DMMP as well as any academic accommodations the student requires. The Section 504 plan protects the school by showing that it has appropriately evaluated the student under 504 and outlined the services the student needs to receive FAPE. Only school staff members who provide diabetes care need to be familiar with the DMMP, which contains confidential medical information, but all of the student's teachers need to be familiar with the 504 plan.

[Having both plans] is superior to a health plan alone, because the combination ensures that the medical information and the information about accommodations needed by the student in the classroom are delineated in an organized way that reaches the appropriate school staff, thus ensuring FAPE. A 504 plan also ensures that the student's family is given notice of procedural safeguards, as required by Section 504, to appeal disagreements regarding the plan.

Q: *How should schools determine Section 504 eligibility for students with diabetes in light of the amended definition of disability in the ADA Amendments Act?*

A: The ADA states that all students who are substantially limited in the major life activity of endocrine function have a disability under Section 504. Diabetes . . . is a diagnosis that the student either does not produce insulin or cannot properly use the insulin produced by the body. Insulin production and use is a function of the endocrine system, and so a diagnosis of diabetes means that the endocrine system is substantially limited.

Not only do all students with diabetes qualify as students with disabilities under Section 504 and the ADA, but all need related aids and services. Some school districts have argued that students who use insulin do not need accommodations at school and therefore do not need a 504 plan. In fact, students cannot use insulin at school without permission, and a student who uses insulin will always require related aids and services, such as permission to use insulin.

OCR has repeatedly stated that accommodations related to insulin, blood glucose testing, glucagon, and other diabetes care are required in order for a student with diabetes to receive FAPE. Districts which have denied accommodations for students who use insulin have been found noncompliant under Section 504 and the ADA.



Q: *What issues might arise from having two plans in place for students? How can districts ensure both are implemented consistently?*

A: It's useful to think of the DMMP and the 504 plan as two halves of the same whole. They are not truly two separate plans but rather two related documents that work together. The 504 plan outlines the information the teachers and staff need to know and states that diabetes care will be given according to directions in the DMMP. The DMMP provides more in-depth information about diabetes care.

There will be times when the DMMP needs to be updated due to changes to the student's diabetes care. This sometimes will require changes to the 504 plan. For instance, if the number of times a student must test his blood glucose during the school day changes, his 504 plan would need to reflect this change. On the contrary, the plan would not need to be updated if only the insulin ratio changes but the number of times the student receives insulin during the day stays the same. The 504 plan also will need an update if the student needs specific accommodations for an upcoming state standardized test, but the DMMP would not change in this case.

Districts can ensure that both [plans] are implemented consistently by ensuring that school staff members are familiar with the appropriate plan and that the 504 team reviews both plans at the beginning of the school year and at any time an update is necessary due to the changing needs of the student.

Q: *Does a student's management of his condition with insulin take away his need for a Section 504 plan?*

A: Insulin use actually creates the need for a variety of accommodations, including academic accommodations that are best outlined in a 504 plan. We need to correct the idea that insulin "cures" the symptoms of diabetes and to educate [districts] about the various accommodations that all students with diabetes need at school.

Districts must individually assess whether a student needs accommodations or a 504 plan, regardless of whether the student uses medication. Any child who uses insulin experiences blood glucose fluctuations during the school day as a side effect of both diabetes and insulin. As such, students need to be able to test blood glucose at school. Permission to do this and trained staff to administer blood glucose tests for young children are accommodations all students who use insulin need.

Further, students will need to be able to: 1) stop during an exam or assignment and test blood glucose, and arrangements must be made about where and how the blood glucose test will be done; 2) stop during tests or assignments to eat a snack, drink water, or go to the bathroom due to high or low blood glucose; and 3) make up a test or assignment if the student has a severe high or low blood glucose.

Q: *What is the most frequently asked question you hear from school district administrators, nurses and other personnel?*

A: One question that comes up with some regularity is [about] diabetes-related absences and truancy. OCR writes in a Q&A document: "School districts are required to provide a free appropriate education to students with disabilities based on their individualized educational needs. The services may include . . . adjustments to rules regarding absences when a student's absences are due to a disability."

As OCR makes clear, if a student with diabetes is missing school due to diabetes, Section 504 requires the district to adjust rules regarding absences in the student's 504 plan, for example by excusing absences and tardies related to diabetes. Thus, a school district violates Section 504 and the ADA if it reports a student with diabetes truant for diabetes-related absences.