

FOOD ALLERGIES *and* 504s *for* Parents

Section 504 of the Rehabilitation Act of 1973 prohibits agencies, institutions, and programs that receive federal financial assistance from discriminating against or excluding an individual solely on the basis of his/her disability. Public schools are one type of institution that receives federal financial assistance, and thus are required by Section 504 to provide “free and appropriate public education” (or FAPE) to all students, regardless of disability. Additionally, when a student has an identified disability, the student must be included (allowed to safely participate) in all programs and activities provided by the school. Both the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice have determined that food allergies may sufficiently meet the legal definition of disability to require accommodation under federal disability laws and regulations, including Section 504.

Why should you consider seeking a 504 Plan for your food-allergic child?

A 504 Plan goes well beyond instructing your child’s school personnel how to respond in the event of an allergic reaction. A 504 Plan can instruct your child’s school how to safely care for your child while under the school’s supervision, including accommodations that are designed to reduce your child’s risk for an allergic reaction. It can also set out accommodations to ensure that your child is safely included in school activities and allowed to equally participate alongside his/her peers. These accommodations should be specifically tailored to your child’s individual needs. They are not intended to give your child preferential treatment; they are intended to ensure that your child can safely and equally participate in school activities and events.

While similar information may be set out in an Individual Health Plan (IHP) or Individual Health Care Plan (IHCP), these plans are not governed by federal law and it is unlikely that they are afforded any protection under state law. Section 504 rights are protected by federal law. The U.S. Department of Education, Office for Civil Rights, is tasked with enforcing Section 504 rights. Additionally, a private law suit may be filed in federal court to enforce Section 504 without having to exhaust any administrative complaint processes (such exhaustion is a requirement before filing suit under the Individuals with Disabilities Education Act). Keep in mind that you should not wait until problems occur with your school to obtain a 504 Plan. A 504 Plan is created to prevent such problems. It is created so that everyone who comes in contact with your child has the same understanding of how to provide appropriate instruction and care for your child to keep him/her safe and included.

How do you seek a 504 Plan for your child?

A parent may refer his/her child for a Section 504 evaluation. This referral should be made to the school administrator in writing and specifically give permission for your child to be evaluated for a 504 Plan. Once your child is evaluated and determined eligible for a 504 Plan, a 504 committee meeting will be held to determine the appropriate accommodations for your child and a 504 Plan will be created.

