

School Responsibilities Under Federal Laws

The Federal laws described in this section apply to a school's responsibility to help students manage diabetes, including confidentiality requirements. A particular student with diabetes could be covered under only one law or more than one law. For information on getting copies of the laws, see page 132 in the Resources section.

How to Use the Laws Section

- Use the section on Federal laws for planning and implementing effective diabetes management and for preparing the student's education plan.
- Determine whether applicable State and local laws need to be factored into helping the student with diabetes.
- Create a supplement to this guide containing the applicable State and local laws.
- Copy and distribute the section on laws to appropriate school personnel.
- Review the section on laws when training school personnel on how to comply with the Federal laws pertaining to students with diabetes.

Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act of 1990 (ADA)²

Section 504 prohibits recipients of Federal financial assistance from discriminating against people on the basis of disability. Title II of the ADA prohibits discrimination on the basis of disability by public entities, regardless of whether the public entities receive Federal financial assistance. Public school districts that receive Federal financial assistance are covered by both Title II and Section 504, and the obligations of public schools to students with disabilities under each law are generally the same. For schools, these laws are enforced by the Office for Civil Rights (OCR) in the U.S. Department of Education.

Section 504 outlines a process for schools to use in determining whether a student has a disability and in determining what services a student with a disability needs. This evaluation process must be tailored individually because each student is different and his or her needs will vary. Historically, students with diabetes have been covered by Section 504 and the ADA.

Under Section 504, students with disabilities must be given an equal opportunity to participate in academic, nonacademic, and extracurricular activities. The regulations also require school districts to identify all students with disabilities and to provide them with a free appropriate public education (FAPE). Under Section 504, FAPE is the provision of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students who do not have disabilities are met.

A student does not have to receive special education services, however, in order to receive related aids and services under Section 504. Administering insulin or glucagon, providing assistance in checking blood glucose levels, and allowing the student to eat snacks in school are a few examples of related aids and services that schools may have to provide for a particular student with diabetes. The most common practice is to include these related aids and services as well as any needed special education services in a written document, sometimes called a “Section 504 Plan.”

Private schools that receive Federal financial assistance may not exclude an individual student with a disability if the school can, with minor adjustments, provide an appropriate education to that student. Private, nonreligious schools are covered by Title III of the ADA.

² Both the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA) were amended by the ADA Amendments Act of 2008, P.L. 110–325.

Individuals with Disabilities Education Act (IDEA)

IDEA provides Federal funds to assist State educational agencies and, through them, local educational agencies in making special education and related services available to eligible children with disabilities. IDEA is administered by the Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education.

A child with a disability must meet the criteria of one or more of 13 disability categories and need special education and related services. The IDEA category of “other health impairment” includes diabetes as one of the health conditions listed. To qualify under IDEA, the student’s diabetes also must adversely affect educational performance to the point that the student requires special education and related services, as defined by State law. An example of a child with diabetes who may qualify under IDEA is a student who may have difficulty paying attention or concentrating in the learning environment because of recurring high or low blood glucose levels that adversely affect the student’s educational performance.

IDEA requires school districts to find and identify children with disabilities and to provide them a free appropriate public education (FAPE). Under IDEA, FAPE means special education and related services that meet State standards and are provided in conformity with an individualized education program (IEP). The IDEA regulations specify how school personnel and the parents/guardian, working together, develop and implement an IEP.

Each child’s IEP must include the supplementary aids and services to be provided for or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided for the child to make progress and to be involved in the general education curriculum. Administering insulin or glucagon, providing assistance in checking blood glucose levels, and allowing the student to eat snacks in school are a few examples of related services, supplementary aids and services, or program modifications or supports that schools could provide for a particular student with diabetes who is eligible under IDEA.

Generally, if a child with diabetes needs only a related service and not special education services as defined by State law, that child is not a child with a disability under IDEA and therefore is not eligible for any services under IDEA. Such a child might still be eligible for services under Section 504.

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In general and consistent with the Family Educational Rights and Privacy Act (FERPA), IDEA's confidentiality provisions require prior written consent for disclosures of personally identifiable information contained in education records, unless a specific exception applies.

Family Educational Rights and Privacy Act (FERPA)

FERPA generally prohibits schools from disclosing personally identifiable information in a student's education record, unless the school obtains the prior written consent of the student's parent/guardian or the eligible student (a student who is 18 years old or older or who attends an institution of postsecondary education). However, there are a number of exceptions to this requirement. One such exception permits schools to disclose personally identifiable information in a student's education record without obtaining prior written consent to school officials, including teachers, who have legitimate educational interests in the information, including the educational interests of the child. Schools that do this must include in their annual notification to the parent/guardian and eligible students the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest. This exception for school officials also applies to a contractor, consultant, volunteer, or other party to whom a school has outsourced institutional services or functions provided that the outside party:

- (1) Performs an institutional service or function for which the school would otherwise use employees;
- (2) Is under the direct control of the school with respect to the use and maintenance of education records; and
- (3) Is subject to the requirements in FERPA governing the use and redisclosure of personally identifiable information from education records.

Another exception to the requirement of prior written consent permits schools to disclose personally identifiable information from an education record to appropriate parties, including the parent/guardian of an eligible student, in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals. Under this exception, a school may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If a school determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the

health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the United States Department of Education will not substitute its judgment for that of the school in evaluating the circumstances and making its determination.

In addition, under FERPA, the parents/guardian or eligible students must be given the opportunity to inspect and review the student's education records. A school must comply with a request for access to the student's education records within a reasonable period of time, but not more than 45 days after it has received the request.

How can I get copies of the Federal laws?

The statutes are found in the United States Code (U.S.C.). The regulations implementing the statutes are found in the Code of Federal Regulations (CFR).

- Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, implementing regulations at 34 CFR Part 104.
Available at <http://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>
- Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12134 et seq., implementing regulations at 28 CFR Part 35.
Available at <http://www2.ed.gov/policy/rights/reg/ocr/edlite-28cfr35.html>
- The Americans with Disabilities Act Amendments Act of 2008.
Available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s3406enr.txt.pdf
- To obtain copies of the Section 504 and Title II regulations, you also may contact the Customer Service Team of the Office for Civil Rights, U.S. Department of Education, toll-free at 1-800-421-3481. For TTY, call 1-877-521-2172.
- Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., implementing regulations at 34 CFR Part 300.
Available at <http://www2.ed.gov/about/offices/list/osep/index.html>
- For copies of the IDEA regulations, you also may contact EdPubs at 1-877-433-7827.
- Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, implementing regulations at 34 CFR Part 99.
Available at <http://www2.ed.gov/policy/gen/guid/fpco/index.html>

How can I get more information?

The Office for Civil Rights (OCR) and the Office of Special Education Programs (OSEP) in the U.S. Department of Education can answer questions and provide technical assistance.

- For more information from OCR, contact OCR's Customer Service Team toll-free at 1-800-421-3481. For TTY, call 1-877-521-2172. Information is also available on the OCR website, <http://www2.ed.gov/about/offices/list/ocr/index.html>. You may also contact one of OCR's 12 Enforcement Offices around the country. Contact information is available from the OCR Customer Service Team and from the OCR website.
- For more information from OSEP, call (202) 245-7459. For TTY, call (202) 205-5637. Information is also available on OSEP's website, at <http://www2.ed.gov/about/offices/list/osers/osep/contact.html>
- More information about FERPA is available at <http://www2.ed.gov/policy/gen/guid/fpco/index.html>