

# Diabetes: Law and Order

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# Some Legal Protections for Diabetics You Need to Know

- *Section 504 of the Civil Rights Act of 1973* (Section 504) is a civil rights law that prohibits discrimination against individuals with disabilities. It ensures, for example, that a child has ACCESS to an education, and provides for accommodations and modifications to the regular day and/or curriculum.
- The *Americans with Disabilities Act* (ADA) is another federal law that prohibits discrimination against persons with disabilities.
- The *Health Insurance Portability & Accountability Act of 1996* (HIPAA)
- Social Security Disability
- Malpractice/Civil Liability/Tort Claims

# “Disability” under Section 504

- A student is understood to have a disability as defined by Section 504 if she has a mental or *physical impairment* or a record of impairment. Students regarded as having such an impairment are also understood to have a disability.
- In addition, the federal government considers students as disabled if they are *substantially limited in their major life activities*. This includes activities and abilities such as (but not limited to) self-care, breathing, walking, seeing, performing schoolwork, speaking and learning. Many students with learning disabilities do not appear to be substantially limited in life. In fact, it may not be obvious that they even have a disability or a disorder. Still, such students might need special services in school.

# “Person with a Disability”

- A person with a physical or mental impairment that substantially limits one or more life activities; OR
- A person who has a record or history of such an impairment; OR
- A person who is regarded as having such an impairment
  
- *Physical or mental impairment is defined very broadly to include most physical, mental, or psychological disorders or conditions, anatomical losses, and disfigurements*

# “Disability” under the ADA

- An individual with a **disability** is **defined** by the **ADA** as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

# Is Diabetes a Legal Disability?

- **The short answer is "Yes."**
- Under most laws, diabetes (both Type 1 and Type 2) is **protected** as a disability. This helps keep them from being discriminated against.
- Diabetes is a disability because it substantially limits the function of the endocrine system
- Diabetes can be an "invisible" disability
- Diabetes is still a disability, even if a person is healthy and diabetes is well-managed

However, diabetes is not generally considered a disability in terms of Social Security *benefits*. Generally, there must be more extenuating circumstances (dialysis, amputation, etc) in order get disability benefits.

## School Settings

- Federal laws give students the right to receive the diabetes care they need to be safe and participate in school activities just like any other child.

# Schools Should Provide

- Multiple staff members are trained to check blood glucose levels and administer insulin and glucagon.
- Trained staff to provide diabetes care during field trips, extracurricular events and all school sponsored activities
- All school staff—including teachers, coaches and bus drivers—who interact regularly with the student know how to recognize high and low blood glucose levels and respond appropriately.
- Capable students permitted to self-manage their diabetes anytime, anywhere and keep their diabetes supplies with them.

and also provide:

- Full participation in all sports, extracurricular activities, and field trips, with the necessary diabetes care assistance and/or supervision provided.
- Permission to eat whenever and wherever necessary, including eating lunch at an appropriate time with enough time to finish eating.
- Permission to take extra trips to the bathroom or water fountain.
- Permission for extra absences for medical appointments and sick days without penalty.
- Alternate arrangements for classroom time missed for medical appointments, because of periods of high or low blood glucose, or illness related to diabetes

# Schools Should NOT

- Make family members go to school to care for a student's diabetes
- Transfer students to a different school to get needed diabetes care
- Prevent students with diabetes from participating in field trips, sports and other school-sponsored activities

# What to Consider in a 504 Plan

- Provision of diabetes care
- Student's level of self-care, carrying supplies and extra supplies
- Snacks and meals
- Exercise
- Water and bathroom access
- Checking blood glucose levels, insulin and medication administration, and treating high or low blood glucose levels
- Field trips, playground, extracurricular activities, before/after school care
- Tests and classroom work

**Note:** *Accommodations for diabetes care during standardized tests at school should be made. SAT and ACT offer accommodations too. Be sure to seek out this information early as you have to document the disability (available online).*

- Communication of issues and changes

# Continued...

- Emergency care. Emergency evacuation and shelter-in-place considerations
- Notify parents/guardians immediately for situations...such as:
  - Symptoms of severe low blood sugar.
  - Call 911 first for unconsciousness, then nurse, then parents
  - Student's blood glucose results are above \_\_\_\_\_ or below \_\_\_\_\_.
  - Symptoms of high blood sugar.
  - Student refuses to eat or take insulin injection/ bolus. • Any injury.
  - Insulin pump malfunctions that cannot be remedied.
- Parent/Guardian and Emergency Contacts (all possible contact methods)
- Student's health care provider

# American Diabetes Association Sample 504 Plan

- <http://main.diabetes.org/dorg/PDFs/Advocacy/Discrimination/504-plan.pdf>

EXCELLENT SOURCE OF INFORMATION

# ADA Compliance and Issues

- *Kapche v. City of San Antonio* was a case involving an individual who was turned down for a position as a police officer *solely* because he has diabetes. The case reached the Fifth Circuit twice (176 F.3d 840; 304 F.3d 493), with the court ultimately overturning prior case law and determining that blanket bans that disqualify a person with diabetes from a given position without an individual assessment are *unlawful*.
- *Rosen v. City of Philadelphia*, a class action involving the mistreatment of people with diabetes in police custody--The settlement of this lawsuit included procedures to ensure that people with diabetes have access to food, medication, and health care personnel, and that police officers receive training on the medical needs of people with diabetes. These procedures and training materials serve as a national model.

# What Covers Your Facility?

- Title II of the ADA covers *state funded* schools and employers
- Title III of the ADA covers private entities
- Section 504 covers *any schools* that receive *any* federal dollars

# What happens if we don't?

- Consequences:
  - Student can file a Complaint with the Office of Civil Rights or the US Department of Education
  - Leads to a thorough investigation, which may include audits
  - Student may file a private action in Federal Court naming the College and the Professor-remedies are injunctive relief, attorney's fees, and \$\$\$ damages, if the discrimination is shown to be *intentional*.
  - Loss of any federal funding to the institution
  - Civil Damages?

# Some Resources

- [www.wrightslaw.com](http://www.wrightslaw.com)
- <http://main.diabetes.org/dorg/PDFs/Advocacy/Discrimination/504-plan.pdf>
- <https://www.youtube.com/watch?v=PzXzlqMOX3k>
- <https://www.youtube.com/watch?v=yHJijRF9Upo>



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