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FAME

FEDERAL LAWS

The Rehabilitation Act of 1973 (29 USC s.794)

This federal civil rights law, commonly referred to as **Section 504**, helps ensure that individuals with handicaps/disabilities are not excluded from participating in any program or activity that receives federal financial assistance. All public schools and some private schools usually receive some form of federal financial assistance. Most, if not all, school districts already have procedures to implement Section 504. Students who are covered by this law are eligible to receive what is known as a 504 Plan.

Students with life-threatening food allergy fall under this law, as their health condition meets its definition of handicap/disability; i.e., a physical condition that substantially limits one or more major life activity (i.e., eating, breathing). As a result, schools need to make sure that these students are able to fully participate, alongside their peers, in the school day and curriculum related activities.

A **504 Plan** is a written management plan outlining certain accommodations made by the school that address the student's food allergy. Examples of 504 accommodations may include, but not be limited to, special seating arrangements, curriculum adjustments, field trips, special school events and staff training. Parents/guardians are within their rights to request an evaluation for eligibility and to pursue such a plan. All schools subject to this law should have a 504 Coordinator on staff who can help parents/guardians throughout the 504 process.

In addition, schools are required to a) notify parents/guardians that their child/children may be entitled to accommodations under 504 and b) are required to identify potentially eligible students, "Child Find." Parents of children with LTA's should ask the school nurse or administrator to speak with the 504 coordinator and, if needed request a comprehensive 504 plan evaluation. If further action is needed parents should contact their school superintendent. Some parents may require additional steps such as contacting a civil rights attorney or educational advocate.

The law is overseen by the US Department of Education's Office for Civil Rights (OCR).

- **Regional OCR contacts can be found at:**

wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm

- **More information about Section 504 can be found at:**

ed.gov/about/offices/list/ocr/504faq.html

The Americans with Disabilities Act (ADA) of 1990

The ADA and Section 504 are both federal civil rights laws; however, the ADA can be applied to institutions that do not receive federal financial assistance, such as some private schools, private child care centers, etc. Congress amended the ADA in 2008 (ADAAA) to clarify that it had always intended a broad definition of disability. Disability under ADAAA means a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. The regulations that implement the ADAAA require broad interpretation of the term disability. Parents/advocates of children with food allergy often point to the ADAAA as further evidence that food allergy is a disability as defined by this law; i.e., an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

- **More information about the ADAAA can be found at:**

ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html (ADA Amendment Act Q & A)

The Individuals with Disabilities Education Act (IDEA) originally adopted in 1975 and amended in 2004

IDEA provides protections for students with learning and other disabilities. Among the key provisions are the right to a free and appropriate public education (FAPE), placement in the least restrictive environment, and parent participation. The law also establishes safeguards to ensure enforcement. IDEA generally applies to students who have disabilities that impact their learning i.e., autism, vision/hearing impairment, etc. A food allergy alone generally does not apply to IDEA; however, some children with learning disabilities may also have food allergy. Typically in this situation, the child's food allergy is incorporated into an Individual Education Plan (IEP). IDEA is governed by each state's department of education.

The Individuals with Disabilities Education Act (IDEA) includes the Child Find mandate. Child Find requires all school districts to identify, locate and evaluate all children with disabilities, regardless of severity. This obligation to identify all children who may need special education services exists even if the school is not providing special education services to the child.

The IDEA requires all States to develop and implement a practical method of determining which children with disabilities are receiving special education and related services and which children are not.

Overall, the goal of IDEA is to provide children with disabilities the same opportunity for education as those students who do not have a disability.

- **More information about the IDEA can be found at:**

idea.ed.gov

The Food Allergen Labeling and Consumer Protection Act (FALCPA),

PUBLIC LAW 108-282—AUG. 2, 2004 took effect January 1, 2006, mandates that the labels of foods containing one of the eight major food allergens (milk, eggs, fish, crustacean shellfish, peanuts, tree nuts, wheat, and soy) declare the allergen in plain language, either in the ingredient list or via:

- the word "Contains" followed by the name of the major food allergen (i.e.) "Contains milk, wheat"
- a parenthetical statement in the list of ingredients—(i.e.) "albumin (egg)"

Such ingredients must be listed if they are present in any amount, even in colors, flavors, or spice blends. Additionally, manufacturers must list the specific nut (e.g., almond, walnut, cashew) or seafood (e.g., tuna, salmon, shrimp, lobster) that is used.

It is important to remember that FALCPA only applies to the eight major allergens listed above. Other potential allergens, such as sesame or mustard, would still have to be included in the ingredient list—if in fact they are in the food item—but would not warrant a separate "Contains..." statement or a parenthetical.

Also be aware that processing aids that contain major allergens, though at an insignificant level unlikely to cause an allergic reaction, are used by the food industry and fall under the scope of FALCPA. As an example, soy lecithin is used as a processing aid in nonstick spray to keep baked goods from sticking to baking pans, or as a carrier for certain flavor, spice, or vitamin ingredients. FALCPA requires food companies to label ingredients like soy lecithin, regardless of its level in the food you purchase. You, therefore, may notice "soy lecithin" or "Contains soy" on products that did not previously list soy, despite the fact that the amount of soy in the finished food is highly unlikely to trigger a reaction.

You may also see other ingredients derived from major allergens being treated as processing aids that had not been labeled pre-FALCPA. It is advised that, if you see a newly added allergen statement as a result of a processing aid such as soy lecithin, to consult with your health care provider instead of ignoring the newly added statement on the label.

It is also important to keep in mind that FALCPA does NOT regulate the use of precautionary allergen advisory statements such as “may contain”, “processed in a facility” or “manufactured on shared equipment”. It has always been advised that you do NOT purchase any food product with such a “may contain” statement. By using such a statement, the manufacturer is proclaiming that there may be a risk of cross-contact during the manufacturing process, and therefore the product may not be safe for an allergic individual.

This change to the food label may reduce the choice of food products available to someone with food allergy. However, it is potentially dangerous to assume that any label change is related to insignificant levels having to be labeled by FALCPA rather than a true reformulation of the food product. So rather than ignore “Contains...” statements, speak to your health care provider.

This act has made food label reading easier to identify food allergens for millions of Americans living with and caring for those with food allergies. However, ingredient labels on all packaged food items must be read carefully each time food is to be consumed.

- **More information about the FALCPA can be found at:**

fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/allergens/ucm106890.htm

The Food Labeling Modernization Act of 2015

Sections pertaining to food allergies.

The Secretary is required to finalize the following three sections/regulation no later than three years following enactment of the Food Labeling Modernization Act of 2015.

Sec. 8 – Food Allergen Labeling for Sesame: This section includes sesame on the list of major food allergens, however the manner in which sesame must be disclosed will be determined.

Sec. 9 – Information about Major Food Allergens in Non-prepackaged Foods: This section requires that signs listing major food allergens be placed adjacent to non-packaged foods being offered for sale at retail.

Sec. 10 – Submission and Availability of Food Label Information: This section requires the manufacturer or importer of any food to submit to the Secretary all information that is to be included in the labeling of food, specifically: the nutrition facts panel; ingredients; any natural or artificial flavoring; an image of the primary display panel; allergy warnings or information; nutrient content claims; health related claims; and other relevant information as determined by the Secretary.

This section also requires the manufacturer or importer to update or supplement the information to keep the information up-to-date. It provides penalties for any violation of reporting requirements. It also creates a public database containing all information submitted that is searchable by the public.

Public Law 117–11–Food Allergy Safety, Treatment, Education, and Research Act of 2021 or the FASTER Act of 2021

An act to improve the health and safety of Americans living with food allergies and related disorders, including potentially life-threatening anaphylaxis, food protein-induced enterocolitis syndrome, and eosinophilic gastrointestinal diseases, and for other purposes.

What the FASTER Act Means for Food Allergy Families

More than 1.5 million people living in the U.S. are allergic to sesame. Reactions to sesame can be severe, even fatal, yet sesame ingredients aren't always identified on packaged foods. The FASTER Act of 2021 solves this problem by adding sesame to the list of allergens that must be labeled in plain language under the Federal Food, Drug, and Cosmetic Act.

As of January 1, 2023, sesame will be labeled on packaged foods sold in the U.S., in the same way that the other top allergens—milk, egg, peanut, tree nuts, wheat, soy, finned fish and crustacean shellfish—have been labeled since 2006. The FASTER Act of 2021 marks the first time that food allergen labeling has been expanded since the Food Allergen Labeling and Consumer Protection Act (FALCPA) became law in 2004.

In addition to labeling sesame, the FASTER Act mandates that the Secretary of Health and Human Services report to Congress on the prevalence, severity, diagnosis, prevention, treatment and management of food allergies. This report, to be delivered in late 2022, will also propose strategies to acquire accurate food allergy prevalence data and make recommendations toward developing and implementing a framework to label new major food allergens.

- **For more information:**

foodallergy.org/resources/how-fare-advocates-helped-pass-faster-act
fda.gov/food/food-labeling-nutrition/food-allergies

The FDA Food Safety Modernization Act

In 2011, Congress passed the FDA Food Safety Modernization Act to improve food safety in the United States by shifting the focus from response to prevention. Section 112 of the act calls for the Secretary of U.S. Department of Health and Human Services, in consultation with the Secretary of the U.S. Department of Education, to develop voluntary guidelines for schools and early childhood education programs to help them manage the risk of food allergies and severe allergic reactions in children.

In response, the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services, in consultation with the U.S. Department of Education, developed the **Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs**.

- **More information and the Guidelines can be found at:**

cdc.gov/healthyyouth/foodallergies

The School Access to Emergency Epinephrine Act

The School Access to Emergency Epinephrine Act was passed into law in 2013. This federal law encourages states to implement policies requiring schools to stock undesignated epinephrine auto-injectors for use in emergencies. States that develop such policies will be given additional preference for federal asthma education grants.

The new law stresses the importance for schools to be prepared to treat anaphylaxis; however, it does not mandate that schools stock epinephrine. The law encourages states to pass their own laws mandating that schools within that state stock epinephrine.

Parents/Guardians whose children have prescribed epinephrine to treat anaphylaxis need to provide the child's school with a physician's written order and a supply of prescribed epinephrine auto-injectors.

Substitutions or Modifications in School Meals

For schools participating in a federally-funded school nutrition program, USDA regulations 7 CFR Part 15b require substitutions or modifications in school meals for students whose disabilities restrict their diets. A student with a disability or medical condition must be provided substitutions in foods when that need is supported by a statement signed by a licensed physician. The physician must identify:

- The student's disability or medical condition
- An explanation of why the disability restricts the student's diet
- The major life activity affected by the disability
- The food or foods to omit from the student's diet
- The food or choice of foods to substitute in the student's diet

Generally, students whose food allergy may result in severe, life-threatening reactions (anaphylaxis) meet this law's definition of disabled, and the school food service personnel must make the substitutions prescribed by the licensed physician. Parents/Guardians who encounter difficulties with schools and these USDA regulations are often advised to contact their regional USDA civil rights office.

- **More information about USDA regulations can be found at:**

fns.usda.gov/school-meals/guidance-and-resources

USDA regulations have not been amended to reflect the ADA Amendments Act. Regulation will be updated by Department of Agriculture (198 section 131).

The Family Education Rights and Privacy Act of 1974 (FERPA)

FERPA is a privacy act that addresses student confidentiality. Schools should be careful if they attempt to somehow identify or publicize a student's food allergy without consent from the student's parents/guardians. For example, there have been instances where schools have posted food allergy signs, notices etc. that specifically identify a particular student. Without parental consent, this may represent a violation of FERPA. Be aware that some states have school student records laws that are more restrictive than FERPA.

- **More information about FERPA can be found at:**

ed.gov/policy/gen/guid/fpco/ferpa/index.html

State Educational Agency (SEA)

According to 34 CFR 77.1 (c) [Title 34—Education; Subtitle A—Office of the Secretary, Department of Education; Part 77—Definitions that apply to Department Regulations], the term State educational agency means “the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.”

- **Link to the State listing to find SEAs:**

ed.gov/about/contacts/state/index.html

Food Allergy Management & Prevention Plan (FAMPP)

From CDC Vol. Guidelines 3. Page 25—Centers for Disease Control and Prevention. Voluntary Guidelines for Managing Food Allergies in Schools and Early Care and Education Programs. Washington, DC: US Department of Health and Human Services; 2013.

USDA REGIONAL CIVIL RIGHTS OFFICES

Mid-Atlantic Regional States

Delaware, District of Columbia, Maryland, New Jersey, Puerto Rico, Pennsylvania, Virgin Islands, Virginia and West Virginia

Regional Director MARO Civil Rights

Mercer Corporate Park
300 Corporate Boulevard
Robbinsville, NJ 08691-1598
(609) 259-5123

Midwest Regional States

Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin

Regional Director MWRO Civil Rights

77 West Jackson Blvd, 20th Floor
Chicago, IL 60604-3507
(312) 353-3353

Mountain Plains Regional States

Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming

Regional Director MPRO Civil Rights

1244 Speer Boulevard, Suite 903
Denver, CO 80204
(303) 844-0307

Northeast Regional States

Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont

Regional Director NERO Civil Rights

10 Causeway Street, Room 501
Boston, MA 02222-1065
(617) 565-6424

Southeast Regional States

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee

Regional Director SERO Civil Rights

61 Forsyth Street, SW, Room 8t36
Atlanta, GA 30303
(404) 562-1808

Southwest Regional States

Arkansas, Louisiana, New Mexico, Oklahoma and Texas

Regional Director SWRO Civil Rights

100 Commerce Street, Room 5-A-6
Dallas, TX 75242
(214) 290-9820

Western Regional States

Alaska, American Samoa, Arizona, California, Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Oregon, Trust Territories, Nevada and Washington

Regional Director WRO Civil Rights

550 Kearny Street, Room 400
San Francisco, CA 94108
(415) 705-1322

STATE LAWS

A variety of state laws can impact the way a school manages students with food allergy. For example:

- Most states have laws allowing students to self-carry their prescribed epinephrine while at school, at a school-sponsored event, or while in transit to and from school.
- Some states have a law or regulation allowing schools to obtain a non-student-specific (stock) epinephrine auto-injector to keep on hand for emergency use.
- Many states have published (through the department of education and/or department of health) statewide food allergy management guidelines for schools.
- Some states have laws/regulations pertaining to training of various school personnel on the usage of epinephrine.

For more information about state laws or regulations regarding life-threatening allergies, see the following state guidelines (next page). In addition, you can contact your states department of education and/or health.

STATE GUIDELINES FOR SCHOOLS

Arizona State Guidelines for School Management of Food Allergies

azdhs.gov/phs/oeh/fses/pdf/allergies1007.pdf

Connecticut State Guidelines for School Management of Food Allergies

sde.ct.gov/sde/lib/sde/pdf/publications/food_allergies/food_allergies.pdf

Illinois State Guidelines for Managing Life-Threatening Food Allergies in Illinois Schools

isbe.state.il.us/nutrition/pdf/food_allergy_guidelines.pdf

Maryland State Guidelines for School Management of Food Allergies

wcps.k12.md.us/depts_programs/student_services/documents/anaphylactic_guidelines.pdf

Massachusetts State Guidelines for School Management of Food Allergies

doe.mass.edu/cnp/allergy.pdf

Mississippi State Guidelines for School Management of Food Allergies

healthyschoolsms.org/health_services/documents/GuidelinesforManagingFoodAllergies.pdf

Missouri State Guidelines for Allergy Prevention and Response

dhss.mo.gov/living/families/schoolhealth/pdf/mo_allergy_manual.pdf

New Jersey State Guidelines for School Management of Food Allergies

state.nj.us/education/students/safety/health/services/allergies.pdf

New York State Guidelines for School Management of Food Allergies

health.ny.gov/professionals/protocols_and_guidelines/docs/caring_for_students_with_life_threatening_allergies.pdf

Pennsylvania State Guidelines for Management of Food Allergies in Schools— Recommendations & Resource Guide for School Personnel

pears.ed.state.pa.us/forms/files/PDE032i.pdf

Rhode Island (Sample Rhode Island Food Allergy Policy)

thrivert.org/documents/Sample_School_Food_Allergy_Policy_10-08-08.pdf

Tennessee State Guidelines for School Management of Food Allergies

tennessee.gov/education/schoolhealth/healthservices/doc/HealthCareProfessionals-HealthySchoolsGuidelines.pdf

Texas State Guidelines for the Care of Students with Food Allergies at Risk for Anaphylaxis

dshs.state.tx.us/schoolhealth/docs/SB-27-guidelines-edit.doc

Vermont State Guidelines for School Management of Food Allergies

education.vermont.gov/documents/food_allergies_manual_0608.pdf

Washington State Guidelines for School Management of Food Allergies

wwps.org/support/healthservices/documents/allergy/GuidelinesCareStudentsAllergies.pdf

West Virginia State Guidelines for School Management of Food Allergies

wvde.state.wv.us/healthyschools/documents/WVDEAllergyGuidelines.pdf