



Section 504 Protections for Students with Food Allergies

Section 504 of the Rehabilitation Act of 1973 is a Federal civil rights law that protects students from disability-based discrimination in schools (including preschools, K-12 schools, colleges, universities, and other postsecondary institutions) that receive Federal financial assistance.

Under Section 504, a student with a food allergy can be a student with a disability for purposes of Section 504 if the student's food allergy substantially limits one or more of the student's major life activities. [34 C.F.R. § 104.3\(i\)\(1\)\(i\)](#).

What are food allergies?

According to the [Centers for Disease Control and Prevention](#), a food allergy is an adverse health effect arising from a specific and reproducible immune response to certain foods. Symptoms of food allergies may include: red watery eyes, swollen lips, tongue or eyes, itchiness, hives, rash, nausea, vomiting, sneezing, nasal congestion, dry staccato or deep cough, difficulty breathing, pale skin color, dizziness, loss of consciousness, irritability, or confusion. Because the severity of allergic reactions may vary over time, past mild reactions do not mean an individual may not experience a more serious reaction in the future.

The Office for Civil Rights (OCR) enforces Section 504 against entities that receive Federal financial assistance from the Department of Education.

In addition to the rights and obligations discussed in this fact sheet, a child with a disability attending a public K-12 school may have additional rights under Section 504 (such as the right to a free appropriate public education ([34 C.F.R. § 104.33](#))) and the Individuals with Disabilities Education Act. Parents also may have additional rights under those statutes and their implementing regulations.

OCR also shares in the enforcement of Title II of the Americans with Disabilities Act (ADA) with the Department of Justice (DOJ), and DOJ enforces Title III of the ADA. Both Title II and Title III can also apply to schools. For information, see DOJ's ADA home page at www.ada.gov or contact DOJ at 1-800-514-0301, 1-833-610-1264 (TTY).

Can a student with a food allergy have a disability under Section 504?

Yes. A student with a food allergy has a disability if their food allergy substantially limits one or more of their major life activities.

According to the [Food and Drug Administration](#), there are more than 160 foods that have caused allergies in people, but milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, soybeans, and sesame account for more than 90 percent of food allergies and serious allergic reactions in the United States.

Food allergies can substantially limit the operation of the respiratory or gastrointestinal systems, which are major bodily functions, and therefore major life activities under Section 504. [29 U.S.C. § 705\(20\)\(B\)](#) (incorporating [42 U.S.C. § 12102\(2\)\(B\)](#)).

Food allergies can also affect an individual's eating, breathing, or concentrating, which are also major life activities under Section 504. [29 U.S.C. § 705\(20\)\(B\)](#) (incorporating [42 U.S.C. § 12102\(2\)\(A\)](#)).

Whether a food allergy substantially limits the operation of the respiratory or gastrointestinal systems can be established by a medical examination or medical tests (such as a skin prick or blood test). But medical tests are often not required to determine that a student is substantially limited in a major life activity. For example, a student's history of past allergic reactions may provide sufficient information to determine that a student has a food allergy that substantially limits a major life activity. A school may always accept that a student has a disability without any documentation or medical tests.

Under Section 504, the issue of whether an impairment substantially limits a major life activity should not demand extensive analysis. 29 U.S.C. § 705(20)(B) (incorporating 42 U.S.C. § 12102(4)(B), which incorporates § 2(b)(5) of the findings and purposes of the ADA Amendments Act of 2008).

The term substantially limits must be construed broadly in favor of expansive coverage, to the maximum extent permitted by the statutory language. 29 U.S.C. § 705(20)(B) (incorporating 42 U.S.C. § 12102(4)(A)).

An impairment does not need to prevent, or significantly or severely restrict, an individual from performing a major life activity in order to be considered substantially limiting. It is enough that an impairment substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. Additionally, an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. 29 U.S.C. § 705(20)(B) (incorporating 42 U.S.C. § 12102(4)(B), which incorporates § 2(a)(7)-(8), (b)(5)-(6) of the findings and purposes of the ADA Amendments Act of 2008, and § 12102(4)(D)).

The beneficial effects of mitigating measures, such as medication, used by an individual, must be disregarded in determining whether an impairment substantially limits a major life activity of an individual. 29 U.S.C. § 705(20)(B) (incorporating 42 U.S.C. § 12102(4)(E)).

How can a food allergy affect a student's experience in school?

Students with a food allergy may:

- be absent from school due to medical appointments;
- experience isolation from peers at mealtimes in order to avoid exposure to allergens;
- feel discomfort due to an allergic reaction such as itchiness, dry throat, or watery eyes;
- have an ongoing sense of fear or stress about the possibility of a life threatening reaction; and/or
- experience an incident, such as anaphylaxis, which can be life threatening, while at school.

What might a school need to do to address a student's food allergy?

If the student's food allergy has resulted in the student having a disability under Section 504, that student may require certain modifications (sometimes referred to as accommodations) to meaningfully access or benefit from the school's educational opportunities. [34 C.F.R. §§ 104.4, 104.44](#). This is true even if the student is not substantially limited in the major life activity of learning.

Section 504 may require a school to provide modifications such as:

- designating allergy-free eating areas such as peanut-free tables, and providing clearly labeled, dairy-free, or other allergen-free food options in school cafeterias, dining halls, and at school events;
- prohibiting certain foods in classrooms and/or school buildings, and providing notice to students and families about all food allergy-related rules;
- ensuring eating and learning environments are free of food allergens, including during field trips and extra-curricular activities where possible, by, for example, wiping down tables, chairs, and other surfaces before use by the person with an allergy;
- permitting students who are capable of carrying and using an epinephrine auto-injector at school and during school-related events to do so or—for students in an elementary or secondary school setting who are not capable of carrying or using an auto-injector—storing the epinephrine auto-injector in a quickly accessible place and ensuring school staff are trained on how to use it; and/or
- allowing the student to make up work, without penalty, and excusing late arrivals and absences when they miss class due to a medical appointment or when food allergies hinder a student's ability to complete their work.

Furthermore, even if a student with a food allergy has a disability but does not need modifications, they would still be protected from discrimination, such as disability-based harassment. For example, Section 504 may require a school to respond to bullying or harassment targeted at the student because of their medical condition, or because they are regarded as or have a record of having a disability. [34 C.F.R. § 104.3\(j\)\(1\)\(ii\) & \(iii\)](#). Such bullying or harassment, for example, could be related to a student's eating of an allergy-safe lunch or could involve the threat of exposure to a food to which a student is allergic.

What remedies might a school need to provide if the school does not appropriately address a student's food allergy?

If a school violates the Section 504 rights of a student with a food allergy, the school may be required to, among other things:

- offer the student an opportunity to re-take classes, tests, or assignments with appropriate modifications if needed, and without penalty or negative consequence to the student;
- excuse absences incurred due to allergic reactions and correct student records regarding unexcused absences; and/or
- train faculty and staff on how to keep students with food allergies safe; on students' food allergy action plans; on addressing peer-to-peer bullying and harassment; and on how living with a food allergy may impact a student physically, psychologically, socially, and academically.

What can be done if a student or parent believes a school is not meeting its obligations?

- Section 504 requires schools to develop and implement a system of policies and procedures to address concerns and disagreements that may develop between schools and students. [34 C.F.R. §§ 104.7, 104.36](#). Parents and students may choose to initiate proceedings in keeping with these policies and procedures.
- Students, parents, or others who would like to request technical assistance from the Office for Civil Rights (OCR), or who would like to file a complaint, may do so by contacting the [OCR enforcement office that serves their State](#).

For more information on disability-related issues, please visit OCR's [Disability Discrimination](#) webpage.

To request language access services or resources, which may include oral technical assistance or written translation of Department information, free of charge, contact OCR@ed.gov.

If you need more information about interpretation or translation services, call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339). To request documents in alternate formats such as Braille or large print, contact the Department at 202-260-0818 or ofe_eos@ed.gov.

This fact sheet does not have the force and effect of law and is not meant to be binding, beyond what is required by statutory and regulatory requirements. All enforcement determinations made by OCR are based on the particular factual circumstances presented in each individual case.