

Know Your Rights

get schooled in
ANAPHYLAXIS[®]

There are a number of federal laws that govern schools' responsibilities and protect the needs of students with potentially life-threatening (severe) allergies. Every school has an obligation to reasonably accommodate students with severe allergies upon notification and confirmation of those allergies. Schools are also required to keep a record confirming that these obligations have been consciously carried out.

Following are several federal laws that impact students with severe allergies and their schools.

Section 504

The Rehabilitation Act of 1973 (29 USC s.794) is a federal civil rights law, commonly referred to as Section 504. This law 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 money. Most, if not all, school districts already have procedures implementing Section 504. Students with food allergies may 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 (e.g., 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.

The law allows parents to participate in creating what is commonly called a 504 Plan, which 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 and staff training. Students with food allergies do not necessarily need a 504 Plan; however, parents are within their rights to request and pursue such a plan. All schools subject to this law should have a 504 Coordinator on staff that can help parents develop these written plans.

The law is overseen by the U.S. Department of Education's Office for Civil Rights (OCR). Regional OCR contacts can be found at <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>* and more information about Section 504 can be found at <http://www2.ed.gov/about/offices/list/ocr/504faq.html>.*

The Americans with Disabilities Act (ADA) of 1990

The Americans with Disabilities Act (ADA) is similar to Section 504; however, the ADA can be applied to institutions that do not receive federal financial assistance, such as some private schools or private child care centers. Congress amended the ADA in 2008 to clarify that it had always intended a broad definition of disability. More information about the ADA can be found at <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>.*

The Food Allergen Labeling and Consumer Protection Act (FALCPA)

The Food Allergen Labeling and Consumer Protection Act (FALCPA), which took effect January 1, 2006, mandates that the labels of foods containing major food allergens (milk, eggs, fish, 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 – e.g., "Contains milk, wheat" – or a parenthetical statement in the list of ingredients – e.g., "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.

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The Get Schooled in Anaphylaxis initiative offers practical information to educate the school community to help those at risk for life-threatening allergic reactions avoid their triggers, recognize anaphylaxis signs and symptoms and understand how to quickly get appropriate treatment and immediate medical care when anaphylaxis occurs.

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Additionally, processing aids are often used by the food industry, but are different from other ingredients like sugar or flour. Soy lecithin, for example, is used as a processing aid (as a 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. You may also see other ingredients derived from major allergens being treated as processing aids that had not been labeled pre-FALCPA. This change to the food label may reduce the choice of food products available to you. However, it is potentially dangerous if you start assuming any label change is related to insignificant levels having to be labeled by FALCPA rather than a true reformulation of the food product.

Substitutions or Modifications in School Meals

For schools participating in a federally funded school nutrition program, USDA regulations 7 C.F.R. 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 be omitted from the student's diet
- ★ The food or choice of foods that must be substituted

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

The Family Education Rights and Privacy Act 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. For example, there have been instances where schools have posted food allergy signs or notices that specifically identify a particular student. Without parental consent, this may represent a violation of FERPA. See <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.*

Some states also have school student records laws that are more restrictive than FERPA, so it's important you understand the laws specific to your state as well.

Adapted, with permission, from content in the St. Louis Children's Hospital, FAME: Food Allergy Management and Education Manual.

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