

# SCHOOL AND COLLEGE LEGAL SERVICES of California

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## LEGAL UPDATE

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**To: Superintendents, Member School Districts (K-12)**

**From: Monica D. Batanero, Associate General Counsel** <sup>MDB</sup>

**Subject: District's Responsibilities to Provide Reasonable Accommodations to Students with Food Allergies under Section 504 of the Rehabilitation Act of 1973/Americans with Disabilities Act**  
**Memo No. 19-2014**

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This legal update is provided to school districts as a reminder that a student with a peanut allergy or other food allergy who qualifies as disabled under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act (ADA) should receive reasonable accommodations.

### Section 504/ADA Eligibility

A child with a food allergy may qualify as a student with a disability under Section 504 if the allergy substantially limits a major life activity, such as breathing, respiratory function, immune system function, or learning. A student's food allergy need not prevent or severely or significantly restrict a major life activity in order to be substantially limiting.

The Section 504 regulations provide that schools may not discriminate against students with disabilities or exclude them from participating in, or deny them the benefits of, school programs. (34 C.F.R. section 104.4.) The Office for Civil Rights interprets that provision to mean that schools must take steps to make school environments as safe for students with disabilities as they are for nondisabled students.

## **California School Boards Association Policy (CSBA)/Administrative Regulation Regarding Food Allergies**

For those districts that subscribe to CSBA policy updates, CSBA Policy and Administrative Regulation 5141.27 – Food Allergies/Special Dietary Needs contains very helpful recommendations with respect to notification to district staff, food services, class parties/school activities, sanitation and cleaning, professional development, supervision of students and health education.

### **Steps to Consider**

If school staff become aware that a student may have a food allergy, the following steps are recommended:

1. Request that the student's parent provide the school district with a comprehensive medical report from the student's physician indicating:
  - The nature of the allergy;
  - The severity of the allergy;
  - How the allergy limits the student's ability to learn and participate in school activities;
  - What triggers the student's allergic reaction (e.g. ingestion of the food product);
  - The physician's recommendations for avoiding an allergic reaction; and
  - What action should be taken if the student suffers from an allergic reaction.
2. If parent is unable or unwilling to provide the school district with a report from the student's physician, request that parent sign a release to exchange information with the student's physician and have the school nurse contact the physician to obtain the above-bulleted information.
3. Schedule a Section 504 meeting to review the physician's report, if provided by parent, or any relevant information/documentation, to discuss whether the student's food allergy substantially limits a major life activity, and if so, what reasonable accommodations the student requires. For example, if a 504 team is determining what reasonable accommodations would be necessary for a student with a severe peanut allergy, the following accommodations could be considered:
  - Allowing the student to carry an epinephrine auto-injector pen;
  - Banning peanuts and peanut products from a student's classroom;
  - Placing hand-washing stations outside the student's classroom;
  - Cleaning of surfaces at school;
  - Designating a "tree nut free" table in the cafeteria;

- Allowing parent to bring in a treat box for student on occasions such as classroom parties and birthdays;
  - Providing the student the option of purchasing a tree nut free lunch;
  - Having student's teacher keep a tree nut-free snack to provide to the student when other students are receiving snacks;
  - Requiring staff to follow a food allergy plan, including the use of an EpiPen in case of severe reactions;
  - Cleaning of student's "tree nut free" table with a cleaner that removes food allergens.
4. Make sure that student's Section 504 plan identifies the safety procedures that would be implemented to protect the student from accidental exposure, the persons responsible for emergency responses, or the training to be provided to staff members.
  5. Make sure that school staff, including substitutes, are informed of a student's allergy-related needs, including the location of the student's emergency kit or epinephrine auto-injection pen.

#### **Incoming Student with a Section 504 Plan**

If a school district receives an incoming student with a Section 504 plan for a food allergy, the receiving school district should make reasonable accommodations and modifications to address the needs of the student, subject to the existing Section 504 plan but as modified based on the student's new educational placement, to provide the student with equal access to education. The school district may want to schedule a Section 504 meeting to review student's plan at his/her new school site and to address whether further information is needed from the student's physician or whether the student's accommodations need to be modified.

Please contact our office with questions regarding this or any other legal matter.