

Legal Protections for Children with Diabetes



This information was prepared to be a guide and provide references for further information. It is not a complete account of state or federal requirements and is not a substitute for professional legal advice.

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The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) was signed into law in 1990. The ADA prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else to participate in the mainstream of American life -- to enjoy employment opportunities, to purchase goods and services, and to participate in State and local government programs and services. Essentially, the ADA is an "equal opportunity" law for people with disabilities. The ADA applies to public and private schools, preschools, and child care centers except those operated by a religious institution.

Section 504 of the Rehabilitation Act of 1973

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."

This provides protections for students with all disabilities, including diabetes, from being treated unfairly. It gives the students the right to receive all of the care that they need to be safe. It provides protections that they will be able to participate fully in all activities. Covered schools are required to make reasonable accommodations. These accommodations should be outlined in a student's 504 plan.

Diabetes Youth Services recommends a 504 plan is written for every student with diabetes to ensure that proper preparations are made for every situation that may occur during school that could impact the child's ability to safely and effectively participate in activities. Use of a 504 does not indicate lack of action on the part of either the school or the parent. It can address situations that are not specifically outlined in the child's diabetes management plan.

The Individuals with Disabilities Education Act (IDEA)

Under IDEA, the federal government provides financial support to education agencies to assist in providing services to some children with certain disabilities. The child will qualify for services if his/her disability harms an ability to learn. Under IDEA, some children with diabetes qualify. Often children will qualify because they have another disability in addition to diabetes. However, some do qualify on the basis of diabetes alone. Children who qualify for services under IDEA will have an Individualized Education Plan (IEP) that outlines the educational needs of the child based on his/her individual disability.

Family Educational Rights and Privacy Act (FERPA)

According to FERPA, information about a child's diabetes should not be released as part of an education record without prior consent from the parent/guardian or eligible student. The exception to this law is if a school official has a legitimate educational interest in the information. The information may also be disclosed to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. For example, it is necessary for a paramedic attending to a student in an emergency to know that the student has diabetes.

Ohio

Insulin and Glucagon administration: How can non-licensed staff assist?

A nurse or other licensed health care professional may train school staff on providing diabetes care, including insulin and glucagon administration. Ohio Revised Code states:

(D)(1) [...] the department of education shall adopt nationally recognized guidelines, as determined by the department, for the training of school employees in diabetes care for students. [...] (2) The guidelines shall address all of the following issues: [...] (g) Administering insulin, glucagon, or other medication in accordance with a student's physician's order and recording the results of the administration; (h) Understanding the relationship between the diet recommended in a student's physician's [order and actions that may be taken if the recommended diet is not followed. ORC Section 3313.7112(D).

An advanced practice registered nurse or a physician assistant may also issue medical orders and give any diabetes care authorizations, in addition to a physician, according to Ohio General Assembly 131 House Bill 216, Jan. 2017.

Diabetes self-management: What does Ohio allow?

With proper authorization from a treating practitioner and guardian, a student with diabetes may conduct all aspects of diabetes care anytime, anywhere. However, this privilege may be revoked. Ohio Revised Code states:

(H)(1) [O]n written request of the parent, guardian, or other person having care or charge of a student and authorization by the student's treating physician, a student with diabetes shall be permitted to attend to the care and management of the student's diabetes in accordance with the student's physician's order during regular school hours and school-sponsored activities if the student's treating physician determines that the student is capable of performing diabetes care tasks. The student shall be permitted to perform diabetes care tasks in a classroom, in any area of the school or school grounds, and at any school-related activity [...] (2) If the student performs any diabetes care tasks or uses medical equipment for purposes other than the student's own care, the board or governing authority may revoke the student's permission to attend to the care and management of the student's diabetes. ORC Section 3313.7112.

Students and carrying diabetes supplies: What does Ohio allow?

With proper authorization from a treating practitioner and guardian, a student with diabetes may be permitted to "possess on the student's self at all times all necessary supplies and equipment to perform these tasks." ORC Section 3313.7112 (H).

Attending school: Can a child be transferred to a different school because of diabetes?

In Ohio, a child with diabetes must be able to attend school. They may NOT be transferred to a school that they would not normally attend based on a need for diabetes care. Ohio Revised Code states:

(G) A student with diabetes shall be permitted to attend the school the student would otherwise attend if the student did not have diabetes and the diabetes care [...] shall be provided at the school. A board or governing authority shall not restrict a student who has diabetes from attending the school on the basis that the student has diabetes, that the school does not have a full-time school nurse, or that the school does not have an employee trained in diabetes care. The school shall not require or pressure a parent, guardian, or other person having care or charge of a student to provide diabetes care for the student with diabetes at school or school-related activities. ORC Section 3313.7112.

Michigan

Insulin and Glucagon administration: How can non-licensed staff assist?

School administrators may assign staff to administer medication at school. Please see MCLS § 380.1178. School districts may adopt "reasonable rules for [...] the administration of medication to students by school personnel in accordance with instructions of the student's physician." Op. Mich. Atty. Gen., October 27, 1987, No. 6476.

According to the Model Policy on the Management of Diabetes in the School Setting (2011), the Michigan Board of Education recommends that before the beginning of each school year, "[a]ll school personnel should be given training about diabetes and how to manage it." Staff chosen to actually perform most diabetes care tasks, including insulin and glucagon administration, should have comprehensive training from a health care professional.

Diabetes self-management: What does Michigan allow?

The Michigan Board of Education supports self-management, according to MCLS § 380.1201. :

Diabetes care depends upon self-management. Students should have the right to self manage, when appropriate. [...] A student's ability to participate in self-care also depends upon his/her willingness to do so. It is preferable that students be permitted to perform diabetes care tasks in the classroom, at every campus location, or at any school activity (e.g., testing blood glucose). If the steps are performed correctly and materials are disposed of properly, there is no risk of blood or any other unsanitary material contact to other students.

The Michigan Department of Education has developed a Model Policy of the Management of Diabetes in the School Setting, published in 2011. Please see this document on guidelines for administering to students with diabetes in your school. It is available at [www/michigan.gov/mde](http://www.michigan.gov/mde).

References and Resources

Department of Education: <https://www2.ed.gov/about/offices/list/ocr/504faq.html?exp>

US Department of Justice, Civil Rights Division: www.ada.gov

American Diabetes Association: www.diabetes.org

Individuals with Disabilities Education Act: <https://sites.ed.gov/idea/>

Ohio Revised Code, Title 33: Education – Libraries, Chapter 3313: Boards of Education, Section 7112 (2015)

Ohio Department of Education, "Diabetes Management" (see all links in this site)

Ohio Department of Health, "Your Road Map to Diabetes Medication Administration" (2011)

Ohio General Assembly 131 House Bill 216, Jan. 2017.

Michigan Combined Statutes § 380.1178. Nursing; Definitions; principles of construction

Michigan Combined Statutes § 380.1201. Regulation of student conduct and safety

Michigan Board of Education, Model Policy on the Management of Diabetes in the School Setting (Updated 2011)

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