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FIVE STEPS TO SUCCESSFUL ACCOMMODATIONS: AN APPROACH FOR ADDRESSING HIDDEN DISABILITIES IN PARISH SCHOOLS

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NOTE: The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date. It is not intended as, nor should it be considered, "legal advice." If you are presented with a specific issue, you should consult with legal counsel.

FIVE STEPS TO SUCCESSFUL ACCOMMODATIONS: AN APPROACH FOR ADDRESSING HIDDEN DISABILITIES IN PARISH SCHOOLS

I. Introduction

Parish schools face special challenges when confronted with students with disabilities, particularly if those impairments are not readily apparent or are hidden. In today's regulatory scheme, there are a myriad of federal, state, and local laws that affect how schools respond to such situations. These laws can apply to parish schools. They prohibit discrimination against students on the basis of disability and require that schools make certain accommodations or minor adjustments to ensure physical and program access.

When a school learns of a student that may need an accommodation, it is imperative that the school have a process for effectively addressing the issue. Having a framework allows the school to proceed in an efficient and productive manner while taking into account the school's limited resources, legal obligations, and the rights of other students.

II. Definition and Statistics

Hidden disabilities are physical or mental impairments that are not readily apparent to others. They include such conditions and diseases as specific learning disabilities, diabetes, epilepsy, and allergy. A disability such as a limp, paralysis, total blindness or deafness is usually obvious to others. But a hidden disability, such as low vision, poor hearing heart disease or chronic illness, may not be obvious.

According to the United States Department of Education, Office of Civil Rights, there are at least 4 million elementary and secondary students with disabilities in the United States. Of these 43 percent are students classified as learning disabled, 8 percent as emotionally disturbed, and 1 percent as other health impaired.[1]

III. Applicable Laws

A. Federal Laws

1. Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits discrimination based on disability. Under Section 504:

[1] U.S. Department of Education, Office of Civil Rights, The Civil Rights of Students with Disabilities under Section 504 of the Rehabilitation Act of 1973 (Mar. 15, 2005).

> "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…."

29 U.S.C. § 794(a).

a. Purpose of Section 504

Section 504 applies to entities that receive federal funds and prohibits those entities from discriminating against individuals with disabilities. In the educational context, Section 504 prohibits schools from discriminating against disabled students and generally requires schools to ensure that disabled students have the same educational opportunities and benefits as those provided to nondisabled students.

b. Application to Parish schools

Section 504 applies to private schools that receive "federal financial assistance," regardless of whether those schools are sectarian or nonsectarian. 29 U.S.C. § 794(b)(3)(A)(ii). The term "federal financial assistance" is broadly defined by government regulation. 34 C.F.R. § 104.3(h). For our purposes, it is sufficient to understand that it means any funds from the government, including a grant, loan, or contract (other than a procurement contract or a contract of insurance or guaranty) and any other arrangement in which the Department of Education provides services, property, or funding to a school.

Generally speaking, the amount of the funding is irrelevant. Federal funding can be received directly and indirectly through a variety of different avenues. Common examples include:

- School lunch programs
- Grants for drug-prevention programs and at-risk youth programs
- Placements through public schools
- Use of federally funded vouchers
- Textbooks
- Educational reform programs
- Programs designed to enable students to meet national educational goals
- Technology grants
- Government contracts or loans
- Transportation
- Childcare centers that receive government subsidies

c. Applies to students who have or are regarded as having a disability

Section 504 protects students that have a "physical or mental impairment" that "substantially limits a major life activity"[2], students that have a record of such an impairment, and students which are treated as if they have such an impairment.

Numerous physical or mental impairments qualify as a "disability," under this definition. Federal regulations use technical terms and explain that the term, "disability," includes:

> any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine.

34 C.F.R. § 104.3(j)(2)(i)(A). Disabilities also include mental or psychological disorders, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 34 C.F.R. § 104.3(j)(2)(i)(B).

This means that Section 504 applies to obvious conditions, such as paralysis or blindness. But it also means that Section applies to other conditions that are less obvious, or hidden, such as: speech and hearing impairments, cerebral palsy, epilepsy, cancer, heart disease, diabetes, HIV/AIDS, arthritis, ADD/ADHD, and specific learning disabilities (such as dyslexia). Additionally, depending on the severity and cause, allergies (including nut allergies), asthma, obesity, and social maladjustment conditions, might also qualify as a "disability" under Section 504.[3]

d. Requirements of Section 504

Section 504 imposes significant requirements on private schools by requiring that they make adjustments to programs to ensure access by disabled students. These requirements include:

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[2] Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 34 C.F.R. § 104.3(j)(2)(ii).

[3] Certain conditions, however, are explicitly excluded from disability coverage under Section 504. 29 U.S.C. § 705(20)(F). The conditions include: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; compulsive gambling, kleptomania, or pyromania; or psychoactive substance use disorders resulting from *current* illegal use of drugs. 29 U.S.C. § 705(20)(F).

- Enroll students with disabilities if the student is otherwise qualified to participate in the program, with or without "minor adjustments." 34 C.F.R. § 104.39. In other words, if a disabled student meets the private school's program criteria, the school must enroll the student, or if the disabled student could meet the criteria with a minor adjustment, the private school must make that adjustment and enroll the student.

- Provide the least restrictive environment and comparable facilities to disabled students. 34 C.F.R. § 104.34.

- Provide equal opportunity for participation in nonacademic and extracurricular activities. 34 C.F.R. § 104.37.

- If the private school operates a preschool education, day care, or adult education, the school cannot, on the basis of a handicap, exclude qualified handicapped persons. The private school must also consider the needs of such persons when determining the aid, benefits or services that will be provided. 34 C.F.R. § 104.38.

- If the private school offers special education programs, it must satisfy obligations relating to evaluation and placement and procedural safeguards that are similar to those for public schools. 34. C.F.R. § 104.39(c); 34. C.F.R. § 104.35; 34 C.F.R. § 104.36.

2. IDEA

The Individuals with Disabilities Education Act ("IDEA") is a federal law that ensures "that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); *Special Sch. Dist. No. 1 v. E.N.*, 620 N.W.2d 65, 68-69 (Minn. App. 2000). The phrase "free appropriate public education" is often referred to by the acronym FAPE and expresses a fundamental principle of special-education law.[4]

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[4] IDEA defines FAPE to mean special education and related services that:

(A) have been provided at public expense, under public supervision and direction, and without charge;
(B) meet the standards of the State educational agency;
(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
(D) are provided in conformity with the individualized education program [IEP] required under [20 U.S.C. § 1414(d).]

20 U.S.C. §1401(9).

As a general rule, IDEA does not apply to private, sectarian schools. 34 C.F.R. § 300.2(b); *Smith v. James C. Hormel School of Virginia Institute of Autism*, 2009 WL 4799738, 23 (W.D. Va. 2009); *see also St. Johnsbury Academy v. D.H.*, 240 F.3d 163, 172 (2d Cir. 2001) (holding that a disabled student did not have a cause of action under IDEA against a private school, because the private school was not a local educational agency, as defined by statute and regulation). If a private school does not receive specific funding under IDEA from the federal government, the private school is not required to provide special education services to children with disabilities. *See* 20 U.S.C. § 1411 (authorizing grants to states to assist them in providing special education to students with disabilities); 34 C.F.R. § 300.2(c)(1) (providing that the public agency is responsible for ensuring that disabled children placed in private schools by the public agency receive a FAPE).

*Even though IDEA does not directly apply to most private schools, private schools are affected by IDEA because students at private schools may be eligible for or receive services through public schools. In those cases, the IDEA obligations still typically fall to the public school district, but it can be helpful to be involved with discussions relating to what services are needed and how and when those services will be provided.

B. State Law

The Minnesota Human Rights Act ("MHRA") prohibits educational institutions, including private schools, from discriminating against persons with disabilities. Minn. Stat. § 363A.13, subd. 1 (prohibiting discrimination by educational institutions); Minn. Stat. § 363A.03, subd. 14 (defining "educational institution" as including private elementary or secondary schools). More particularly, under Minn. Stat. § 363A.13, subd. 1,

> "It is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of . . . disability, or to fail to ensure physical and program access for disabled persons."

Schools cannot discriminate against disabled students through exclusion, expulsion, or admission. "It is an unfair discriminatory practice to exclude, expel, or otherwise discriminate against a person seeking admission as a student, or a person enrolled as a student because of . . . disability." Minn. Stat. § 363A.13, subd. 2. Accordingly, situations relating to the expulsion or exclusion of a disabled student need to be handled with careful judgment.

Private schools in Minnesota must also ensure "physical" and "program access." Minn. Stat. § 363A.13, subd. 1. The statute provides some examples of what program access does and does not include. But the list is not exhaustive. Under the MHRA, program access includes: providing taped texts, interpreters or other methods of making orally delivered materials available, readers in libraries, adapted classroom equipment, and similar auxiliary aids or services. *Id*. Program access, under the MHRA, does not include: providing attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature. *Id*.

C. Local Ordinances and Codes

In addition, cities sometimes adopt their own anti-discrimination codes. Usually, these codes, do not exempt religious organizations, including parish schools, from prohibitions on disability discrimination.

Minneapolis and Saint Paul, for example, both have their own anti-discrimination ordinances. Those ordinances are similar to the MHRA and prohibit discrimination on the basis of disability, including denying or failing to ensure access to programs and services and excluding, expelling or taking other actions against the student on the basis of disability. Minneapolis, Minn., Code of Ordinances, § 139.40(k); St. Paul, Minn., Code of Ordinances, § 183.0.05. These ordinances require the same kind of program access as the MHRA, which requires providing taped texts, interpreters, etc.

IV. An approach for responding to requests for accommodations

When viewed together, these federal, state, and local laws require private schools to make certain accommodations or adjustments to their programs to ensure that disabled students have access. As a result, parish schools can no longer conclude that IEPs, Section 504 plans, or service plans have no application or affect on the school. Moreover, a parish school cannot assume that it has no obligation to assist or accommodate a student with a disability. Accordingly, when a school learns that a student has a condition that may constitute a disability, the school must address the issue and determining what, if any, accommodations or minor adjustments are necessary.

Below is a 5-step approach, or framework, that can help schools address these situations. Throughout the process, schools should take certain steps to protect themselves from a legal standpoint, including:

- Document in writing all communications between the school's staff and the parents. This can include keeping copies of any letters or emails relating to the student that you receive from parents, public school officials, or others; maintaining copies of evaluations, progress reports or report cards; keeping copies of IEPs, Section 504 plans, or other services plans; and maintaining a telephone log; and

- Consult with legal counsel as issues arise, instead of waiting until there is a parental complaint or serious incident.

A. Step 1: Awareness of disability

This first step is where the school determines whether the student has a condition or disease that is a "disability."

- Schools may become aware of a disability or a need for an accommodation through a variety of avenues: the parent, the teacher, the public school, a counselor or a social worker.

- Even if a student has a condition that does not necessarily mean the student has a disability. The focus is on whether the student's condition (or possible condition) is an impairment that substantially limits a major life activity.

- Remember that the name of the condition is not what determines its status as a disability. No impairment is in and of itself a disability. The impairment must substantially limit a major life activity to be a disability under Section 504. The determination should be made in relation to its *effect* upon an individual's functional capabilities, taking into consideration the duration of the condition, severity, treatment, and documentation of any past history.

    - Some examples of less obvious, mental impairments that might rise to the level of a disability include: chronic depression, bi-polar disorder, manic/depression, social phobia, panic disorders, obsessive compulsive disorder, schizophrenia, attention deficit disorder, or post-traumatic stress disorder.

    - Some examples of characteristics which probably are not disabilities include: poor judgment; quick temper; cultural, economic, or environmental disadvantages; stress or depression that is not the result of a documented physiological or mental disorder, kleptomania, or pyromania.

- Be sure to obtain information from a variety of sources, including parents, teachers, public school, counselors, social workers, a 504 coordinator, IEP team (if applicable) and medical providers.

    - Don't forget to involve the public school if appropriate.

    - It can be helpful to set up a meeting to meet with these parents and the other people involved.

- Schools can consider a physician's medical diagnosis, aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.

- In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons.

- Request medical documentation verifying the existence of a condition and its severity.

  - When an accommodation request is received, staff should respond by immediately requesting more information from the parents regarding the student's medical condition. The school should request that parents provide them with consent for medical records and provide them any other relevant information.

  - The medical documentation, at a minimum, should identify the condition, explain how it substantially limits a major life activity, and identify the length or limitations for the condition. The school may also want to ask the medical provider for an appropriate accommodation or if a suggested accommodation would be effective.

  - In situations where the parents refuse to provide the school with sufficient information, but have indicated that a student's condition is severe, the school may wish to hire its own medical consultant to review the student's educational and medical records, and to recommend accommodations.

- If the school determines that the student has a disability, move on to the next step.

B. Step 2: Obtain input on possible accommodations

The next step is to obtain input to determine what accommodations or minor adjustments are appropriate.

- Involve the student (if age appropriate), teachers, parents, counselors, public school, 504 coordinator, and IEP team (if applicable) to determine if an accommodation is needed and to determine what accommodation is appropriate.

- With regard to the proposed accommodations, ask what benefit the accommodation would provide, whether the accommodation could be provided effectively, and what benefit the student would be denied if the accommodation was not provided.

- Do not say yes or no to any particular accommodation until all facts are obtained and considered.

- Consider requesting medical documentation verifying the appropriateness of proposed accommodations.

- Depending on the circumstances, general accommodations can include modifications to:

    - Communications between parents, students, and teachers (e.g., developing a daily or weekly journal and scheduling and holding meetings)

    - Presentation of materials (e.g., repeating directions, reading directions aloud, reading and writing directions, highlighted textbooks, extra books for home use, enlarged print, or visual aids)

    - Teacher responses to a student (e.g., marking answers in books, using reference aids, positive reinforcements, behavior intervention plans)

    - Student's setting (e.g., providing a separate study carrel, special lighting, providing a separate room during a test, giving assigned seating to minimize disruptions or maintain focus, and allowing the student additional opportunity for movement)

    - Other facilities (e.g., adjusting transportation and parking arrangements and ensuring accessibility to the cafeteria or media rooms)

    - Time and scheduling of work and activities (e.g., providing extended time to get to and from classes or activities, providing more frequent breaks, allowing more time to take tests or complete assignments, early dismissal for appointments or allowing additional absences for health reasons)

C. Step 3: Evaluate and choose the accommodation

The third step is to evaluate and choose the appropriate accommodations or minor adjustments. When reaching this decision it is crucial that the school carefully consider its obligations. Schools should remember that they do not need to blindly comply with all requests for accommodations. At the same time, schools should not automatically conclude that no accommodation is required.

- Remember that the chosen accommodation(s) must relate to the purported disability.

- Consider what accommodations the school has provided in the past and what it will be required to provide in the future.

- Pay particularly close attention to the requirements of Section 504, which requires private schools to :

    - make minor adjustments to ensure access to disabled students;

    - provide least restrictive environments and comparable facilities; and

    - provide equal opportunity for participation in nonacademic and extracurricular activities.

- Also pay close attention to the requirements of the MHRA, which provides *some* examples of what program access does and does not include.

    - Under the MHRA, program access includes: providing taped texts, interpreters or other methods of making orally delivered materials available, readers in libraries, adapted classroom equipment, and similar auxiliary aids or services.

    - Program access, under the MHRA, does not include: providing attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

- Evaluate accommodations for the normal school day, but also consider adjustments that might be needed for other circumstances, such as field trips, extracurricular activities, etc.

- When evaluating requests, consider the cost (financial and non-financial) to the school against the potential benefit to the student. Keep in mind that if a school chooses not to provide a requested accommodation, it must be prepared to explain, as a practical matter, the basis for its decision.

- All such inquiries are fact specific. Some factors that might be considered include the overall size of the school with respect to the number of employees, number and type of facilities, and size of budget, and the nature and cost of the accommodation needed.

- Carefully choose the accommodation.
  - A school that fails to implement an accommodation that it has agreed to provide can face liability under Section 504.
  - If you provide the accommodation to one student, you may be expected to provide a similar accommodation in the future.
  - Be prepared to explain why what the school has chosen is reasonable and effective.

- If no accommodation is legally required or requested proceed carefully. If a school treats a student differently without justification, it could be accused of discrimination or of regarding the student as having a disability.
  - Failure to provide accommodations or adjustments in accordance with Section 504 can result in substantial damage awards, including attorneys' fees. A student who prevails against a school in a Section 504 case can also be entitled to reinstatement.

D. Step 4: Implement the accommodation

- Communicate the school's decision to the parents and to school staff.

- Create a Section 504 plan if appropriate. Typically, the chosen accommodations are documented in a Section 504 plan (or in cases where the student is getting services under IDEA, an IEP or services plan). This document should specifically state the child's disability, needs, accommodations, and how these accommodations will be delivered.

- Put the accommodation in place.

- Continue to be proactive to address situations where an accommodation might be needed on a field trip or when there is a substitute teacher.

E. Step 5: Evaluate the effectiveness of the accommodation

- This is an ongoing process. An accommodation which is ineffective can be as problematic as no accommodation at all.

- Be prepared to repeat these steps as needed, including when new information is received about the student's disability.

V. Disciplining Students with Disabilities

Students with disabilities can present unique challenges and pitfalls for schools when it comes to discipline. Proceed carefully when disciplining a student who has disabilities, particularly if the offending behavior is related to or the result of the student's disability. In addition to following the suggestions above (particularly those relating to documenting and planning), it will be helpful to keep a written log of all disciplinary issues relating to the student. Such a log should indicate the date of the incident, describe the offending behavior, identify any other participants or victims, explain the immediate steps that were taken to correct the behavior, and identify any communications with the student or parents.

Be aware that federal and state laws limit a school's ability to expel disabled students. For example, the Minnesota Pupil Fair Dismissal Act (though applicable to public schools) contains specific restrictions on the exclusion and expulsion of disabled students. Under that law, if a child with a disability is suspended for more than 5 consecutive school days or 10 cumulative school days in the same year, the child's IEP team must meet to evaluate the child's need for services. Minn. Stat. § 121A.43. The same law also requires schools to take certain procedural steps before expelling or excluding a student. Minn. Stat. § 121A.47. Finally, if a student is placed at the private school by the public school district, any disciplinary action taken by the private school will likely need to comply with Section 504 (and if applicable IDEA).

VI. Accommodations for Two Specific Hidden Disabilities

The rest of these materials focus on two specific hidden disabilities: allergies and diabetes. These two impairments are becoming more prevalent and present unique challenges for all schools.

A. Allergies

The safe management of food allergies has become a prominent issue for schools. An increasing number of students are requesting accommodations for their food allergies at school.

Common food allergens include wheat, milk, soy, peanuts and tree nuts, fish and shellfish, and eggs. In addition to food allergies, some students suffer from multiple chemical sensitivities. Although the focus below is on food allergies, schools should keep these issues in mind as well. Students with chemical sensitivities have asked schools to refrain from using scented soaps, lotions and shampoos and to prohibit other students from wearing scented products to school.

The numbers tell the story. Food allergies affect 11 million Americans, including 6–8% of children. And the prevalence of food allergies appears to be increasing. Between 1997 and 2002, one study reported that the prevalence of peanut and tree nut allergies had doubled in children during that five-year period.[5] Another study, which surveyed 400 elementary school nurses, determined that 44% of respondents reported an increase in children with food allergies in their schools over the last 5 years; more than one third had 10 or more students with food allergies; 78% did staff training as a preventive strategy, with 74% developing their own training guidelines; and 90% stated students' epinephrine was stored in the nurse's office.[6]

Because food is so ubiquitous in most schools, managing food allergies has proven challenging. In addition to the food served in the cafeteria, there is food in the classrooms and on the playground. Food may be used in classroom activities, such as art projects, cooking lessons, math instruction, or celebrations for birthdays and holidays. As a result, it is not surprising that school nurses across the country have ranked the challenge of managing food allergies on par with other serious health concerns, such as diabetes.[7]

Poor management of allergies can have serious, even deadly, results. In one study of 32 fatal food-allergy induced reactions, four (13 percent) occurred in child care settings.[8] In another study of 31 fatalities, 10 percent were associated with school settings.[9] And in another study of 13 fatal or near-fatal food allergy-induced reactions in children, four of the six fatal reactions occurred at school.[10]

Situations involving allergies are highly fact specific. Depending on the severity of the allergy, it may qualify as a disability and some accommodation by the school may be necessary. That being said, parental requests for accommodations are tending to become increasingly demanding. Parents are requesting that peanut or nut products be banned from the entire school; that schools require staff members, including bus drivers, to be trained on a student's allergy and administration of an EpiPen usage; and that students

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[5] S.H. Sicherer, et. al., Prevalence of peanut and tree nut allergy in the United States determined by means of a random digit dial telephone survey: a 5-year follow-up study, 112 J. Allergy Clin. Immunol., 1203 (2003).
[6] C. Weiss, et. al., Impact of food allergies on school nursing practice, 20 J. Sch. Nurs. 268 (2004).
[7] *Id.*
[8] S.A. Bock, et al., Fatalities due to anaphylactic reactions to foods, 107 J. Allergy Clin. Immunol. 191 (2001).
[9] S.A. Bock, et al., Further fatalities caused by anaphylactic reactions to food, 2001–2006, 119 J. Allergy Clin. Immunol. 119 (2007).
[10] H.A. Sampson, et al., Fatal and near-fatal anaphylactic reactions to food in children and adolescents, 327 N. Engl. J. Med. 380 (1992).

and staff members be required to wash their hands after meals, snacks, and before entering the classroom.

The nature of the appropriate accommodation is going to vary depending upon the type of allergy, the age of the child, the severity of the reaction, and, to some extent, the resources of the school. Balancing the rights of students to eat the foods (or wear the perfume they want) with the requests of parents can be an increasingly challenging endeavor.

It will be helpful to use the framework identified above when a school learns that a child has an allergy. If an accommodation is appropriate, some examples could include:

- Accommodations relating to the student
    - Get information from the parents: assistance with the food allergy plan for the child, suggested alternatives (soy nut butter instead of peanut butter), or a box of safe foods.
    - Remind parents that they are responsible for informing the school of the child's needs and possible signs of an allergic reaction.
    - Teach the child to notify an adult if they suspect a reaction.
    - Provide more breaks for hand-washing.
    - Permit breaks or absences relating to severe allergic reactions.
    - Inform parents and students to notify the school if they are being bullied or harassed because of their food allergy.

Of Special Concern: Bullying
The rise in allergies, particularly nut allergies, has brought restrictions in public places, like schools. Those restrictions in turn have generated some public backlash. Studies indicate that kids are bullied because of their allergies. Failure to respond to and prevent such incidents can give rise to discrimination claims against schools. Furthermore, responding to bullying or harassment can be an important part of a defense strategy if a discrimination claim is filed.

- Accommodations relating to educational personnel
    - Train and educate staff to ensure that they can recognize an allergic reaction.

- Train and educate staff so they know where Epinephrine is located and who on the staff is qualified to administer it.
- Train and educate staff so they are vigilant and proactive about avoiding food allergens for the allergic student.
- Inform substitutes when appropriate.
- Avoid cross-contamination of allergens.
- Review lesson plans to reduce allergens.
- Promote good hand-washing.
- Discourage and stop any harassment relating to a student's allergies.

- Accommodations relating to the school or administration
  - Have a personalized action plan for each child with information from the child's medical provider. That plan can include a recent photo of the child, a list of foods to which the child is allergic, signs and symptoms the child might experience during an allergic reaction, appropriate treatment instructions from the child's doctor, and emergency contact information for the child's parents and doctor.
  - Consider adopting an allergy management plan for your school.
    - This plan can include policies regarding the use of food throughout the day, where medications will be kept, protocols for emergencies, and protocols for contacting emergency services and parents during a reaction.
    - Such a plan can help a school community to view food allergy management as a process (not an event), just as it view fire drills.
  - Consider instituting a no-trading-food policy.
  - Consider banning homemade food from being brought in for class celebrations or parties (only commercially prepared foods with ingredient labels would be allowed).
  - Consider becoming "nut free" (if appropriate).

- Determine whether first aid supplies should include epinephrine auto-injectors in the event of a first time reaction.

- Have all children wash hands.

- Accommodations relating to Epinephrine

  - Make accommodations to ensure a student's EpiPen is in close proximity to the student at all times during the school day. This includes times when the student is in the classroom, lunchroom, recess, on a school bus, at field trips, or participating in school activities.

  - Consider adopting a policy for possession and use of epinephrine. *See* Minn. Stat. § 121A.2205 (encouraging nonpublic schools that are not subject to the ADA to adopt a policy and plan that conforms to the requirements in this statute).

  - Consider training additional staff to administer Epinephrine.

B. Diabetes

Diabetes is a growing problem, especially in children. The numbers again tell the story. According to data released this year, 25.8 million children and adults, or 8.3% of the population, in the United States have diabetes. There are 215,000 people under the age of 20 who have diabetes. 1 in every 400 children and adolescents has diabetes.

Students with diabetes are likely protected by Section 504 and state and local laws that prohibit discrimination on the basis of disability. Often times a student with diabetes may be independent and management of the diabetes may involve little effort by the school. In other situations, the school may need to be more involved, particularly if the student is very young.

No two situations are exactly the same and an individualized response is often necessary. As a result, frequently, the development of a written accommodations or care plan, such as a Section 504 plan, IEP plan, or services plan, can be the best way to ensure that diabetes needs are met in a way that maximizes safety, health, learning and participation.

Some accommodations specific for students with diabetes can include:

- Educate staff members so they have a basic understanding of diabetes.

- Ensure staff know who to contact in the event of a diabetes emergency.

- Ensure some staff, including a school nurse, are trained so that a staff member is always available to provide routine and emergency diabetes care such as blood glucose checking and insulin and glucagon administration.

    - Minn. Stat. § 121A.22 allows administration of drugs and medicine pursuant to parent requests or pursuant to IEPs.

    - Additionally, the Minnesota Department of Health Guidelines for Medication Administration in Schools, available at http://www.health.state.mn.us/divs/cfh/shs/pubs/medadmin/appb.html, states that school nurses can train and delegate unlicensed school staff to administer insulin via pump or injection.

- Provide additional assistance or supervision for participation in sports, extracurricular, or field trips.

- Allow the student to eat more frequently.

- Allow the student extra bathroom breaks, breaks for the water fountain, or breaks for monitoring blood glucose levels or getting injections.

- If self-management is an option, consider what (if anything) the school needs do to assist with that.

- Permit absences for medical appointments

- Consider how to manage standardized testing, field trips, and celebrations that involve food.

VI. Conclusion

Parish-based schools likely have obligations to provide certain accommodations to disabled students under local, state, and federal laws. Liability for disability discrimination claims can be significant and can include awards of costs and attorneys fees.

It is critical that schools have a plan and process for responding to requests for accommodations. Every situation varies, but having a general framework is an essential component to making decisions that are effective, practical, and justifiable.