

ADVOCATING FOR YOUR CHILD WITH NUT OR OTHER SEVERE FOOD ALLERGIES

Presentation for
**No-Nut Moms Group of Palm Beach
County**

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Prevalence of severe food allergies

- Food allergies cause specific and reproducible adverse immune responses to certain foods.
- 4-6% of children in the US have food allergies, some of which are life-threatening.
- The most common food allergens include milk, eggs, fish, crustacean shellfish, wheat, soy, peanuts, and tree nuts.
- (Source: US Centers for Disease Control and Prevention, <http://www.cdc.gov/HealthyYouth/foodallergies/>)

Food Allergies in School

- Children with food allergies are two to four times more likely to have asthma or other allergic conditions than those without food allergies.
- The prevalence of food allergies among children increased 18% during 1997–2007, and allergic reactions to foods have become the most common cause of anaphylaxis in community health settings.
- In 2006, about 88% of schools had one or more students with a food allergy.
- (Source: US Centers for Disease Control and Prevention, <http://www.cdc.gov/HealthyYouth/foodallergies/>)

So what can families do to protect their children with food allergies in the school environment?

Gain expertise about your child's condition

- Speak with his/her doctors and ask questions about anything you don't understand. Get written reports when possible.
- Research on the Internet and at the library about your child's allergies. Collect articles that explain the allergy well to share with others.
- Join national and local groups and organizations related to the field to get advice and support from others in similar situations

You are your child's most important advocate!

Provide documentation to the school

In making your child's school aware of the allergy, provide detailed medical documentation.

- You must have a diagnosis from a medical doctor. If treatment is provided by an allergist who is not an MD, then get your pediatrician to review the report and provide his/her own stamp or diagnosis confirming the condition.
- Ask your child's medical providers to list symptoms to watch for, all effects of exposure, and recommendations for how to prevent exposure and how to treat the child if exposure occurs.

Options Available Under the Law for Plans to Protect Students with Severe Allergies

- **Individualized Healthcare Plan**
- This can be part of a **504 Plan** or part of an **Individualized Education Plan (IEP)**, depending on your child's needs and how the allergy (and other comorbid conditions, if any) affect the student's education.

What laws protect students with severe food allergies?

Americans with Disabilities Act (ADA)

- Protects individuals with physical and mental conditions that significantly impact one or more major activities of daily living (Eating is one of them, as is breathing)
- Title II of the ADA, which covers schools, requires qualified students with disabilities to be given full access to all the programs and services that other students are allowed to access
- Protects students with qualifying disabilities against discrimination on the basis of their disabilities
- Prohibits retaliation against anyone who advocates for a person with a disability (although this can be hard to prove.)

What laws protect students with severe food allergies?

Section 504 of the Rehabilitation Act

- Follows the ADA as to whom it covers and the protections. Section 504 has slightly expanded coverage in terms of entities that accept federal funds, which might include some private schools.
- Section 504 is the basis of 504 plans, which provide accommodations to students with disabilities so they can fully access the curriculum and programs of the school.
- Not everyone is entitled to a 504 plan. Only those whose disability affects their education can get one.

What laws protect students with severe food allergies?

Individuals with Disabilities in Education Act (IDEA)

- This does not apply to all students with disabilities. It requires a student to fit within qualifying criteria within specific categories and to need modification of the curriculum (such as services) in order to succeed in school.
- Students covered by the IDEA can get Individualized Education Plans (IEPs) that may include accommodations and also include services and alterations to the curriculum. It also provides more comprehensive due process protections to the student and family.

IEP Categories for Allergies

- **Other Health Impaired**
- **Hospital-Homebound**
- Other categories may apply when a student has other conditions that have a greater impact on their learning.

Individualized Healthcare Plans

- Should be individualized to the student's unique needs.
- Can get ideas from allergy organizations, doctors, and sample plans available on the Internet, but should really look at them carefully to make sure all components apply to your child (and that all interventions or protections needed are included).
- Should make provisions for the classroom, cafeteria, hallways, field trips, after-school programs, and special events/activities.

Individualized Healthcare Plans

- Should include information on what an allergic reaction looks like in this child, all possible effects of a reaction and how those would manifest or appear to an onlooker.
- Should also include all necessary precautions to prevent exposure and who is responsible for ensuring they are followed.
- Should include all steps that would need to be taken in the case of exposure, including medications to be used, who will administer them, where medication will be kept and by whom, communication plan with administration and parents, when EMT to be called, etc.
- Should specify who will be trained and who will conduct training.

Individualized Healthcare Plans

Sample Plans

- <http://www.kidswithfoodallergies.org/resourcespre.php?id=130>

Resources to Support Your Request for an Individualized Healthcare Plan

- National Association of School Nurses Position Statement
<http://www.nasn.org/PolicyAdvocacy/PositionPapersandReports/NASNPositionStatementsFullView/tabid/462/smId/824/ArticleID/9/Default.aspx>
- Joint NASN and CDC Tool Kit
<http://www.nasn.org/ToolsResources/FoodAllergyandAnaphylaxis>
- Food Allergies Research & Education Association, Managing Food Allergies at School
<http://www.foodallergy.org/managing-food-allergies/at-school>
- Ann Arbor Schools Food Allergy Handbook
www.aaps.k12.mi.us/.../files/foodallergyhandbook.pdf

Advocacy Support

- Bring a **friend** or **family member** with you to the meeting with the school for support
- Bring a **healthcare provider** or **allergy expert** to the meeting for expertise and to help educate school staff when possible (and when indications exist that the school is unknowledgeable about food allergies)
- Bring a **non-attorney advocate** who has training about the school's responsibilities and your rights (ex. PALs program)
- Bring a **special education attorney** when you have experienced resistance or need legal expertise. (Florida Association of Special Education Attorneys on Facebook)

Case Law and Guidance on Severe Allergies

- ***Saluda School District One, OCR, Southern Division (SC) 2006***: District's proposed 504 plan non-compliant because it didn't specifically identify safety procedures to prevent exposure and treat reaction, training to be provided to staff members, or sanctions to be placed on persons who harass the student on the basis of disability.

Case Law and Guidance on Severe Allergies

- ***Methuen (MA) Public Schools, OCR, Eastern Division (Boston) 2013***: As a result of OCR investigation that found a district had violated a student's right to FAPE when it stopped following his 504 plan for food allergies with fidelity, District agreed to transfer the student to a school that had established policies prohibited food consumption in classrooms and outside of cafeteria and to provide support services to help the transition. Additionally, the District had to provide extensive training to staff regarding food allergies at the noncompliant school and the new school.

Case Law and Guidance on Severe Allergies

- ***Mystic Valley (MA) Regional Charter School, Massachusetts State Educational Agency 2004:*** District violated rights under Section 504 of a student with severe peanut allergy by refusing to agree to an outright ban on peanut products in the classroom, despite implementing many other accommodations. The State Educational Agency determined that the ban was not an undue burden on the District.

Case Law and Guidance on Severe Allergies

- ***Cascade (OR) School District, Oregon State Educational Agency 2002***: This case came before Mystic Valley and found that an outright ban on any unlabeled food products or homemade treats was an undue burden on the school and beyond accepted standards.

Case Law and Guidance on Severe Allergies

- ***Garland (TX) Independent School District, OCR (Southern Division) (Dallas) 1990***: Student who had multiple unexcused absences due to allergies was not protected by Section 504 because her mother did not provide sufficient medical documentation of her disability.

Case Law and Guidance on Severe Allergies

- ***Plumas (CA) Unified School District, OCR (Western Division) (CA) 2010***: This case underscores the necessity of having all provisions of a 504 plan well-defined and making sure all parties are on the same page. OCR found the District did not violate a student's 504 plan when its interpretation of a "peanut-free lunchroom" meant that the school would not use peanuts in decorations or activities, but it would allow parents to send in peanuts in students' lunches. The parents had understood the plan to mean there would be no peanuts at all in the lunchroom.

If you cannot reach agreement

You have several options for seeking redress of decisions by the school or district with which you disagree

- Complaint with District
- State Complaint
- OCR Complaint
- Due Process
- Litigation

State Complaints

- Information and forms can be found at:
<http://www.fldoe.org/ese/resolution.asp>

OCR Complaints

- Information and forms can be found at <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>
- Start with US Department of Education. If they are not interested but you have a compelling case, try US Department of Justice's OCR.

Due Process

- Information and cover sheets for due process complaints can be found at <http://www.fldoe.org/ese/resolution.asp>
- Sample orders: <http://www.fldoe.org/ese/due-order.asp>

Litigation

- Exhaustion of administrative remedies
- Sometimes OCR will litigate on your behalf

If you have questions

Feel free to reach out to me

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Powerpoint presentation can be found at:

<http://www.ksolawfirm.com/#!/blog/c1ghi>

I can be reached at:

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