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# A DOCTOR'S DIAGNOSIS OR PRESCRIPTION FOR SERVICE: WHAT NEXT?

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# General Issues with the Handling of Medical Concerns

- **Some health care services are required to be provided at school.**
  - Clean Intermittent Catheterization is a related service necessary to support a student's health at school so that the student may attend school.
  - Student required a nurse to attend school and the district had to provide the nurse. School nursing services are not medical services because they are not provided by a doctor.

- **What types of medical conditions are at issue?**

- AIDS

- See *Montalvo v. Radcliffe*, 167 F.3d 873, 29 IDELR 896(4<sup>th</sup> Cir. 1999) (dealing with student with HIV and the student's participation in a martial arts class).

- Diabetes

- School district resolved OCR complaint alleging the failure to monitor blood sugar levels of student, refusing to train back up to nurse for administration of glucagon, requiring parent to accompany student on field trips and refusing other accommodations in class by creating an appropriate Section 504 plan for the student.
- Student required glucose monitoring and parent insisted on daily calls to report levels.
- The parents also asked that the student have the ability to heat up the homemade food he brought to school but sometimes the student ate the food cold.

- The doctor wrote a statement that the staff needed to insure that the student ate an adequate amount of food at school.
- “Meaningful access,” however, does not mean “equal access” or “preferential treatment.”
- Heating up the lunch was not a required reasonable accommodation and, besides, the student could have eaten school lunches.
- Similarly, the request to supervise the student’s lunch intake was a preferential as opposed to a necessary accommodation.

- School district violated Section 504 when it did not accommodate a student's diabetes through the procedures of Section 504.
- Hiring a nurse so that student with diabetes could attend the neighborhood school is not a required accommodation and did not violate the ADA or Section 504.

- Food allergies, peanuts and tree nut allergies (PTA).
  - This is a hot issue with the Office for Civil Rights.
  - The Maryland Department of Education was not financially responsible for damages for the anaphylactic reaction experienced by the student due to a peanut butter sandwich.
  - No duty to protect was raised by the provision of food through the free lunch program.

- Use of the term “no nuts” in the student’s Section 504 plan was vague.
- Did it mean no nuts at school or no nuts for the student?
- Wyoming has a form for requesting “Special Meals, Accommodations, and Milk Substitutions.”

- See NSBA Policy Guide: Safe at School and Ready to Learn: A Comprehensive Policy Guide for Protecting Students with Life-threatening Food Allergies (2011).
  - NSBA recommendations:
    - Follow medication protocols.
    - Have a plan for responding to food allergy emergencies.
    - Educate parents, students and staff.
    - Monitor and evaluate policies and practices.

- Bee sting allergies.
  - Develop a plan for response.
- Multiple chemical sensitivities.
  - Student with allergies in the school environment was appropriately accommodated by the school district through the regular changing of air filters and the removal of ceiling tiles.

- Any life threatening condition.
  - Student with Hepatitis B and hemophilia wanted to play on the basketball team.
  - The student was placed on hold pending medical clearance from the doctor.
  - The doctor provided a vague letter: “I have some reservations about [John’s] health but I think overall, he is capable of playing basketball. He does have hemophilia which is going to put him at some risk for difficulties. Your consideration regarding this matter is greatly appreciated.”
  - There is a direct threat exception to the ADA.
  - The school district provided a qualified individual to assist with g-tube feedings and was not subject to money damages, even though the support was not written into the IEP.

- Physical disabilities.
  - Student's parents alleged violations of Section 504 due to alleged failure of school district to provide wheelchair accessible routes, doors, restrooms and classrooms.
  - The matter was resolved by agreement.
  - Wyoming students may be exempted from participation in PAWS if the student is medically fragile, not capable of instruction due to the medical condition and there is medical documentation supporting the inability of the student to participate in the assessment.

- The Office for Civil Rights takes the position that a health care plan is not sufficient and that a Section 504 plan must be used for these dangerous conditions.
- The obligation to provide information supporting the existence of a disability does not fall on the parents.
- This obligation falls to the school district.

- One Wyoming school district had a Section 504 review by OCR and a compliance finding which included a discussion of the necessary steps to take under Section 504 for procedural compliance.
- Those steps include identification, evaluation and placement procedures, grievance procedures and procedural safeguards.

- Special considerations applicable to medical conditions.
  - If parents produce a doctor's statement that diagnoses the student with a medical condition which affects the student's participation in school, there is a set of procedures that must be followed by the school district.
  - First, the school district should request a release to obtain information from the doctor about how the student's condition affects his or her attendance and participation in school.
  - Other necessary information to be sought from the doctor includes any recommended accommodations, training, monitoring of the condition, precautions and necessary supportive health services to be provided at school, including the administration of medications.

- Once the medical information is received, the school district should gather other needed information from a variety of sources in order to determine if the student will qualify as a student with a disability under Section 504.
- After all information is gathered, the next step is to convene a Section 504 meeting of knowledgeable persons to review and consider the information and determine if the student is an eligible student.
- If eligible, the student will need to have a Section 504 plan developed.
- According to OCR, a health treatment plan cannot take the place of a Section 504 plan for an eligible student.

- According to OCR, the Section 504 team must include one or more of the student's teachers in order to have a team knowledgeable about the student.
- Teacher recommendations are an important source for considering Section 504 eligibility and in developing a Section 504 plan.
- When health issues are being discussed, the school nurse is also an important team member.
- Parents should be advised of their procedural safeguards at the time of eligibility.

- School districts should not supply medical interventions, accommodations or services unless supported by written medical documentation.
- This information should come directly from the physician in order to ensure its accuracy.
- The doctor's orders rather than a parent's interpretation of those orders should typically be followed.

- If the information received from the doctor is not clear, use the release obtained from the parents to contact the physician and obtain clarification.
- Any clarification of medical procedures should also be provided in writing by the doctor.

- School districts should not reject the opinions of a doctor concerning medical issues without having the written support of another medical professional.
- School districts, however, are not required to accept the educational recommendations of a physician.
- Those educational recommendations must be considered but do not have to be implemented unless agreed to by the school district.

- It is a good practice to have the student's treating physician review and approve the accuracy of any Section 504 plan that includes health procedures.
- Also, ask the physician how frequently the Section 504 plan needs to be reviewed.
- Be sure to obtain new input from the physician at the time any updates are made to the Section 504 plan.

- School districts should make sure that appropriate staff is aware of the interventions required in a Section 504 plan that addresses health care issues.
- Also, substitute staff should be trained in and knowledgeable about the student's health issues and interventions so that there is no lapse in the providing of the Section 504 plan services.
- Do not allow parents to countermand the directives of the doctor unless updated protocols are supplied by the doctor.

- Cultivate a relationship with a physician to advise the school district on medical issues. The local health director may be of assistance.
- School districts are not required to provide medication or supplies.
- Be aware that interventions for medical conditions are applicable to bus transportation, field trips and other non-academic programs.

- Support on bus by a person other than a physician is required if needed during the bus ride.
- Participation in field trips cannot be linked to attendance by parents.
- There may be reasons to support an exclusion from a bus trip.

- Have a medications policy, train staff regarding the policy and implement it faithfully.
  - The administration of medication cannot be contingent on the provision of a release of liability from the parents.
- School districts are not required to provide a residential or hospital placement for a student if the placement is the result of non-educational needs.
- The student should receive homebound instruction pursuant to W.S. § 21-4-402.

- **Some health care services are required to be provided at school.**
  - CIC is a related service necessary to support a student's health at school so that the student may attend school.
  - Student required a nurse to attend school and the district had to provide the nurse.
  - School nursing services are not medical services because they are not provided by a doctor.

- **If parents produce a doctor's statement that diagnoses the student with a medical condition that affects the student's participation in school, there is a set of procedures that should be followed by the school district.**

- First, the school district should request a release to obtain information from the doctor about how the student's condition affects his or her attendance and participation in school.
- Other necessary information to be sought from the doctor includes any recommended accommodations, training, monitoring of the condition, precautions and necessary supportive health services to be provided at school, including the administration of medications.

- **School districts should not supply medical interventions, accommodations or services unless supported by written medical documentation.**
  - This information should come directly from the physician in order to insure its accuracy.
  - The doctor's orders, rather than a parent's, should typically be followed.
  - If the information received from the doctor is not clear, use the release obtained from the parents to contact the physician and obtain clarification.
  - Any clarification of medical procedures should also be provided in writing by the doctor.

- **School districts should not reject the opinions of a doctor concerning medical issues without receiving the written support of another medical professional.**
- School districts, however, are not required to accept and implement the educational recommendations of a physician.
- Those educational recommendations must be considered but do not have to be implemented unless agreed to by the school district.

- **Parents should not be allowed to countermand the directives of the doctor and, if needed, updated procedures are supplied by the doctor in writing.**
  - Make sure parents understand that medical directives will be followed unless countermanded in writing by the physician.
  - If a doctor has stated that a student cannot participate in a certain activity, the student must refrain from participation until the doctor certifies in writing that this precaution is no longer needed.
  - Do not rely on the parents' statement that it is okay to ignore the doctor's directive.

- **Cultivate a relationship with a local physician to advise the school district on health issues.**

- There are many healthcare issues that arise at school.
- School nurses are a great source for obtaining information about how to respond to those issues.
- Additionally, the local health director or a retained physician may be of assistance in advising school districts to understand what is needed.

- **School districts are not required to provide medication or supplies.**
  - These items are the responsibility of the parents to provide.
  - It is prudent to have a procedure in place for notifying the parents in writing when supplies are running low.
  - Also, if the lack of medication or supplies poses a health risk for the student, the school district may be required to report the medical neglect to social services.
  - Be careful not to file a report as a retaliatory measure.

- **Be aware that the requirement to make available certain interventions for medical conditions is applicable to bus transportation, field trips and other non-academic programs.**
  - If the student requires insulin or blood sugar monitoring, for example, during a field trip, this support must be made available.
  - Needed medical supports are provided in school and in school related activities.
  - Address the student's health needs during these activities in the Section 504 plan.

- **Have a medications policy, train staff regarding the policy and implement it faithfully.**

- The existence of a policy can provide good direction to staff for dealing with medications and may provide some legal protection if the policy is followed.
- Make sure that staff is trained on the existence and content of a medications policy.

- **The administration of medication cannot be contingent on the provision of a release of liability from the parents.**
  - If a student needs to take medication at school, it is likely that the school will need to accommodate the student's needs through the administration of the medication.
  - This fulfillment of this obligation cannot be conditioned on the receipt of a release of liability for administration of medication.

- **Develop an emergency plan for the special needs student in appropriate cases.**

- Do not forget to plan for special needs students in situations calling for evacuation from the building or other special circumstances.
- Special circumstances may include fires, natural disasters and safety threats.
- Where a student needed to have an emergency evacuation plan developed for the student so that she could leave the building in an emergency, the school was required to provide such a plan.
- Consult with local fire and police departments in developing an appropriate plan.

- **A doctor's diagnosis does not automatically entitle a student to a Section 504 plan.**

- This statement is worth repeating several times.
- The doctor's recommendation for the development of a Section 504 plan is not binding on the school district.
- It is, however, information that must be considered.
- A health plan cannot take the place of a Section 504 plan when the student has an impairment that substantially limits a major life activity.
- Eligibility under Section 504 is determined on an individual basis following an evaluation.

**THE END**