

A Toolkit for Students and Families



ADVANCING JUSTICE. ADVOCATING INCLUSION.



New Jersey's designated Protection and Advocacy system, dedicated to representing and protecting the human, civil, and legal rights of people with disabilities.

DISABILITY RIGHTS NEW JERSEY

1-800-922-7233 (New Jersey only) 609-292-9742 609-633-7106 (TTY); Dial "711" for Relay

> 210 S. Broad Street, 3rd Floor Trenton, New Jersey 08608

www.disabilityrightsnj.org

Se Habla Espaňol



INTRODUCTION

There are a growing number of students enrolled in New Jersey schools with medical conditions that are potentially life-threatening such as asthma, epilepsy, diabetes, and nut allergies. Public and non-public schools in New Jersey are required to have policies that establish a safe and healthy learning environment for students with life-threatening medical conditions.

This toolkit is designed to help students and families advocate for the necessary services to ensure the safety of students with medical conditions at school and during school functions. This toolkit provides information on: (a) the relevant laws that may apply, and (b) the best practices for obtaining the services needed to address a medical condition.

At the end of this document, you will find a list of internet links that provide service recommendations for certain medical conditions. If the list does not have any information regarding your child's condition, there may be additional resources available online and professional organizations with expertise in the condition.

Finally, the information set forth in this toolkit is intended to serve as general guidance and thus should not be considered legal advice.



I. INDIVIDUALIZED HEALTH PLAN

What Is an IHP?

An IHP is a plan that addresses a student's medical needs while the student is in school. Typically, schools offer an IHP that outlines (a) the student's medical condition; (b) accommodations for the student in the school setting and during school-related activities such as field trips, after-school activities, and class parties; and (c) action plan to deal with the condition in the event of an emergency.

What Are Some Examples of Accommodations Listed in an IHP?

The accommodations contained in the IHP are individually tailored to the student's medical condition. Examples of accommodations include, but are not limited to: school personnel training, serving food or using class materials without ingredients that cause allergic reactions, regulation of room temperature, blood glucose testing, having designated personnel accompany student during field trips, and monitoring and encouraging students to wash their hands and to avoid sharing their food.

What Documentation Is Required to Obtain an IHP?

There is no uniform answer as every student's situation is unique. Gather relevant medical records including the most recent ones from the student's physician knowledgeable of the student's condition (e.g., allergist). Generally, the records should outline the following:

- (a) student's condition and its symptoms,
- (b) potential temporary symptoms (e.g., allergic reaction, seizure) if triggered,
- (c) how the temporary symptoms can be triggered,
- (d) the steps to take, if any, to avoid the triggering effects, and
- (e) action plan to deal with the symptoms.

If the condition is a food allergy, the IHP should identify the necessary medication (e.g., epinephrine for nut allergy), where and how the medication should be stored within the school setting, and who should administer it in case the student has an allergic reaction.

How Do I Start the Process of Obtaining an IHP?

The most important rule in the process is to be proactive! Do not wait for the school to make the first move to address the student's medical condition. It is best to reach out to the school as early as possible, preferably before the school year starts, to get the ball rolling.

¹ The IHP is sometimes referred to as an Individualized Health Care Plan, Individualized Health Service Plan or Emergency Care Plan, but IHP is used in this toolkit throughout for consistency purposes.



The first step is to gather and organize supporting medical documentation from the physician or treating doctor (e.g., allergist).

The next step is to make a request to the school's principal and nurse for a meeting to develop the IHP. The request should always be made in writing such as letter and/or e-mail. If you choose to mail the letter, then it should be sent by certified mail which will allow you to track and confirm its delivery. It is critical to have proof of your meeting request so the school cannot deny receiving your request. Retain a copy of all of your correspondence with the school. A sample letter requesting an IHP meeting is attached as Appendix A.

Once the school receives the meeting request, the school should identify the core team which should include – at a minimum – the school nurse, teacher, principal, and the parent/student. If the medical condition is a food allergy, then the cafeteria director should be a part of the core team, too.

How Do I Prepare for the IHP Meeting?

It is strongly advised that you provide a copy of all relevant records to the school's nurse prior to the IHP meeting. If certain medical documentation is not available until right before the meeting, then bring the new document to the meeting.

If you have any suggested training materials for the school to review, you should provide a copy of the written materials and/or link to the training video as well. The training material could be helpful for all the staff members the student expects to interact with in case they need to act whenever the student's symptoms are triggered.

Providing the material to the school before the meeting would allow the school personnel to be more prepared to discuss what should be in the IHP during the meeting. It would also allow the school to invite any additional personnel who may be necessary to participate in the meeting. The meeting would not be as productive if a key member is absent as it could result in a delayed IHP or the need for a second meeting.

It is recommended that you write a list of questions and concerns and bring the list to the meeting so you would not forget to raise them during the meeting.

Does the IHP Have to Follow a Certain Format?

There is no uniform IHP format that must be followed by the schools, and each school may have its own template. Appendix B contains a sample template, and many sample templates are also available from an internet search.²

² Sample IHP templates for various conditions can be accessed at https://www.sdcoe.net/student-services/student-support/Nurses/Pages/individual-student-health-plan-templates.aspx.



Drafting the IHP requires a collaborative effort amongst the core team members that includes the parent/student. Keep in mind that every student is different so the IHP should be designed to meet the student's specific needs.

If you happen to obtain - with valid permission - a copy of an IHP for another student with a similar condition, that IHP could provide some great ideas for your IHP but it should not be duplicated due to each student's uniqueness.

Is the School Liable for Failing to Comply with the IHP?

Most likely no unless the school personnel acted with extreme negligence or disregard for the student's safety which is always difficult to prove. This is why many schools try to push parents and students into accepting IHPs instead of determining whether the student is eligible for a 504 Plan.

II. SECTION 504 PLAN

What Is a 504 Plan?

Students with medical conditions may also qualify for a 504 Plan. A 504 Plan is similar to an IHP in the sense that it outlines the necessary accommodations and action plan. The 504 Plan is mandated by Section 504 of the Rehabilitation Act of 1973 (Rehab Act), which is an anti-disability discrimination law that applies to any school – public or private - that receives federal funds.

Who Is Responsible for Developing the 504 Plan?

The school's 504 Team reviews and develops 504 Plans. The regulations under the Rehab Act do not specifically define the members of the 504 Team. The regulations simply state that the 504 Team is to be made up of a "committee of knowledgeable persons," which would most likely be the parent, teacher, nurse, and principal.

Why Do Many Schools Avoid Bringing Up 504 Plans?

Regretfully, schools will commonly attempt to bypass the evaluation process mandated by the Rehab Act, insisting instead that the parent accept an IHP. Over the years, there have been multiple investigative findings against school districts for such violations by the U.S. Office for Civil Rights (OCR) within the U.S. Department of Education, which enforces the Rehab Act.

³ See, e.g., Tyler (TX) Indep. Sch. Dist., 56 IDELR 24 (OCR 2010) (finding that the district issued IHPs rather than referring students for evaluations to determine their Section 504 eligibility); Forest Hills (OH) Local Sch. Dist., 58 IDELR 114 (OCR 2011) (finding that the district had the improper practice of issuing IHPs and not performing Section 504 evaluations unless the parents specifically requested them).



The reason why many schools are hesitant to provide 504 Plans usually comes from the expense involved. The Rehab Act gives important rights to parents and students that the school must follow, often at a financial expense to the school, such as a medical assessment.

What Rights Does a 504 Plan Provide That an IHP Does Not?

The Rehab Act affords important rights which include necessary medical assessments at the school's expense and official notices to the parent and student of any decision or action the school intends to take with respect to the 504 Plan.

The OCR has repeatedly stressed that a student covered under the Rehab Act is entitled to similar disciplinary protections that a student with an individualized educational program, better known as an IEP, has. For example, if a student with a 504 Plan gets in trouble for inappropriate behavior and the school wants to suspend the student for more than 10 days or expel the student, then the school should perform what is called a manifestation determination review first to determine whether the behavior was caused by the student's disability. If it is determined that the behavior was caused by the disability, then the school cannot suspend or expel the student. This particular right could be important in a situation where the student acted out because the school forgot to give the student the necessary medication (e.g., Adderall for student's ADHD) required by the 504 Plan.

Furthermore, if the school violates the 504 Plan, you have the right to file a due process petition with the New Jersey Office of Special Education Policy and Dispute Resolution within the New Jersey Department of Education (NJDOE) to seek remedies available under the Rehab Act. If you win in court with the assistance of a lawyer, the school may be obligated under the Rehab Act to reimburse you for the fees you had to pay for your lawyer's service.

In the alternative, you may file an administrative complaint with the OCR. The downside to filing an administrative complaint is it may take an unusually long time for the OCR to address your complaint because the OCR receives a high volume of complaints.

Can an IHP Be Incorporated Into a 504 Plan?

Although many schools might try to resist doing so, an IHP can be included in a 504 Plan. The rights afforded under the Rehab Act are attached to an IHP that is incorporated into a 504 Plan.

Can a School Ask for a Waiver of Rights Under the Rehab Act?

Schools are known to use creative tactics to convince parents and students to waive important

⁴ A complainant may also file a legal complaint in state or federal court within two years from the date of the alleged violation of the Rehab Act. It is strongly advisable that the complainant consult with a lawyer about filing the legal complaint. Please be aware that there is no fee for filing a due process petition with the NJDOE while there is a fee for filing a legal complaint in state or federal court.



rights they may have. If the school asks you to waive any rights under the Rehab Act as a condition of receiving a 504 Plan (whether there is an IHP incorporated within it), respectfully decline to do so. If the school keeps insisting on the waiver, you may need to petition for due process which could ultimately force the school to withdraw its waiver demand. Guidance on how to request due process is given at the latter part of this section of the toolkit.

What Are the Qualifications for a 504 Plan?

To qualify for a 504 Plan, the student must have a disability that substantially limits one or more major life activities as defined by the Rehab Act. Major life activities include breathing, learning, reading, and concentrating as well as operation of major bodily functions such as bowel, bladder, digestion, respiration, and circulation.

Corrective measures like medication cannot be considered for the determination as to whether the student is disabled under the Rehab Act. Furthermore, a student's impairment may also be covered under the Rehab Act even if the impairment is in remission or episodic (e.g., seizure) in nature as long as the disability substantially limits a major life activity when active.

What Documentation Is Required to Obtain a 504 Plan?

When seeking a 504 Plan, you must provide medical records with sufficient evidence that the student has a disability that substantially limits a major life activity as defined under the Rehab Act. It would not suffice for a physician to simply state the student either (a) has a medical diagnosis and/or (b) is qualified for a 504 Plan.

Although entitlement to an IHP, in and of itself, does not require a showing of a substantial limitation of a major life activity, the medical records you would need to furnish to obtain an IHP might suffice to obtain a 504 Plan if there is enough evidence to show the student's condition would be covered under the Rehab Act.

Non-medical records can also be important because the 504 Team needs to consider all the available information as part of the evaluation of the student's eligibility for a 504 Plan. The information can include the student's grades over the past several years, teacher's reports, information from parents or other agencies, state assessment scores or other school administered tests, observations, discipline reports, attendance records, and adaptive behavior information. This non-medical information could help determine whether the student's condition has had an adverse impact on a major life activity (e.g., condition's negative impact on learning as evidenced by decline in grades and testing scores).



What if the 504 Team Thinks More Information Is Necessary for the Determination of the Need for a 504 Plan?

If the 504 Team concludes there is insufficient information to show the student is entitled to a 504 Plan, the school should perform an evaluation to determine eligibility for a 504 Plan. If the school does not have a qualified professional on staff who can perform the necessary evaluation, then it should contract with one who can, which is typically the case with psychiatric assessments. The school cannot force parents to pay for the evaluation.

Parents and students also have the right to seek a private evaluation at their own expense and provide it to the 504 Team for consideration of 504 Plan-eligibility.

Once the 504 Team has completed and reviewed all of the updated assessments, the school should provide formal notice to the parent as to whether it believes the student is entitled to a 504 Plan.

How Do I Start the Process of Obtaining a 504 Plan?

Similar to the process for obtaining an IHP, being proactive is key. Once you have the necessary medical records, submit a request to the school's principal and 504 Coordinator to express your desire for a Section 504 meeting to develop a 504 Plan. Appendix C contains a sample letter requesting an IHP meeting.

If it is not clear from your school's website who the 504 Coordinator is, then the request can just be submitted to the principal who should then alert the 504 Coordinator of the request. Like the IHP process, the request for the 504 Plan meeting should be done in writing with a way to confirm its submission such as e-mail or certified mail.

You should also deliver the relevant medical records you have to the 504 Coordinator once you receive notice of the meeting with the 504 Team. Any relevant documents obtained shortly before the meeting should be brought to the meeting.

You should prepare a list of questions and concerns and bring the list with you to the meeting so you would not forget to raise them.

Does the 504 Plan Have to Follow a Certain Format?

Like the IHP process, the regulations in the Rehab Act do not articulate a certain format for the 504 Plan. There are lots of available 504 Plan templates available on the internet, and the school might have its own template. Be creative in creating the 504 Plan that works best for you. Appendix D contains some sample 504 Plans for you to review.



How Do I Use the Dispute Resolution Procedures Available if There Is a Disagreement Regarding the 504 Plan?

There are several ways in which the school may violate the Rehab Act. For example, the school might claim it has no obligation to perform an evaluation when the regulations state it does. The school might also conclude the student does not qualify for a 504 Plan when the evidence shows otherwise. The school may fail to provide the required notice of its decision regarding the 504 Plan or fail to follow the steps set forth in the 504 Plan when a medical emergency arose.

When there is a violation of the Rehab Act, you can file either a due process petition with the NJDOE within two years or an administrative complaint with the OCR within 180 calendar days.

Due Process Petition

The due process petition can be submitted either in person, by regular mail, or by e-mail to the NJDOE at:

Director Office of Special Education Policy and Dispute Resolution NJ Department of Education P.O. Box 500 Trenton, NJ 08625-0500 E-mail: osepdisputeresolution@doe.nj.gov

If you wish to submit by way of e-mail, the petition itself must be saved in .pdf format first. If you do not have Adobe software to convert your petition into .pdf format, you could download the software for free. The Adobe Reader is available at https://get.adobe.com/reader/.

You must also make sure you send a copy of your petition to your school's director or superintendent at the same time you file the petition with the NJDOE. Your petition should confirm you sent a copy of the petition to the director or superintendent. Appendix E contains a sample form you could use for your petition.

OCR Complaint

If you wish to file an administrative complaint, you may mail or fax a letter to the OCR's office responsible for New Jersey. The contact information for that OCR's office is:

Office for Civil Rights, New York Office U.S. Department of Education 32 Old Slip, 26th Floor New York, NY 10005-2500 Phone: 646-428-3800 Fax: 646-428-3843



The complaint letter should contain the following:

(a) the complainant's name, address and if possible (although not required), a telephone number where the complainant may be reached during business hours;

(b) information about the student(s) injured by the alleged violation of the Rehab Act (although the names of the injured student(s) are not required);

(c) the name and location of the school you believe violated the Rehab Act pertaining to the 504 Plan; and

(d) a description of the violation of the Rehab Act with enough detail for the OCR to understand what had happened, when it happened, and the basis for the violation.

Complainants may file a complaint using the same procedures as above by way of e-mail at ocr@ed.gov.

Additionally, complainants may file a complaint using OCR's electronic complaint form at the following website: https://www.ed.gov/about/offices/list/ocr/complaintintro.html.

If you choose to use the school's internal grievance process first, then you have up to 60 calendar days from the final outcome of the internal process to file with the OCR. At that point, the OCR will determine whether to defer to the final outcome of the internal process.

Appendix F contains a sample letter to assist with the drafting of your administrative complaint letter to the OCR.

HELPFUL INTERNET LINKS

IHP/504 Plan

https://www.wrightslaw.com/info/allergy/Wright.FARE.Ask.the.Expert.IHCP.QandA.pdf

https://www.pacer.org/health/samplehealthplans.asp#:~:text=An%20Individual%20Health%20Care%20Plan,medication%20during%20the%20school%20day

NJ Resource

SPAN Parent Advocacy Network www.spanadvocacy.org.

U.S. Department of Education Guidance

https://www2.ed.gov/about/offices/list/ocr/504faq.html

https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf

OCR Complaint Process

https://www2.ed.gov/about/offices/list/ocr/docs/howto.html

https://www2.ed.gov/about/offices/list/ocr/qa-complaints.html

NJDOE Guidance

https://www.nj.gov/education/students/safety/health/services/allergies.pdf

Asthma

https://higherlogicdownload.s3.amazonaws.com/NASN/b385213b-35e8-49e3-97fe-d6627843f498/UploadedImages/Public%20Documents/IHPAsthma.pdf

Diabetes

https://www.diabetes.org/resources/know-your-rights/safe-at-school-state-laws/written-careplans/section-504-plan

Epilepsy

https://www.epilepsynorcal.org/wp-content/uploads/2015/07/Sample_504.pdf

Food Allergies

https://www.cdc.gov/healthyschools/foodallergies/index.htm

https://www.kidswithfoodallergies.org/sample-section-504-plans.aspx

https://www.foodallergy.org/resources/cdcs-toolkit-managing-food-allergies-schools



SAMPLE IHP MEETING REQUEST LETTER

APPENDIX A

(C) 2021 DISABILITY RIGHTS NEW JERSEY

NOVEMBER 2021



Jane Doe 123 Main Street My Town, NJ 08000

January 1, 2021

Principal Ed Rooney Nurse Patricia Wilson Cedar Park Elementary School 150 Main Street My Town, NJ 08000

Re: John Doe – Individualized Health Plan

Dear Dr. Rooney and Ms. Wilson:

I am the parent of John Doe, who currently attends Cedar Park Elementary School as a fourth grader. He was diagnosed with diabetes last week and now requires insulin injections on a daily basis. John's doctor, Dr. Phil Smith, strongly recommends that he have an Individualized Health Plan at school. As such, I would like an IHP meeting at your school to develop an IHP for him. I will provide a copy of John's medical documentation and IHP recommendations as soon as you let me know when the IHP meeting can be scheduled.

Thank you for taking the time to read this letter. I can be reached at 609-555-1234 during business hours. In case you have trouble reaching me by phone, you can e-mail me at jdoe@gmail.com.

Sincerely,

Jane Doe

APPENDIX B

IHP TEMPLATE





IHP Template				
Student name:		School name:		
DOB:	Grade:	Teacher:		
Plan Effective from		to		
Parent/Guardian Nam				
Emergency Contact (Name, Relationship) and Contact Info.				
Primary Care Provider	and Contact Info.			
Specialist and Contact	Info.			
Current Health Condit	ion			



Symptoms

Symptom Triggers

Pertinent Health History and Documentation (attach if necessary)

Current Medication

Action Plan

Potential Problem

Intervention

a.

b.

с.		
d.		
Signatures		
School Nurse:	Date:	
Parent:	Date:	
Student:	Date:	



SAMPLE 504 PLAN MEETING REQUEST LETTER

APPENDIX C

(C) 2021 DISABILITY RIGHTS NEW JERSEY



Jane Doe 123 Main Street My Town, NJ 08000

January 1, 2021

Dr. Ed Rooney, Principal Patricia Wilson, Nurse Cedar Park Elementary School 150 Main Street My Town, NJ 08000

Re: John Doe/Section 504 Plan

Dear Dr. Rooney and Ms. Wilson:

I am the parent of John Doe, who currently attends Cedar Park Elementary School as a fourth grader. I am writing to you to request a meeting with the school's Section 504 Team for the purpose of developing a Section 504 Plan for John at school. After several seizures in the past six weeks, I took John to Dr. Phil Smith who diagnosed him with epilepsy. Dr. Smith strongly recommends a seizure action plan within a Section 504 Plan.

As soon as you let me know when the Section 504 meeting can be scheduled, I will provide you with a copy of John's diagnostic information as well as Dr. Smith's specific recommendations for the 504 Plan.

Thank you for taking the time to read this letter. I can be reached at 609-555-1234 during business hours. In case you have trouble reaching me by phone, you can e-mail me at jdoe@gmail.com.

Sincerely,

Jane Doe

APPENDIX D

504 PLAN TEMPLATE



504 Plan Template

School Information			
Student name:		Plan meeting date:	
School name:		Plan effective date:	
DOB:	_ Grade:	Plan review date:	
Qualifying disability:			
Documentation of disabili	ty (attach if neces	ssary):	
504 Team Members:			
Participant Name and Title		Attendance Signature	



Accommodations and/or Services

	Area of educational need	Accommodation	responsible ementing	Frequency of accommodation
1.				
2.				
3.				
4.				
NC	DTES:			
Pla	an approved by:		 Date approved:	

APPENDIX E

SAMPLE DUE PROCESS PETITION





DUE PROCESS PETITION (items marked with an asterisk below are not required)

Director Office of Special Education Policy and Dispute Resolution NJ Department of Education P.O. Box 500 Trenton, NJ 08625-0500

From:

(Full name of parent(s) submitting the request)

Address:	
*County:	_
*Home Phone:	_ *Fax:
*Work Phone:	*Cell Phone:
*E-mail Address:	

*Please check whether you will be represented by _____ an attorney or assisted by _____ an advocate.

3	
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*Name of attorney or advocate:		
*Address:		
*Phone:	*Fax:	
Student's Name:	Date of Birth:	
Student's Address (if different from parent's addres		
*School District of Residence (district in which pare	ent resides):	
*School the student attends:		
*School District where the student is located:		
*Student's Disability:		

Please provide a description of the nature of the problem and any facts related to the problem. Attach additional sheets as needed:



Please provide a description of how this problem could be resolved. Attach additional sheets as needed.

A copy of this petition must be provided to the other party. Please check to verify the applicable sentence:

_____A copy of this request was sent to the superintendent of the school district.

_____A copy of this request was sent to the director of the private school because I placed my child at that school at my expense.

Name of the superintendent/director:

Address:

Parent's signature: _____ Date:

APPENDIX F

SAMPLE OCR COMPLAINT





Jane Doe 123 Main Street My Town, NJ 08000 Phone: 609-292-8000

March 12, 2021

Director Office for Civil Rights, New York Office U.S. Department of Education 32 Old Slip, 26th Floor New York, NY 10005-2500

Re: John Doe/Cedar Park School District

Dear Director:

I am the mother/guardian of John Doe, who currently attends Cedar Park Elementary School as a fourth grader. Cedar Park Elementary School, located in the Cedar Park School District, is located at 150 Main Street, My Town, NJ 08000.

Please accept this letter as my request for an administrative complaint against Cedar Park School District for violating my son's rights under the Rehabilitation Act of 1973. My son, who has epilepsy, has had a Section 504 Plan since January 13, 2021, that calls for all of his teachers to receive formal training on how to handle his seizures. However, only one of his teachers received the formal training because Dr. Ed Rooney, the school's principal, said only one teacher needed to do the training. I even have a copy of Dr. Rooney's e-mail to prove it.

I can be reached at the contact information above. Even though you can reach me via telephone, the best way to contact me is by work e-mail at jdoe@gmail.com during business hours.

Thank you very much.

Sincerely,

Jane Doe