

ACCOMMODATING CHILDREN WITH ALLERGIES IN SCHOOL



IS A FOOD ALLERGY CONSIDERED A DISABILITY ?

- It depends . . .
- Under the Americans with Disabilities Act (“ADA”), a disability is defined as a mental or physical impairment that substantially limits a major life activity, such as eating; major life activities also include major bodily functions, such as the functions of the gastrointestinal system
- Some individuals with food allergies have a disability as defined by the ADA, particularly those with more significant or severe responses to certain foods

WHAT IS THE COLORADO SCHOOLCHILDREN’S ASTHMA AND ANAPHYLAXIS ACT & WHAT DOES IT DO?

- This Act requires the State Board of Education to create rules for the management of food allergies and anaphylaxis among students enrolled in public schools
- These rules require each school district board of education, including the Charter School Institute, to adopt and implement a policy for the management of food allergies and anaphylaxis among students enrolled in district
- The rules require that staff are trained in a basic understanding of
 - 1) food allergies and the importance of reasonable avoidance of agents that may cause anaphylaxis
 - 2) the ability to recognize symptoms of anaphylaxis and respond appropriately if a student needs to administer an epinephrine auto-injector
 - 3) an awareness of the ability of the student to carry and self-administer an epinephrine auto-injector

CAN MY CHILD SELF-CARRY HIS/HER ASTHMA/ANAPLYLAXIS MEDICATION?

- If your child is determined to be eligible to administer his/her own medication, then your child may self-carry
- This determination is made by the school nurse or administrator in consultation with the school nurse and in collaboration with the parent or legal guardian and healthcare practitioner
- The assessment is based on the student’s knowledge of his/her condition and his/her ability to self-administer medication.

CAN THE SCHOOL CHARGE MORE FOR A MEAL THAT REQUIRES MODIFICATIONS?

- No, schools may not charge children with dietary disabilities or with certified special dietary needs who require food substitutions or modifications more than they charge any other children for program meals or snacks

- Schools do not have to provide modified meals based on *food preferences* of a family or child – example: a school does not have to provide vegetarian meals for a child whose parents are strict vegetarians and want their child to be provided with vegetarian meals

WHAT DOCUMENTATION IS REQUIRED IN COLORADO FOR MEAL MODIFICATION WHEN A STUDENT’S ALLERGY IS CONSIDERED A DISABILITY?

- A medical statement completed and signed by a licensed physician
- This statement must identify:
 - The child’s disability
 - The major life activity affected by the disability
 - An explanation of why the disability restricts the child’s diet
 - The food or foods to be omitted from the child’s diet, and the food or choices of foods that must be substituted
- The medical statement is required when the child’s medical condition qualifies as a disability under Section 504 of the Rehabilitation Act, the Individuals with Disabilities Education Act (“IDEA”), the Americans with Disabilities Act, or if the child has a medical condition that does not qualify as a disability under Section 504 of the IDEA but that is determined by the child’s physician to be considered a disability (for example, a severe food allergy may fall under this second category)

WHAT IF THE MEDICAL STATEMENT FAILS TO SPECIFY THE REQUIRED FOOD SUBSTITUTIONS?

- The school food service staff *may not* decide what foods should be substituted
- An appropriate school official must ask the parents to obtain more written information from the physician concerning the substitutions or modifications the student requires

WHAT IF THE MEDICAL STATEMENT REQUIRES FOOD-RELATED SERVICE OUTSIDE NORMAL SCHOOL MEAL PERIODS?

- Students with disabilities are required to receive the same extent of benefits from programs that are available to students without disabilities, for example, if a medical statement requires a student with a dietary disability to consume six cans of juice per day at regular intervals, and some of those intervals fall outside the normal school meal periods, the food service would only be responsible for the juice as part of the regular reimbursable meal or snack service. The school is not required to pay for and provide additional servings throughout the day *unless specified in the student’s IEP*. However, the school may still have to allow it as a reasonable accommodation.

WHERE CAN I FIND GUIDANCE ABOUT CREATING A POLICY FOR STUDENTS WITH FOOD ALLERGIES?

- The Colorado Department of Education has published a sample policy, available at http://sites.cde.state.co.us/sites/default/files/documents/healthandwellness/download/nurjlcda_foodallergypolicy.pdf

***** DISCLAIMER: This is not intended as legal advice, but rather for informational purposes only. Always consult a lawyer if you have questions about your legal rights. *****

References:

Disability Law Colorado – www.disabilitylawco.org
 Dept. of Justice Information on the ADA – www.ada.gov
 Colorado Department of Education – www.cde.state.co.us
 Colorado Secretary of State – www.sos.state.co.us