SCHOOL NURSING AND YOU: Liability Issues Regarding Disabled Students and COVID-19

Presented By:
Lewis R. Silverman, Esq.
Caroline B. Lineen, Esq.
Silverman & Associates
November 3, 2020

SILVERMAN & ASSOCIATES | ATTORNEYS AT LAW

Your Presenters

Lewis R. Silverman

Founding Member, Silverman & Associates

J.D., Syracuse University College of Law, 1992

- *Member and Officer, Syracuse Law Review*

B.A., State University of New York at Albany, 1989

Admitted to New York State Bar, 1993. Working with school districts since 2001.

Caroline B. Lineen

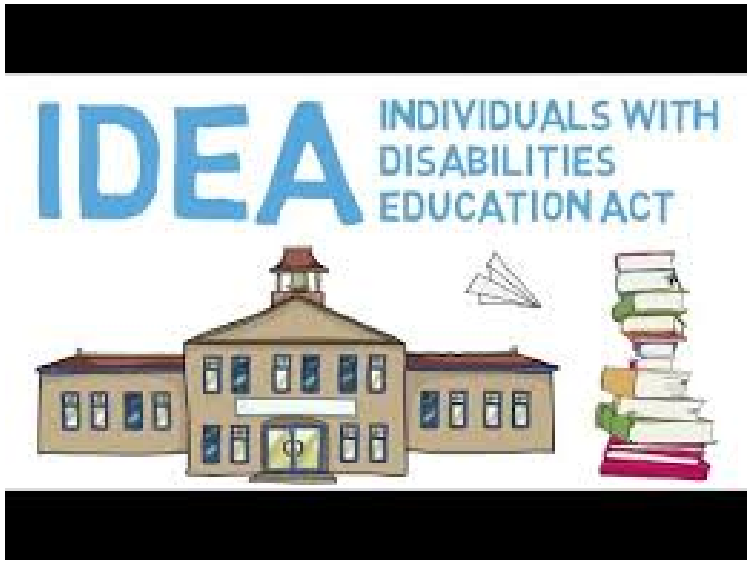
Partner, Silverman & Associates

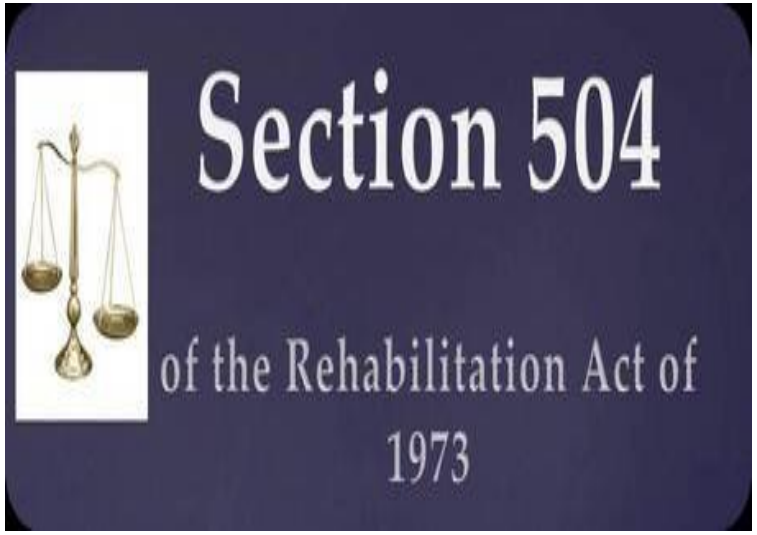
J.D., New York Law School, 2005

B.A., Colgate University, 2000

Admitted to the New York State Bar, 2006. Working with school districts since 2006.

- Located in White Plains, New York. We cover cases throughout New York, including the NYC, Long Island and Hudson Valley areas of New York State
- Specialize in litigation, with an emphasis on claims regarding employment practices liability, discrimination, harassment, sexual misconduct, police misconduct, civil rights, prisoners' rights, student discrimination and bullying, and general negligence in school setting
- Clients include many public and private schools and public entities, schools and public entity insurers
- Have tried many cases to verdict in New York State Courts and the Federal Courts





PART I: SCHOOL NURSE OBLIGATIONS UNDER THE IDEA AND SECTION 504

OBJECTIVES TODAY?*

- To learn about compliance with the protections afforded to disabled students under the IDEA and Section 504 including:
  - The legal framework and history of these protections
  - Their applicability to the school nursing context
- To understand IEP's and Section 504 Plans
- Describe the role of the school nurse in developing individualized plans
- To discuss the applicability of the obligations under these statutes in real life situations
- Develop best practices for ensuring compliance with the legal requirements

** *See Disclaimer on page 79* **

SIGNIFICANCE

- In 2018-19, approximately 14% of public school students (ages 3-21) were classified as students with disabilities under the IDEA[1]
    - New York has one of the highest classification rates at approximately 19.2% as of 2017-18
        - Compare to approximately 16.9% in New Jersey, 15.1% in Connecticut, 12.2% in California, 9.2% in Texas [2]
- As of October 2018, New York State Education Department reports that 489,491 school age students across New York are receiving special education programs and services[3]

[1] National Center for Education Statistics, *The Condition of Education*, May 2020.

[2] Education Week, *Special Education: Definition, Statistics, and Trends,* December 17, 2019

[3] New York State Education Department Data Summaries of Children with Disabilities Receiving Special Education http://www.p12.nysed.gov/sedcar/goal2data.htm

SIGNIFICANCE

- Trends seem to show the classification rate continues to increase

Type of disability	Number of children served as a percent of total enrollment\7\														
	1976-77	1980-81	1990-91	2000-01	2008-09\1\	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17\2,3\	2017-18\2,4\	2018-19\2\
All disabilities	**8.3**	**10.1**	**11.4**	**13.3**	**13.2**	**13.1**	**13.0**	**12.9**	**12.9**	**12.9**	**13.0**	**13.2**	**13.4**	**13.7**	**14.1**
Autism	---	---	---	0.2	0.7	0.8	0.8	0.9	1.0	1.1	1.1	1.2	1.3	1.4	1.5
Deaf-blindness	---	#	#	#	#	#	#	#	#	#	#	#	#	#	#
Developmental delay	---	---	---	0.5	0.7	0.7	0.8	0.8	0.8	0.8	0.8	0.9	0.9	0.9	0.9
Emotional disturbance	0.6	0.8	0.9	1.0	0.9	0.8	0.8	0.8	0.7	0.7	0.7	0.7	0.7	0.7	0.7
Hearing impairment	0.2	0.2	0.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1
Intellectual disability	2.2	2.0	1.3	1.3	1.0	0.9	0.9	0.9	0.9	0.9	0.8	0.8	0.9	0.9	0.9
Multiple disabilities	---	0.2	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Orthopedic impairment	0.2	0.1	0.1	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Other health impairment\5\	0.3	0.2	0.1	0.6	1.3	1.4	1.4	1.5	1.6	1.6	1.7	1.8	1.9	2.0	2.1
Preschool disabled\6\	†	†	0.9	†	†	†	†	†	†	†	†	†	†	†	†
Specific learning disability	1.8	3.6	5.2	6.1	5.0	4.9	4.8	4.7	4.6	4.5	4.5	4.6	4.6	4.6	4.7
Speech or language impairment	2.9	2.9	2.4	2.9	2.9	2.9	2.8	2.8	2.7	2.7	2.6	2.7	2.6	2.7	2.7
Traumatic brain injury	---	---	---	#	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Visual impairment	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1

[4] National Center for Education Statistics, *The Condition of Education*, Table No. 204.30, May 2020, https://nces.ed.gov/programs/digest/d19/tables/dt19_204.30.asp

SIGNIFICANCE

- Rates of classification continue to rise in New York
  - For 2014-15, classification rate was approximately 17.6%[4] vs. approximately 19.2 by 2017-18
  - The numbers of students receiving special education programs and services reported by State Education Department in the recent years evidence this trend:

    2015: approximately 459, 562

    2016: approximately 465,590

    2017: approximately 482,143

    2018: approximately 489,491[5]

[4] Front Line Research & Learning Institute, Crossing the Line: *Exploring Equity in Special Education Classification Across the United States*, 2017

[5] New York State Education Department Data Summaries of Children with Disabilities Receiving Special Education http://www.p12.nysed.gov/sedcar/goal2data.htm

WHY IS UNDERSTANDING IDEA AND SECTION 504 IMPORTANT?

- Student health and welfare
- Efficient and orderly operation of the school
- Possibility of disciplinary action by employer
- Possibility of administrative complaints – Due Process Complaints, complaints New York State Education Department, complaints to United States Department of Education Office of Civil Rights
- Possibility of lawsuits
  - Financial implications: Jury awards, attorney's fees
  - Time consuming
  - Potential for punitive damages to individuals!
- Reputation – both school district/program and individual

What Is the IDEA?

- The Individuals with Disabilities Education Act ("IDEA")
  - 20 U.S.C. § 1400, *et seq.*
  - Reauthorized as the Individuals with Disabilities Education Improvement Act ("IDEIA") in 2004
- The IDEA was enacted "to assure that all children with disabilities have available to them ... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." Cedar Rapids Cmty. Sch. Dist. v. Garret F., 526 U.S. 66 (1999)
  - Child with a disability means a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities and who, by reason thereof, needs special education and related services. 20 U.S.C. §1401(3).
- The IDEA requires that all states that receive federal funds provide a "free appropriate public education" or "FAPE" to "all children with disabilities." 20 U.S.C. § 1412(a)(1)(A)
- FAPE includes both special education AND "related services"

WHAT ARE RELATED SERVICES?

- Related Service means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include **school health services and school nurse services**, social work services in schools, and parent counseling and training. 20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a).

WHAT ARE RELATED SERVICES?

- Medical services

  Services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services. 34 C.F.R. § 300.34[c](5)

  - services of a physician (unless for diagnostic or evaluation purposes) are excluded from related services, but services that can be provided in school setting by a nurse or qualified layperson are not excluded

WHAT ARE RELATED SERVICES?

- School Health Services and School Nurse Services

  Health services that are designed to enable a child with a disability to receive FAPE as described in the child's individualized education plan

  - School Nurse Services: those provided by a qualified school nurse

  - School Health Services: those that may be provided by either a qualified school nurse or other qualified person 34 C.F.R. § 300.34[c](13)

WHAT ARE RELATED SERVICES?

Cedar Rapids Comm. Sch. Dist. v. Garret F., 526 U.S. 66, 1999

- School district brought action to challenge an administrative determination that it was required to provide nursing service for a quadriplegic student
- Student was wheelchair-bound and dependent on a ventilator and required individual nearby to attend to certain physical needs during the school day
- The Court asked two questions to determine whether the services were required: (1) were the services "supportive services"; and (2) were the services excluded as "medical services"
- The Court concluded the requested services were in fact supportive services because the student could not attend school unless the services were available
- The services were found not to fall within the "medical services" exclusion

WHAT ARE RELATED SERVICES?

Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883 (1984)

- Action brought to require school district to provide clean intermittent catheterization ("CIC") for child with spina bifida
- The Court held that school was required provide the services as it was a supportive services and not a medical service
- The Court emphasized that the CIC was a simple procedure that could be performed in a few minutes by a layperson with minimal training and that the student could not attend school and benefit from her special education without the service

WHAT ARE RELATED SERVICES?

- School Health Services and School Nurse Services Can Include
  - Special feedings
  - Clean Intermittent Catherization
  - Suctioning of tracheotomy tube
  - Assisting child during lunch
  - Changing quadriplegic/paraplegic child's position in wheelchair
  - Administering nebulizer treatment
  - Monitoring for possible ventilator malfunction
  - Administering medication (by nurse's only)
  - Training in emergency procedures for child
  - Assisting with toileting of non-ambulatory child

THE IEP

- Individualized Education Plan or IEP is a written statement of the educational program designed to meet a child's individual needs

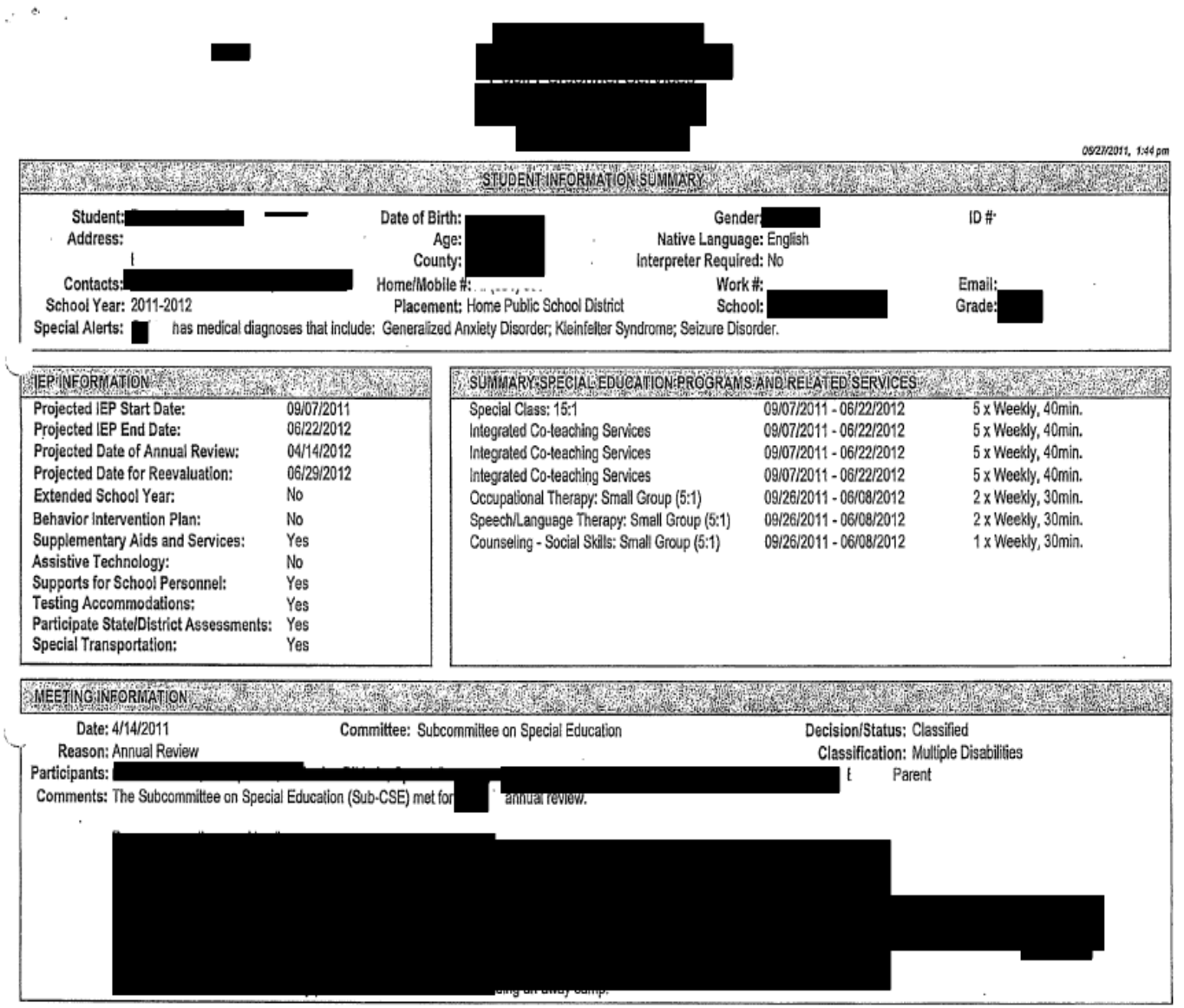
- It is a legal document

- Two purposes: 1. Set learning goals for the child
  2. State the services that will be provided for the child

THE IEP

- What is contained in the IEP?
  - Child's present level of academic achievement and functioning
  - Annual goals for the child
  - Special education to be provided to the child
  - **Related Services** (including school nursing or health services) to be provided to child
  - When modifications and related services will begin and how often/for how long they will be provided, where they will be provided, and any other necessary specifics
- Nursing services should be documented in the present level of performance and related service sections of IEP
- Reviewed at least annually

SAMPLE IEP



[redacted]

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09/27/2011, 1:44 pm

STUDENT INFORMATION SUMMARY

Student: [redacted] Date of Birth: [redacted] Gender: [redacted] ID #:
Address: [redacted] Age: [redacted] Native Language: English
County: [redacted] Interpreter Required: No
Contacts: [redacted] Home/Mobile #: [redacted] Work #: [redacted] Email:
School Year: 2011-2012 Placement: Home Public School District School: [redacted] Grade: [redacted]
Special Alerts: [redacted] has medical diagnoses that include: Generalized Anxiety Disorder; Kleinfelter Syndrome; Seizure Disorder.

IEP INFORMATION

Projected IEP Start Date:	09/07/2011
Projected IEP End Date:	06/22/2012
Projected Date of Annual Review:	04/14/2012
Projected Date for Reevaluation:	06/29/2012
Extended School Year:	No
Behavior Intervention Plan:	No
Supplementary Aids and Services:	Yes
Assistive Technology:	No
Supports for School Personnel:	Yes
Testing Accommodations:	Yes
Participate State/District Assessments:	Yes
Special Transportation:	Yes

SUMMARY SPECIAL EDUCATION PROGRAMS AND RELATED SERVICES

Special Class: 15:1	09/07/2011 - 06/22/2012	5 x Weekly, 40min.
Integrated Co-teaching Services	09/07/2011 - 06/22/2012	5 x Weekly, 40min.
Integrated Co-teaching Services	09/07/2011 - 06/22/2012	5 x Weekly, 40min.
Integrated Co-teaching Services	09/07/2011 - 06/22/2012	5 x Weekly, 40min.
Occupational Therapy: Small Group (5:1)	09/26/2011 - 06/08/2012	2 x Weekly, 30min.
Speech/Language Therapy: Small Group (5:1)	09/26/2011 - 06/08/2012	2 x Weekly, 30min.
Counseling - Social Skills: Small Group (5:1)	09/26/2011 - 06/08/2012	1 x Weekly, 30min.

MEETING INFORMATION

Date: 4/14/2011 Committee: Subcommittee on Special Education Decision/Status: Classified
Reason: Annual Review Classification: Multiple Disabilities
Participants: [redacted] Parent
Comments: The Subcommittee on Special Education (Sub-CSE) met for [redacted] annual review.

[redacted]

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RECOMMENDED SPECIAL EDUCATION PROGRAMS AND SERVICES					
SPECIAL EDUCATION PROGRAM/SERVICES	SERVICE DELIVERY RECOMMENDATIONS*	FREQUENCY HOW OFTEN PROVIDED	DURATION LENGTH OF SESSION	LOCATION WHERE SERVICE WILL BE PROVIDED	PROJECTED BEGINNING/ SERVICE DATE(S)
SPECIAL EDUCATION PROGRAM					
Special Class	[redacted]	5 x Weekly	40min.	Math Class	09/07/2011
Integrated Co-teaching Services		5 x Weekly	40min.	English / Language Arts Class	09/07/2011
Integrated Co-teaching Services		5 x Weekly	40min.	Science Class	09/07/2011
Integrated Co-teaching Services		5 x Weekly	40min.	Social Studies Class	09/07/2011
RELATED SERVICES					
Occupational Therapy		2 x Weekly	30min.	Therapist's Office	09/26/2011 - 06/08/2012
Speech/Language Therapy		2 x Weekly	30min.	Therapist's Office	09/26/2011 - 06/08/2012
Counseling - Social Skills		1 x Weekly	30min.	Therapist's Office	09/26/2011 - 06/08/2012
SUPPLEMENTARY AIDS AND SERVICES/PROGRAM MODIFICATIONS/ACCOMMODATIONS					
Refocusing and Redirection		Daily	Throughout the School Day	Classroom	09/07/2011
Positive Reinforcement Plan		Daily	Throughout the School Day	Classroom	09/07/2011
Special Seating Arrangements		Daily	Throughout the School Day	Classroom	09/07/2011
Copy of Class Notes		Daily	Throughout the School Day	Classroom	09/07/2011
Monitor		Daily	Throughout the School Day	Across All Educational Settings	09/07/2011
ASSISTIVE TECHNOLOGY DEVICES AND/OR SERVICES					
- None - Not applicable					
SUPPORTS FOR SCHOOL PERSONNEL ON BEHALF OF THE STUDENT					

DISPUTE PROCEDURE

- Due Process Complaint
  - Adjudicated by Impartial Hearing Officer ("IHO") after sworn testimony and introduction of evidence
  - Could be called to testify during hearing
  - IHO can award tuition, payment of compensatory services, ordered services
  - Appeals process
- Complaint to OCR
- Federal litigation – either as appeal of Due Process Complaint decision or distinct claims for violation of IDEA

WHAT IS SECTION 504

- Section 504 of the Rehabilitation Act of 1973 ("Section 504" or "the Rehabilitation Act")
  - Requires that "[n]o otherwise qualified person with a disability shall, solely by reason of the disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance. 29 U.S.C. § 794

- Requires the provision of necessary supports, or accommodations, for students in general education classroom with related aids or services designed to meet the student's needs as adequately as those of a non-disabled students 34 C.F.R. § 104.33

WHAT IS SECTION 504

- Section 504 is broader in scope than the IDEA
  - "Disability" means a physical or mental impairment that substantially limits one or more major life activities of an individual; a record of such an impairment; or being regarding as having such an impairment
  - "Major Life Activity" includes, but is not limited to:
    - Caring for oneself
    - Performing manual tasks
    - Seeing
    - Hearing
    - eating,
    - Sleeping
    - Walking

WHAT IS SECTION 504

- Standing
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentration
- Thinking
- Communicating
- Working

WHAT IS SECTION 504

- "Major Life Activity" also includes the operation of a major bodily function, including but not limited to:
  - Functions of the immune system
  - Normal cell growth
  - Digestive and bowel functions
  - Bladder functions
  - Neurological and brain functions
  - Respiratory functions
  - Circulatory functions
  - Endocrine functions
  - Reproductive functions

WHAT IS SECTION 504

- An impairment that is in remission or episodic is still a disability if it would substantially limit a major life activity when active

- Determination of whether impairment substantially limits a major life activity should be made without regarding to the corrective effects of mitigating measures such as: medication; medical supplies, vision devices (excluding eyeglasses or contact lenses), prosthetics, hearing aids and cochlear implants mobility devices, oxygen therapy equipment, assistive technology, reasonable accommodations or services

WHAT IS SECTION 504

- OCR has opined that school district should not require extensive documentation or analysis to determine that child with Diabetes, Epilepsy, Bipolar Disorder, or Autism has a disability under Section 504
  - Other conditions that could be require Section 504 accommodations are: Asthma, Tourette's Syndrome, Attention Deficit Disorder, emotional or mental illness, heart conditions, blood disorders, Cancer, urinary conditions, etc.

- The regulations of Section 504 do not require a medical diagnosis as a prerequisite to determine Section 504 eligibility
  - If school district requires a diagnosis as part of evaluation, it must obtain one at no cost to the parent
  - If school district requests medical diagnosis or medical documentation, but the parent fails to provide it, the school district should be made the determination based on the information available

WHEN TO EVALUATE FOR OR CONSIDER 504 PLAN

- Disability of any kind is known
- Reason to believe student has a disability
- Chronic absenteeism
- Student presents with a chronic medical or behavioral health problem
- Student presents with new diagnosis of major physical or health issue
- Student returns to school after serious illness of injury (eg. concussion, major surgery)
- Student requires administration of medical or other nursing services during the school day
- A parent requests evaluation

SECTION 504 PLAN

- A plan for how the school will provide supports and accommodate student so that the student has equal access to the general education curriculum
- Not proscribed rules for what 504 Plan must look like or include
- Not required to be a written document – but it is best practice to do so
- Legally binding (in contrast to an Individual Health Plan, which is not)

SECTION 504 PLAN

- Best practices for what should be included in 504 Plan
  - Description of the disability and its related effects
  - Documentation or reference to documentation of disability or diagnosis
  - Any necessary medications
  - Any necessary treatments
  - Other accommodations to be provided, along with description of how often, when, where, and how accommodations will be provided
  - Identification of who will provide each accommodation
  - Identification of who is responsible for ensuring implementation of 504 Plan
  - Details regarding emergency plan for students with special health needs

DISPUTE PROCEDURE

- Impartial Hearing before IHO
- Complaint to OCR
- Complaint pursuant to school district's Section 504/ADA policy
- Federal litigation

SAMPLE 504 PLAN

[redacted]

INDIVIDUALIZED 504 PLAN

Student Name: [redacted] Meeting Date: 11/21/06

DOB: [redacted] Age: [redacted]

Current School: [redacted] Teacher: [redacted] Grade: [redacted]

Parent/Guardian: [redacted]

Address: [redacted] Telephone: (H) [redacted] (B) _____

504 Plan for School Year: 2006-2007 Review Date: 11/07

I. Describe the nature of the specific concern or problem:

[redacted]

II. Describe the basis for determining this student has a disability (include behaviors, test dates and test results):

Review of Records

III. Describe how the disability affects a major life activity: Due to student's medical condition, accommodations are required to allow student equal access to district programs.

IV. Determination:
(Check one)

☐ The District has determined that the student is not a Section 504 disabled individual because:

- The student does not exhibit a disability under Section 504;
- The student does not exhibit a significant limitation in learning or other major life activity, which significantly impacts learning.

☒ The District has determined that the student meets the criterion for qualification as a disabled individual under Section 504. The school has agreed to make reasonable accommodations and address the student's individual needs by:

[redacted]

List all appropriate accommodations as is appropriate: (Example: physical arrangement of the room, test modifications, presentation of assignments or class work, etc.).

1. [redacted]

Educational Services:

1. Type of Service | Times Per Week | Duration | Group/Individual

None at this time.

2. Specialized Equipment/Adaptive Devices:

Ambulation Needs: n/a Transportation Needs: n/a

Medication: [redacted] Special Alerts: [redacted]

V. Participants [redacted] Title [redacted]

I, the Student's Parent/Guardian, have participated in the meeting in which this document was drafted, and I have received a copy of my rights under Section 504.

(Parent's/Guardian's Signature)

I, the Student's Parent/Guardian, (circle one) agree/disagree to this Individualized 504 plan as it is written.

[redacted]

(Parent's/Guardian's Signature)

SAMPLE 504 PLAN

[redacted]

SECTION 504 ACCOMMODATION PLAN
2015-2016

STUDENT INFORMATION

Student: [redacted] **Date of Birth:** [redacted] **Gender:** [redacted] **ID #:** [redacted]
Address: [redacted]
County: [redacted] **Interpreter Required:** No
Contacts: [redacted] **Home/Mobile #:** [redacted] **Work #:** [redacted] **Email:** [redacted]
School Year: 2015-2016 **Recommended:** [redacted] **Home School:** [redacted] **Grade:** 07
Plan Start: 05/06/2016 **Plan End:** 09/30/2016 **Review Date:** 09/30/2016
Special Alerts: [redacted] received a concussion in December 2015. He did not return to school until April 2016. He is currently experiencing post-concussion symptoms that include frequent, severe and persistent headaches, persistent ocular motor tracking and teaming difficulties and significant and persistent sleep disturbance .

MEETING INFORMATION

Meeting Date: 5/6/2016 **Reason:** Initial Eligibility Determination Meeting
Participants: [redacted] School Nurse; [redacted]
Comments: [redacted]

[redacted]

Discussion commenced regarding eligibility. Psychologist reported that based on the information present, [redacted] does qualify for Section 504 Accommodations. Parents and staff agree.

Based on the above, Committee finds [redacted] eligible to receive accommodations under Section 504. Program and testing accommodations were discussed and added to [redacted] plan. Committee will reconvene in the fall when updated information is available for review and accommodations will be amended, if needed, at that time . Parent is in agreement with the Committee's recommendations.

INITIAL OR MOST RECENT EVALUATIONS/REPORTS

Date	Evaluation/Report	
05/06/2016	General Education Teacher Verbal Report	
05/06/2016	Guidance Report	
05/06/2016	Parent Report and Observations	
05/06/2016	Teacher's Verbal Report	[redacted]
05/03/2016	[redacted]	[redacted]

04/11/2016	Doctor's Note	[redacted]

STATE AND DISTRICT-WIDE ASSESSMENTS

- None

DETERMINATION

It has been determined that the student has a physical or mental impairment that substantially limits a major life activity .

Identify the physical or mental impairment:

The student has a mental and/or physical impairment in the following area(s): Neurological and Musculoskeletal. [redacted] also has sleep disturbance. He is currently having persistent ocular motor tracking and teaming difficulties .

Identify the major life activity affected by this physical or mental impairment:

This impairment substantially limits the following major life activity(ies): Learning, especially in the area of reading, which adversely affects appropriate participation in academic activities .

Describe how this impairment substantially limits a major life activity:

[redacted] had a traumatic brain injury in December. His visual difficulties and sleep disturbance are significantly and negatively impacting on his academic progress . [redacted] reads very slowly when he is required to read independently. Sleep disturbance, combined with the visual difficulties, cause increased fatigue and also can exacerbate his post-concussion symptoms . [redacted] has severe headaches and this has significantly impacted his ability to complete work in a timely manner and concentrate during classes .

PROGRAM ACCOMMODATIONS, MODIFICATIONS AND SUPPORTS

	DESCRIPTION	FREQUENCY	DURATION	LOCATION	START DATE
SUPPLEMENTARY AIDS AND SERVICES/ PROGRAM MODIFICATIONS/ACCOMMODATIONS:					
Copy of Class Notes	[redacted]	as needed/Daily	Throughout the School Day	School	05/06/2016
Modified Assignments	[redacted]	as needed/Daily	For Home Use	School and Home	05/06/2016

	[redacted]				
Additional Time to Complete Assignments	[redacted]	as needed/Daily	NA	home and school	05/06/2016
Nursing needs	Access to the nurse as needed or whenever [redacted] asks to go.	as needed/Daily	NA	school	05/06/2016
3 minute release from class	[redacted]	as needed/Daily	Throughout the School Day	School	05/06/2016
Modified PE	[redacted]	as needed/Every other day	42 minutes	PE/School	05/06/2016
Breaks as needed	[redacted]	as needed/Daily	Throughout the School Day	classroom	05/06/2016
Assistance with reading tasks	[redacted]	as needed/Daily	NA	Home and School	05/06/2016

	[redacted]				
Access to Computer	[redacted]	as needed/Daily	NA	School and Home	05/06/2016
ASSISTIVE TECHNOLOGY DEVICES AND/OR SERVICES:					
Access to Audio Books	[redacted]	as needed/Daily	NA	Home and School	05/06/2016
Access to Computer	[redacted]	as needed/Daily	NA	Home and School	05/06/2016

TESTING ACCOMMODATIONS

Individual testing accommodations in the administration of district-wide assessments of student achievement and, in accordance with department policy, state assessments of student achievement .

TESTING ACCOMMODATION	CONDITIONS*	IMPLEMENTATION RECOMMENDATIONS**
Extended Time		1.5
Frequent breaks when needed		[redacted]

*Conditions - Test Characteristics: Describe the type, length, purpose of the test upon which the use of testing accommodations is conditioned, if applicable .
**Implementation Recommendations: Identify the amount of extended time, type of setting, etc ., specific to the testing accommodations, if applicable .

SAFETY NET ELIGIBILITY

ROLE OF SCHOOL NURSE

May Include:

- Assisting with identifying students who may need special education or accommodations
- Assisting with analysis of student's functional and physical health status in collaboration with other team members (Committee on Special Education, 504 Committee)
- Developing 504 Plans
- Developing Individual Health Plans (for students that may not be eligible for IEP's or 504 Plans)
- Recommending health-related accommodations or services that are necessary for the student to access the educational programs
- Providing in-house training to administrators, teachers, support staff, etc. regarding individual student's health needs and accommodations
- Implementing the specific services or accommodations afforded to students
- Monitoring progress and reporting to team if accommodations appear to need modification
- Communication with home

ROLE OF SCHOOL NURSE

BEST PRACTICES:

1. When IEP addresses student's health condition and school nurse/health services, be involved in and present at meetings where the IEP is discussed and developed

2. When student being evaluated for 504 eligibility based on physical or health condition, be an essential member of the 504 Committee or team determining eligibility and developing Plan

ROLE OF SCHOOL NURSE

BEST PRACTICES:

3. Fully review all documentation and evaluations available to analyze student's physical or health condition, limitations, and needs

4. Seek additional information (from parent, student's physician(s), other team members, independent research, additional training) when necessary to fully understand student's individual condition and develop appropriate accommodations

ROLE OF SCHOOL NURSE

BEST PRACTICES:

5. Ensure that the specific nursing/health services are specifically and clearly documented in the IEP, Section 504, and/or Individual Health Plan for the student
   - When, how often, in what manner the accommodation or service will be provided
   - Who will provide the accommodation or service
   - Whether medication is to be administered, and if so, how, when, and by whom
   - Whether any procedures/monitoring will be necessary at school
   - What kind of parent contact and/or logs, if any, will be required regarding daily accommodations/services
   - Consider field trips, extra curriculars, physical education, special area instruction
6. Prepare an emergency care plan, if necessary

ROLE OF SCHOOL NURSE

BEST PRACTICES:

7. If not included in IEP or 504 Plan, develop Plan for how accommodations/services will be implemented in events such as assemblies, field trips, and extracurriculars

8. Advise administrators, teachers, support staff, etc. who will be working with student of student's particular health needs and accommodations

ROLE OF SCHOOL NURSE

BEST PRACTICES:

9. Train administrators, teachers, support staff, etc. who will be working with student regarding the student's condition and particular needs and accommodations, as well as emergency protocols

Samples of training memos

CONFIDENTIAL MEMO

To: [redacted]

From: [redacted]

Re:

Date: 09/08/2006

Please attend an important meeting regarding [redacted]. The meeting will be held in my office on **Wednesday, September 13th, 2006 during 4th period.** Mrs. [redacted] and I have some important information to share with you. If you need coverage, please arrange it with Mrs. [redacted]

In the interim, please be aware that [redacted] is a child with diabetes. Please be liberal with allowing her to:

1) visit the nurse
2) use the bathroom or the water fountain
3) go to the main office to call her mother.

If it appears that [redacted] is abusing these privileges, just let me know and I will address the issue with her mother.

Naturally, in case of an emergency or if the child appears weak, please call the nurse at **ext. 1380** and she will come to your classroom.

[redacted]

ROLE OF SCHOOL NURSE

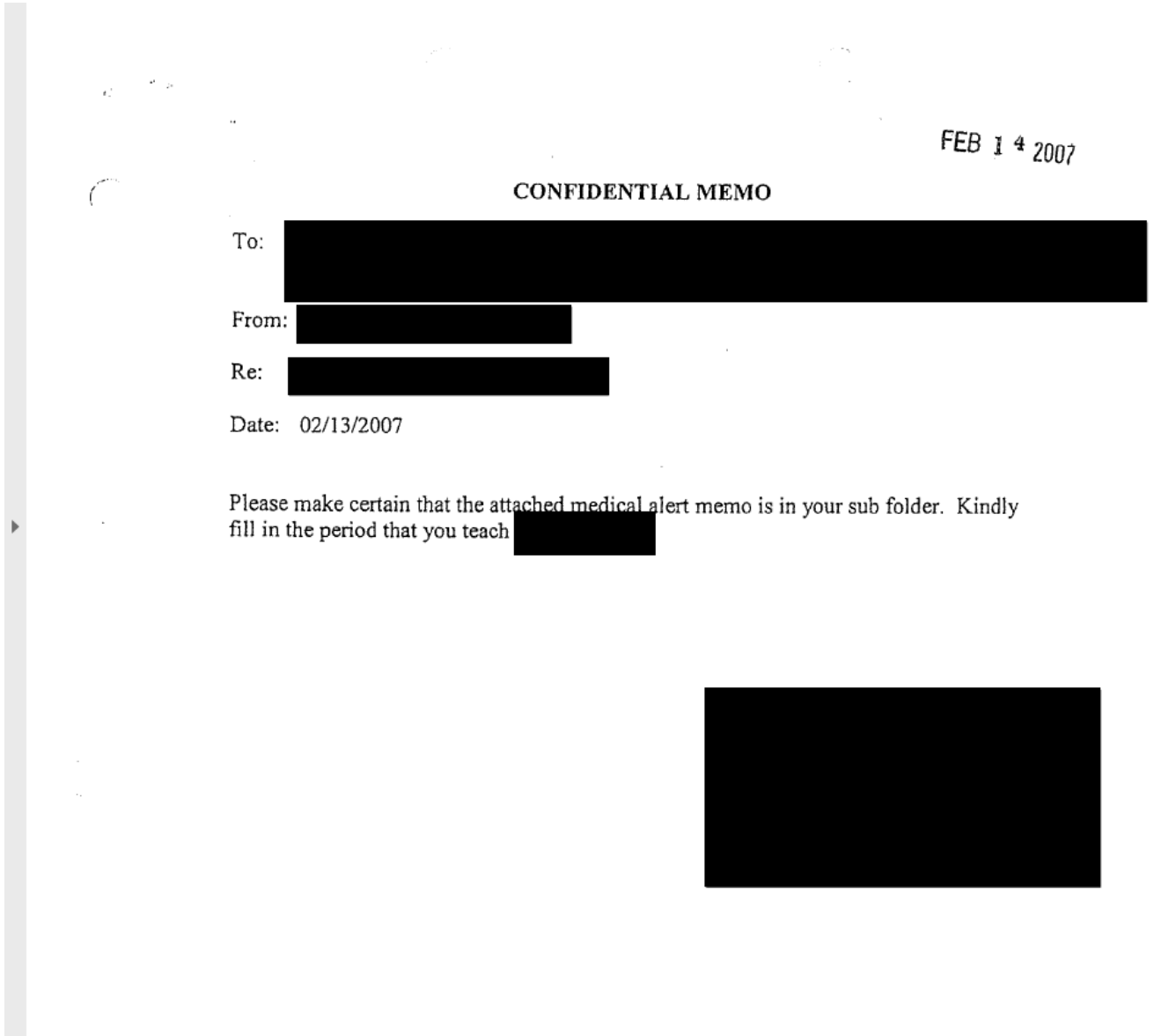
BEST PRACTICES:

10. Implement procedures for notifying substitutes of student's needs and accommodations/services and emergencies plans

11. Establish a "Care Team" for student, when necessary

12. Ensure you have all critical contact information for parents, doctors, etc.

Medical Alert Memo



FEB 14 2007

CONFIDENTIAL MEMO

To: [redacted]

From: [redacted]

Re: [redacted]

Date: 02/13/2007

Please make certain that the attached medical alert memo is in your sub folder. Kindly fill in the period that you teach [redacted]

[redacted]

Samples of notifying substitutes

CONFIDENTIAL MEMO

MEDICAL ALERT

Please be aware that [redacted] is in my _____ period class and she has [redacted] Please be liberal with allowing her to:

1) visit the nurse
2) use the bathroom or the water fountain
3) go to the nurse's office to call her mother.
4) use the contents of her "crash" bag.

Naturally, in the case of an emergency or if the child appears weak, please call the nurse at **ext. 1380** and she will come to your classroom.

ROLE OF SCHOOL NURSE

BEST PRACTICES:

13. With a non-verbal student, significantly cognitively delayed student, and/or student that may not be an accurate reporter, adhere to concussion management protocol in an abundance of caution when there is information to suggest possible injury to head/face
14. When student returning from extended absence due to illness/injury, a significant injury or illness, or surgery, evaluate whether 504 accommodations or IHP is necessary

ROLE OF SCHOOL NURSE

BEST PRACTICES:

15. COMPLY WITH THE PLAN!

16. Document, document, document
    - Log of when student comes to nurse/treatment performed
    - Logs monitoring condition, eg. blood sugar, complaints, mood, etc.
    - Parental contact
    - Training provided to others
    - Incidents that may arise
    - Conversations/meetings with other personnel regarding student and his or her condition and accommodations/services

REAL LIFE EXAMPLES

Gardner v. Uniondale UFSD

- Middle school student with Type I Diabetes had 504 Plan requiring access to bathroom and water fountain upon request and to carry and use contents of her "crash bag" when necessary
- A substitute in the student's class initially refused to let student use bathroom when requested and claimed she had no knowledge student had a medical condition or accommodations
- Plaintiffs also allege that another teacher harassed the student when she found her drinking a soda from her "crash bag" and denied her the right to continue drinking it

REAL LIFE EXAMPLES

Gardner v. Uniondale UFSD, et al.

- Student and her mother sued the District and various school employees alleging such actions violated the IDEA and Section 504 and that the District and employees were negligent and committed assault
- Federal court dismissed the IDEA and Section 504 violations because of the plaintiffs' failure to follow the administrative procedure, but could have been problematic if not dismissed on such grounds (implication for attorney's fees and costs)
- Negligence and other state law claims permitted to proceed - plaintiffs argued that the violation of the 504 Plan on the two occasions amounted to establish negligence, as well as assault and intentional and negligent infliction of emotional distress

REAL LIFE EXAMPLES

Gardner v. Uniondale UFSD, et al – OUTCOME

- Went through discovery process (depositions and document exchange) over several years
- District requested dismissal and argued that the evidence did not prove that the District engaged in wrongdoing or negligence with respect to the student
- The Court denied the motion to dismiss and specifically concluded that there was sufficient evidence that, if believed by a jury, could entitle the plaintiffs to damages on claims that the District did not properly supervise the student and did not properly supervise and train its staff working with her
- District had to settle to avoid the trial and potential for more significant damages award

REAL LIFE EXAMPLES

Gardner v. Uniondale UFSD, et al.

- Things done well by District in Gardner
  - School nurse was proactive in securing information regarding student's condition and needs from physician once learned the student would be entering the school
  - Held 504 meeting with the Committee to review prior 504 Plans and develop new one
  - Included detailed information in 504 Plan about accommodations to be afforded to student
  - School nurse held training session with student's assigned teachers to inform them of unique nature of student's conditions, symptoms to be alert for, and what to do in case of concerning symptoms or emergency
  - School nurse kept detailed log of blood sugar checks and readings, and student's visits to nurse

REAL LIFE EXAMPLES

Gardner v. Uniondale UFSD, et al.

- Things that were problematic
  - Substitutes may not have been sufficiently advised of student's condition and accommodations
  - Unclear if a "Care Team" was actually established despite being included as an accommodation in the 504 Plan
  - Other teachers and personnel that would come into contact with students were not advised of her necessary accommodations, eg. access to "crash bag"
  - Minimal documentation of contact/conversations with parent and incidents that arose
  - Original documents were removed from District after commencement of lawsuit

REAL LIFE EXAMPLES

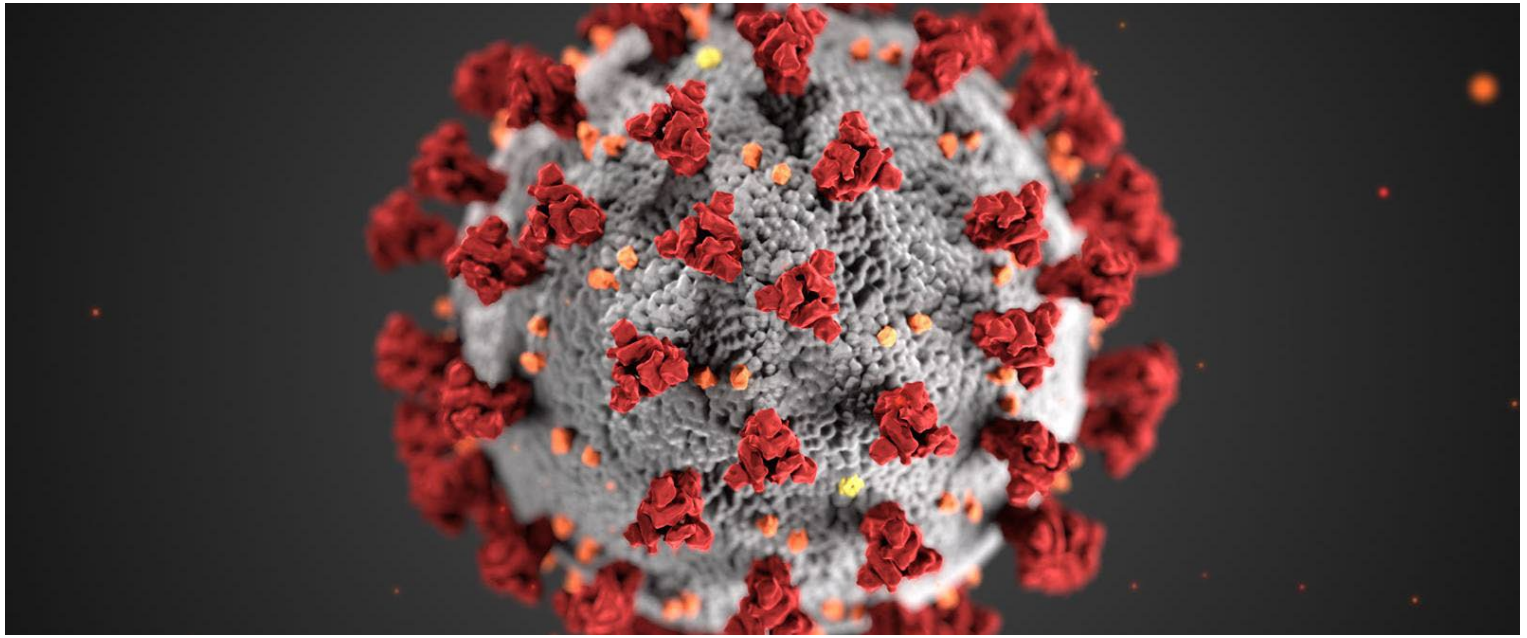
Walker v. Valley Cent. Sch. Dist.

- Student sustained a concussion during practice of the school's modified wrestling team
- Student remained out of school on home instruction for several months following the injury
- Upon return to school, student still reported frequent severe and persistent headaches, issues with ocular motor tracking, and significant sleep disturbance

REAL LIFE EXAMPLES

Walker v. Valley Cent. Sch. Dist.

- Referral was made to 504 Committee
- School nurse was a part of the Committee and participated in development of 504 Plan
- Student found eligible to receive accommodations under 504
- Nursing needs were specifically documented in the 504 Plan – allowed him access to nurse whenever requested



PART II: ROLE OF THE SCHOOL NURSE IN THE COVID-19 ERA

OBJECTIVES TODAY?*

- Describe the role of the school nurse in the COVID-19 era
- Discuss the nursing obligations in the COVID-19 era
- Develop best practices for ensuring compliance with public health guidelines and mandates and protection of students' privacy rights

** *See Disclaimer on page 79* **

CRITICAL PART OF THE TEAM

- **May be called upon for numerous issues and input**

  - Collecting and interpreting daily health screenings and questionnaires
  - Temperature checks and screenings upon entry and throughout the day
  - Questions about symptoms/possible symptoms being exhibited by students and/or employees during the day
  - Monitoring and tracking students who have been out sick to ensure they do not return to school while potentially contagious or without proper clearance
  - Communications with parents and guardians, as well as treating physicians regarding symptoms and removal of children from class
  - Collaborating with school district administrators and officials regarding clusters or outbreaks, recent health advisories and guidance, and best practices for prevention

CRITICAL PART OF THE TEAM

- **May be called upon for numerous issues and input**

  - Attend CSE's and 504 meetings to discuss how students' needs can be met safely and without unreasonable increase in risk of exposure/transmission
  - Assisting with instruction, training, and guidance to students and employees on hygiene and protective measures and equipment
  - Working with local health departments and other government and medical officials
  - Contact tracing

BEST PRACTICES

- Keep up to date on recent developments in medicine and science
- Keep up to date on current statistics and patterns – monitor Center for Disease Control and Prevention announcements and advisories, local updates on numbers in the area, state and county briefings on recent developments and restrictions or mandates
- Ensure full understanding of and compliance with regulations and mandates
- Ensure full knowledge of the school district's own protocols
- Communications with nursing colleagues in other school districts

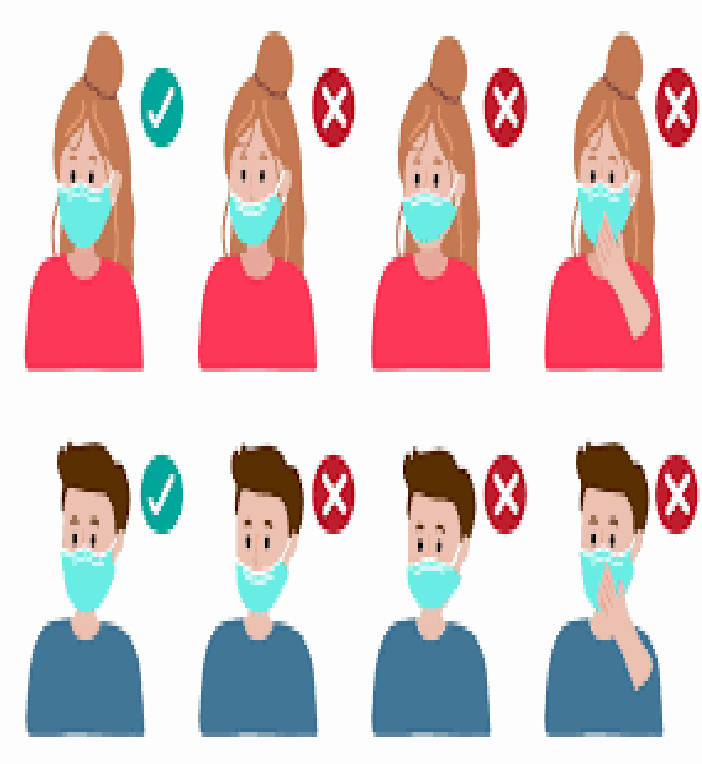
BEST PRACTICES

- Immediately pull any students from classroom if potential symptoms are observed or reported, isolate as much as possible, and monitor and assess for appropriate further action
- Ensure appropriate separation and social distancing between students and staff visiting the health office for various reasons
- Identify and secure, if possible, an isolation room
- Students with disabilities may be a higher risk – be vigilant for symptoms and complications
- Ensure that IEP and 504 Plan health services and school nurse services are met – and if not, advise administration of how they are not being met and why – document

BEST PRACTICES

- Protect yourself – sufficient PPE and hygiene
- Report any violations of safety protocols or risky behaviors
- Advocate if additional PPE or protective measures appear necessary
- Frequent communication with building administration
- Document, document, document!!

STAFF TRAINING CONSIDERATIONS



- Signs and symptoms by students or employees that require immediate isolation and assessment
- Signs, symptoms, and behavior that may require restriction of access to the building
- Appropriate use and maintenance of PPE, as well as location and accessing of school PPE
- Disposal of PPE
- Proper handwashing and sanitizing
- Disinfection of surfaces and classroom materials
- Appropriate distancing
- How to instruct and guide students on PPE, hygiene, and distancing
- Look out for signs of anxiety and mental health concerns in students and refer to appropriate personnel

POTENTIALLY SYMPTOMATIC CHILDREN

- Establish protocol for assessment of students exhibiting potential COVID symptoms
  - How to remove from class, location for assessment, parent contact, screening checklist, notification of staff, documentation, tracing efforts, etc.
- Ensure you are wearing/using sufficient PPE
- Not expected to diagnose or treat
- Protocol for sending home and advising of what is required before return to school (distribute flyer or flow chart with information to assist parents?)
- Coordination with pediatricians and healthcare providers, as well as local health departments and governments
- Planning for potential accommodations upon students' return to school
- Notify administration and wait for directives on necessary further action

NYSDOH COVID-19 In-Person Decision Making Flowchart for Student Attendance

Can My Child Go To School Today?

In the past 10 days, has your child been tested for the virus that causes COVID-19, also known as SARS-CoV-2?

YES

Was the test result positive OR are you still waiting for the result?

YES → Your child **cannot** go to school today.

They must stay in isolation (at home and away from others) until the test results are back and are **negative OR** if **positive**, the local health department has released your child from isolation.

NO

In the last 14 days, has your child:

- Traveled internationally to a CDC level 2 or 3 COVID-19 related travel health notice country; or
- Traveled to a state or territory on the NYS Travel Advisory List; or
- Been designated a contact of a person who tested positive for COVID-19 by a local health department?

YES → Your child **cannot** go to school today.

They must stay at home until your local health department releases your child from quarantine, at least 14 days.

A negative diagnostic COVID-19 test does not change the 14-day quarantine requirement.

NO

Does your child currently have (or has had in the last 10 days) one or more of these new or worsening symptoms?

- A temperature greater than or equal to 100.0° F (37.8° C)
- Feel feverish or have chills
- Cough
- Loss of taste or smell
- Fatigue/feeling of tiredness
- Sore throat
- Shortness of breath or trouble breathing
- Nausea, vomiting, diarrhea
- Muscle pain or body aches
- Headaches
- Nasal congestion/runny nose

YES → Your child **cannot** go to school today.

Your child should be assessed by their pediatric healthcare provider (HCP). Call your child's HCP before going to the office or clinic to tell them about your child's COVID-19 symptoms. If your child does not have a HCP, call your local health department.

NO

Your child CAN go to school today.

Make sure they wear a face covering or face mask, practice social distancing, and wash their hands!

Report absences, symptoms, and positive COVID-19 test results to your child's school.

SEEK IMMEDIATE MEDICAL CARE IF YOUR CHILD HAS:

- Trouble breathing or is breathing very quickly
- Prolonged fever
- Is too sick to drink fluids
- Severe abdominal pain, diarrhea or vomiting
- Change in skin color - becoming pale, patchy and/or blue
- Racing heart or chest pain
- Decreased urine output
- Lethargy, irritability, or confusion

My child has COVID-19 symptoms. When can they go back to school?

HEALTHCARE PROVIDER (HCP) EVALUATION FOR COVID-19 (can be in-person or by video/telephone as determined by HCP)

HCP Recommends COVID-19 Diagnostic Test

STAY OUT OF SCHOOL
and in isolation until test result is back

Positive Test Result

Your local health department will contact you to follow up.

Your child must remain in isolation (at home and away from others) until your local health department has released them from isolation, which is typically:

- 10 days after symptom onset; **AND**
- Child's symptoms are improving; **AND**
- Child is fever-free for at least 72 hours without use of fever reducing medicines.

While your child is in isolation, **all members of the household must quarantine at home until released by the local health department,** typically 14 days.

Note: A repeat negative COVID-19 test is not required for return to school.

Negative Test Result

If your child's symptoms are improving **AND** they are fever-free for at least 24 hours without the use of fever reducing medicines, your child **may return to school** with:

- A note from HCP indicating the test was negative **OR**
- Provide a copy of the negative test result.

OR

HCP Gives Alternate Diagnosis

If your child's HCP provides a diagnosis of a known chronic condition with unchanged symptoms, or a confirmed acute illness (examples: laboratory-confirmed influenza, strep-throat) **AND** COVID-19 is not suspected, then a note signed by their **HCP explaining the alternate diagnosis is required** before your child will be allowed to return to school. They may return to school according to the usual guidelines for that diagnosis.

Note: a signed HCP note documenting unconfirmed acute illnesses, such as viral upper respiratory illness (URI) or viral gastroenteritis, will not suffice.

COVID-19 Diagnostic Test Recommended but Not Done and No Alternate Diagnosis

Child is Not Evaluated by HCP

Your child must remain in isolation at home and is not able to go back to school until your local health department has released them from isolation, which is typically:

- At least 10 days have passed since date of first symptoms; **AND**
- Child's symptoms are improving; **AND**
- Child is fever-free for at least 72 hours without use of fever reducing medicines.

COVID-19 diagnostic testing includes molecular (e.g., PCR) or antigen testing for SARS-CoV-2, the virus that causes COVID-19. Diagnostic testing may be performed with a nasopharyngeal swab, nasal swab, or saliva sample, as ordered by the health care provider and per laboratory specifications. At times, a negative antigen test will need to be followed up with a confirmatory molecular test. Serology (antibody testing) cannot be used to rule in or out acute COVID-19.

CONFIDENTIALITY/PRIVACY

- Maintain student privacy – FERPA and HIPAA protections
  - Do not disclose information to other parents, students, uninvolved personnel

- If information requested for contact tracing, confer with administration and/or school district legal counsel to ensure not in violation of FERPA and/or HIPAA

STUDENT WELFARE

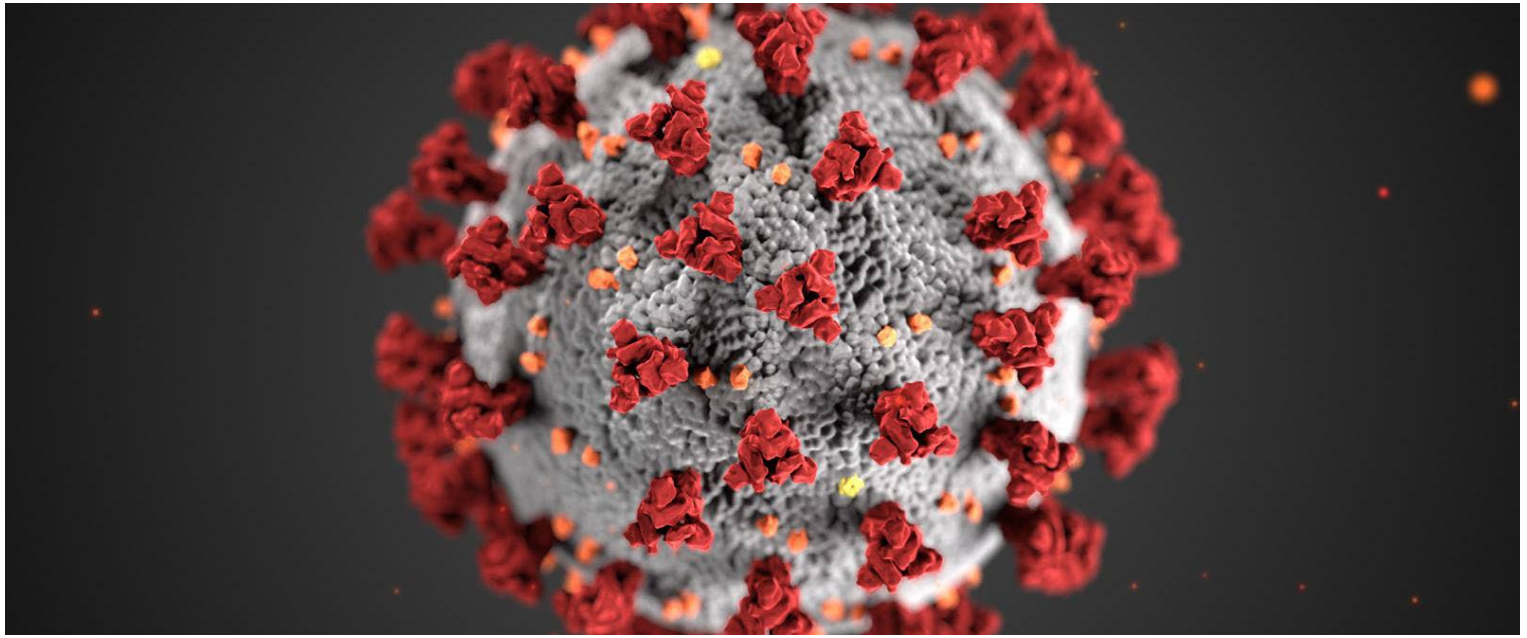
- Be vigilant for signs and indicators of other health concerns and welfare that could be impacted by COVID-19, loss of income, and stress at home
  - Mental health
  - Inadequate nutrition, clothing, etc.
  - Inadequate guardianship or neglect
  - Inadequate medical care and outstanding vaccinations
  - Abuse
  - Social concerns and/or bullying

HELPFUL LINKS AND RESOURCES

- Center for Disease Control and Prevention: https://www.cdc.gov/coronavirus/2019-nCoV/index.html
- National Association of School Nurses: https://www.nasn.org/nasn-resources/practice-topics/covid19
- United States Department of Education: https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf
- Helping Children Cope with Changes Resulting from Covid-19: https://higherlogicdownload.s3.amazonaws.com/NASN/3870c72d-fff9-4ed7-833f-215de278d256/UploadedImages/PDFs/03252020_NASP_NASN_COVID-19_parent_handout.pdf

HELPFUL LINKS AND RESOURCES

- Healthy Schools Campaign: https://healthyschoolscampaign.org/covid-19-resources-for-school-nurses/
- American Federation of Teachers: https://www.aft.org/covid19-hc
- CDC: Get Your Clinic Ready for Coronavirus Disease 2019 (COVID-19)
- Frequently Asked Questions and Answers Regarding the Provision of Services to Students with Disabilities During the 2020-21: http://www.nysed.gov/common/nysed/files/programs/reopening-schools/special-education-faq-2020-21.pdf



PART III: SICK TIME AND EMPLOYEE LEAVE

IF YOU GET SICK/NEED LEAVE

- There are different types of leave and time off if you get sick or must quarantine
- Will depend on why you cannot report to work – sick vs. quarantine vs. childcare
- Will depend on applicable laws and regulations in effect at that time and how those work in conjunction with the sick and leave time provisions of your collective bargaining agreement
- May be excluded from certain paid leave if voluntarily travel to a hotspot or region on quarantine list

OVERVIEW OF POTENTIAL LEAVE: FAMILY AND MEDICAL LEAVE ACT ("FMLA")

- Leave for your own health condition or to care for a family member with a serious health condition
- Certain eligibility requirements – worked for employer for at least 12 months total with no break in service longer than 7 years and worked at least 1,250 hours in the 12 months prior to taking the leave
- Entitles you to 12 weeks of UNPAID leave and to return to same or nearly identical position (with same pay and benefits)
- Some collective bargaining agreements require that FMLA leave run concurrent with sick time – require exhaustion of paid sick days prior to unpaid leave kicking in
- Health insurance benefits continue – may have to make contributions

OVERVIEW OF POTENTIAL LEAVE: FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

- Effective through *December 31, 2020*
- Job protected paid sick leave or expanded FMLA leave for reasons related to COVID-19
- Up to two weeks (80 hrs) of paid sick time at regular rate of pay (or minimum wage – whichever is higher) up to $511/day for certain specific reasons related to COVID 19 (eg. experiencing symptoms and seeking diagnosis and/or under quarantine order or directive from health care provider)
- Or up to weeks of pay at 2/3 regular rate (or 2/3 of minimum wage) up to $200/day because of need to care for individual under quarantine
- Employees employed for at least 30 days eligible for up to additional 10 weeks of leave at 2/3 pay regular rate up to $200/day to care for child whose school or childcare provider is closed or unable due to COVID-19 reasons
- Employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave under this section

OVERVIEW OF POTENTIAL LEAVE: NEW YORK COVID-19 QUARANTINE LEAVE

- New York Paid Sick Leave
  - Allows for job protection
  - For public employer, 14 days paid sick leave if subject to mandatory or precautionary order of quarantine (order must be issued by governmental entity)
  - Not available to employees able to work through remote or other means
  - Cannot be forced to use accrued PTO/sick time prior
  - Available to the extent it exceeds leave and benefits available under the Federal Acts
- Paid Family Leave may also be used to care for family member with COVID-19 or when child under quarantine - Pay is a percentage of your average weekly pay up to a cap – ***but only applies to certain employers (public employer must have opted into NY PFL)***

HELPFUL LINKS AND RESOURCES

- United States Department of Labor: FMLA
  https://www.dol.gov/agencies/whd/fmla

- United States Department of Labor: FFCRA
  https://www.dol.gov/agencies/whd/pandemic

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

- NY Paid Leave for COVID-19

https://paidfamilyleave.ny.gov/COVID19

Questions and Answers

*DISCLAIMER

This program and these materials address a subject with complex legal issues. This program and these materials provide a summary of this subject and do not offer any legal advice. If confronted with a specific issue related to student's IEP, 504 Plan, other health accommodation or need, or COVID-19, please consult with your supervisors and/or seek the advice of an attorney, including your school district/program's legal counsel. Only an attorney can apply the various applicable laws to an individual's specific circumstances. Laws and court rulings are not static and no information provided by this presentation should serve as a substitute for legal counsel. Every effort is made to ensure the accuracy of the information contained in these materials and the presentation.

The information contained herein is provided to illustrate possible items you may wish to review in your particular scenario. Since each individual situation is different, there is no correct or complete list that will be appropriate for all situations. The issues listed herein are matters you should consider as possibly being relevant to your particular situation after carefully weighing the facts and legal issues and after consulting with qualified legal counsel.