



The Unique Role of Medical-Legal Partnerships in Helping Health Centers Address Disability & Chronic Disease Discrimination

Disability and Chronic Disease Discrimination with Kids: Navigating the Health Center's Role in Securing Legal Protections for Pediatric Patients



Opening Remarks

National Center for Medical-Legal Partnership

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National Center for Medical-Legal Partnership

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Katie Hathaway

Moderator
NCMLP Consultant

Katie Hathaway is a consultant for the National Center for Medical-Legal Partnerships and the moderator of this webinar series. Katie has nearly 20 years of experience as a disability rights attorney, and spent 17 years at the American Diabetes Association building and then leading its legal advocacy program seeking to end discrimination against people who live with diabetes.

Today's Presentation Will Cover:

- The legal protections available for children with disability and chronic disease in school, college, childcare programs, and immigration custody and proceedings;
- The role of health centers in supporting pediatric patients (and their families) in these systems;
- The federal government's role in enforcing the civil rights of students with disabilities;
- Disability discrimination & the role of COVID-19 for kids;
- An open Question & Answer period





Legal Protections in Education

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Federal Laws

Americans with Disabilities Act (“ADA”) – prohibits discrimination on the basis of disability by public and private entities including all public and some private schools, many childcare programs, and colleges and universities.

Section 504 of the Rehabilitation Act of 1973 (“Section 504”) – prohibits discrimination on the basis of disability by the federal government, government contractors, programs conducted by federal agencies, and programs receiving federal financial assistance, including public schools.

Individuals with Disabilities Education Act (“IDEA”) – requires states to provide a free appropriate public education to eligible children with disabilities and ensures those children receive special education and related services to help them learn.



The Role of States & State Laws

Administering IDEA:

- IDEA is administered by states and local education agencies with funding from the federal government. Funding is provided through formula grants and discretionary grants.

State laws:

- May require more than federal law, but cannot require less (federal preemption)
- May impact how certain services are provided – for example, how medication is collected, stored, administered, recorded, and supervised; what training is required.



Protections Against Discrimination

K-12 Schools:

- Free Appropriate Public Education (FAPE)
- Evaluation & Written Plans
- Least Restrictive Environment
- Procedural Protections

Daycare/Childcare and College/University:

- Reasonable Modification of Policies





Legal Protections in Immigration Custody and Proceedings

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Katharine Gordon

Capital Area Immigrants' Rights Coalition

Katharine Gordon is a staff attorney with the Detained Adult Program at the Capital Area Immigrants' Rights Coalition, where she serves immigrants with mental health disabilities detained in the DC/MD/VA region. Prior to this, she worked at Al Otro Lado, in Tijuana, coordinating the pro bono response to the previous administration's "Metering" and "Migrant Protection Protocols" policies which prevented asylum seekers from meaningfully exercising their right to request protection under international and federal law. She also worked as a child advocate with unaccompanied minors—including children with developmental and mental health disabilities—detained by the Office of Refugee Resettlement. Before shifting to immigration advocacy, she worked with the American Diabetes Association's national legal advocate program, where she helped people across the country fight discrimination in employment, education, public accommodations, correctional facilities, and interactions with law enforcement. A former Georgetown University Women's Law and Public Policy Fellow, Gordon is a graduate of Bryn Mawr College and the George Washington University Law School.

Overview of Legal Protections of Non-Citizens

- **Anti-Discrimination Statutes and Related Regulations Apply Equally to Non-Citizens**
- **Due Process Protections Are More Limited**
- **The Risk of Retaliation as a Consideration**
- **HRSA Federally Qualified Health Centers Do Not Discriminate Based on Immigration Status**



Unaccompanied Minors in Office of Refugee Resettlement Custody & the Flores Settlement

Where: Shelters operated by the Office of Refugee Resettlement, Health and Human Services

What: *Flores v. Reno* Settlement (1997)

Who:

- Minors with mental health disabilities & forced medication
- Prolonged detention
- Sponsors with disabilities



DACA Requirements and Education

- 1. Have continuously resided in the United States since June 15, 2007**
- 2. Were physically present in the United States on June 15, 2012**
- 3. Are currently in school, have graduated or obtained a certificate of completion from high school, or have obtained a general education development (GED) certificate**



Immigration & COVID-19

- **Title 42:** Policy justified by public health law restricting ability of asylum seekers to enter the United States, which Biden administration seeks to end on May 23, 2022.
- **Fraihat v. Immigration and Customs Enforcement:** provides for custody review of individuals with underlying health conditions and disabilities which put them at risk of COVID-19 or more serious COVID-19 infection.



Key Resources

- Kids in Need of Defense: <https://supportkind.org/>
- Immigration Advocates: <https://www.immigrationadvocates.org/legaldirectory/>
- National Center for Youth Law: <https://youthlaw.org/focus-areas/immigration>
- Physicians for Human Rights: <https://phr.org/>
- Capital Area Immigrants' Rights Coalition: <https://www.caircoalition.org/>





The Role of Health Centers in Supporting Pediatric Patients with Disabilities

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Gina Gavlak, BSN, RN
Neighborhood Family Practice

Gina Gavlak, BSN, RN has thirty years of experience in administration and leadership, program and fund development, advocacy and direct patient care. As a nurse, community leader, individual and mother of a child living with diabetes, she is passionate about improving access to affordable and equitable health care and eliminating health disparities. Since 2019, Gina has served as the Vice President of Business and Fund Development for Neighborhood Family Practice, a community health center located in Cleveland, Ohio. Throughout her career, and as a former chair of the American Diabetes Association's National Advocacy Committee, she has extensive experience in legal, legislative, regulatory, and grassroots advocacy. Gina earned a Bachelor of Science in Nursing from Capital University.

Common Challenges Faced by Our Pediatric Patients

- Undiagnosed or untreated issue affecting learning (e.g., ADHD)
- New diagnosis (or new school) and family and school are struggling to come to agreement on care plan at school (e.g. diabetes, asthma, seizures, depression, anxiety)
- No school nurse available to provide medication or other checks during school day, on field trips, or at extracurricular activities – potentially making participation dangerous
- No masking requirement at school but child is immunocompromised and at high risk of severe outcome from a COVID-19 infection
- Patient transitioning to college without the same school and family supports to manage their condition



Supporting Our Patients: Health Center as Patient Advocate

1. Screen for possible discrimination – listen to your patients and their families. Ask probing questions about how things are going at school/daycare/college.
2. Educate your patients about their rights – you don't need to be a lawyer to share basic information with your patients about their legal rights to aids and services or policy changes!
3. Provide active support by completing medical care plans, school forms, and answering questions from school personnel.
4. Share resources when your patients run into obstacles – a MLP referral or local legal aid; written/online resources provided through this series.



Resources for Health Centers

American Diabetes Association Sample Diabetes Medical Management Plans:

www.diabetes.org/DMMP

Epilepsy Foundation School Seizure Action Plan:

www.epilepsy.com/preparedness-safety/action-plans

Colorado Department of Education

- Asthma Care Plan and Medication Order for School and Child Care Settings:

www.cde.state.co.us/healthandwellness/coloradoasthmacareplan

- Allergy and Anaphylaxis Emergency Care Plan and Medication Orders:

www.cde.state.co.us/healthandwellness/standardanaphylaxisplan2016





The Federal Government's Role Enforcing the Civil Rights of Students with Disabilities

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Sarah Fech-Baughman

U.S. Department of Education
Office for Civil Rights

Sarah Fech-Baughman is an attorney with the U.S. Department of Education's Office for Civil Rights (OCR). Prior to joining OCR, she directed the litigation program at the American Diabetes Association. Fech-Baughman earned her law degree from American University's Washington College of Law and her undergraduate degree from the University of Nebraska-Lincoln.

The Office for Civil Rights (OCR)

Mission: To ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.



Department of Education COVID-19 Resources

Disability Rights & COVID-19 Resource Page: www.ed.gov/coronavirus/factsheets/disability-rights

- Letter to Educators and Parents Regarding New CDC Recommendations and their Impact on Children with Disabilities (March 2022)
- Fact Sheet: Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504 (February 2022)
- Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19 (October 2021)
- Long COVID Under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families (July 2021)



Other Department of Education Resources

Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools

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

Dear Colleague Letter and Resource Guide on Students with ADHD

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>





Panel Discussion: COVID-19 and Other Case Studies

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Case Study 1

Mateo came to the United States from El Salvador as a child. He now attends public school in Colorado, where he has struggled. As part of his education and with the goal of improving his English, Mateo has been placed in an English Language Learner program at his middle school. He is often disciplined for alleged daydreaming and not following classroom instructions. Eventually, Mateo decides to quit school, deciding it's just not for him and he won't ever be able to meet the goals his teachers set for him. Because he quit school, he is no longer eligible for DACA, and as a result, he is picked up by ICE and sent to immigration detention. Without access to legal counsel, Mateo is deported.



Case Study 2

Maria is a third grade student at a public school. Maria has leukemia and has been actively receiving treatment for it for the past year. During that time, she has not been able to attend school in person due to COVID-19 and her increased risk of infection and serious disease. Recently, after finishing a round of treatment, Maria's health care team determined it would be safe for Maria to return to the classroom and learn alongside her peers, a decision that has elated Maria, who desperately misses her friends and school routine. However, this decision was contingent on – and dependent upon a policy that required – universal masking at Maria's school. Upon learning that the school mask mandate has been removed, Maria's parents ask her school to require masking to keep her safe. The school principal says her hands are tied.



Case Study 3

Tamera has just entered her sophomore year of college at a large state university where she is excited to join a sorority and continue the success she had as a freshman starring on her school's soccer team. Two weeks into the fall semester, Tamera is feeling unusually fatigued and thirsty. Although she initially believes this is a result of her grueling soccer schedule, her parents convince her to visit the campus health clinic to get checked out. She is unable to get seen quickly, and, feeling terrible, lets her roommate take her to the local health clinic downtown where she is diagnosed with type 1 diabetes. Back on campus, she meets with her coach to share the news and is told she cannot participate anymore because she might pass out. Frustrated, Tamera tries to manage her diabetes by herself but experiences low blood glucose during an exam and performs poorly. Tamera returns to the health center overwhelmed and depressed by how her first month back at school has gone.



Case Study 4

Josh is a high school student in New York who attended school remotely for parts of two school years due to the pandemic. During that time, he experienced the loss of a grandparent to COVID-19. For the first time, he has developed severe depression. Josh's parents tell his school principal about his depression, but the principal does not refer Josh for any evaluations. Instead, the principal tells Josh's parents that all students are struggling because of the pandemic and remote learning, and says that Josh just needs to "toughen up." When Josh's parents plead with the principal to provide him with help at school, the principal suggests the parents should hire a private tutor and find a psychologist for Josh.



Case Study 5

Alejandro has been detained at an immigration facility since January 2020. During that time, he was infected with COVID-19 twice due to poor health and safety procedures implemented by the private prison company that runs his facility. When he arrived in the U.S. he did not have any chronic health conditions. Since having COVID-19 he has been experiencing symptoms of what is commonly known as Long COVID, though his facility has ignored this. His immigration attorney is trying to secure medical care for Alejandro but, as Alejandro has been detained for more than two years, he does not have a regular healthcare provider who can help advocate for him.





Open Question & Answer

**Please take a
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The New Kid on the Disability Block: COVID-19 and Emerging Issues

May 25, 2022, 2-3:30 PM ET

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