ALLERGENS AND PLACEMENT

Schools frequently receive students with identified peanut or other allergies. The seriously life-threatening case is epidemiologically relatively rare and most students can be accommodated even in a large public school building with reasonable planning and interventions.

But once in a while, a school will receive a student at the far end of seriously life-threatening. What then?

Certainly, a school can – and should – exercise its right to evaluate the student, which would include an independent medical assessment of the degree and significance to the allergy and the complexity of required interventions. But for the moment, assume the medical information is copacetic.

The school will need to consider whether, with the recommended accommodations and interventions, it reasonably can educate the student in the regular public school setting. If the recommendations essentially require a guarantee that no peanuts or part thereof (or other applicable substance) be present, and/or if those recommendations tend toward an insistence of regulating other student behavior, reasonable accommodations may not be possible.

A relatively recent case out of New York, but involving a student suffering from Pica, gives some instruction regarding environmental modifications. *T.L. v. New York City Dept. of Educ.,* 61 IDELR 45 (E.D. N.Y. April 12, 2013).

In that case, the student's condition was "serious" and "severe" particularly when combined with oft-associated conditions of "profound" developmental disabilities and moderate to profound intellectual disability. The court did not make a ruling on the issue about T.L.'s IEP and placement as it remanded the case for further evidence. The court wanted the parties to address "how the proposed public school placement would have provided an educational environment that ensured T.L.'s severe Pica disorder did not interfere with her classroom instruction." Id. at 11.

The evidence (which would include T.L.'s IEP and the school district's explanations), according to the court, was "unacceptably sparse in details about how the public school would provide a supportive educational environment." Id. at 12. Simply identifying a "supportive and structured environment," promising it would not be "too large and over stimulating," and assuring "that there was nothing around," is not enough. Id. at 13.

The court did not question the public school staff's "experience and expertise" and assumed staff were "highly skilled." Id. at 13. But the matter of how the school would educate T.L. (e.g., adjusting classroom instruction, educational techniques, collaboration, communication, etc.) missed the point. The court wanted to know, instead, what the school district proposed to do in order to eliminate and appropriately reduce oral stimuli and make the physical environment safe. "[E]valuating only the educational methods within a given school environment without considering physical features is not sufficient to determine an appropriate placement." Id. at 13.

Whether that school could be made both safe and appropriate for T.L., we do not know. But the case reminds us that environmental conditions sometimes even trump pedagogic interventions. This brings us back to peanuts: can the environment be rendered necessarily so benign that it satisfies medical need, and, if so, can you explain and deliver on a

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promised peanut-neutralizing protocol?

A peanut allergy, we will assume, is a qualifying disabling condition under Section 504 (whether or not the student also needs special education is beside the point for our current purposes). In order to assure non-discrimination (remember: a FAPE and non-discrimination are not coterminous) a public school needs to provide reasonable accommodations in order to permit the student to participate or receive the benefit of or otherwise have the same educational opportunity as nondisabled peers. But a public school is not required to provide accommodations that would fundamentally alter the educational program at issue.

Providing a peanut antiseptic environment in a public school may not be possible. In such case, a reasonable accommodation could be placement in a different school environment.

In addition, to the extent the neutralizing recommendations intrusively regulate other student conduct, the recommendations could be approaching the threshold of a "fundamental alternation" to the public school program, see 22 Pa. Code § 4.11, which after all is for the benefit of all students.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.