Section
504 COMPLIANCE ADVISOR

ROUTE TO

Your Guide to Understanding and Administering Section 504

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IN THIS ISSUE

Investigate before signing off on student self-administering medication

The parents of an eighth grader with diabetes are pushing for their student to be able to self-carry and self-administer his insulin at school.

Although the parents provided a written consent form from the student's physician, the school nurse determined that the student lacked the maturity to handle his blood glucose checking kit independently. The Section 504 team, in discussion with the parents and student, agreed that the student would report to the nurse's station to administer insulin while working toward the independence to self-administer.

When determining whether or not a student can self-administer medication, 504 teams should gather information from a variety of sources, including state statutes, district policies, and physician and school nurse recommendations. Then, teams should meet to seek consensus on whether a student can safely self-administer medication. Read on for the steps a 504 team should take.

State law, district policy

Section 504 requires districts to provide health-related services to students with disabilities. This can include the administration of medication performed during the school day to allow the student to benefit from his education. *See Watkins v. Jordan Sch. Dist.*, 76 IDELR 215 (D. Utah 2020) (The mother of an elementary student could pursue Section 504 and ADA claims that the district denied a request to allow the student to self-administer insulin using syringes she had pre-filled at home.).

State law typically addresses students self-administering and even self-carrying medication at school.

Districts should make sure that their policies match up with state law and ensure teams know what the law requires, said Celynda Brasher, an attorney with Tueth Keeney in St. Louis, Mo. "If the policy isn't in sync with state law, then that's a legal issue just waiting to happen. So, it's always a good thing to review policies and be sure that they match state law," she said.

Provider authorization, parent affidavit

The team should determine if the district has a policy requiring a medical provider to authorize and approve a student self-administering medication at school, Brasher said. Next, it should ensure there is a written medication order on file from the student's physician. The order should include certification that the student has been instructed on how to use the medication responsibly and has demonstrated this to the physician, Brasher said.

(See **MEDICATION** on page 3)

May district let mom decide whether to keep 504 plan another year?

An Arizona district's school psychologist had a practice of contacting the parents of students with existing Section 504 plans at the start of each school year. The psychologist inquired as to whether the parents wanted their children to continue with their plans.

Consistent with that practice, the psychologist contacted the mother of a student with an undisclosed disability and asked whether she wanted to keep the student's plan in place for the new school year.

The psychologist noted: "In person conversation with [Student 1's mother]. She said that [Student 1] no longer needs the accommodations."

Subsequently, a staff member emailed the psychologist, asking for a copy of the plan. The psychologist replied that the student no longer had a 504 plan because the parent didn't want to continue with it.

The parent filed an OCR complaint claiming the district violated Section 504 and Title II of the ADA.

Under Section 504, placement decisions must be made by a group of persons knowledgeable about the student, evaluation data, and placement options.

Did district properly terminate student's 504 plan?

A. Yes. The parent was the person with the most insight into whether the student still needed accommodations.

B. No. The district effectively enabled the parent to unilaterally decide whether the plan should continue.

C. No. The district was only entitled to terminate the plan if the 504 team met and voted to terminate it.

How OCR found: B.

The district violated Section 504 because the psychologist allowed the parent to terminate the student's 504 plan. *Mammoth-San Manuel (AZ) Unified Sch. Dist.*, 83 IDELR 89 (OCR 2023).

OCR pointed out that when determining a student's placement, a district must convene a group of persons knowledgeable about the student, evaluation data, and placement options to determine the student's placement. Additionally, placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented.

The district didn't follow those rules, OCR found. "[T]he School Psychologist allows, and even invites, parents to unilaterally ... eliminate a student's Section 504 plan and any accommodations, modifications, or services contained therein," OCR wrote. OCR observed that the psychologist also sidestepped the law's requirement of considering information from a variety of sources.

OCR found that the district violated Section 504 and Title II by failing to convene the 504 team before terminating the student's plan.

A is incorrect. Even if this was true, Section 504 required the 504 team to convene and make the decision based on information from, not only the parent, but other sources as well, such as teachers' input and observations.

C is incorrect. Section 504 teams must reach decisions through building a consensus. If they cannot build consensus, then the district team must make the final decision and inform the parent of her procedural safeguards.

Editor's note: This feature is not intended as instructional material or to replace legal advice. ■

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MEDICATION (continued from page 1)

Some districts may require parents to sign an affidavit certifying that the student can self-administer the medication, she said.

"What you want is proof that the student has demonstrated his ability to self-administer. All of that is going to be very essential in the medical care documentation and also in the event that there's any sort of need for discipline and response to this," she said.

Observation

Districts should instruct teams to have students demonstrate to the school nurse that they can properly administer their medication, said Annie Hetzel, school health services consultant for student support at the Washington Office of Superintendent of Public Instruction in Olympia.

Having multiple levels of safety checks before making the determination ensures that the student knows how to administer the medication responsibly, independently, and safely, she said.

If the nurse determines that the student still needs assistance administering the medication, the 504 team may decide to have the student go to the nurse's office, Hetzel said. That would be safer until the student is better equipped to self-administer without supervision.

Predictability of condition

Districts also might consider the predictability of the student's condition when determining whether he can self-administer medication, said Hetzel. For example, a student with cystic fibrosis who needs to take enzymes at meals might be fairly independent; she may know when to administer the medication. However, a student with uncontrolled diabetes may be less independent in knowing when to manage his low blood sugar, she said.

"And in addition to assessing how predictable and stable they are, you want to know if they know when to call for help and who to talk to. Make sure they understand who they can go to if they need some assistance and support," Hetzel said.

Student check-ins

If a 504 team decides that the student is capable of self-administering medication at school, include that in the student's individualized health plan. Hetzel said to consider including regular check-ins in the plan to make sure the student is administering the medication without incident.

"When it comes to things like medication for life saving issues, such as EpiPens for life threatening allergies or inhalers for asthma, we recommend that school nurses check that the student actually is carrying it as they say they will," she said. ■

Is it peer 'bullying' or 'harassment'? How and why the difference matters

A second-grader with dyslexia reports that his classmates routinely call him "stupid" and "idiot." A 12-year-old with autism discovers a social media page that classmates use to mock her mannerisms and her eagerness to answer teachers' questions. A teenager with ADHD spends several minutes after every class picking up items that other students dumped out of his backpack.

There's no question that each of these hypothetical situations would qualify as "bullying." However, the district can't necessarily punish the offenders and consider the matter resolved. It also must consider whether the behavior in question amounts to disability-related harassment.

The distinction between "bullying" and "harassment" is more than just a matter of terminology. Section 504 prohibits districts and other recipients of federal funds from discriminating against students on the basis of disability. 34 CFR 104.4(a). A district can violate this prohibition against disability discrimination by ignoring, tolerating, encouraging, or failing to adequately address peer harassment that is serious enough to create a hostile environment. *Dear Colleague Letter*, 55 IDELR 174 (OCR 2010). If a district hopes to comply with Section 504, it must know how to identify disability-based harassment when it occurs and take appropriate remedial measures.

Look for connection to disability

A district needs to be able to recognize harassment to address it effectively. As used in the special education context:

- **Bullying** is aggression by someone who has more real or perceived power than the target. It can involve overt physical behavior or verbal, emotional, or social behaviors, such as excluding a student from social activities, making threats, withdrawing attention, or destroying someone's reputation. Cyberbullying, or bullying by electronic means, can include offensive text messages or emails, rumors or embarrassing photos posted on social networking sites, or fake online profiles. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013).

• **Harassment** is bullying that is based on or motivated by a student's disability. It can include disability-related insults or slurs, imitation or mocking of disability-related traits, interference with the use or operation of mobility aids, and physical aggression. Severe or repeated acts of disability-based peer bullying can create a hostile environment and amount to disability discrimination. *Dear Colleague Letter*, 55 IDELR 174 (OCR 2010).

The best way to distinguish "bullying" from "harassment" is to look for a connection between the offender's conduct and the targeted student's disability. For example, derogatory comments about a student's socio-economic status, fashion choices, or taste in music — all of which are unrelated to the student's disability — would not amount to harassment under Section 504. However, conduct such as mocking a student's verbal tics or playing "keep away" with a student's crutches likely would qualify. *See, e.g., E.M. v. San Benito Consol. Indep. Sch. Dist.*, 74 IDELR 106 (S.D. Tex. 2019) (holding that the parent of a student with multiple disabilities sufficiently alleged disability harassment by claiming that sixth-graders in a PE class called the student names and repeatedly made fun of his physical and speech-related impediments).

Investigate promptly

Districts also need to know how to respond to harassment effectively. Many districts have adopted anti-bullying policies that require them to take certain actions regardless of whether the offender harassed the targeted student on the basis of disability. However, Section 504 requires a district to take additional steps when the behavior in question crosses the line into harassment — even if that behavior is covered by the district's anti-bullying policy.

A district that knows or has reason to know of disability-based harassment must investigate the alleged harassment promptly, thoroughly, and impartially. Depending on state law or district policy, the investigation may be conducted by the Section 504 coordinator, the principal, or some other official. If the investigation reveals that disability-related harassment occurred, the district must take prompt and effective steps to end the harassment. Those steps may include:

• Separating the offender and the targeted student.

• Providing counseling for the targeted student and the offender.

• Taking disciplinary action against the offender.

The district also must take steps to eliminate any hostile environment the harassment caused, prevent the harassment from recurring, and remedy the effects of the harassment (as appropriate). *Dear Colleague Letter*, 55 IDELR 174 (OCR 2010) (Such steps should at least include disciplinary action against the harassers, consultation with the Section 504 and Title II coordinator to ensure a comprehensive and effective response, special training for staff on recognizing and effectively responding to harassment of students with disabilities, and monitoring to ensure that the harassment does not resume.).

Consider impact on FAPE

Regardless of whether an act of bullying qualifies as disability harassment, it could interfere with the targeted student's receipt of FAPE. That's why the district should reconvene the student's 504 team to discuss whether the student's needs have changed as a result. If the student's plan no longer offers a meaningful benefit, the team should consider whether the student needs different or additional services to receive FAPE and revise the student's plan accordingly. ■

Take time to find effective seating alternatives for sensory-seeking students

A student with ADHD who struggles to sit still due to hyperactivity; a student with autism who needs sensory input; a student with an emotional disturbance who needs to move to reduce anxiety — what might all these students have in common?

They all might benefit from alternative seating in the classroom, like a sensory chair or wiggle cushion, to better participate.

When a student with sensory processing issues needs help focusing during class, his Section 504 team may determine that a seating alternative like a wobble cushion or a motion stool could be a solution for him. Teams may have to experiment with several sensory chairs before finding the best option. This means teachers should recognize that sensory chairs are not a quick fix, as some students may require time to find the right seating alternative. See insights from an occupational therapist on alternative seating options.

Determine who might need sensory chair

Different sensory chairs allow students to fidget or move during class without distracting their peers. These sensory-seeking students can get the input

they're seeking while still participating in class, said Molly Wagner, occupational therapist for Hazelwood School District in St. Louis, Mo.

The type of alternative seating a student benefits from will vary depending on the student's disability and needs. Students with ADHD and autism and those who need sensory input or self-regulation could benefit from a motion stool or wiggle cushion.

"A lot of typically developing kids, too, can benefit from those, but any student with sensory processing issues can benefit from those alternative seating methods," Wagner said.

When conducting classroom observations, OTs like Wagner must differentiate between whether or not a student would benefit from a motion stool or sensory chair.

Students who have a hard time staying in their seats or their own spaces, answer questions impulsively, or seek out movement or sensory input may benefit from sensory chairs, Wagner said.

"Lack of body awareness and knowing where their body is in space are some signs that I look for to see if we should try one of these alternative seating methods," she said.

Wagner said some younger students might move around in class regardless, but if they're figuring out what they need in a safe, undistracted way where they are still engaged in class, alternative seating may not be necessary. However, if a student isn't engaging or is having a hard time being safe or participating, then alternative seating is something to try.

Educate teachers on sensory chairs

Remind teachers that sensory chairs are not a quick fix for a student. Wiggle cushions and stools are not designed to stop a student from moving but to give them the input they're seeking in a way that allows them to participate in class, Wagner said.

"I think a lot of times people just expect student's behavior to change instantly, and we're not trying to change the student, we're just trying to give them what they need," she said.

Often, providing a sensory-seeking student with alternative seating is a trial-and-error process. Wagner said it takes time for students to get used to the wobbly cushion or T-stool. Younger students might even view the new seat as a toy, but with some redirection and praise when using the chair correctly, students can learn to use it appropriately and often have better outcomes, she said.

"It's a lot of educating teachers and reminding them that it's not a clear-cut fix. It's something that has to be trialed for a while to see if it's going to help or not," Wagner said.

Pivot when chair isn't working for student

Districts might have a variety of sensory chairs for students to try if the first option doesn't work. As an OT, Wagner looks to see if a sensory-seeking student participates and is more engaged in class when using a sensory chair. If a student using a sensory chair stays seated more often but is not engaged in class, the chair may not be what the student needs.

"That's our goal: to increase their participation and success in the classroom. That's what we look for — if they're participating, answering more questions, and being more engaged," Wagner said.

Remember that not all sensory chairs will work for all sensory-seeking students. For example, if a student has poor coordination, core strength issues, or low muscle tone, some sensory stools, like a T-stool, which require more balance, may be difficult for the student to use and stay engaged.

"You have to think about underlying factors besides just sensory processing when it comes to that," she said. ■

See tips on who to inform, how to handle when 504 student has severe allergy

When a student has a severe allergy, districts should be mindful about who gets what information and when. Relevant staff, parents, and other students in the classroom may interact with the student who has the allergy and need to be informed to varying degrees.

To be eligible for services under Section 504, a student must have a physical or mental impairment that substantially limits a major life activity, such as breathing, respiratory function, or learning. Section 504 coordinators should consider whether banning an allergen, such as a type of food in the cafeteria, is an appropriate accommodation. Staff members should be informed of a student's allergy and trained on how to respond. The consequence of not notifying relevant staff of a student's allergy could result in a student having an allergic reaction and the parents filing a complaint against the school. Read on for insights from a 504 coordinator on handling a student with a severe allergy.

Notify relevant staff, train them accordingly. 504 teams should notify relevant school staff when a student has a severe allergy and an individualized health plan to address that allergy. This could include the student's teacher, paraprofessionals, media specialists, cafeterias, substitutes, and others.

"We notify relevant school staff, and that would be anyone who is responsible for supervising that student. If it's a severe allergy, there would be an IHP written, and the staff would have a copy of that," said Latriva Varnum, Section 504 Coordinator for Bay District (Fla.) Schools.

The IHP would include what the child is allergic to, the signs to look out for during an allergic reaction, and how to respond. Varnum said that relevant school staff would need to be trained depending on their role in interacting with the student.

School nurses would translate information from the student's physician on the best practices for keeping that student from being exposed to an allergen while in an academic setting. Districts should make every effort to inform and train staff about a student's allergy.

Consider when parent requests notification, get waiver. When parents of a student with a severe allergy request that other parents in the class be notified of the allergy, districts should consider the request and address parent concerns.

When a parent requests to notify other parents of a student's allergy, the district will need to have the parents requesting the notification sign a waiver to legally release information about their child.

The notification might include the student's name, the student's allergy, and the situation surrounding the student's allergy. Districts should address parents' concerns about their child's allergy and consider requests on a case-by-case basis.

"Some parents may want other parents to know so that they voluntarily [won't] send the allergen in. As a district, we can't require that parents not send a peanut butter and jelly sandwich for their student because another student has an allergy," Varnum said.

Mitigate allergens through accommodations before banning them. When a student has a severe allergy, districts should mitigate the allergen in the environment, not promise an allergen-free environment.

This can occur through accommodations in a student's 504 plan. For example, a team may implement an accommodation for a student with a severe allergy in elementary school that all students wash their hands after coming in contact or potentially coming in contact with an allergen. For a student with a peanut allergy, there may be a designated nut-free table in the cafeteria. The teacher in this situation might be tasked with determining who has a nut-free lunch to ensure that the student with the allergy does not sit alone and feel singled out.

Districts have an obligation to ensure that school environments are as safe for students with disabilities as they are for other students. The 504 team should meet to determine what accommodations a student with an allergy would need at school. *See Virginia Beach (VA) City Pub. Schs.*, 59 IDELR 54 (OCR 2012).

"We can try to do the best that we can do, but there is no way to ensure or guarantee an allergy-free environment. We're going to try to mitigate in the best way that we can based on what the nurse's guidance is and that particular student's allergy," she said. ■

Uncover potential 504 eligibility for students with obesity-related impairments

A middle school student gained a considerable amount of weight during summer break. He's having trouble walking without getting winded, focusing in class, and interacting with peers. The teacher mentions these concerns to the student's mother, who in turn shares that over the summer, the student began taking a new medication for an underactive thyroid. The student's weight gain and limitations in class signaled to the teacher that the student may need a referral for a Section 504 plan.

A student is eligible under Section 504 when a physical or mental impairment substantially limits one or more of the student's major life activities. ADA Title II regulations define major life activities to include tasks such as caring for oneself, performing manual tasks, walking, standing, sitting, and lifting and the operation of major bodily functions. 28 CFR 35.108(c)(1)(i)(ii).

Obesity may be considered a disability under Section 504 when it substantially limits a major life activity or is perceived by others as doing so. *OCR Memorandum*, 307 IDELR 17 (OCR 1989). A special education law professor and former school administrator shares insights for districts to consider for evaluations, accommodations, and bullying of students based on their weight.

Hinge eligibility on evaluation

When faced with a student who may be in need of accommodations due to weight, districts should

ensure that evaluations are comprehensive. They need to cover all areas that could be affecting major life activities, said Michelle Powers, a special education law professor at Augustana University in Sioux Falls, S.D.

"Any health issue could potentially qualify an individual for a plan of accommodation under Section 504, and obesity certainly would be an area that could qualify someone in that area, but everything is going to hinge on evaluation," she said.

Consider the student's physical limitations related to weight. Determine whether students have an underlying health condition like Prader-Willi syndrome, Cushing syndrome, or thyroid disease, said Powers. In addition to gathering health and medical information, conduct a gross motor assessment, a fine motor assessment, and even a sensory assessment, she said. Students taking certain medications could also have a side effect of weight gain. Additionally, individuals who are eligible for a 504 plan due to being overweight or obese may also already have mental health issues, Powers said.

"Any of those sorts of things would help to establish whether or not the individual is being impacted in one of their life areas," Powers said.

Think inclusively about 504

When determining access for students with limitations attributed to weight, remember the wide net Section 504 casts, Powers said. Consider the parameters of what is going on with individual students and how their health impairments are disrupting their access at school.

"People need to think more inclusively about all that Section 504 covers. When someone's obesity is impacting their ability to access their educational program, first determine whether or not that student is eligible for a plan of accommodation," Powers said.

When it comes to providing access to students who are obese, teams may consider a variety of accommodations. Students may need more time to move from class to class, Powers said. In class, students may need larger desks or need to use tables and chairs. Sitting in class may cause back pain, or the student may need to use the school elevator. Depending on the student's age, considerations for physical education may be required. Although some accommodations may be fulfilled informally, they may also be a signal to teams to determine eligibility for a student.

"As a former director, we had students where it wasn't just a singular issue of what they needed accommodations for. There were other things that we were doing in support of a student that had a need because they were impacted by a disability," she said.

Watch out for stigma

Section 504 and Title II require districts to take prompt and effective action when disability-based harassment and bullying occur. Districts have to determine what occurred and attempt to eliminate the hostile environment. *Dear Colleague Letter*, 55 IDELR 174 (OCR 2010). It's no secret that students are sometimes bullied at school because of their weight.

"If a student is obese, and they are on a Section 504 plan, and you discover that they're in a hostile situation, you have to take action, you have to eliminate that hostile situation, try to stop it from reoccurring," said Powers. ■

Adapt to evolving needs, devices of deaf, hard of hearing students

Successful Section 504 teams know that the needs of students with hearing loss or deafness can be as unique as their thumbprints. They should also consider the personal choice that students make to wear or not wear hearing aids and that students' needs for accommodations to access education can change over time. See some insights from a district team that works to provide access to all students with hearing impairments.

Personal choice in devices

The different levels of auditory access that a student needs will translate to which services and interventions are on the student's 504 plan, said Sue Alex, manager of exceptional student education programs for the School District of Palm Beach County, Fla. Some students may wear different types of personal amplification devices, and "others function as deaf and use sign language interpreters," she said.

"It is so individualized because no two hearing losses are the same, and there's not only the auditory access piece, but some personal choice in it as well," Alex said.

These personal amplification devices can include hearing aids, cochlear implants, and bone-anchored hearing aids. Their use will depend on the student's unique levels of hearing loss, said Diane Gillan, audiologist for the School District of Palm Beach County, Fla.

Cochlear implants would likely be worn by students who are deaf or who have profound hearing loss, Gillian said. The device is surgically implanted

and stimulates the auditory nerve. Hearing aids are amplification devices set to an individual's specific hearing loss and worn on the ear. A bone-anchored hearing system, similar to both devices, delivers vibrations directly to the inner ear. This device can be surgically implanted or worn on a stretchy headband, said Gillan.

Necessity of accommodations

While a student who is deaf or hard of hearing may be eligible for services under Section 504, they may not currently require accommodations to access their education, said Kim Doyle, section 504 coordinator for the School District of Palm Beach County, Fla.

"It really depends on students' needs and is extremely individualized. We have lots of kids with hearing aids who get accommodations, but we have some students with hearing aids who don't need any accommodations," said Doyle.

Even if a deaf or hard of hearing student does not require accommodations, they would still receive protection from discrimination under Section 504, she said. *See Dear Colleague Letter*, 58 IDELR 79 (OCR 2012). Forcing a student who is deaf or hard of hearing to use an accommodation when he doesn't need it could also be considered discriminatory, she said. This could look like forcing a student who wears a cochlear implant to always sit near the point of instruction or utilize closed captioning when he doesn't need to, she said.

Changes over time

Students who are deaf or hard of hearing may experience changes with their disability as they grow up. From preschool to elementary, middle, and high school, students with hearing loss go through different developmental stages, Gillan said.

"What you're doing for a child in the elementary year, you may have to readjust as they grow and get older, and the challenges will be different," she said.

It's helpful to have multiple professionals working with students to recognize what they need to access their education, including audiologists, speech pathologists, and teachers of the deaf. For example, although students in elementary school may wear their hearing aids with no issue, as they enter middle school, they're more likely to reject them, she said.

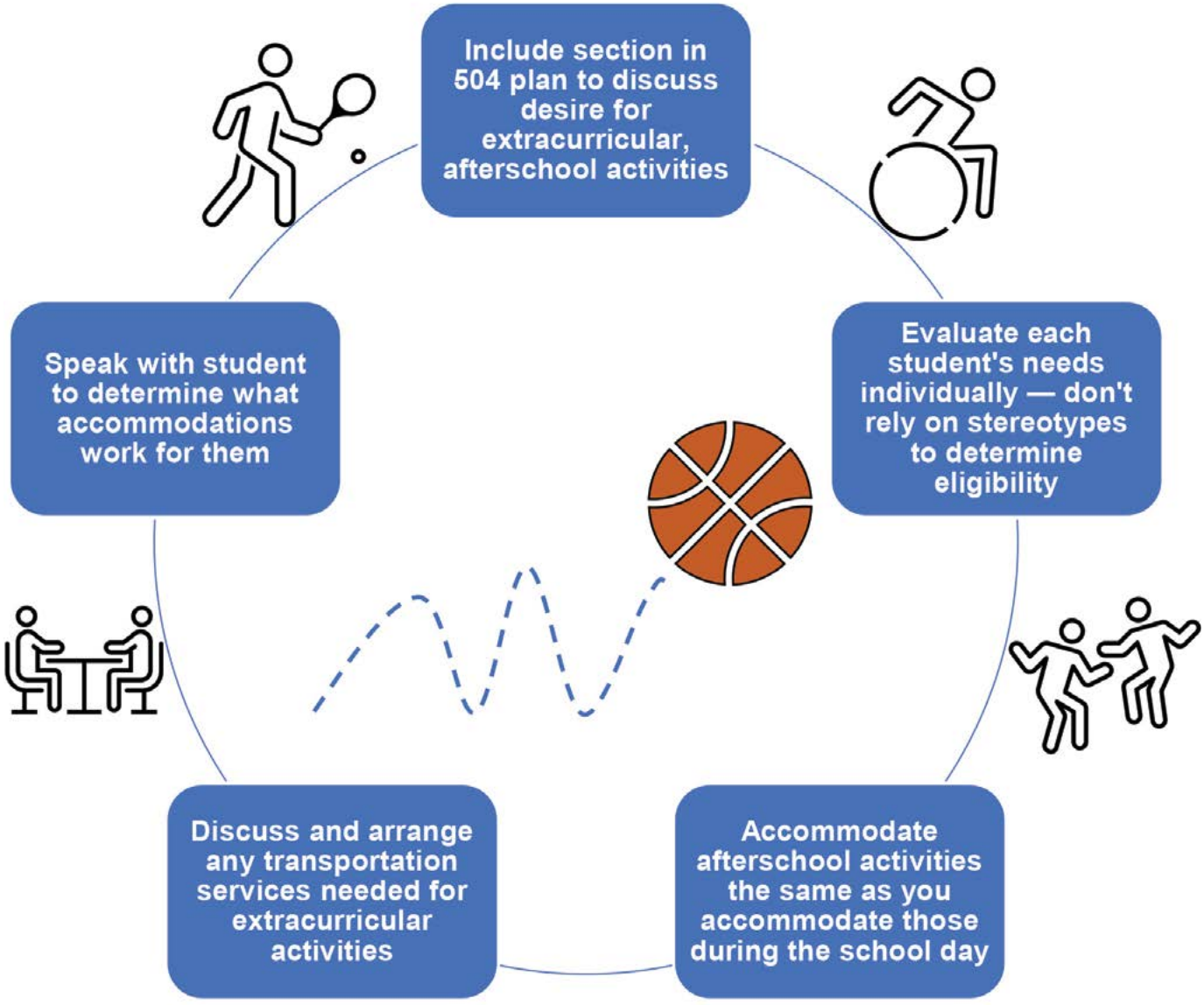
As changes occur for students who are deaf or hard of hearing, the 504 team may reconvene to determine if an accommodation is needed, Doyle said.

Accommodations that these students could benefit from include interpreter services, closed captioning services, and Communication Access Realtime Translation, which is a remote, professional captioning service, she said. These are all accommodations that could be added to a student's 504 plan if the team decides that they're necessary, she said.

"We are meeting at least annually to review what's going on with these students to make sure that if something has changed, then the 504 team can be responsive to the student's needs," Doyle said. ■

Don’t drop ball on equal access to afterschool activities for 504 students

Students with disabilities who have Section 504 plans may want to participate in afterschool activities but may not know that they have access to them. To level the playing field, districts can implement accommodations that allow students to fully participate in extracurricular activities just like their nondisabled peers. Refer to this one-pager on ensuring equal access to extracurricular and afterschool activities. ■



Miss. elementary school playgrounds need new paths, routes, ground cover

Case name: *Simpson County (MS) Sch. Dist.*, 123 LRP 17099 (OCR 03/02/23).

Ruling: In light of a Mississippi district's acknowledgement of playground accessibility concerns and the commitments it made, the Office for Civil Rights found complaint allegations resolved and closed its investigation. OCR will monitor the district's implementation of the agreement to make necessary modifications to ensure they're implemented timely and effectively.

What it means: Because public school districts must ensure that their buildings, facilities, and equipment are physically accessible to individuals with disabilities, they should consult with appropriate professionals knowledgeable about accessible playground settings to assist it in complying with the 2010 ADA standards. Here, had the district consulted with accessibility professionals before constructing its playground, pathways, and campus, it might have avoided discrimination claims necessitating modifications and reconstruction.

Summary: The play areas at two Ohio elementary schools were not accessible to or usable by children with mobility impairments. OCR received a complaint alleging the district discriminates because the playgrounds at two elementary schools are inaccessible to or unusable by persons with disabilities. The complainant asserted there is no accessible path to the play areas or between the individual components in those areas, the ground surface is not accessible, and none of the individual play components is accessible. ADA Title II and Section 504 prohibit districts from denying the benefits of, excluding from participation in, or otherwise subjecting to discrimination individuals with disabilities, OCR explained. The district acknowledged the concerns, and photographs of the playgrounds illustrated the concerns, OCR noted. It observed that neither playground included an accessible path leading to the area, and there is no accessible route to accessible play structures within either playground. Accordingly, OCR expressed concerns that the playgrounds are physically inaccessible to people with disabilities. The district expressed an interest in resolving the issue and agreed to complete a self-evaluation of the playground facilities and develop a written plan identifying modifications necessary to ensure accessibility to persons with mobility impairments. The plan will include a timetable for completion of modifications, to provide an accessible route from the school to the playgrounds, as well as accessible routes that connect and surround accessible activities within the settings. It will also address ground surfaces and maneuvering spaces within play areas that are stable, firm, and slip-resistant. Finally, it committed to ensure that a range of different types of play activities are accessible to children with mobility impairments. ■

More than 400 N.M. students due comp ed because of bus driver shortage

Case name: *Albuquerque (NM) Pub. Schs.*, 123 LRP 17105 (OCR 03/21/23).

Ruling: The Office for Civil Rights identified systemic discrimination in violation of ADA Title II and Section 504 when a New Mexico district failed to provide required transportation services to students with disabilities because of a bus driver shortage. The district must determine whether impacted students are entitled compensatory or remedial services due to the loss of FAPE.

What it means: Despite a district's best-laid plans, if it fails to implement services required under a student's IEP or 504 plan, it likely denies the student FAPE and discriminates. This district did all the right things to pre-plan for students' transportation needs during the school year, but it couldn't overcome a bus driver shortage. While it created a task force, tracked students' transportation needs, ramped up recruiting efforts, and collaborated with parents and staff to provide transportation, it missed the important step of convening a team meeting for each student

504 quick quiz

Q: *How often must districts provide 'nondiscrimination on basis of disability' notice to parents?*

A: There is no exact answer to this question. Neither Section 504 nor Title II requires districts to distribute notices at a particular time or interval. However, because OCR has determined that the notice requirement applies to all publications made available to participants, beneficiaries, applicants, and employees, districts should regularly and routinely ensure that all bulletins and publications made available to the public include a notice of nondiscrimination.

According to 34 CFR 104.8(a), districts must take "appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing" so that the district does not discriminate on the basis of disability. Initial and continuing notification methods may include the posting of notices, publication in newspapers and magazines, the placement of notices in districts' publications, and the distribution of memoranda or other written communications. Under 34 CFR 104.8(b), if a district publishes or uses recruitment material or publications containing general information, it must make it available to participants, beneficiaries, applicants, or employees and include a nondiscrimination policy statement in those materials or publications.

to determine whether they were denied FAPE and due compensatory services.

Summary: A New Mexico district denied FAPE to students with disabilities when it failed to provide transportation services required under their IEPs and 504 plans as a result of a bus driver shortage. Despite the district's efforts to pre-plan to identify students who would need transportation services during the school year, it encountered a shortage of 28 school bus drivers at the start of the year. That impacted its ability to provide bus services and required it to provide compensatory services. OCR investigated systemic issues raised by a complaint alleging the district failed to provide required transportation services to a student with an undisclosed disability. ADA Title II and Section 504 require districts to provide FAPE to students with disabilities by way of special education services designed to meet their individual needs as adequately as the needs of students without disabilities are met, OCR explained. Developing and implementing an IEP or 504 plan, and all of its requirements, is one means of meeting that requirement. OCR found that the district denied students FAPE by modifying their IEPs and 504 plans, shortening their school days to accommodate the driver shortage, and causing them to miss school and services. OCR noted the district's efforts to overcome the driver shortage by expanding its recruiting efforts, establishing a task force, re-routing bus schedules, purchasing vehicles to drive students, and training staff drivers. However, it didn't convene an IEP or 504 team for each student to discuss whether the student was denied FAPE as a result of the transportation issues and, if so, develop a plan to provide compensatory services, OCR pointed out. Moreover, compensatory services offered to 428 students appeared intended to mitigate the loss of ongoing instruction rather than compensate for a loss of FAPE. Finally, OCR identified 282 students who missed school, students who were provided remote instruction, and other students with disabilities who relied on district transportation and may have been impacted. ■

Unreasonable delay to evaluate student costs Va. district

Case name: *Loudoun County (VA) Pub. Schs.*, 123 LRP 17127 (OCR 03/17/23).

Ruling: Pursuant to the Office for Civil Rights' rapid resolution process, a Virginia district resolved allegations that it failed to timely evaluate a student under ADA Title II and Section 504 for special education services. It agreed to determine whether the student was due compensatory services for the delay and to issue a memorandum to staff about the obligation to timely evaluate students under Section 504.

What it means: Check state law for a timeline for initial eligibility evaluations since the ADA and Section 504 only require that they not be unreasonably delayed. When a district receives repeated requests from a parent to evaluate, along with additional updated medical reports, as this district did, it's probably a good idea to go ahead and initiate the evaluation process rather than risk a child find violation. This district should have acceded to the parent's wishes and evaluated during the semester because Virginia imposes a 65-day deadline. Not doing so made the district's delay unreasonable and untimely.

Summary: A Virginia district may owe compensatory services to a student with an undisclosed disability because it didn't timely evaluate her despite her parent's repeated requests. The student transferred from another district with a 504 plan. The district held a 504 team meeting and determined that her previous accommodations were appropriate. After the parent shared a diagnosis, the team re-convened and determined that the student's accommodations continued to be appropriate. The parent shared additional medical reports and requested additional accommodations and an evaluation. The team conducted a classroom observation and determined the student remained eligible, but she was not eligible under a different disability category. The parent provided additional information and continued to request a meeting to discuss eligibility. The team finally met, considered new information, and found the student eligible with a new disability, requiring additional accommodations. The parent contacted OCR. OCR explained that ADA Title II and Section 504 require districts to evaluate any student who needs, or is believed to need, special education due to a disability. The regulations don't impose a specific time frame for completing an evaluation; however, an unreasonable delay may result in discrimination because it may deny the student meaningful access to educational opportunities provided to students without disabilities, it added. Virginia generally requires that evaluations and eligibility decisions be completed within 65 business days of a referral. OCR expressed concerns regarding the timeliness of the district's evaluation during the first semester. It noted that, to the extent the parent disagreed with the team's determination, it generally doesn't review or second-guess the result of individual evaluation, placement, and educational decisions as long as the district adheres to procedural requirements. The district agreed to resolve OCR's concerns by determining whether the student required compensatory services for any missed services during the semester. It also agreed to issue a memorandum regarding the obligation to evaluate students for special education without unreasonable delay. ■

Texts, calls highlight school's efforts to reschedule snowed-out 504 meeting

Case name: *Claibome County (TN) Sch. Dist.*, 123 LRP 21998 (OCR 07/15/21).

Ruling: A Tennessee district didn't violate the IDEA by allegedly failing to schedule a timely Section 504 meeting for a student with an unidentified health impairment. Noting that the district worked with the parent to arrange a mutually agreeable date for the meeting, OCR rejected the parent's allegations that the district violated Section 504 and Title II of the ADA. In a highly redacted Letter of Findings, OCR also found that the district didn't deny the student FAPE by refusing to require all the student's classmates to wear masks during the COVID-19 pandemic.

What it means: A district must work with a parent to schedule a 504 meeting within a reasonable period of time after the parent requests a meeting. To demonstrate it met that standard, a district should document its communications with the parent about arranging a meeting date and location. Here, the district communicated with the parents through texts and phone calls about rescheduling a meeting due to bad weather. Not all the communications were documented. While no violation was found, the district would have been on firmer ground had it kept a log of its communications with the parents, including the phone calls.

Summary: A Tennessee district's description of its efforts to work with a parent to reschedule a 504 meeting hampered by snow, staff unavailability, and holiday breaks, helped demonstrate that the district complied with Section 504 and Title II of the ADA. While acknowledging that not all the communications were documented, OCR found insufficient evidence that the district failed to schedule a timely meeting. The parent filed an OCR complaint alleging that the district discriminated against her son by failing to timely schedule a 504 meeting after she requested one. A district must convene a Section 504 meeting within a reasonable period of time after a parent requests one. OCR pointed out that after the parent's request, the district made multiple attempts to schedule it. OCR noted that the parent and district communicated about the meeting date by text and phone and that "not all of the correspondence has a written record." The district initially rescheduled the meeting due to a snowstorm, OCR observed, but then, it rescheduled again for a few days later. Further, the district attempted to reach the parent and her husband by phone concerning the rescheduled meeting, but neither answered, OCR stated. OCR noted that the district ultimately spoke to the parent about amending the plan and held another meeting to address the parent's concerns about the plan. "Throughout this time, the evidence reflects that the school system maintained regular communications with the [parent] and ultimately scheduled the Section 504 meeting ... in order to accommodate the holiday break, weather delays and staff availability," OCR wrote. ■

Mom's failure to point to protected activity defeats retaliation claim

Case name: *District of Columbia (DC) Pub. Schs.*, 123 LRP 22016 (OCR 07/13/21).

Ruling: The parent of a student with unidentified medical conditions failed to establish that the District of Columbia retaliated against her son because she advocated on the student's behalf. Noting that the parent didn't engage in protected activity under Section 504 and Title II of the ADA, OCR found insufficient evidence of retaliation.

What it means: When defending itself against a disability-based retaliation claim, a district can argue that the activity the parent engaged in was not protected activity under Section 504 or Title II. Sometimes, as in this case, the parent's own description of the activity can demonstrate that it wasn't protected. Here, the parent told OCR that when she complained about how the district responded to a substitute's interaction with her son, she didn't think the conduct related to the student's disability. This allowed the district to show that her complaint to the district wasn't protected activity.

Summary: A parent's acknowledgement that an interaction between her son and a substitute teacher had nothing to do with the student's medical conditions was fatal to her retaliation claim. OCR closed the complaint, concluding that the parent failed to establish that she engaged in activity protected under Section 504. The parent contended in an OCR complaint that the District of Columbia retaliated in violation of Section 504 and Title II of the ADA in response to her requests for a 504 evaluation. OCR explained that for a parent to establish retaliation, she must first demonstrate that she engaged in protected activity and that the district took adverse action against her or her child because of the protected activity. A parent engages in protected activity, OCR explained, if she files a complaint or asserts a right under a law enforced by OCR. The parent must also show that the district engaged in the adverse action because of the parent's protected activity. In this case, OCR observed, the student's mother complained to the school chancellor about an incident involving the student and a substitute teacher. OCR pointed out that the parent told OCR that the incident did not involve disability discrimination. "As such, OCR determined that the Complainant's communication with the Chancellor ... was not a protected activity under Section 504," OCR wrote. OCR also found no evidence that the parent asked for an evaluation prior to any of the district's purported adverse actions of falsifying behavior reports, giving the student a failing grade, accusing the student of bullying, or suspending the student. Therefore, the parent could not establish that the district engaged the alleged actions in response to her protected activity. ■