

# Section 504 COMPLIANCE ADVISOR

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Your Guide to Understanding and Administering Section 504

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## What's on the menu? Serve up sensory diets to meet students' needs

If a parent brings up a sensory diet as part of their student's IEP, don't respond that the cafeteria doesn't serve that.

A sensory diet is an individual occupational therapy intervention strategy designed to alleviate a student's inattentive or disorganized behavior, including their need to move or access other input during group or instructional activities. It consists of a carefully planned program of specific sensory-motor activities scheduled to a student's individual needs, said Tracy Stackhouse, co-founder and executive director of Developmental FX in Denver, Colo. Developmental FX is a nonprofit organization that provides clinical services to families with Fragile X syndrome and other neurodevelopmental disorders.

While there's no specific rule on how much detail a student's IEP must include about sensory input or regulation, a district must ensure that the IEP identifies various sensory issues and offers strategies to manage them, said Stackhouse. If an IEP fails to provide the sensory supports that a student needs, it may violate the IDEA. *See D.L. v. St. Louis City Sch. Dist.*, 76 IDELR 31 (8th Cir. 2020) (holding that a Missouri district violated the IDEA by failing to provide sensory supports to a student with autism).

A sensory diet provides targeted interventions that can be individualized to meet student's needs. Correctly developing a sensory diet allows students with sensory regulation issues to show up ready to engage in learning in the classroom. Stackhouse provides answers to some common questions on how to integrate sensory diets into students' IEPs or Section 504 plans.

### What senses are addressed in sensory diets?

Sensory diets aim to include all five senses — sight, smell, sound, taste, and touch — plus two hidden senses that may play a large role in the student's ability to regulate.

The two hidden movement senses are proprioception and the vestibular sense, said Stackhouse. Stimulating the vestibular sense involves spinning or swinging. Engaging proprioception involves lifting, pushing, moving, and carrying things, she said. "That's really the body-based sense when you do heavy work, when you lift or push or move things, or when you have kind of passive weight on you like a weighted blanket," Stackhouse said.

(See **SENSORY** on page 3)

## Is separating, talking to both students sufficient to stem disability harassment?

A parent of a child with a disability reported to a Pennsylvania district that a classmate punched her child in the head and made threats. She also complained that the classmate repeatedly called the child derogatory disability-related names.

In response, the principal spoke with the classmate about the punching incident. The principal then spoke to the two students together about how to interact with others, rough housing, and body language. The principal didn't otherwise investigate the situation. She also subjected the classmate to a disciplinary sanction for the code of conduct violation.

The student's teacher assured the parent she would change his seat. She also recommended that the student "keep his distance and find the front of the line whenever possible."

When the mistreatment continued, the district moved the classmate to a different class.

The parent filed an Office for Civil Rights complaint alleging the district violated Section 504 and Title II of the ADA by failing to properly respond to disability-based harassment.

Under the law, districts must investigate disability-based harassment and take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, and prevent the harassment from recurring.

### Did Pa. district properly respond to harassment?

A. No, the district's steps weren't reasonably calculated to prevent further harassment.

B. No, the principal's steps were reasonable, but they didn't actually stop the harassment.

C. Yes, the principal disciplined the classmate.

How the Office for Civil Rights found: A.

In *Allegheny Valley (PA) Sch. Dist.*, 123 LRP 29857 (OCR 09/21/23), the district discriminated against the student by not adequately investigating and by putting the onus on the student to resolve the harassment.

OCR noted that the district's response included blatant missteps. These included putting the burden on the child 1) by changing his seat, rather than, at first, moving the classmate; and 2) by recommending that the child go to the front of the line to avoid the classmate.

In addition, OCR noted that the principal allegedly met with both students after the punching incident — a step that could have exacerbated the harassment.

Finally, OCR noted that the principal failed to thoroughly investigate, including by speaking to students or staff who had witnessed the incidents.

Because the district failed to properly respond to the harassment, it violated Section 504 and Title II. The district pledged to take the steps to outlined in a resolution agreement to address its violations.

B is incorrect. A district must take steps calculated to end the harassment and prevent it from recurring. But the mere fact that the steps fail doesn't automatically mean its response was inadequate under the ADA and Section 504.

C is incorrect. Discipline alone is typically an insufficient response since, short of expulsion, it's unlikely to prevent further harassment.

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

### SECTION 504 COMPLIANCE ADVISOR

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**Chief Marketing**
**Officer:**

Jana L. Shellington

**Vice President,**
**Education:**

Julie J. Kline, Esq.

**Editor:**

Janiece Branson

**Legal Editor:**

Amy E. Slater, Esq.

**Copy Editor:**

Jack White

**Product Group Manager:**

Katie Cannistraci

**Production Director:**

Joseph Ciocca


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**SENSORY** (continued from page 1)

**What do sensory diets look like?**

A sensory diet is designed to provide external and body-based sensory support on a time-regularized schedule, Stackhouse said. One way to think about it is “bookending” the instruction with sensory regulation techniques specific to the student. For example, before and after instruction, include a transitional grounding time to organize sensory input. This can look like sensory input of heavy work like carrying things (proprioception), transitioning with rhythm and music (auditory), or touching a sensory sequin pillow (tactile).

This approach produces a series of bookends throughout the day to create that input that students can’t create on their own or are inefficiently creating, Stackhouse said.

“A sensory diet can help kids to learn how to more effectively use the things that they’re doing, whether they’re stimming or not, to bring it to a structure where they’re ready for learning,” she said.

**When would sensory diets be integrated into class routines?**

School teams should work with teachers to appreciate how a sensory diet might be best integrated with the school schedule, said Stackhouse.

“Ask about the practicalities of scheduling and look

then at that particular classroom and how the day flows,” she said.

Teams should consider these questions:

- Where are those “bookend” opportunities?
- How can the sensory diet be most naturally applied for this student?
- How will this fit into the culture of the classroom?
- Can the whole class be included in the regulating activity so that one student is not singled out?

**How can sensory diets be included in IEPs or 504 plans?**

If an IEP’s characterization of a student’s needs indicate a sensory diet would be helpful, there are several ways it can be included, said Stackhouse.

One way is to include the sensory diet in social-emotional or self-regulation goals. The language might sound something like this, “In order for this student to attain the self-regulation skills that they need for classroom participation, for 30 minutes per topic, the sensory diet will be used as a support to ensure that they’re meeting this goal,” she said.

The sensory diet might be similarly written in as part of a 504 accommodation plan.

Sometimes, sensory diets can be included as a part of a behavior intervention plan, said Stackhouse, but this requires a multidisciplinary team to ensure integrity and intention in implementing it. ■

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## For effective calming rooms, map out implementation, monitor use

A middle-school student with a Section 504 plan for anxiety struggles with school avoidance, and transitioning into a school day is especially difficult. Her 504 team wrote an accommodation allowing her to use the school’s newly acquired calming room. A school counselor checks the student in and out of the room, making sure to document when and how she uses it.

Calming rooms offer designated spaces where students can take a short break when emotions are high. For students with or without disabilities, these rooms promote self-regulation when properly set up. Districts considering adding calming rooms in their schools should pay close attention to the rooms’ placement as well as how often and in what ways students access them. It’s critical that the rooms avoid serving to seclude students with disabilities. *See Wake County Bd. of Educ.*, 121 LRP 32476 (SEA NC 07/30/21). Staff professional development will also help ensure a smooth rollout.

Rosemount-Apple Valley-Eagan Schools in Dakota County, Minnesota, placed calming rooms in two schools. Discover what two administrators from that district had to say about successful implementation.

**Location**

The location of the calming room is important, said Stacey Buchwald, principal of Valley Middle School of STEM in Apple Valley, Minnesota. At Valley Middle School, the calming room is in the student services suite in the view of the three school counselors. In the open greeting area, counselors can see when students enter. Counselors also can passively monitor the space while giving students privacy.

“Have it in a space that can be supervised with staff that are responsible for the maintenance, communication, and keeping track of it,” she said.

### Room must-haves

Calming rooms are designed to include items, lighting, and furniture that help students self-regulate. For example, lower lighting is often used instead of fluorescent lighting, said Stephanie Ochocki, student support and social-emotional learning coordinator for Rosemount-Apple Valley-Eagan Schools. Other items that could be included:

- Soft-sided furniture.
- Soft-textured rugs.
- Arts and crafts supplies.
- Yoga mats and resistance bands.
- Fidget toys and stress balls.
- Noise-canceling headphones or sound machines.
- Sensory swings or balance balls.
- Aroma therapy or calming essential oils.

“They have a visual timer in the room and can spend 10 minutes in there. If they need longer than that, then they chat with a counselor,” said Buchwald.

At Valley Middle School, the room rarely hosts more than one occupant at a time, and students aren’t allowed to use technology. A counselor tracks students’ use of the room and how it’s helping them become regulated.

### Recommended uses

The calming rooms at Rosemount-Apple Valley-Eagan Schools are open to all students. Students with disabilities work with their case manager and school counselor to select appropriate self-regulation tools in the rooms, said Buchwald, and use of these areas can be included as an accommodation in a 504 plan or behavior intervention plan.

Calming rooms should not, however, function as seclusion rooms for students with disabilities. In *Wake County Board of Education*, 121 LRP 32476 (SEA NC 07/30/21), the district used words such as ‘quiet room’ and ‘time out’ to conceal the use of restraint and seclusion. Staff tracking of calming room usage will help avoid this danger, ensuring that students enter and exit voluntarily.

At Valley Middle School, students can access different levels of self-regulation interventions. Throughout the school are calming spots where they can quickly breathe or stretch. Students with higher levels of need use the calming room if they need a longer break, Buchwald said.

“I’d never go back to not having one,” Buchwald said. “The pandemic really helped us to recognize that we have to do a better job of educating the whole child and honoring the whole human,” she said.

### Staff training

Part of the \$5,000 grant that Ochocki helped write for Valley Middle School’s calming room included professional development on mind and body regulation strategies. As part of the district’s tier 1 supports, teachers learned how to use movement and breathing exercises. This training introduced the calming room’s features and how students can use them, she added.

Students can “access [supportive] tools and still be close enough to rejoin their school day and peers,” Ochocki said. ■

## Good-faith effort to schedule 504 evaluation means less stress when timeline derailed

Staff shortages, poor student attendance, or lack of student cooperation could all contribute to delays in completing an initial 504 evaluation.

Section 504 does not specify a time frame within which a district must conduct an initial evaluation, but districts are directed to establish a system of procedural safeguards concerning them. 34 CFR 104.35(b) (1) through 34 CFR 104.35(b)(3). The Office for Civil Rights has stated that the timing of evaluations must be reasonable. This means a district cannot deliberately drag its feet during the process.

The IDEA’s specified timeline to complete an initial evaluation is no more than 60 days from the date parental consent is received. 34 CFR 300.301(c)(1). OCR has indicated that the IDEA’s 60-day requirement is a good standard to follow for 504, too. See *Concept Charter*

*School (IL)*, 115 LRP 17593 (OCR 02/13/15), where a district waited over three months after an evaluation request to develop a 504 plan. OCR investigated the parent’s claims that the district disregarded her request for an evaluation, and the district promised to revise its policies.

When delays to initial 504 evaluations occur, how can districts ensure they’re following reasonable procedures? Start by complying with district policy, which may require a timeline even shorter than that mandated by the IDEA. Immediately communicate delays to parents while working to resolve challenges and documenting your good-faith efforts.

### Timelines

When a parent requests a 504 evaluation, teams should ensure they follow district-mandated proce-



dures regarding timing, said Jan Tomsy, attorney with Fagen, Friedman & Fulfrost in Oakland, Calif. If district procedures don't specify, teams should adhere to the IDEA requirement of a 60-day time frame to complete an initial evaluation.

Treat the timeline as rigid rather than amorphous, Tomsy said. If OCR is investigating whether a district followed an appropriate process, it will look to the district's requirements. Although some districts may have tighter windows, the maximum should be 60 days.

The 60-day limit under the IDEA doesn't start until the district gets written parental consent, said James Evans, attorney with Barclay Damon LLP in Syracuse, N.Y. See *Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Educ. of Children with Disabilities*, 123 LRP 33181 (OCR 07/18/23).

### Delays

Although circumstances such as student illness, prolonged inclement weather, lack of student cooperation, or student absence could contribute to a delayed initial evaluation, teams should address these challenges in collaboration with parents, said Evans.

"The key is that the reason for the extended period is legitimate and the district is able to demonstrate that it is working in good faith to promptly complete the evaluation."

Staff shortages may also contribute to longer evaluation timelines, said Tomsy. Districts should explore all avenues to fill gaps when faced with a lack of staffing. This can include hiring temporary staff or contracting outside the district.

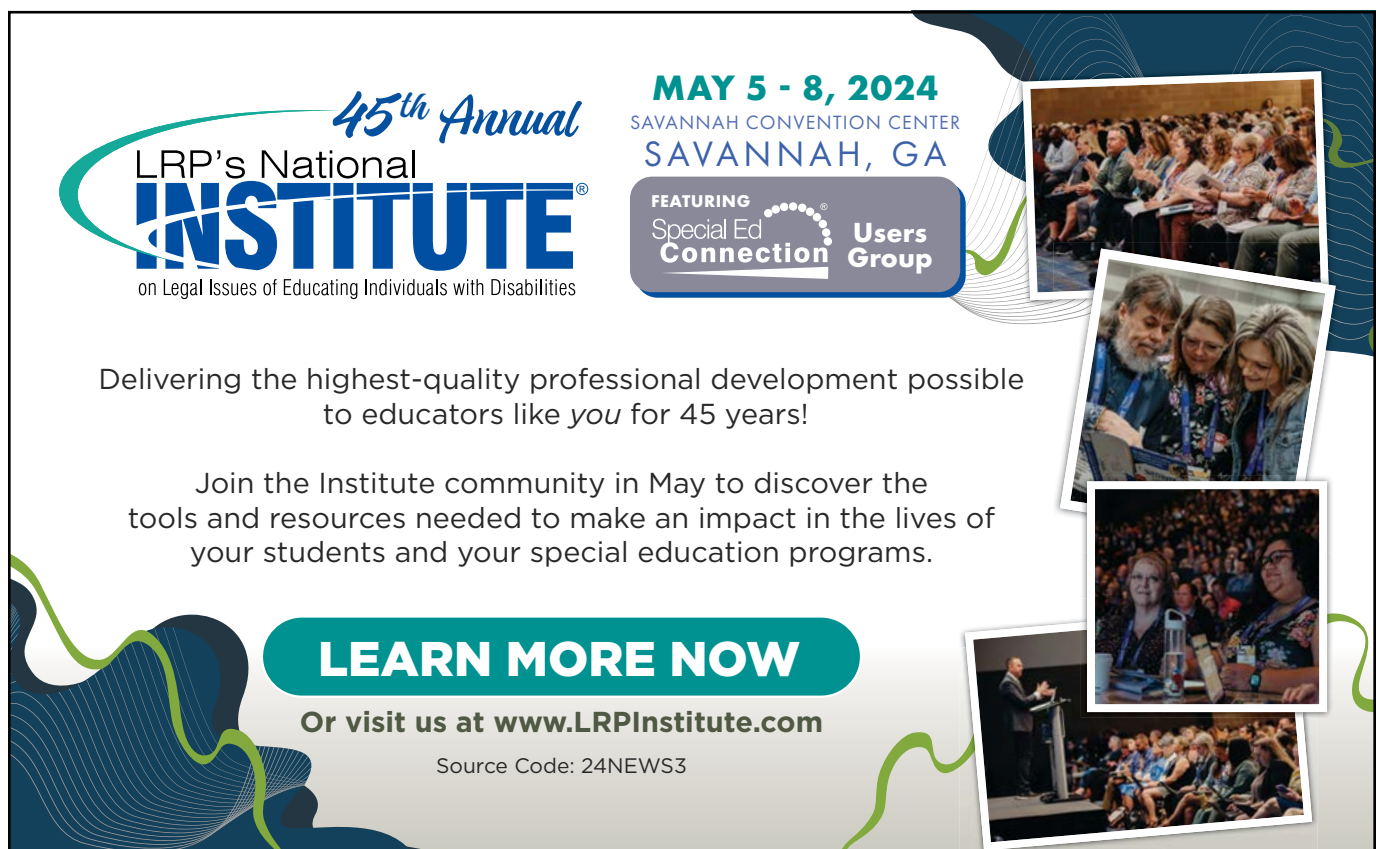
If a student's condition complicates assessment for 504 eligibility, a district should consider other evaluation methods. See *Kelseyville (CA) Unified School District*, 123 LRP 17113 (OCR 03/24/23), where a district delayed an evaluation for a student with a heat sensitivity by waiting until the weather cooled down.

### Communication

If a district anticipates or experiences a delay in completing an initial evaluation, it should proactively communicate with parents as soon as possible, said Tomsy. Communication failures erode trust, leading parents to believe the district is not taking the evaluation request seriously.

"Don't hide the [issue]. Communicate it, make a new plan, set a new deadline, and make sure that we can accomplish it," she said.

A district should also document prompt initiation of the evaluation, Evans said. Showing diligence in trying to complete the evaluation after receiving parental consent can include documented communication with parents about the extenuating circumstances, he said. ■



The advertisement features a blue and green color scheme with wavy line graphics. On the left, the logo for "45th Annual LRP's National INSTITUTE" is displayed, with the tagline "on Legal Issues of Educating Individuals with Disabilities". To the right, the dates "MAY 5 - 8, 2024" and location "SAVANNAH CONVENTION CENTER SAVANNAH, GA" are listed. Below this, a box highlights "FEATURING Special Ed Connection Users Group". The central text promotes "Delivering the highest-quality professional development possible to educators like you for 45 years!" and invites participants to "Join the Institute community in May to discover the tools and resources needed to make an impact in the lives of your students and your special education programs." A prominent green button reads "LEARN MORE NOW", followed by the website "Or visit us at www.LRPInstitute.com". The source code "Source Code: 24NEWS3" is at the bottom. On the right side, there are four photographs: a large group of people in an audience, two women looking at a laptop, a woman speaking at a podium, and a group of people at a table.

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## For inclusive parent 504 meeting, bookend experience

Whether parents experience the Section 504 process as “old hat” or a whole new world, gathering their perspective is vital. Section 504 does not explicitly list parents as mandatory members of the team, but districts should make every effort to facilitate their participation and input.

From giving ample notice of the meeting to offering an avenue to follow up afterward, bookend the parent experience with the suggestions below.

### Before

**Give reasonable notice.** Don’t plan 504 meetings spur of the moment, said Marcia McKnight, 504 coordinator for Livingston Parish Public Schools in Livingston, La.

Well in advance, send a prior written notice alerting the parents of when the meeting will take place. Depending on the school, this notification could happen by mail or email with a follow-up phone call. If parents are hard to reach, some districts send certified mail as well. Not following up on a 504 meeting invitation might result in an OCR complaint, as it did in *Charlotte (FL) County School District*, 120 LRP 3460 (OCR 07/24/19).

Be sure to give parents reasonable notice so that they can make plans to attend the meeting. Because parents are important members of the team, having their input is crucial, McKnight said. Also, provide parents with a copy of their rights under Section 504.

“Sometimes they see things at home that you don’t see at school, so you do want to give them every opportunity to be there,” she said.

If parents cannot physically attend the meeting, offer for them to connect virtually or through a conference call. Document when you send prior written

notice of a meeting, either on the parent participation form or another district-specific form, McKnight said.

**Solicit parent input.** Make a practice of sending home a parent interview form to gather input the team will review alongside other data. Even if the parent cannot attend the meeting, this information can still be used, McKnight said.

Questions on the form could include: How do you do homework at night? Do you feel like your student’s accommodations are appropriate? Has anything changed regarding medication or medical history?

For instance, when asked about accommodations, a parent may reveal that their older student, who has small-group testing, doesn’t like being pulled aside in the classroom. The parent could ask if there’s a way to offer the accommodation without the small group.

### After

**Provide copies of documents.** After the meeting, provide parents with copies of relevant paperwork such as the individualized accommodation plan, behavior plans, or individualized health plans, McKnight said. Ensure that parents know their rights under Section 504. Provide documentation that their rights were explained and that they understand them.

**List relevant contact information.** Ensure that parents have contact information for the 504 chairperson at the school in case they have questions. Parents may have concerns about their student’s progress after the accommodation plan is in place. Post-meeting maintenance can sometimes mean coming back together if a parent feels the accommodations are not effective, she said. ■

## Take time to lock down emergency plans for students with disabilities

Depending on the type of emergency, a district may have standard response protocols that include directives to hold, secure, lock down, evacuate, or shelter. These directives should include standardized terminology that is familiar to all, but what about the nuances of emergency preparedness that may affect students with disabilities?

The ADA and Section 504 mandate that districts treat students with disabilities equitably, including during emergencies. *Wasatch County School District*,

73 IDELR 243 (OCR 2018), sets an example for districts to follow. The Utah school district met Section 504 and Title II requirements for students with disabilities; it created emergency medical evacuation cards for students with disabilities and prepared 72-hour disaster medication authorization-to-administer-medication forms.

In 504 meetings, teams should customize safety plans for students, understanding that plans may need revisiting if complications occur during a drill.

Steer clear of potential discrimination against students with disabilities by adopting the following best practices for developing and implementing emergency plans.

### **Develop safety plan**

Discuss the student's potential needs during the emergency drill, said Kari Moneyhun, attorney at Lemich Law Center in Rock Springs, Wyo. These needs could include mitigation for allergies, heightened anxiety, sensory issues, medical needs, attention deficit issues, or behavioral issues.

Next, determine what supplementary aids might be necessary. For example, consider a go-bag that includes noise-cancelling headphones, sensory tools, weighted blankets, or medication.

The team should then incorporate information from first responders and the district's emergency response protocol, she said. The resulting plan might include evacuation or reunification procedures, such as an evacuation map with an alternate route or a particular building to which the student would be moved for reunification.

The final plan should be relayed to those responsible for implementing it, and these individuals should be trained to carry it out, she said.

### **Review safety plan**

Once the plan is drafted, it should be practiced during emergency drills and reviewed for any obstacles, Moneyhun said. Inquire of the teacher implementing the drill whether anything should be changed. The team should meet if any confusion or issues arise.

For example, for students who have trouble with

transition, use social stories to familiarize them with how to safely handle situations involving evacuations and lockdowns. A teacher or paraprofessional can read these stories to the student to help them develop the muscle memory of responding to the drill.

"We want that drill to be as boring as possible so that there isn't that heightened sense of emotion, fear, or anxiety when an emergency situation does occur," she said.

### **Address differences with SROs**

When there's deviation from standard procedure, let first responders, law enforcement, or school resource officers know, Moneyhun said.

During an evacuation drill for targeted violence or school shooting, students are sometimes expected to walk out of the building with their hands on their heads, she explained. A student with disabilities may lack the coordination or ability to do this.

"The concern is, if we have a kid that can't do that for whatever reason, law enforcement may think that student is an aggressor. Notify them that there are some students who may be doing something differently," she said.

This may require signed parental release of information to stay in compliance with FERPA.

### **Keep communication lines open**

Remember to fill in knowledge gaps for parents of students with disabilities, Moneyhun said. At home, parents can reinforce how students should respond to emergency drills. Be transparent about the protocols adopted and what the drills entail, and listen to parent concerns, she added. ■

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## **When it's party time, protect students with hyperphagia, other food-related disabilities**

While class parties and other celebrations promote peer connections and a positive climate, centering these activities around food can be problematic for students with disabilities.

Section 504 mandates that districts provide students with an equal opportunity to participate in extracurricular activities and services. 34 CFR 104.37. Districts also must not exclude individuals with disabilities from participating in or benefiting from any district program or activity. 34 CFR 104.4(a).

Celebratory treats can pose challenges for students with food-related disabilities or fixations, such as

those associated with Prader-Willi syndrome. Some students with the neurodevelopmental disorder exhibit hyperphagia, an insatiable hunger and desire to eat. This makes unregulated food-related activities a potential breeding ground for negative behaviors and anxiety.

Carefully plan activities and parties so that students with food-related disabilities have equal opportunities to join in. Before an event, discuss with the parent how the student can have fun while remaining safe. Read expert advice to help teachers take the focus off food, set students' expectations, and foster an inclusive experience for all.

**Communicate with parents before activity**

Plan with parents how they envision the student safely participating, said Amy McTighe, a Prader-Willi syndrome educational consultant from Pennsylvania.

Discuss the entire activity, whether food will be involved, and how it will impact or disrupt the student's typical school day. Share the details and determine as a team what the celebration will look like for the student, she said.

"The more details that you can provide to the parent in advance, the more chance you have to create an environment where the student can participate safely," she said.

**Provide non-food-related activities**

Have teachers plan activities not involving food during celebrations or activities, said McTighe. For students with food-related disabilities such as Prader-Willi Syndrome to participate successfully, the activity must be food-secure. This includes games or crafts that don't incorporate food.

Some activity swaps for students with food-related challenges could be:

- Using plastic bingo markers instead of candy bingo markers.
- Making decorative crafts instead of decorating cookies with icing and sprinkles.
- Using art supplies to make crafts for family members instead of creating edible take-home treats.

"When you don't provide food-related activities, a student with Prader-Willi Syndrome can think less about food and enjoy the activity that is presented with their peers," she said.

**Prepare student for celebration**

Before the activity occurs, prepare the student for what to expect. Plan to let students with Prader-Willi syndrome know the day before the activity, as they tend to fixate and perseverate on changes, said McTighe.

"Prior to the celebration, present a visual schedule to the student that outlines how their typical day will change and provide a checklist of events that will occur during the celebration," she said.

If a student perseverates on the change in schedule, use visual reminders to show him that mealtimes will remain unchanged, she said. Use social stories to highlight behavior expectations.

Outline what food exposure will look like for that student if food must be present at the activity, McTighe said. For example, explain that first, the student will play a bingo game, and then he will have a cookie.

"When food is not part of the celebration and there is not a chance to obtain food, anxiety and the chance for negative behaviors decreases. Creating a structured, predictable routine about the events of the celebration will support the student," McTighe said. ■

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## Section 504 accommodations for students with dyslexia, dysgraphia

Students with learning disabilities, such as dyslexia or dysgraphia, may be eligible for services under Section 504 even if the district finds them ineligible for IEPs under the IDEA. In those circumstances, the district should assess the student's needs to determine what 504 accommodations would enable the student to access the curriculum to the same extent as his nondisabled peers.

The following chart provides a list of possible accommodations for students with dyslexia who have difficulties in reading and students with dysgraphia who have difficulties in writing. Note that some accommodations for dyslexia and dysgraphia may also help students with other learning disabilities, such as dyscalculia.

| Disability        | Accommodations  |
|-------------------|---|
| <b>Dyslexia</b>   | <ul style="list-style-type: none"> <li>• Providing the student preferential seating to minimize distractions.</li> <li>• Conducting periodic checks to ensure the student understands directions, expectations, or content.</li> <li>• Permitting physical movement in the classroom to meet the student's sensory processing challenges.</li> <li>• Breaking up directions into smaller steps or segments.</li> <li>• Reducing visual clutter on the student's worksheets.</li> <li>• Providing the student materials with enlarged print.</li> <li>• Offering the student worksheets in light overlay colors.</li> <li>• Allowing the student to use heavy paper strips to assist in tracking.</li> <li>• Color-coding the student's materials or notes with highlighters.</li> <li>• Permitting the student to show knowledge verbally instead of in writing.</li> <li>• Avoiding multiple choice or bubble answer sheets to prevent confusion.</li> <li>• Allowing the student to access word processing devices to complete assignments or tests.</li> <li>• Permitting the student to use spelling or grammar devices.</li> <li>• Providing the student a list of key vocabulary words prior to each lesson.</li> <li>• Offering the student access to audio recordings of books or materials.</li> <li>• Allowing the student to use text-to-speech technology.</li> </ul> |
| <b>Dysgraphia</b> | <ul style="list-style-type: none"> <li>• Decreasing the amount of handwriting necessary in class and during tests.</li> <li>• Providing the student a word processor, scribe, or speech-to-text note-taker.</li> <li>• Allowing the student to show knowledge verbally instead of in writing.</li> <li>• Offering the student extra time to take notes.</li> <li>• Providing the student typed copies of lessons, outlines, and/or notes.</li> <li>• Permitting the student to start writing projects and assignments early or providing extra time to complete them.</li> <li>• Recording certain class sections.</li> <li>• Grading the student's tests and assignments on knowledge only and not penalizing the student for handwriting or spelling.</li> <li>• Allowing the student to use graph paper to line up math and other questions.</li> </ul>  |

Source: *The Utah State Board of Education* (2021). ■

## Frequent use of seclusion, restraint indicates need to revisit students' IEPs

**Case name:** *Folsom Cordova (CA) Unified Sch. Dist.*, 123 LRP 31631 (OCR 10/12/23).

**Ruling:** A California district discriminated against multiple students with disabilities when it allowed their public and private schools to use restraint and seclusion as behavior-management techniques for two consecutive school years. OCR found that the district could remedy the various Section 504 and ADA violations by taking the steps set forth in a resolution agreement.

**What it means:** A district cannot disregard reports that school staff frequently use restraint or seclusion to manage an IDEA-eligible student's behaviors. Whether the district needs to revisit the student's behavioral intervention plan or review BIP implementation with school staff, it must take prompt and effective action. Here, incident reports showed that some students with disabilities were restrained as many as 22 times, while others lost up to 48 hours of class time due to repeated seclusion. Had the district convened IEP meetings for the affected students, it could have made changes to the students' programs or provided staff training as needed.

**Summary:** A California district violated Section 504 and the ADA by failing to revisit multiple students' IEPs after learning about repeated incidents of restraint in their public and nonpublic schools. OCR found that the district could resolve the matter by revising its policies, providing staff training, notifying nonpublic schools of the changes, and determining each affected students' need for compensatory education. OCR acknowledged that the district's existing policies and procedures limited the use of seclusion and restraint to emergency circumstances unless otherwise specified in a student's IEP. However, OCR pointed out that the district's compliance with those policies was inconsistent. For example, OCR observed, the district did not always convene an IEP meeting after a restraint incident that stemmed from an unsuccessful intervention or a newly manifested behavior. "The reason for not scheduling an IEP meeting was rarely documented on the [incident reports] or elsewhere," OCR wrote. OCR noted that the district sometimes placed students with disabilities in nonpublic schools without any knowledge of whether a particular school restrained students or used seclusion rooms. Furthermore, OCR pointed out that information in the schools' restraint and seclusion logs did not always match the incident reports. Nor did the incident reports indicate how much instructional time students missed as a result of being secluded or restrained. OCR explained that it also had concerns about IEP and BIP

implementation, given that staff at one nonpublic school repeatedly restrained a student whose IEP prohibited physical interventions. "The District produced no evidence that the IEP was ever modified to provide clarity to staff about when or how physical interventions could be used," OCR wrote. OCR found that the violations, viewed as a whole, amounted to disability discrimination and a denial of FAPE. ■

## Stalling pupil's access to afterschool program begets discrimination claim

**Case name:** *Cozad City (NE) Schs.*, 123 LRP 32245 (OCR 10/28/23).

**Ruling:** According to OCR, a Nebraska district may have discriminated against a student with an undisclosed disability when it denied him an equal opportunity to participate in its afterschool program. To resolve the potential Section 504 and Title II violation, the district executed a resolution agreement in which it pledged to revise its policies and conduct staff training.

**What it means:** A district should avoid basing its admission decisions on a student's disability status. If a parent is interested in enrolling a student in a district program, the district should assess the student to determine how it can accommodate the student's needs. When this parent expressed an interest in enrolling the student in the district's afterschool program, the district should have convened the student's IEP team. That way, the IEP team could determine what services the student needed to participate in the afterschool program or whether an alternative afterschool program was necessary to offer FAPE.

**Summary:** Allegations that a Nebraska district's afterschool program shut its doors to a student with an undisclosed disability persuaded OCR to investigate whether the district engaged in disability discrimination. However, OCR closed its investigation early once the district pledged to resolve the potential Section 504 and Title II violation through a resolution agreement. Under Section

## 504 quick quiz

**Q: Is it safe to assume students know what accommodations they have?**

**A:** Probably not, according to OCR Letters of Findings. For example, in *Wallis Annenberg (CA) High School*, 115 LRP 24568 (OCR 01/29/15), the student's IEP required each of his teachers to sign his assignment calendar daily. However, they would only sign it when the student remembered to present it to them. OCR reminded the district that the teachers should have prompted the student to show them the calendar if he forgot to ask for their signatures at the end of class.

504 and Title II, a district must ensure a student with a disability has an equal opportunity to participate in and benefit from its programs, activities, and services. The district may have violated these antidiscrimination mandates, OCR determined. According to the complaint, the parent enrolled the student in the district's afterschool and summer program. When she attempted to drop off the student at the program, a staff member allegedly informed her that the program "could not accommodate the Student." Specifically, the staff member allegedly told the parent that the program was unable to provide the services outlined in the student's IEP. OCR noted that when the parent contacted the district, a former official allegedly said students with disabilities were allowed to attend the afterschool program if they did not require many accommodations. Although OCR expressed concerns that the district may have discriminated against the student, it closed its investigation once the district executed a resolution agreement. In the agreement, the district pledged to review and, if necessary, revise its policies and procedures. It also promised to train all relevant staffers on the antidiscrimination provisions of Section 504 and Title II. Finally, the district agreed to invite the student to attend its afterschool program. Concluding that these corrective actions remedied the allegations, OCR closed the matter. ■

## Fla. district's transportation mix-up results in student's month-long absence

**Case name:** *Hillsborough County (FL) Schs.*, 123 LRP 32275 (OCR 05/26/23).

**Ruling:** A Florida district resolved with OCR allegations that it discriminated in violation of ADA Title II and Section 504 by failing to provide a student's specialized transportation services under his 504 plan. The district agreed to invite the student to reenroll and convene a 504 team meeting to determine whether he requires compensatory services due to his absences.

**What it means:** Failing or delaying to implement required provisions within a student's 504 plan may discriminate and deny the student FAPE. This district delayed almost a month to provide a student's required transportation services because of confusion and miscommunication between staff. The district should review and update its procedures for approving and implementing specialized transportation requests to ensure quicker turnaround and approval time. It would be a good idea to designate a staff member to check follow-through on transportation requests. In addition, the district should have assessed any impact the delay may have had on the student.

**Summary:** A 24-day delay to provide the specialized transportation services prescribed in a student's 504

plan may have denied him FAPE. The Florida district will have to consider whether he's due compensatory services because of his absences. The district created an emergency plan for the student due to his medical condition. The parent requested transportation. The district subsequently developed a 504 plan which included specialized transportation. However, the student wasn't permitted to ride the bus until the district trained an aide or the bus driver on his emergency plan. He remained at home for several weeks, first waiting for his 504 plan to be developed, and then waiting for transportation to be approved so that he could return to school. The parent contacted OCR. ADA Title II and Section 504 require that districts provide students with disabilities FAPE by providing special education and related services designed to meet their individual educational needs as adequately as the needs of non-disabled students are met, OCR explained. It identified concerns with the delays in the school's evaluation for and implementation of the required transportation services. After initially learning of the student's medical condition, he was absent from school for at least 24 school days despite that he was able to be safely transported by bus earlier, it observed. The delay was, in part, due to confusion regarding whether the student could ride the bus even after the driver was trained, as well as miscommunication with the transportation department, OCR reasoned. Specifically, the student's 504 plan initially required a nurse/aide on the bus, but staff later clarified that the 1:1 nurse was removed and the bus driver only needed to be trained, it noted. Because the student missed nearly a month of school due to the transportation issue, there was concern that the unreasonable delay in evaluating him, developing a 504 plan, and implementing the plan's transportation services denied him FAPE, OCR remarked. ■

## Failure to see mom's consent email leads to implementation concerns

**Case name:** *Birmingham City (AL) Sch. Dist.*, 123 LRP 32968 (OCR 05/05/23).

**Ruling:** An Alabama district signed a resolution agreement to address claims that it violated Section 504 and Title II of the ADA by ceasing to provide a high school student's resource room services. To address claims that it discriminated against the 10th grader with an undisclosed disability, the district pledged to determine the student's need for compensatory services. The district also agreed to train the student's case manager and teacher concerning requirements for fully implementing students' IEPs and 504 plans.

**What it means:** Districts must ensure that, once they receive parental consent, they promptly direct the

form to the appropriate staff member and implement the student's special education services. Here, the parent emailed the form to the student's teacher and four other district employees. The district never provided services, partly because the teacher and case manager didn't notice the email. To prevent this from occurring, it's prudent to train teachers on the importance of following up on parental consent requests. Had the teacher or case manager contacted the parent or rechecked their emails, they might not have withheld the student's resource room services.

**Summary:** An Alabama district agreed to resolve Section 504 and Title II claims arising out of its alleged failure to implement reading and math resource room services for a teen with an unidentified disability. The district agreed to determine whether the student needed compensatory services covering the four months in which he received no services, as well as to conduct staff training. The parent alleged that the district discriminated against the student with an unidentified disability by terminating his resource room services on Sept. 6, 2022. Section 504 requires districts to provide FAPE to students with disabilities. If a parent refuses to consent to her child's receipt of special education services, however, the district won't be considered to deny the student FAPE if it withholds services. OCR acknowledged the district's view that it was forced to terminate resource room instruction because the parent failed to return a consent form, despite repeated district email requests. "[T]he Teacher stated that until receipt of OCR's data request letter on January 10, 2023, she and the Student's Case Manager were under the impression that signed consent was never received," OCR wrote. Unbeknownst to both of them, OCR remarked, the parent had emailed a signed consent form on Oct. 10, 2022, to the teacher and four school officials. The teacher, OCR observed, stated that she overlooked the email. Some of the confusion, OCR suggested, might have arisen from the parent not initially understanding that she needed to provide consent for her child to receive the services. This, OCR noted, led the parent to initially withhold consent, but she later consented on October 10. OCR stated that it would monitor the district's implementation of a voluntary resolution agreement. ■

## Ousting event guest reveals staffer's confusion about service dog policy

**Case name:** *Murrieta (CA) Valley Unified Sch. Dist.*, 123 LRP 33175 (OCR 04/14/23).

**Ruling:** A California district may have discriminated against a visitor with an undisclosed disability when it barred her from attending an on-campus event with her

service dog, OCR determined. To remedy the potential Section 504 and Title II violation, the district agreed to conduct staff training and revise signage related to service animals.

**What it means:** As a best practice, districts should train all staffers — not just educators and administrators — on federal service animal requirements. Because custodial and front office staff routinely interact with visitors, appropriate training may help prevent these employees from improperly turning away individuals with service animals. The district here should have trained the custodian to recognize the difference between pets and service animals and appropriately greet individuals seeking to access school facilities with service animals. This training would have ensured the visitor could attend the on-campus competition with her service dog and prevented any conflict between her and the custodian.

**Summary:** A custodian's misinterpretation of a California district's service animal policy may have caused him to improperly eject a visitor with a psychiatric service dog from an on-campus competition. Nonetheless, OCR closed its investigation once the district executed a resolution agreement to remedy the allegations of disability discrimination. Under Section 504 and Title II, a district must modify its policies, practices, and procedures to permit the use of service animals by individuals with disabilities. The district may have violated this mandate, OCR concluded. It noted that in September 2022, the district entered into an agreement with a third-party organization to hold a competition at a school gymnasium. On the day of the event, the visitor entered the gymnasium with her psychiatric service dog and sat in the bleachers without issue. A custodian then approached the visitor and informed her that dogs were prohibited. Although the visitor told the custodian several times that her dog was a service animal, the custodian and the director of the third-party event informed her that she had to leave. Additionally, two other employees of the third-party organization informed the visitor that the custodian had called the police due to her dog. To avoid a confrontation with the police, the visitor then left the event, OCR observed. The district explained that "the custodian's actions were the result of his misunderstanding of the District's policies related to service animals on campus." Because signage around the district barred all "animals" from campus, the custodian believed this prohibition extended to the visitor's dog. Before OCR could make a compliance determination, the district executed a resolution agreement to resolve the matter. It pledged to revise its signage regarding the prohibition of animals and conduct training for all custodians and other staff members, among other corrective steps. ■