Section 504 COMPLIANCE ADVISOR

ROUTE TO

Your Guide to Understanding and Administering Section 504

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IN THIS ISSUE

Use these scenarios to gauge shelf life of 504 plans

Unlike a gallon of milk, Section 504 plans don't come with expiration dates. At the same time, schools must remain alert to evolving student needs that would necessitate reevaluation and possible eligibility changes.

Reevaluating students every three years is appropriate under the IDEA. 34 CFR 300.303(a) and 34 CFR 300.3(b). Districts should, however, determine the timing of Section 504 reevaluations on more of a case-by-case basis. As long as it puts procedures in place to evaluate regularly and ensure students' needs haven't changed, a district will likely comply with the law under 504, said Tyler Coverdale, school attorney at KSB School Law PC, LLO in Lincoln, Neb., and Sioux Falls, S.D.

Keep a watchful eye to ensure that Section 504 plans continue to serve students' best interests. Failure to conduct a needed reevaluation may leave a student with outdated supports or even miss that she no longer has a qualifying disability. Familiarize staff with three scenarios in which 504 plans need a closer look.

- **Student's needs have changed, but he remains eligible.** For many students with a 504 plan, particularly students with allergies or diabetes, their needs might change in only minor ways as they get older, said Coverdale. For example, an older student may want to self-administer medication instead of relying on school personnel. Coverdale said that in this situation, a district should reevaluate and appropriately update the student's plan.
- **Student's impairment no longer substantially impacts her life.** While 504 plans do not expire, students may no longer qualify if reevaluation reveals they no longer have a disability, said Coverdale. To be eligible under the ADA, a student must be determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities. 28 CFR 35.108(a)(1)(i).

"At some point you meet with the family to discuss the threshold for a 504 plan," Coverdale said.

- **Student transitions to college.** Another situation when a student no longer qualifies for a 504 plan is in transition to postsecondary education. While he may be able to use his plan as evidence of having received accommodations, a college is not held to the same FAPE standard, said Coverdale. If a student attends a postsecondary institution that receives federal funding, however, it will have an obligation of nondiscrimination under the ADA.

(See **SCENARIOS** on page 3)

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Does dispatching crisis team for teen constitute an adverse action?

The parent requested a special education evaluation. The district determined that the teen was ineligible and would receive services under a Section 504 plan.

One week before graduation, the parent raised concerns to staff about the treatment of her daughter and her mental wellbeing and suicidal ideations. The district contacted a crisis center, which dispatched a mobile crisis team.

The district explained that if it is questionable whether a crisis response is necessary, it makes the report, to ensure the student's safety pursuant to district policy. The crisis team made the decision to contact the teen based on the verbatim contents of the parent's email. Staff denied having any knowledge of the teen previously having suicidal ideations.

The parent contacted the Office for Civil Rights, alleging the district retaliated.

To establish retaliation in violation of ADA Title II and Section 504, the parent must show that she engaged in a protected activity, experienced an adverse action caused by the district, and a causal connection existed. Then OCR determines whether there is a genuine, legitimate, nonretaliatory reason for the adverse action.

Was calling crisis team in response to mom's concerns about teen's suicidal ideations retaliatory?

A. Yes. The district retaliated by calling the crisis team.

B. No. The parent didn't engage in a protected activity.

C. No. The district acted to protect the teen's safety and pursuant to district policy.

How the Office for Civil Rights found: C.

In *Queen Creek (AZ) Unified School District,* 123 LRP 33091 (OCR AZ 04/28/23), OCR found insufficient evidence to support that the district retaliated. OCR determined that contacting the crisis team constituted an adverse action. And, given the close proximity in time from the date of the call and the parent's ongoing disability-related advocacy, it inferred a causal connection to the adverse action. It determined that the parent established a prima facie case of retaliation; however, the district proffered a legitimate nonretaliatory reason for contacting the crisis team — it acted within the district's expectations and procedures in light of the email to ensure the student's safety.

OCR observed that district policy acknowledged instances when time-sensitive decisions have to be made quickly by the principal without consulting the crisis management team. And it provided that the crisis team should be contacted for suicidal students, OCR noted.

A is incorrect. OCR found that although the parent established retaliation, the district proffered a genuine, legitimate, nonretaliatory reason for its action.

B is incorrect. There was no dispute that the parent engaged in protected activity, OCR remarked. Her advocacy on her daughter's behalf, for the 504 plan to be updated with IEE results and for an IEP, was ongoing.

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

SECTION 504 COMPLIANCE ADVISOR

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SCENARIOS (continued from page 1)

"While the student might be entitled to bring those supports into the classroom, the college wouldn't be on the hook for providing them in the same way a K-12 institution would," he said.

In this way, the 504 plan takes on a new shape for the student. While Section 504 does not have transition planning requirements like the IDEA does 34 CFR 300.321(b)(1), districts should still have a transition conversation with parents and students, Coverdale said. ■

Ready, set, go! Act after parents request MDR

A parent has requested a manifestation determination review for their child with ADHD experiencing a pattern of suspensions this year. Don't rush to get an MDR on the calendar. Review the student's records.

In this situation, the student received two days of suspension in September for a fight. He received three days of suspension in October for stealing money from a peer, which also led to a fight. In November, there was another two-day suspension for bringing a knife with a one-inch blade to school. Believing that these incidents are similar in nature, proximity, and length, the district agrees with the parent and conducts an MDR.

Did it make a good decision? Yes. By recognizing that similarity and the fact that the student was nearing 10 days of suspension, the district made the right call to conduct an MDR.

If a parent requests an MDR, a district should examine the facts before it acts. Typically, a district will be on top of the 10-day rule and MDR timelines, but there are atypical scenarios that it should be aware of. Read on to learn more about situations where a parent requests an MDR.

Beware of MDR timelines

"The law is very prescriptive of when MDRs have to occur. Hopefully, districts are never in a situation where a parent is asking [for one] when they haven't already agreed to it," said Maureen Lemon, an attorney for Ottosen DiNolfo Hasenbalg & Castaldo, Ltd. in Naperville, Ill.

A district should hold an MDR within 10 days of any disciplinary measures that would result in a change of placement. A change in placement is a removal for more than 10 consecutive school days or when the student has a pattern of removals totaling more than 10 school days. 34 CFR 300.530(e).

Lemon advises her clients to hold an MDR around day eight so that the district has some breathing room. This will help determine if the student's placement is correct and whether a functional behavioral assessment or updated behavioral intervention plan is necessary.

Handle requests on case-by-case basis

A district may believe there's no connection between a student's removals and deny a parent's request for an MDR. Before it issues a prior written notice with its decision and reasoning, it should consider the similarities between the student's behavior, length and proximities of removals, and the total days removed, Lemon said. If those all suggest a change in placement, an MDR may be prudent, she said. The parent is right for making the request.

"Conduct the MDR to determine if the conduct was a manifestation of the student's disability. This gives the parties the opportunity to discuss the student's current placement and whether that placement is even appropriate," she said.

A parent, however, may request an MDR too early in the disciplinary process. For example, a student with a learning disability, who otherwise has never been in trouble, is suspended for four days, and the parent requests an MDR. The district would be well within its rights to deny that request and issue a PWN to the parent. The student is not approaching removal for more than 10 consecutive school days. Lemon said the notice should include an explanation of the regulations and why an MDR is not warranted at this time.

If a parent requests an MDR, but the district doesn't believe one is warranted, it should convene an IEP meeting after the suspension to address the concerns. Consider whether an FBA is necessary or whether the student needs a BIP, Lemon said.

Remember these overlooked scenarios

Don't forget about two subsections of students with disabilities whose parents may request MDRs. The first is students with Section 504 plans. Some school personnel may believe students with Section 504 plans require an MDR since the 504 regulations fail to mention one. However, OCR and most courts interpret Section 504 as requiring an MDR in connection with disciplinary actions that constitute a "significant change in placement" under 34 CFR 104.35.

The second is students who are not yet found eligible under the IDEA, Lemon said. In this situation, the district is deemed to know that the student has a

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disability when the parent has "expressed concern" in writing regarding it. 34 CFR 300.534(b).

Remember that if a district conducts an MDR for a student ineligible for special education services, it does not create additional rights for the student. *See Wake County Bd of Educ.*, 80 IDELR 145 (SEA NC 2021) (where a district conducted an MDR when it had no basis of knowledge that the student had a disability). ■

Cultivate 504 building coordinators in your district through training, support

What does it take to grow a plant? Time, attention, water, sunlight, a green thumb. Although not identical, guiding a 504 building coordinator in your district requires much of the same.

Districts can offer good communication and consistent training to 504 building coordinators, which can help to build strong relationships among families, students, the district, and the school. With regular, comprehensive training for 504 building coordinators, districts can ensure that timelines are being met and students are receiving the supports and services they need should they move, graduate, or leave the school. Failing to train building coordinators effectively might result in a lack of understanding in how the 504 process works and students' not receiving the services they need in a timely manner. See tips from a Section 504 coordinator on helping to cultivate good 504 building coordinators in your district.

Open communication between school, district

District coordinators should support the 504 building coordinators by being available to answer questions and attend meetings as necessary.

When they have questions about students' plans, 504 building coordinators should feel comfortable reaching out. They should expect to have consistent feedback since this is the information they need to do their jobs, said Alayna Siemonsma, Section 504 coordinator for Montgomery (Texas) Independent School District.

District coordinators should be available to attend 504 meetings as needed if the building coordinator or the parent requests it. Oftentimes, if the building coordinator is dealing with a meeting that is contentious, the district coordinator will attend to give extra support.

"They reach out through emails, phone calls, and stopping by, whatever is needed to help them be able to do their job to the best of their ability," she said.

Hold regular, comprehensive trainings

504 building coordinators are responsible for providing training for school staff, but the district is responsible for ensuring that the building coordinators are adequately trained to do that.

Siemonsma said that in her district, they hold quarterly meetings where 504 coordinators come together for training and to review procedures. They also have an optional monthly Q&A training with school attorneys where attendees are encouraged to ask questions.

When 504 building coordinators come into the role with little Section 504 experience, it's sometimes necessary to slow down to help them directly, outside of the regular training, she said.

Not everyone who is assigned to the role of 504 building coordinator will have a choice in the matter if it falls under 'other duties as assigned' in their job description. Districts should acknowledge where the staff member is starting from and work to give them comprehensive training and the opportunity to ask questions. Additionally, districts should consider providing their 504 building coordinators professional development tools.

Share knowledge of what job entails

The district should emphasize what the 504 building coordinator will have on her plate during the school year. Siemonsma said that her 504 building coordinators are responsible for scheduling and attending all 504-related meetings, collecting paperwork and relevant information from parents and teachers to help the 504 team make decisions, providing training to school staff on 504, and other duties.

"It must be individualized. The gathered information and data must tell us a story about the child so that we can make sure that we're providing accommodations that are appropriate and needed to level the playing field," she said.

504 building coordinators spend time communicating with parents and teachers to gather this information, which allows them to build relationships with the students and their family members. These campus coordinators have to be organized in following up on communication to parents to make sure the 504 team has as much information as possible to make a decision.

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Carefully consider timelines for school year

District coordinators should work in conjunction with 504 building coordinators to help base day-to-day priorities on timelines, procedures, and student need.

"Attending to timelines and procuring all the information from staff, parents, and students to be prepared for Section 504 meetings is highly important," Siemonsma said.

For example, in Siemonsma's district, 504 building coordinators need to prepare for spring testing and state testing, depending on whether they're at the elementary or secondary level.

During that time, teams are completing amendments to 504 plans in preparation for the state testing, so the students who use their accommodations consistently in the classroom will receive them when taking their tests. ■

Review dos, don'ts to beef up accommodations for extended time, makeup work

The Section 504 plan of a student with a mobility impairment specified an accommodation of individualized teacher assistance when she could not access instruction along with peers.

Delayed provision of assistance meant many of the makeup assignments were due within the same week. When the student in *Gadsden (AL) City Schools*, 76 IDELR 105 (OCR 2019), wasn't able to complete the work in a timely fashion, she claimed the district denied her FAPE in violation of Section 504 and Title II. After OCR investigated, the district agreed to allow the Alabama student to complete assignments on which she had done poorly. Her complaint offers a reminder that accommodations should reflect the student's unique context while providing a road map for implementation.

When a student's 504 accommodations involve extended deadlines or makeup work, following the dos and don'ts below can prevent district implementation errors that spark denial of FAPE complaints. From avoiding cookie-cutter provisions on extended time to writing accommodations with specificity to meet the student's needs, a 504 administrator and attorney share lessons learned.

✓ Do seek teacher input

Teachers can advise teams on how to best structure an accommodation related to extended time and makeup work, said Marie Gonzales, executive director of special education and 504 for Round Rock Independent School District in Texas.

For example, a student with a condition that affects immunity may be physically able to do the coursework but only when permitted to complete it outside of school. Gonzales said another student with a chronic illness may lack the stamina for particular types of work, prompting needs for flexible timelines as well as reduced assignments.

"Rely on the classroom teacher's lens to streamline the work as much as possible without actually eliminating any of the state curriculum," she said.

× Don't write blanket accommodations

Consider how the student's disability or health condition impacts her ability to complete assignments, said Gonzales.

The amount of extra time provided should depend on the individual student. "Consider the rate at which they're able to complete the work. The more specific we can be, the better off we are at meeting that student's needs," she said.

A best practice for providing an accommodation of extra time is specifying when and for what types of assignments the student will receive the accommodation, said Gonzales. Extra time for a five-paragraph essay may look different than extra time to complete a multi-part book report. Accommodations should be specific enough that teachers understand how to implement them, she said.

✓ Do meet with parents

When a disability impedes a student's ability to receive her education, the 504 campus coordinator should, along with the 504 team, meet with the student's parents, said Wesley Johnson, attorney for Escamilla & Poneck in San Antonio, Texas. Discuss how often extended deadlines will be provided, in addition to how and when makeup work should be turned in.

Strong communication between parents and the school is vital to addressing problems that may arise, Johnson said.

× Don't neglect to disseminate, document details

Make sure the campus has a system for disseminating information about 504 accommodations, including extended time on assignments and makeup work, said Gonzales. Teachers need a method of documenting implementation of accommodations.

Also, instill a school culture that encourages teachers to ask questions when they're not sure how to implement and document a particular accommodation, she said. If a teacher receives a student's plan but didn't attend the 504 meeting, make sure he knows where to

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obtain more information. For example, Gonzales said the teacher may need more detail about the types of assignments for which the student receives extended time.

"Having that proactive approach will serve students and save all of the adults additional time on the back end if it's not working well," Gonzales said.

✓ Do reconvene when necessary

If a student is not finishing work or is in danger of failing due to incomplete work, this should signal the 504 team to reconvene, Johnson said. The team should discuss the student's barriers to work completion and the feasibility of makeup work. ■

Can you hear me now? Make reasonable effort to invite parents

A single 504 meeting invitation may not meet a district's obligation to include a parent in the process.

In *Charlotte (FL) County School District*, 120 LRP 3460 (OCR 07/24/19), a district faced an Office for Civil Rights investigation and possible compensatory education when it didn't follow up with a parent about a 504 meeting invitation.

Section 504 doesn't require parental participation, so even if a parent doesn't respond to three invitations, a district still has an obligation to meet. This was the case in *Virginia Beach City (VA) Public Schools*, 115 LRP 36904 (OCR 03/12/15).

Districts must make a reasonable effort to include parents in the 504 process, which may include multiple contact attempts if they fail to respond to a meeting invitation. To learn what a reasonable effort looks like, read this Q&A with the deputy superintendent of schools who oversees special education for Chelsea Public Schools in Massachusetts.

Q: When parents don't respond to 504 meeting invitations, what's a district's next step?

A: It is important to utilize multiple modalities when reaching out to caregivers. A one-size-fits-all approach does not work. Many parents prefer email, but email can be ineffective for others. We utilize email, phone calls, text messaging through a third-party platform, mail (certified if necessary) and written notices that go home with the child. If none of those work after repeated efforts, we would ask the student to please make sure their caregiver gets the written notice.

As a last resort, I suppose we would need to hold the meeting without the caregiver present but continue to make outreach efforts. If a meeting is held without a parent, a copy of the plan would be sent home for signature. In the event that it does not come back, another one would be sent via certified mail. I want to point out that this level of non-contact would be extremely rare, almost non-existent.

Q: Documentation is key, but what should that look like when it comes to parent notification of a 504 meeting?

A: Email and a third-party text [message] system can provide necessary documentation. Notes can also be entered in a student information system (SIS). Written notice can also be sent via certified mail that provides documentation that the caregiver received the notice. A district must be very persistent prior to holding a 504 meeting without a parent. This is on a case-by-case basis. It would be a last resort to hold a 504 meeting without a parent.

Q: Does the style of invitation matter? Should teams spend time on the aesthetics of the meeting invitation?

A: For many parents, the mode of communication matters greatly. Some schools take surveys from parents that provide their preferred methods of communication. I also believe aesthetics matter. Regardless of format, any formal invitation should be placed on school letterhead. Email inboxes are often flooded with spam and junk mail. If meeting invitations do not look like they are coming from the school, they may be disregarded.

Q: Why is it important for parents to participate in these meetings? How many reminders do parents usually need?

A: It is extremely important for parents/caregivers to participate in 504 meetings. Their input is extremely valuable. It also provides an opportunity for the parent to learn about the process and the students' rights, especially in the first few years of having a 504 plan. In most cases, the initial invitation is successful, but because parent attendance is so important, we must make every effort to communicate with them regarding the importance of the meeting. It should also be stated that we need to be flexible with the times that are offered.

A key to any aspect of parent involvement starts with creating a sense of belonging through the development of positive, two-way relationships. Seek opportunities to build social currency with all parents so that they feel a sense of belonging at their child's school. ■

Here's why 504 IEE requests merit careful consideration

When it comes to independent educational evaluations, Section 504 teams should mark them "handle with care." Initiated often by parents and less commonly by teams, IEE requests require a thoughtful approach.

Parents have the right to obtain an IEE at their own expense under the IDEA, but Section 504 regulations make no reference to IEEs, regardless of whether they're obtained at public expense. The Office for Civil Rights

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has, however, issued findings indicating a district had to cover the costs of an IEE for a 504-eligible student. *See Livingston Parish (LA) Sch. Bd.*, 20 IDELR 1470 (OCR 1993). (The complainants were entitled to reimbursement for an IEE which detected the student's ADD.)

If parents of a 504-eligible student request an IEE, don't risk a claim of failure to evaluate. Ensure adherence to state law and district requirements. Reconvene the 504 team to explore the evaluation's relevance as well as its possible impact on the student's educational needs. Use insights from a school attorney to navigate next steps following an IEE request.

Decide whether IEE needed

Pay attention to district 504 policy regarding IEEs for students with 504 plans, as local procedures may mirror IDEA requirements, said Alison M. Minutelli, a school attorney at Wadleigh, Starr, and Peters PLLC in Manchester, N.H. State regulations may also impose more stringent requirements on districts. For districts whose 504 policies do not mirror the IDEA, Minutelli suggested treating IEE requests as requests for an evaluation.

If a 504 team receives a request for an IEE, it should convene to decide if the evaluation is necessary, said Minutelli. For example, the team may ask whether the requested evaluation can be done by district staff. Ensure that parents receive a copy of the district's procedural safeguards, outlining their rights should they disagree with the team's decision, she said.

A district may be required to pay for an IEE if a hearing officer orders it or if the 504 team requests it, Minutelli said. Often district administrators, not the 504 team, are the decision-makers regarding whether the evaluation will be reimbursed. When a parent provides an IEE to a 504 team, consider the information separately from discussion of whether the district will fund it, she said.

Consider new information

When a parent brings an IEE to the table, determine whether it offers new data that address the student's 504 eligibility or inform his plan's content, Minutelli said. The team needs to make two determinations:

- Does the district agree with the information based on what is known about the child?
- Does the evaluation impact his educational needs? If so, how? For example, a psychological report may suggest accommodations that would enable him to access the district's programming.

The nature of the parent's request and the student's circumstances could also indicate she requires special education, Minutelli said. The team should pursue an IDEA referral if appropriate.

Determine IEE's relevance

Section 504 regulations state that teams must consider a variety of pertinent sources of information when evaluating. 34 CFR 104.35(c). If the team does not deem the IEE relevant, it should document and discuss its reasoning with parents, Minutelli said.

An IEE's relevance may depend on who conducted it, since the IDEA requires districts to specify criteria regarding evaluator qualifications. 34 CFR 300.502(e)(1). Additionally, state law may require the evaluator to have certain certificates and licenses, Minutelli said. If a state mandates certain evaluations be completed by certified psychologists or educational diagnosticians, an assessment from a licensed social worker or life coach might not be relevant. ■

'Appeal to' rather than 'appease' parents who refuse certain 504 services

A Section 504 team might feel stuck if — when it determines a student requires a service or accommodation to receive FAPE — the parent refuses to consent.

The best way to proceed in this situation is to write the plan with everything the student needs for FAPE, including accommodations and services, said Mary Ellen Sowyrda, attorney at Murphy, Hesse, Toomey & Lehane, LLP in Quincy, Mass.

If the parent rejects a service, it doesn't change the fact that the district found the student eligible. Under Section 504, districts are required to provide FAPE to all qualified students with disabilities. 34 CFR 104.33(a).

Don't write an "appeasement" 504 plan, Sowyrda said. Ignoring supports the student needs just to get his parent to sign will come back to bite you later, she said.

If a parent refuses a 504 accommodation or service, try to understand their reasoning. Get refusals in writing and continue to offer the support, keeping the ultimate goal of FAPE in mind. Review Sowyrda's recommendations to help teams navigate the situation where a parent refuses accommodations.

Appeal to parents

When a team learns that a parent is refusing consent to a particular service, it should attempt to understand why, Sowyrda said.

"We want to explain why we think the child needs the services to receive a free appropriate public education," she said.

For example, after an assessment, the 504 team may

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decide a student needs counseling at school. The team might point to evidence such as the observed anxiety, depression, and social isolation the student experiences at school and the psychological evaluation to which the parent consented.

Find common ground with the parent, emphasizing that the goal is giving the student access to learn and function well at school. During the 504 team process, ask the parent to give a service or accommodation time to work. The team can then reconvene to see if it's made a difference.

Get refusal in writing

When a parent refuses an accommodation or service in a student's 504 plan, they may put it writing automatically, said Sowyrda. If the parent conveys it verbally, the team should capture it in writing with a process similar to prior written notice, which is required under the IDEA.

Include in the notice a synopsis of what the district is proposing and the fact that the parent is refusing the service, Sowyrda said. Highlight that the district is not rescinding the offer of the service. Instead, note that without the parent's cooperation, implementation of that accommodation is on hold, she said.

Provide what you can

Some accommodations may not require consent, Sowyrda said. These include supports that teachers provide for all students. Examples are preferential seating, teacher-provided notes, or not cold-calling on a student in class.

In Massachusetts, a service such as clinical therapeutic support does require parent consent, Sowyrda said. If, however, a student with disabilities shows obvious signs of anxiety like crying or shutting down, his teacher will not ignore him. The teacher might notify the school counselor, who would provide appropriate support, just as she would to students without disabilities, Sowyrda said.

"We have to respond to situations as they arise; we're not going to turn away students showing signs of mental health concerns in school," she said.

Know your state law

State and local policy might dictate the appropriate reaction for a district in this situation, Sowyrda said. In Massachusetts, the 504 team is limited in its response when a parent refuses consent for a particular service, she said.

"We don't have the ability to file for a due process hearing when a parent rejects initial services, either through special education or 504."

Keep offer on table

If parents refuse an accommodation that the team has deemed necessary for FAPE, continue to make it available should they change their minds, Sowyrda said. Parents may accept the service later when they notice their student is struggling academically. Once the district has the green light from the parent, they can begin implementing the service or accommodation and report back, she said. ■

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Differentiate temporary impairments, disabilities in remission under 504

When students experience temporary impairments, such as broken bones, or have disabilities that are episodic or in remission, 504 teams will need to determine what, if any, accommodations are eligible for them. Use this chart to determine the difference between a temporary disability and a disability in remission or a disability that is episodic.

Temporary disability:	Disability in remission or episodic:
A temporary disability substantially limits a major life activity for a period of time and is likely to disturb the student's education significantly. Examples of temporary disabilities: Broken limbs, a sleeping disorder, or recovery from surgery.	An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. 42 USC 12102 (4)(D). Types of episodic impairments: Allergies, Asthma, Migraine Headaches, Cystic Fibrosis, Sickle Cell Anemia, ADHD. Disabilities in remission can include cancer or other diseases.
In *Letter to Rahall*, 21 IDELR 575 (OCR 1994), OCR offers examples of how districts should address a student with broken limbs. To determine whether the temporary impairment is a disability, the district should consider the duration or expected duration of the impairment and the extent to which it limits a student's major life activity.	A student with a disability that is in remission may be covered by Section 504 if the disability would substantially limit a major life activity when active. 42 USC 12102 (4)(D).
Districts might consider a stand-alone temporary plan in lieu of a Section 504 plan to meet the needs of a student whose broken bone does not constitute a disability.	A student with an impairment in remission is a student with a record of a disability, and students eligible under the "record of" and "regarded as" prongs traditionally receive nondiscrimination protections but not Section 504 FAPE.
Accommodations for a student who breaks both legs and whose recovery is delayed because of surgery will differ from the needs of a right-handed student who breaks his left hand, which will heal normally with no complications.	Students with disabilities in remission don't currently need accommodations, but are "technically eligible" and entitled to nondiscrimination protection under Section 504. *See Dear Colleague Letter*, 58 IDELR 79, (OCR 2012)

Source: Section 504 Compliance: The Complete K-12 Handbook ■

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Teen's threats of murder, sexual assault justify transfer to different high school

Case name: *Doe v. Portland Pub. Schs.*, 123 LRP 33287 (D. Me. 11/03/23).

Ruling: A parent who claimed a Maine district transferred her 17-year-old son to another school based on stereotypes about mental illness could not compel the student's return to his previous school. Finding the parent was unlikely to succeed on her Section 504 and ADA Title II claims, the U.S. District Court, District of Maine denied the parent's request for injunctive relief.

What it means: Nothing prevents a district from considering classmates' concerns when determining whether a student with a disability poses a threat to the health or safety of others. That said, the district should be prepared to demonstrate it acted on legitimate health and safety concerns as opposed to disability-related generalizations or stereotypes. This district noted that the student's repeated harassment of female classmates, which included comments about rape and murder, violated three district policies prohibiting violence and intimidation. That evidence helped the district show that it did not rely solely on the classmates' discomfort with the student's potential return to their school.

Summary: A Maine district's thorough review of a 12th-grader's threats against his female classmates undercut the parent's claim that the student's involuntary transfer to a different school stemmed from stereotypes about mental illness. The District Court denied the parent's request for a court order that would allow the student to return to his former high school while her Section 504 and ADA claims were pending. U.S. District Judge John A. Woodcock Jr. noted that the parent sought a temporary restraining order and a preliminary injunction. As such, the judge explained, the parent needed to show she was likely to succeed on the merits of her disability discrimination claims. The parent also had to establish a likelihood of irreparable harm that outweighed any harm to the district and show that the requested injunctions would serve the public interest. Judge Woodcock held that the parent did not meet any of those requirements. Although the parent argued that the district excluded the student due to his classmates' fear of individuals with mental illness, the judge disagreed. The judge pointed out that the student had a lengthy history of sexually harassing female classmates through text messages, voice messages, and videos, several of which mentioned rape and murder. After conducting a threat assessment, which included an evaluation by a psychologist, the district determined the student's conduct violated three policies prohibiting violent, intimidating, or harassing behavior. Judge Woodcock rejected the parent's claim that the district transferred the student to another high school to appease his classmates' unfounded fears. "There is ample evidence in the record that this decision was made because of [the student's] conduct," the judge wrote. Furthermore, because the student could continue his studies at the other school and join that school's track team, the judge determined the transfer would not cause irreparable harm. The judge did not address the merits of the parent's Section 504 or ADA claims. ■

W.Va. LEA's self-review of 24 schools heads off accessibility complaint

Case name: *Wood County (WV) Schs.*, 123 LRP 32003 (OCR 06/29/23).

Ruling: Because a West Virginia district was in the process of addressing accessibility concerns at more than 20 of its schools, OCR declined to decide whether the district violated Section 504. OCR found that the district could resolve the issues identified in the complaint, which included inaccessible routes and entryways, by taking the steps set forth in a resolution agreement.

What it means: Districts don't have to wait for a Section 504 complaint to make sure their facilities are readily accessible to and usable by individuals with disabilities. If a district identifies accessibility concerns on its own, it can remediate those issues early and reduce its own potential liability for disability discrimination. In this case, the district showed it was in the process of seeking

504 quick quiz

Q: Must all school officials, employees discipline students in accordance with their BIP?

A: Yes, generally. A behavioral intervention plan for a student with a disability supplants the use of the regular discipline code to the extent explicitly provided. Failure to discipline a student in accordance with his BIP constitutes a failure to properly implement a student's IEP or Section 504 plan. This could lead to a denial of FAPE. Therefore, all school officials and employees who have the authority to discipline the student need to be aware of what is in the plan.

Essential staff members interacting with a student who has a behavioral intervention plan should be familiar with the interventions and have access to a copy of the plan. In *Jefferson County (KY) Public Schools*, 43 IDELR 144 (OCR 2004), a district was found to have discriminated against a student with an emotional disturbance by failing to implement his BIP consistently. Teachers asserted that although they had knowledge of the student's BIP, none of them had reviewed a copy of it.

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architectural and engineering services to review its compliance with ADA Title II. By getting ahead of the issue, the district was able to negotiate a resolution agreement that did not require any additional action beyond keeping OCR informed.

Summary: A West Virginia district's ongoing efforts to address accessibility concerns at two dozen of its schools helped it avoid a finding that it discriminated against individuals with disabilities. OCR found that the district could resolve all compliance concerns identified in the complaint by conducting an accessibility assessment of its facilities and reporting any remedial action it planned to take. OCR noted that accessibility standards differed based on when each building was constructed. For existing facilities built before June 3, 1977, OCR observed, the district needed to ensure its services, programs, and activities were readily accessible to and usable by individuals with disabilities. OCR explained that any facilities constructed after that date would need to meet the accessibility guidelines for new construction that were in effect at the time. OCR did not indicate which standard applied to each of the 24 schools identified in the complaint, which largely focused on inaccessible routes and entryways. However, OCR pointed out that the district was already working to ensure its schools met the appropriate accessibility standards. "The district submitted documentation of its current advertisement and request for architectural/engineering design services, seeking bids for its paving projects, including ADA assessments and compliance," OCR wrote. Given that the district was in the process of resolving all facility accessibility concerns, OCR declined to decide whether the identified accessibility issues amounted to a Section 504 violation. OCR gave the district 120 days to identify the accessibility standard that applied to each facility, and another 150 days to submit an action plan to correct any accessibility issues it identified. ■

Perez revives parents' $50M lawsuit over Fla. district's removal practices

Case name: *Powell v. School Bd. of Volusia County, Fla.*, 123 LRP 33407 (11th Cir. 11/13/23).

Ruling: Parents who claimed a Florida district used exclusions and disciplinary removals to address their children's disability-related behaviors got a second chance to pursue a $50 million class action under Section 504 and ADA Title II. The 11th U.S. Circuit Court of Appeals vacated a District Court decision at 82 IDELR 95 that dismissed the parents' complaint on exhaustion grounds and remanded the case for further proceedings.

What it means: Districts should not assume that *Perez v. Sturgis Public Schools*, 82 IDELR 213 (U.S. 2023), only applies to cases decided after that landmark ruling. Any district that secured a dismissal of a Section 504 or ADA claim for money damages on exhaustion grounds within the last year may have to defend those claims anew. This district cited the parents' previous failure to argue that their request for money damages allowed them to bring their Section 504 and ADA claims directly to court. However, the ruling in *Perez* four months later allowed the parents to raise that argument on appeal.

Summary: A Florida district will have to defend allegations that it unlawfully removed or excluded students who engaged in disability-related behaviors, all because of a March 2023 U.S. Supreme Court ruling. The 11th Circuit vacated the District Court's dismissal of the parents' Section 504 and ADA complaint, which sought $50 million in damages, and remanded the case for further proceedings. The three-judge panel noted that the IDEA's exhaustion provision requires parents to seek relief in an administrative proceeding before suing their child's district in court for an alleged denial of FAPE. Because the parents alleged that the frequent behavior-related exclusions and removals resulted in educational harm, the panel explained, the law in effect at the time required the District Court to dismiss the parents' complaint. However, the panel pointed out that the Supreme Court's ruling in *Perez v. Sturgis Public Schools*, 82 IDELR 213 (2023), issued four months later, changed the applicable law. The *Perez* Court held that the IDEA's exhaustion requirement does not apply to claims for money damages, a remedy the IDEA does not authorize, that are brought under other statutes. Although the district argued that the parents could not base their appeal on the type of remedy sought — an argument they allegedly failed to raise earlier — the 11th Circuit disagreed. "Indeed, *Perez*, which issued after the parties completed initial briefing, changed the law," the panel wrote. The panel also rejected the district's argument that the parents' use of the word "compensatory" in their putative class action created confusion about the type of relief sought. It noted that the parents' complaint clearly sought $50 million in compensatory damages, including attorney's fees, on behalf of all students with disabilities subjected to allegedly discriminatory removals. The 11th Circuit did not address the merits of the parents' complaint. ■

Out-of-district placement won't excuse LEA's failure to investigate harassment

Case name: *Student with a Disability, In re*, 123 LRP 32253 (OCR 06/27/23).

Ruling: A district's failure to respond to a parent's complaint about disability-based harassment at an IDEA-eligible student's out-of-district school prompted OCR to question whether the district understood its obligations under

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Section 504. OCR found that the district could resolve the compliance concern by taking the steps set forth in a resolution agreement.

What it means: Just because an IEP team places a student in an out-of-district school doesn't mean the district can take a "hands off" approach to harassment complaints. When the district receives notice of a complaint, it must investigate whether any disability-based harassment occurred and take steps reasonably calculated to end that harassment. This district forwarded the parent's disability harassment complaint to the school without investigating the parent's allegations or determining whether remedial action was necessary. Its belief that the school was in a better position to investigate the matter did not justify its failure to take action or respond to the complaint.

Summary: A district's decision to let an IDEA-eligible student's out-of-district school handle the parent's disability harassment complaint raised questions about the district's compliance with Section 504 and ADA Title II. OCR found that the district could resolve the matter by investigating the complaint and training relevant staff on their obligations toward students with disabilities in out-of-district placements. OCR noted that Section 504 and the ADA both prohibit districts from discriminating against students with disabilities, either directly or through other arrangements. As such, OCR explained, the district must investigate reports of disability-based harassment whether the harassment occurs in its own schools or in the schools identified in students' IEPs. OCR observed that while the district received copies of two harassment complaints the parent filed with the school, it did not respond to either filing. Instead, the district allowed the school to handle the complaint itself. OCR questioned the district's failure to respond to the parent's allegations. "OCR is concerned that the district, and [certain] staff in particular, are not aware of the district's obligation to respond to complaints of discrimination and harassment concerning students in out-of-district placements," OCR wrote. Because the district asked to resolve the compliance concern, OCR did not decide whether its failure to investigate or respond to the parent's complaint violated Section 504 or the ADA. OCR noted that it would monitor the district's compliance with the resolution agreement. ■

10-year-old's handcuffing illustrates unfairness of Calif. LEA's safety policy

Case name: *C.B. v. Moreno Valley Unified Sch. Dist.*, 123 LRP 34183 (C.D. Cal. 10/13/23).

Ruling: A California district discriminated against a 10-year-old boy with ADHD and oppositional defiant disorder when it allowed campus security officers to handcuff the student on three occasions for disability-related behaviors. The U.S. District Court, Central District of California granted judgment for the student on his Section 504 and ADA Title II claims and ordered the parties to develop an appropriate remedy.

What it means: Districts should think twice about adopting school safety standards that permit or require security personnel to disregard student's disability-related needs. Instead of placing all students on equal footing, such policies or practices may increase the likelihood of restraint, seclusion, or removals of students with disabilities. Not only did this district fail to train campus security officers on how to handle disability-related behaviors, but it allowed classroom personnel to summon the officers when students were noncompliant. The district might have avoided the handcuffing incidents had it provided more effective training and ensured officers were aware of individual students' behavioral supports.

Summary: The parent of a 10-year-old boy with ADHD and ODD had little trouble convincing a District Court that a California district discriminated against his son by handcuffing him for disability-related behaviors. The court held that the district's school safety practices, which had a disproportionate impact on students with disabilities, violated Section 504 and the ADA. U.S. District Judge Jesus G. Bernal noted that the district required campus security officers to treat all students the same way, regardless of whether they had disabilities. However, the judge pointed out that the district's across-the-board policy did not have the same impact on all students. To the contrary, the judge observed, data collected by the district showed that it was almost nine times more likely to summon an officer when a student had a disability. Judge Bernal attributed that increased frequency to the district's failure to train officers on how to handle disability-related behaviors. "Since the position of [campus safety officer] was created in 2016, [the district] has not trained [officers] on how to identify [students with disabilities], understand disability-related behavior, and/or provide disability-specific accommodations," the judge wrote. The judge further noted that the district allowed classroom personnel to summon campus safety officers when students with disabilities became defiant or noncompliant, thereby increasing the likelihood of removal or restraint. Because the district's security policies and practices disproportionately impacted students with disabilities, the court held those practices were discriminatory. It ordered the parties to work together to develop a remedy that would ensure students with disabilities had meaningful access to the district's programs, services, and activities. ■

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